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**Transitional justice in the Israeli-Palestinian conflict
between judicial and non-judicial mechanisms:
a perspective on ensuring accountability between
the international criminal justice and the civil society's
involvement ****

Italian title: *Giustizia di transizione nel conflitto israelo-palestinese tra meccanismi giudiziari e non giudiziari: una prospettiva sulla garanzia di accountability tra giustizia penale internazionale e coinvolgimento della società civile*

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1. Transitional justice. Judicial and non-judicial mechanisms compared

According to the definition adopted in the UN Secretary General's Report on the Rule of Law in Transitional Justice¹, *transitional justice* refers to the set of processes and mechanisms associated with society's effort to come to terms with a legacy of violations committed on a large scale, in order to ensure *accountability*, secure justice and achieve reconciliation. This can be achieved through judicial and non-judicial mechanisms, through international involvement, individual trials, restorative measures, truth-seeking, institutional reforms, checks on individuals in certain public positions and their eventual removal, or a combination of these.

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¹ Security Council, *The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General*, S/2004/616, 23 August 2004, p. 4. See also R. G. TEITEL, *Transitional Justice*, in *Encyclopedia of Human Rights*, ed. D. P. FORSYTHE, Vol. 5, New York, 2009, pp. 81-85.

These *processes* and *mechanisms* are mainly deployed on two occasions: in political transitions from forms of government to which serious violations of human rights are attributable, to forms of government considered to be respectful of human rights²; or, in the transition from a situation of conflict - also the scene of serious human rights violations - to a situation of peace³. The dilemma underlying transitional justice is the following: in these situations, *is it more appropriate to confront the past or to forget it in order to move forward?*⁴ If, however, transitional justice, by definition, involves *coming to terms with the past* to ensure *accountability*, when faced with the choice of forgetting⁵, probably one cannot really speak of transitional justice.

As anticipated, therefore, transitional justice can be implemented through judicial and non-judicial mechanisms. For example, as far as conflicts are concerned, Kapshuk and Strombom⁶ consider transitional justice properly judicial to be applicable to the later phase, whereas *during* a conflict - either at the same time as peace negotiations or before they start or as a remedy for their failure - it is more appropriate to speak of *pre-TJ* or *critical TJ*. In this phase, the leading role is essentially held by civil society organisations, when, on the other hand, *ownership of* transitional justice of a judicial nature rests with state institutions, taking the form of a *vertical* formula. The authors take the example of the Israeli NGO Zochrot and the

² G. FORNASARI, R. WENIN, *La giustizia di transizione*, in *La persecuzione dei crimini internazionali. Una riflessione sui diversi meccanismi di risposta. Die Verfolgung der Internationalen Verbrechen. Eine Überlegung zu den Verschiedenen Reaktionsmechanismen*, ed. R. WENIN, G. FORNASARI, E. FRONZA, *Atti del XLII Seminario internazionale di studi italo-tedeschi, Merano, 14-15 novembre 2014, Akten des XLII. Internationalen Seminars deutsch-italienischer Studien, Meran 14-15 November 2014*, Trento, 2015, p. 47.

³ Y. KAPSHUK, L. STROMBOM, *Israeli Pre-Transitional Justice and the Nakba Law*, in *Israel Law Review*, 54(3) (2021), p. 306.

⁴ Committee on Political Affairs, *Draft report on the challenge of national reconciliation in post-conflict and post-crisis countries*, DR\1033859IT.doc, 31 July 2014, recitals G and M.

⁵ See P. CAROLI, *Il potere di non punire. Uno studio sull'amnistia Togliatti*, in *Fonti e studi per il diritto penale*, ed. S. VINCIGUERRA, G. FORNASARI, Napoli, 2020, pp. 213-220: after the Francoist regime, Spain did not see investigations of responsibility, punishments, purges, historical memory (except for the *Ley de memoria histórica* of 2007); the choice of oblivion was widely supported by all political forces and civil society. See also G. FORNASARI, R. WENIN, *La giustizia di transizione*, cit., pp. 49-52: the Spanish model is an example of a 'pure model' of transition, meaning, by this locution, the experiences of transition in which the criminal law is not given any role (the Spanish case, precisely) or those in which the criminal justice system is entirely relied upon for the 'settling of accounts' (this is the case of Germany, after the fall of the Berlin Wall).

⁶ Y. KAPSHUK, L. STROMBOM, *Israeli Pre-Transitional Justice and the Nakba Law*, cit., pp. 307-309.

Truth Commission it set up to reconstruct the responsibilities of the Israeli state towards the Palestinian people in the period between 1948 and 1960⁷. The studies by Kapshuk and Strombom offer the vision of a coexistence - if not a complementarity - between the two types of mechanisms. However, the question must be asked: are the two types fully fungible? Or are they bound by a hierarchy, dictated by a different *effectiveness*, i.e. capacity to achieve accountability for serious human rights violations? To answer this question, we first analyse the function of judicial mechanisms, digressing briefly into the experience of an overseas Court of Rights.

In judicial mechanisms, the reference is essentially to trials and, more precisely, to three moments: the *investigation* in relation to possible criminal responsibility for past violations; the *ascertainment* of such responsibility; and *reparation*, through the adoption of *ad hoc* measures. These three segments are derived from the jurisprudence of the Inter-American Court of Human Rights, which took shape in the wake of the transitions in Latin America following the collapse of the dictatorial regimes established under the so-called *Plan Condor*⁸.

The San José Court emphasised the role of criminal trials in the reconstruction of large-scale human rights violations mainly in two ways. Firstly, it recognised, in *Barrios Altos v. Peru*, a *right to the truth* for the victims and their relatives: thus, explicitly protected their right to obtain from state bodies the establishment of the facts that gave rise to these violations and the definition of the related responsibilities, through the investigation and the trial⁹.

⁷ Report 'Truth Commission on the Responsibility of Israeli Society for the Events of 1948-1960 in the South, Zochrot, https://www.zochrot.org/publication_articles/view/56371/en (accessed 1 September 2025). Zochrot was founded by a group of Jewish-Israeli activists with the aim of promoting the recognition of the Palestinian *Nakba* (*catastrophe*) and the right of return of Palestinian refugees to Israeli society. On this topic, see also the experience of the *juicios por la verdad* in the Argentine transition (G. FORNASARI, *Giustizia di transizione e diritto penale*, Turin, 2013, pp. 99-102). Born on the basis of a general dissatisfaction with the instruments of ordinary criminal justice, these processes are deformed, lacking legislative regulation and an unambiguous reference model. An identifying element, however, can be seen in the significant role acknowledged to the victims, who enjoyed a broader narrative space than that reserved for them by ordinary criminal procedure, being able "publicly (and before a state authority) to participate and share their suffering".

⁸ In general, see *Percorsi giurisprudenziali in tema di gravi violazioni dei diritti umani. Materiali dal laboratorio dell'America Latina*, eds. G. FORNASARI, E. FRONZA, Trento, 2011.

⁹ *Barrios Altos Vs. Perú*, IACtHR, 14 March 2001.

Secondly, it implemented reparative measures, which, in inter-American jurisprudence, have taken on the physiognomy of a veritable *doctrine*¹⁰. These include criminal investigations and trials themselves, given that impunity encourages the chronic repetition of human rights violations and leaves defenceless victims¹¹. Ascertainment, on the contrary, achieves recognition of the suffering of victims far more than compensation¹².

The criminal trial, therefore, takes on the function of a tool to *deal with the past*, contributing to the creation of a historical memory and, therefore, to avoid the reiteration of criminal conduct in the future¹³. As Fronza¹⁴ observes:

“I processi penali divengono così parte costitutiva dei *processi di memoria* e vengono chiamati ad *arrestare* la narrazione storica dei fatti tramite la sentenza, che passa in giudicato, e che sancirà qual è la verità (ufficiale). La sentenza possiede, infatti, in quest’ottica, quella *auctoritas* idonea a stabilire quegli eventi e quei valori sulla cui memoria condivisa si fondano le società democratiche [...]”¹⁵.

Thus, one can conclude for the exclusion of full fungibility between judicial and non-judicial mechanisms - such as the work of truth commissions - in

¹⁰ S. GARCIA RAMIREZ, *La jurisprudencia de la Corte Interamericana de derechos humanos en materia de reparaciones*, in *La Corte Interamericana de derechos humanos. Un cuarto de siglo: 1979-2004*, San José de Costa Rica, 2005, pp. 3-6: San José's reparations regime is described as *vigorous* and *innovative*, giving a profound meaning to the instrument of judicial protection and to the expectations of the consociates. See also: S. BARTOLE, P. DE SENA, V. ZAGREBELSKY, *Commentario breve alla Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali*, Padova, 2012, p. 497; *La Cantuta v. Peru*, IACtHR, 29 November 2006, §24 (separate opinion of Judge Ramírez).

¹¹ *Anzualdo Castro v. Peru*, IACtHR, 22 September 2009, §179.

¹² L. SEMINARA, *Les effets des arrêts de la Cour interaméricaine des droits de l'homme*, in *Droit et Justice*, ed. P. LAMBERT, D. PLAS, M. PUÉCHAVY, Brussels, 2009, pp. 47-54, 174-176. Mere monetary satisfaction, on the contrary, is viewed with distrust, as it is deemed insufficient to remedy the consequences of serious human rights violations (the damage of which would be irreparable by nature). See also A. GARAPON, *Crimini che non si possono né punire né perdonare. L'emergere di una giustizia internazionale*, Bologna, 2004, pp. 131-135.

¹³ *Almonacid Arellano y otros v. Chile*, IACtHR, 26 March 2006, §149-150.

¹⁴ E. FRONZA, *Ricordare e punire. Alcune osservazioni sull'asse di tensione tra strumento penale e storia nel paradigma di incriminazione derivato*, in *Notizie di Politeia*, XXXIII, n. 125 (2017), p. 81.

¹⁵ Own translation: ‘Criminal trials thus become a constitutive part of *memory processes* and are called upon to *stop* the historical narration of facts through the sentence, which become definitive, and which sanctions what is the (official) truth. In fact, the judgement possesses, from this perspective, that *auctoritas* suitable for establishing those events and values on whose shared memory democratic societies are founded [...]’. See also M. R. DAMASKA, *Problematic Features of International Criminal Procedure*, in *The Oxford Companion to International Criminal Justice*, ed. A. CASSESE, New York, 2009, p. 180.

transitional justice, however much both compete to achieve *accountability*. This first conclusion can be the starting point for turning our gaze to a conflict that is currently ongoing and that seems to require transitional justice.

2. Spotlight Gaza. Taking stock of a chronic conflict through the lens of international criminal justice

It is certainly not an easy task to summarise in a few lines the long-standing conflict involving Israel and Palestine¹⁶; nor, indeed, is an in-depth examination of the conflict from a historical and political perspective the intention of this reflection. However, as Fornasari teaches,

“Il tema della giustizia di transizione è oggetto di attenzione e di approfondimento assolutamente trasversale. Da diversi angoli visuali, esso può interessare lo storico, il politologo, il filosofo e, naturalmente, il giurista”¹⁷.

This justifies any extra-legal references that will prove necessary in the reflection. The history of this conflict is one of serious and large-scale human rights violations. Since the 1948 *Nakba*¹⁸, the incidents have been countless and

¹⁶ I. PAPPÉ, *A history of Modern Palestine*, Cambridge, 2022; I. PAPPÉ, *Brevissima storia del conflitto tra Israele e Palestina*, Roma, 2024. In aid, for an effective overview of the main stages of the conflict, see *Istituto per gli studi di Politica Internazionale (ISPI) - Escalation Israele-Palestina: 12 grafici per capire come siamo arrivati fin qui*, (6 December 2023), <https://www.ispionline.it/it/pubblicazione/escalationisraele-palestina-12-grafici-per-capire-come-siamo-arrivati-fin-qui-126406> (accessed 1 September 2025).

¹⁷ G. FORNASARI, *Giustizia di transizione e diritto penale*, cit., p. 1. Own translation: ‘The theme of transitional justice is the object of absolutely transversal attention and in-depth study. From different angles, it can interest the historian, the political scientist, the philosopher and, of course, the jurist’.

¹⁸ In fact, the origins of the conflict can be traced back further, in particular to 2 November 1917, when the British government, with the so-called Balfour Declaration, pledged to make Palestine ‘a national homeland for the Jewish people’, while protecting the civil and religious rights of the ‘non-Jewish communities’. However, starting with the Declaration, a milestone in the evolution of the Zionist movement, violence between Arabs and Jews grew. The first major wave was in the 1920s, when the colonisation and expropriation of Palestinian lands by the Zionists began: it resulted in what historian Pappé has called a real *ethnic cleansing*, a consequence of Palestinian resistance to colonisation. Other events followed: the Hebron massacre of 1929, the great Arab revolt of 1936. With Resolution 181 of 29 November 1947, the UN, having referred the Palestinian question from the British government to the Assembly, approved the

have given the conflict a chronic character, with periodic flare-ups. The latest is the one that followed the attack by the Palestinian paramilitary group Hamas on 7 October 2023 against Israel. The Israeli response operation on the Gaza Strip, “Swords of Iron”, unfolded with unprecedented violence, produced a very serious humanitarian crisis¹⁹ and continued the disproportionate cost - especially human - to the Palestinian population that is, in fact, a *trend* in this conflict²⁰.

The existence of criminal law profiles in this case is far from new: this is confirmed by the pending investigation of the *situation* in Palestine before the International Criminal Court (thereafter: ICC) for crimes committed on the territory of the Palestinian State since 13.06.2014²¹. The subject of the investigation has been extended to the escalation of hostilities and violence since the 7 October 2023 attack following further referrals on the

partition of Palestine into a Jewish and a Palestinian state. This was followed by the 1948 wave of mass expulsions and, hence, the purging of the Palestinian Arab areas: i.e. the *Nakba*. In December 1948, UN Resolution 194 was passed, recognising *the right of return* for Palestinian refugees, the internationalisation of Jerusalem, and the call for the start of negotiations to implement the two-state solution on the basis of the borders established in the 1947 partition resolution. The Palestine Reconciliation Commission that was set up for this purpose, however, proved unsuccessful and Israel was able to proceed with the creation of the Jewish state - proclaimed in 1948 - which did not include a Palestinian state (I. PAPPÉ, *Brevissima storia del conflitto tra Israele e Palestina*, cit., pp. 28, 37-42, 43-44, 46-48, 66-72).

¹⁹ United Nations Relief and works agency for Palestine refugees in the near east, *UNRWA Situation report #186 on the humanitarian crisis in the Gaza Strip and the West Bank, including East Jerusalem*, <https://www.unrwa.org/resources/reports/unrwa-situation-report-186-situation-gaza-strip-and-west-bank-including-east-jerusalem> (accessed 1 September 2025).

²⁰ As an example, in relation to the so-called Israeli operation ‘Cast Lead’ conducted on the Gaza Strip from 27 December 2008 to 18 January 2009, see L. VIERUCCI, *Sul principio di proporzionalità a Gaza, ovvero quando il fine non giustifica i mezzi*, in *Diritti umani e diritto internazionale*, 3 (2009), pp. 328-330. In verifying Israel's compliance with the principle of proportionality during the operation, the author used the test parameters of excessive harm and concrete military advantage. The ‘numerical’ issue of the conflict, which flows into the end-of-operation budgets, is far from marginal in the assessment of compliance with the principle of proportionality in the use of force during the conflict and, as the author reports, these budgets tend to count much higher numbers of Palestinian casualties than Israeli ones.

²¹ The opening of the investigation into the Situation in Palestine was announced by Prosecutor Fatou Bensouda on 03 March 2021, the prerequisites under Art. 53(1) of the Rome Statute for the opening of an investigation having been found to be met: *fumus commissi delicti*; admissibility of the case under Art. 17 St.; functionality of the investigation to serve the interests of justice, considering the seriousness of the crime and the interests of the victims (<https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine> - accessed 1 September 2025). The date of 13 June 2014 is the one referred to in Palestine's *referral* filed with the Office of the Prosecutor.

Palestinian situation submitted by South Africa, Bangladesh, Bolivia, Comoros and Djibouti²².

The investigation had been preceded by further attempts to proceed against Israel, which never resulted in judgments due to issues related to the Court's jurisdiction *ratione loci* and the statehood of Palestine²³.

²² <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-situation-state-palestine> (accessed 1 September 2025).

²³ See T. MARINIELLO, C. MELONI, *Litigating Palestine before the International Criminal Court*, in *Journal of International Criminal Justice*, 18 (2020), pp. 881-885. The authors trace the milestones of the Palestine disputes before the ICC. The first attempt to activate the Court under Art. 12(3) St. had occurred in 2009 on the occasion of the so-called Operation *Cast Lead*. After a preliminary examination of the referral, in April 2012, the OTP (Office of the Prosecutor) referred the question of whether Palestine could be considered a state under the Rome Statute to the political bodies - i.e. the Assembly of States Parties to the Rome Statute and the UN General Assembly. The resolution of 29 November 2012, no. 67/19, affirmed the right of the Palestinian people to self-determination and independence in a state located in the territories occupied since 1967, recognising Palestine's status as a non-member observer state of the United Nations. Nonetheless, the OTP had not reconsidered its earlier decision not to pursue the investigation, ruling that Palestine should either submit a new declaration under Art. 12(3) St. or ratify the Statute. After Operation *Protective Barriers* in July 2014, in January 2015, Palestine moved in both directions: on 1 January 2015, retroactively accepted the Court's jurisdiction from 13 June 2014 under Article 12(3) St.; on 2 January 2015, it filed its declaration of accession to the Rome Statute. Three years later, on 22 May 2018, Palestine filed a referral before the ICC on crimes committed on Palestinian territory, consistent with the Court's temporal jurisdiction. The Prosecutor, on 20 December 2019, referred a new matter to the Pre-Trial Chamber under Article 19(3) St., for confirmation as to which territories the Court could exercise jurisdiction over in Palestine. On 5 February 2021, the Court, taking up Resolution A/RES/67/19, para. 1, affirmed that the territorial jurisdiction of the ICC in the Situation in Palestine extends to the territories occupied by Israel after 1967, i.e. the Gaza Strip and the West Bank, including East Jerusalem. Pre-Trial Chamber wished to clarify the nature of this decision, which is strictly functional to the exercise of the Court's jurisdiction and irrelevant to define the statehood of Palestine under public international law or to define its present and future territorial boundaries (a matter left to negotiations between States). The PTC reiterated that, as a State Party to the Statute, Palestine's *referral* requires the opening of an investigation, as there is a reasonable basis to proceed (<https://www.icc-cpi.int/court-record/icc-01/18-143-tfra> - accessed 1 September 2025). On this point, see also C. MELONI, *La Corte Penale Internazionale conferma la sua giurisdizione territoriale sulla Palestina*, in *Sistema Penale*, 9 February 2021. See also, R. NIGRO, *La giurisdizione della Corte penale internazionale sul Territorio Palestinese Occupato e la statualità della Palestina*, in *Diritti Umani e Diritto Internazionale*, vol. 15, no. 2 (2021), pp. 511-520: '[...] Indeed, it seems that the decision under comment fits into and can be explained from the dynamic perspective of statehood, that is, taking into account that there are certain factors (and among them, the recognition by existing States of the international community, judgments and decisions of various jurisdictional bodies, resolutions of International Organisations) which, while not constitutive of statehood - that is, not being sufficient in themselves to qualify an entity as a State - nevertheless influence and contribute to determining its process of formation [...]. The

Although these issues were resolved for the purpose of the opening of the investigation by the Pre-Trial Chamber's decision of 05.02.2021, the issue of jurisdiction is not, however, to be considered entirely stable, as it may still be the subject of further issues potentially hindering the progress of the proceeding²⁴. Meanwhile, on 20.05.2024, the Prosecutor requested Pre-Trial Chamber I (PTC) to issue warrants for the arrest of Hamas and Israeli leaders²⁵. Warrants which, on 21.11.2024, were issued against the Israeli Prime Minister Benjamin Netanyahu and the Israeli Defence Minister at the time of the events Yoav Gallant²⁶, as well as against one of

Chamber's own decision, in recognising that Palestine is a State Party to the ICC Statute, may be regarded as one of those factors contributing to the acquisition of statehood under general international law' (own translation).

²⁴ According to Art. 19 St., questions of jurisdiction may be: raised ex officio by the Court; raised by the suspect or accused, or by the State that has jurisdiction over the case and has proceeded with it, or by the State whose acceptance of jurisdiction is sought pursuant to Art. 12 St.; raised by the Prosecutor, who may request a settlement. The time limits for such exceptions are rather ambiguous: in the case of the suspect or accused, before the trial or at the beginning; for the State, *as soon as possible*. In any case, such issues must be resolved *as soon as possible* (see K. AMBOS, *Treaties on International Criminal Law. Volume III: International Criminal Procedure*, Oxford, 2016, p. 253). In a request dated 29 September 2024 - subsequent to the Prosecutor's request to issue arrest warrants for Israeli leaders - the Jewish State challenged the territorial jurisdiction of the ICC under Art. 19(2) St., especially with regard to Israeli nationals, noting that its acceptance would be required. As will be discussed in more detail later, the Oslo Accords severely limited Palestine's criminal jurisdiction over Israeli nationals in the occupied territories: the question of the ICC's jurisdiction over this *situation*, therefore, would revolve around the principle *nemo dat quod non habet* - i.e. Palestine could not delegate to the ICC criminal jurisdiction it does not have, except to a limited extent, over Israeli nationals. The Court, however, rejected the question of jurisdiction raised by Israel as premature (see footnote below) and ruled, moreover, that where territorial jurisdiction is established under Art. 12(2)(a) or (b) St. - as was the case with Palestine - no acceptance is required. On this issue, however, it should be noted that on 10 June 2024, the United Kingdom submitted a request for leave to submit observations pursuant to Rule 103 of the Rules of Procedure and Evidence (RPE): reiterating its decision of 05 February 2021, it noted that, in the regulation of territorial jurisdiction in the situation in Palestine, the majority of the PTC had decided to postpone the determination of issues arising from the Oslo Accords until such time as a question under Article 19 St, considering that these agreements had no relevance to the Court's jurisdiction; at most, to the cooperation profile. On the summary of the two positions, see §124 ff. of the decision of 05 February 2021 (<https://www.icc-cpi.int/court-record/icc-01/18-171-anx> - accessed 1 September 2025).

²⁵ <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> (accessed 1 September 2025).

²⁶ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (accessed 1 September 2025). Although the arrest warrants are qualified by the Court as 'secret', the PTC I considered publishing the factual elements that led it to find reasonable grounds to believe that both B. Netanyahu and Y. Gallant are liable for "the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution, and other inhuman acts". The Court considers

a number of Hamas leaders who had died in the meantime²⁷.

The state of the art could be summarised as follows: a conflict that has never ended, has been exacerbated over time by various military operations and still lacks judicial definitions of a criminal nature of the serious violations committed in the course of it. Recalling the considerations made in the first paragraph, the following can be concluded: the impunity for serious human rights violations committed during the conflict - of which there is also a trace in international justice²⁸ - constitutes fertile ground for their recurrence.

In order to *move forward*, it would be necessary to *deal with the past* and ensure accountability: on the topic of transitional justice applied to the Israeli-Palestinian conflict, this reflection continues.

3. Testing transitional justice to the Israeli-Palestinian conflict through the 5W rule. The justice perspective and the role of civil society

Although the intent is not to chronicle, we will make use of the 5W rule as a valuable tool to develop a very complex argument in a systematic manner and in a contained space.

international humanitarian law applicable in the conflict between Israel and Hamas (both that relating to international armed conflicts and that relating to non-international armed conflicts) and, consequently, on the basis of these legal sources, it has found the commission of crimes against humanity with a widespread and systematic attack against civilians in Gaza, detailing the dramatic effects on the population living in the Strip.

²⁷ On 9 August 2024, the PTC I closed the proceedings against Ismail Haniyeh due to his death; the same happened on 25 October 2024 for Yahya Sinwar, the leader of Hamas in Gaza, and on 26 February 2025 for Deif, the highest commander of the armed wing of Hamas (al-Qassam Brigades) (<https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim> - accessed 1 September 2025). It states that reasonable grounds were found to believe that 'crimes against humanity were part of a widespread and systematic attack directed by Hamas and other armed groups against the civilian population of Israel'. The murders perpetrated against civilians during the attack on 7 October 2023, the taking and treatment of hostages qualify as crimes against humanity and war crimes.

²⁸ In fact, the post-7 October 2023 operation has also stimulated a response in international law, with the opening of proceedings before the International Court of Justice in The Hague for Israel's violation of the Convention on the Prevention and Punishment of the Crime of Genocide against the Palestinians in the Gaza Strip, starting with the application filed on 29 December 2023 by South Africa. The judgment is relevant in relation to this conflict because it has contributed to the emergence of certain forms of responsibility of the State of Israel towards the Palestinian population. On this point, see E. A. ROSSI, *L'indagine della Procura della Corte Penale Internazionale sulla situazione in Palestina. Quale scenario dopo l'ordinanza sulle misure provvisorie della Corte internazionale di Giustizia?*, in *Ordine internazionale e diritti umani* (2024), pp. 163-171.

3.1 Who: *To whom* the task to implement transitional justice?

Assuming a favour towards transitional justice mechanisms of a judicial nature, the situation under consideration in this reflection begs the question of *which judges* can be entrusted with this role.

Let us first note the singular nature of the conflict between Israel and Palestine. We are dealing with two different state entities located within the same borders: the conflict, therefore, takes on the character of both a civil war and a war between states²⁹. In the event of a transitional justice of a judicial nature, this would open up two hypothetical scenarios: on the one hand, the referral of the assessment to only one state entity among the two, with the related need to identify a criterion for attributing jurisdiction to one state rather than the other; on the other hand, the hypothesis of a *two-tier* transitional justice - i.e. taking place in parallel in the two states - which would make it necessary to deepen the points of contact and dialogue between the two sets of processes. However, if one asks oneself whether reassurances emanate from these two states at the moment that investigations into serious human rights violations committed in the past can actually take place, the answer tends to the negative.

In a bird's eye view, the following can be noted. As far as Palestine is concerned, the latter reports severe limitations in exercising its criminal jurisdiction over Israeli citizens for acts committed on its territories under the Oslo Accords³⁰. Israel, on the other hand, has shown a negative demeanour in conducting investigations genuinely or otherwise in a manner compliant to international standards³¹. The picture, which can be

²⁹ Y. PELED, N. N. ROUHANA, *Transitional Justice and the Right of Return of the Palestinian Refugees*, in *Theoretical Inquiries in Law*, Vol. 5:317 (2004), p. 324.

³⁰ K. AMBOS, "Solid jurisdictional basis"? *The ICC's fragile jurisdiction for crimes allegedly committed in Palestine*, in *EJIL:Talk! Blog of the European Journal of International Law*, 2 March 2021, <https://www.ejiltalk.org/solid-jurisdictional-basis-the-iccs-fragile-jurisdiction-for-crimes-allegedly-committed-in-palestine/> (accessed 1 September 2025). See Art. 1 of Annex IV-Protocol Concerning Legal Affairs of the Interim Agreement: the provision stipulates that the Palestinian Authority has criminal jurisdiction, in its own territories, over Palestinians and non-Palestinians, with the exception of Israeli citizens, provided that the offence does not affect Israel's security interests; moreover, even if present in the occupied territories, Israeli settlements and military areas are excluded from Palestinian territorial jurisdiction. There is also an exclusive Israeli jurisdiction for certain crimes. See also footnotes 23 and 24.

³¹ On this point, see V. AZAROVA, S. WEILL, *Israel's Unwillingness? The Follow-Up Investigations to the UN Gaza Conflict Report and International Criminal Justice*, in *International Criminal Law Review*, 12 (2012), pp. 905-93. The authors highlight, in

read according to the categories of *inability* and *unwillingness*³² - and, therefore, in the light of the principle of complementarity under Article 19 St.³³ - leads one to look to the International Criminal Court as a third party with criminal jurisdiction³⁴. It should not be ignored, moreover, that both Palestine and Israel are each bearers of a narrative of the conflict filtered by their own experience³⁵, which could potentially prejudice the guarantees of impartiality and third party status of a possible judge on either side. Characters, on the other hand, of which the ICC judges in the trial phase and the Office of the Prosecutor in the conduct of investigations could be guarantors³⁶.

The Rome Statute, moreover, reflects a certain sensitivity for the role of the victim³⁷, whose right to participate in the proceedings before the ICC is enshrined in Art. 68 par. 3 St.³⁸: if one considers that *transitional justice* is

particular: the unwillingness also of the Israeli Supreme Court to guarantee remedies for civilians against decisions of the Military Judicial Authority for violations of humanitarian law; delays in the opening of investigations and the appeals stage; immunity for army officers.

³² V. AZAROVA, T. MARINIELLO, *Why the ICC Needs a 'Palestine Situation' (More than Palestine Needs the ICC): On the Court's Potential Role(s) in the Israeli-Palestinian Context*, in *Human Rights and International Law*, Issue 1 (January-April 2017), pp. 115-150. The authors note that Israel has opposed denials of economic compensation for Palestinians; moreover, targeted killings, interrogations carried out using illegal methods - including torture - and the demolition of Palestinian homes are attributable to it; as for expropriations by settlers, however, these actions have all been subject to amnesty. Furthermore, for an example of a violation of the right to an effective investigation in relation to proceedings concerning Palestinian subjects in the position of victims of crime, see *Adalah - The Legal Centre for Arab Minorities in Israel and ors v Attorney General and ors* (2009): the Israeli Supreme Court refers to a case law precedent according to which the conduct of a criminal investigation is not automatic in the face of the killing of a civilian by security forces and that an investigation must be conducted when there is substantial evidence that a criminal offence has been committed (HCJ 3292/07, ILDC 2102 (IL 2009), 6th May 2009, Israel; Supreme Court as High Court of Justice - A. Nollkaemper, A. Reinisch, in *Oxford Public International Law*, (<http://opil.ouplaw.com>) - (c)Oxford University Press, 2023).

³³ K. AMBOS, *Treaties on International Criminal Law*, cit., pp. 266-333.

³⁴ As can be seen from a combined reading of Article 1 and the Preamble of the Rome Statute, the underlying intent of the Statute is to avoid impunity for serious crimes that undermine the peace, security and well-being of the world and *deeply shock the conscience of humanity* by affirming the complementary relationship between the ICC jurisdiction and national criminal jurisdictions.

³⁵ See, on this point, footnote 60.

³⁶ K. AMBOS, *The legal framework of transitional justice: a systematic study with a special focus on the role of the ICC*, in *Building a Future on Peace and Justice: Studies on Transistional Justice, Peace and Development*, ed. K. AMBOS et al., Berlin-Heidelberg, 2009, p. 68.

³⁷ K. AMBOS, *Treaties on International Criminal Law*, cit., pp. 51-52.

³⁸ On this topic, see E. O. CALATAYUD, *Las víctimas y la Corte Penal Internacional. Análisis de la participación de las víctimas ante la Corte*, Cizur Menor (Navarra), 2014,

*justice for victims*³⁹, this is a far from negligible element.

At the same time, however, the ICC is an “armless, legless giant”⁴⁰, borrowing Cassese's definition of the International Tribunal for the former Yugoslavia. This raises the need for further reflection.

3.2 What: *which facts* are at the heart of transitional justice?

To answer the question, the definition of the *who* is fundamental. If one assumes, in fact, that, as things stand, only transitional justice through the ICC is realistically conceivable, one comes up not only the issue of jurisdiction *ratione materiae* - which raises no particular questions - but above all the issue of jurisdiction *ratione temporis*. In fact, the Israeli-Palestinian conflict has its roots in the very distant past⁴¹ and a full determination of it would be incompatible with the ICC's jurisdiction *ratione temporis*⁴².

The latter has jurisdiction over crimes committed after the entry into force of the Statute, i.e. on 1 July 2002. However, if a State becomes a party after that date, the Court may exercise jurisdiction over crimes committed after the entry into force of the Statute for that State, unless that State has accepted the jurisdiction of the Court pursuant to Article 12(3) St.: the retroactivity that follows, however, is limited to the date of entry into force of the Statute. This was the case with Palestine⁴³.

Perspectives of flexibilization of this limit could open up, however. According to Ambos⁴⁴, if adequately substantiated, facts beyond this limit

pp. 196-204. The author is critical of the Court's system of sanctions, noting its mainly retributive nature: therefore, there is little room, other than the punishment of the offender, to investigate the *reasons for* the commission of a crime and to place victim and offender in a context of dialogue to mend the social laceration produced by the criminal event, starting with the offender's reflection on his guilt and the damage that has resulted to society, as well as to allow not only economic but also psychological reparation for the victim.

³⁹ K. AMBOS, *The legal framework of transitional justice*, cit., pp. 33-39. The author names, in particular, three victims' rights: the right to truth, the right to justice and the right to reparation.

⁴⁰ A. CASSESE, *On the current trends towards criminal prosecution and punishment of breaches of International Humanitarian Law*, in *European Journal of International Law* (1998), p. 13.

⁴¹ See the footnote n. 18.

⁴² V. FANCHIOTTI, *Struttura della Corte e fase delle indagini*, in *La Corte Penale Internazionale. Profili sostanziali e processuali*, ed. V. FANCHIOTTI, Turin, 2014, p. 102.

⁴³ See footnote n. 23. Also: M. MANCINI, *Adesione della Palestina allo Statuto di Roma e dichiarazione di accettazione della giurisdizione della Corte Penale Internazionale*, in *Ordine Internazionale e Diritti Umani*, No. 2 (2015), pp. 358-362.

⁴⁴ K. AMBOS, *Treaties on International Criminal Law*, cit., p. 259.

can also be referred to the Court's jurisdiction, provided there is a close connection with the facts that actually fall within the jurisdiction *ratione temporis*; the connection must be defined by objective criteria, to avoid an indefinite temporal effect of the referral. Anyway, however useful this perspective may appear in order to broaden the cognisance of the conflict - and, therefore, to achieve the most complete transitional justice possible - a large portion of the past⁴⁵ would nevertheless remain excluded from ascertainment: this is where the operation of transitional justice mechanisms of a non-judicial nature can - or rather: *must* - be grafted in. In order to prevent facts that are incompatible *ratione temporis* with the Court's jurisdiction from falling into oblivion, the contribution of civil society in historical reconstruction - such as, for example, the work of Zochrot's Truth Commission - becomes diriment⁴⁶. Calling in civil society in this sense seems practically necessary, as there is currently no reason to expect the institutions of the two conflict states to take concrete steps towards transitional justice⁴⁷.

3.3 When: *when to start* transitional justice?

Strictly speaking, in order to initiate a process of transitional justice, it would be necessary to wait for the past subject of *accountability* to be fully completed: hence, for a conflict to come to an end.

Following an initial, extremely fragile ceasefire⁴⁸, the conflict flared up

⁴⁵ As an example, see I. PAPPÉ, *Brevissima storia del conflitto tra Israele e Palestina*, cit., pp. 78-79. The author calls the 1956 Kafr Qasim massacre 'una ferita aperta nella storia e nella memoria della minoranza palestinese d'Israele' (own translation: 'an open wound in the history and memory of Israel's Palestinian minority'). Israeli border police had opened fire on Palestinian civilians who, unaware of an Israeli-imposed and unannounced curfew, were returning home after a day's work, violating the imposed timetable.

⁴⁶ See footnote n. 3; T. W. WATERS, *Clearing the path: the perils of positing civil society in conflict and transition*, in *Israel Law Review*, vol. 48(2) (2015), pp. 165-187.

⁴⁷ C. MELONI, *Giustizia universale? Tra gli Stati e la Corte penale internazionale: bilancio di una promessa*, Bologna, 2024, pp. 187-194. On this point, the author highlights an interesting dynamic: the civil society organisations that assist victims of serious human rights violations, gathering their experiences in specialised dossiers, first play a role against the prosecutors - in the sense of pushing them to investigate and prosecute international crimes - and then become second prosecutors themselves, flanking the *institutional* ones because of the greater awareness of the cases.

⁴⁸ S. USHER, *Gaza ceasefire once again in doubt as first phase nears end*, in *BBC*, 23 February 2025, <https://www.bbc.com/news/articles/c8x4pxwne1yo> (accessed 1 September 2025).

again⁴⁹ and the humanitarian situation worsened. A new truce was signed in October 2025, two years after the war began. In this context, it is therefore necessary to reflect on the advisability of initiating transitional justice mechanisms even before the final conclusion of the conflict.

The proceedings before the ICC on the *Situation* in Palestine are currently pending; if, at the end of the investigation, the Prosecutor were to prosecute and, at the end of the confirmation hearing, an indictment was ordered, this would in any case be an initial fact-finding activity and, therefore, a first real prospect of accountability⁵⁰. Although this scenario may not stop the violence or put an end to the conflict, in the long run it could, however, at least appear as a piece of a more accomplished transitional justice. In general, starting the path of transitional justice before a stable and effective closure of the conflict could even help to shape its very fate⁵¹.

3.4. Where: *which place* for transitional justice?

Accountability is achieved through investigation and ascertainment: therefore, when speaking of places of transitional justice, one could refer to the places where these two activities take place. Again, we assume transitional justice realised through the intervention of the ICC.

As to the place of the trial, Art. 62 St. provides that the place of the trial is the seat of the Court, unless otherwise provided for; this exception, pursuant to Art. 100 RPE, may take place if it is in the interest of justice. Which could be the case, specifically, in cases where the ICC takes on the role of an instrument of transitional justice, since the didactic and educational function envisaged by the trial and the positive effect of its

⁴⁹ See several press sources: Aljazeera (<https://www.aljazeera.com/tag/israel-palestine-conflict/>); BBC (<https://www.bbc.com/news/topics/c2vdnvdg6xxt>); CNN (<https://edition.cnn.com/world/middleeast/israel>) (all accessed 1 September 2025).

⁵⁰ V. AZAROVA, T. MARINIELLO, footnote n. 32. With reference to the pivotal question of their reflection - *Why the ICC Needs a 'Palestine Situation' (More than Palestine Needs the ICC)* - the authors conclude the following: in order to legitimise the role of the ICC, especially among Arab countries, which are particularly wary. Indeed, although the effects of a more assertive role of the ICC on the Israeli-Palestinian conflict include the reduction of violence, deterrence and transformation of state conduct, the authors themselves note that the threat of criminal investigations has done nothing to reverse Israel's trend.

⁵¹ C. N. ROJAS, *La transición chilena y justicia transicional. Análisis crítico*, in *Revista Derecho & Sociedad*, n° 47 (Octubre 2016), pp. 140-141.

legacy on the process of reconciliation can only be fully achieved through the proximity of the court to the communities concerned⁵².

With regard to investigative activity, however, the issue of the Court's close dependence on the cooperation of the States emerges⁵³. The general obligation to cooperate, provided for in Article 86 St., is addressed to the States *Parties*. This means, in the present case, that the fulfilment of the same can be requested to Palestine but not to Israel. This gives rise to important limitations on the judicial reconstruction of the truth.

Although the conduct alleged by Palestine is understood to have taken place on Palestinian territory - and, therefore, there would be no interest for Palestine in refusing to cooperate with the ICC in relation to crimes charged against Israeli citizens - on the other hand, resistance could arise in relation to crimes committed by Palestinians on the same territories, both for investigations and for the surrender of wanted Palestinian persons (e.g. the Hamas leaders who had an arrest warrant pending).

As far as Israel is concerned, the fact that the latter is not obliged to cooperate as a non-State Party implies limitations, for example, in finding documentary evidence in the possession of the Jewish State or in subpoenaing witnesses relevant to crimes committed in the Palestinian territories⁵⁴.

The lack of consent to cooperate in investigations - including *in situ* investigations - can be bypassed by requesting an authorisation from the Prosecutor to the PTC to conduct such investigations, pursuant to Art. 54(2)(b) in conjunction with Art. 57(3)(d) St.⁵⁵. The authorisation,

⁵² K. AMBOS, *Rome Statute of the International Criminal Court. Article-by-Article Commentary*, München; Oxford; Baden-Baden, 2022, pp. 1844-1847. The factors to be considered are many: issues of administrative and economic efficiency; interests of the Court, the defendant, the victims and the collective interests of the international community; security issues; issues of evidence-gathering requirements (although this may not justify moving an entire trial).

⁵³ *Ivi*, pp. 2240-2451.

⁵⁴ R. ROSTAN, *Testing Co-operation: The International Criminal Court and National Authorities*, in *Leiden Journal of International Law*, 21 (2008), pp. 435-437. The author sees an opening for circumventing this obstacle in Article 64 (6)(b) St., which provides that the Trial Chamber may directly request the appearance and testimony of witnesses and the production of documents. However, domestic legislation authorising the ICC to issue orders or subpoenas to private individuals remains necessary; the ICC can only address requests for cooperation, not orders to the States.

⁵⁵ This authorisation, however, must also be respected. On the subject, see K. AMBOS, *Treaties on International Criminal Law*, cit., pp. 344 and 391: the remedy, if not, is the referral of the matter to the Assembly of States Parties by the PTC pursuant to Art. 87(7) St. The same may occur in the event of a lack of will in cooperation. See also M. MIRAGLIA,

however, must concern a State Party, and thus, for example, only Palestine. As a State not party to the Rome Statute, on the other hand, Israel could cooperate voluntarily⁵⁶ with the ICC, on the basis of a declaration under Art. 12(3) St., or on the basis of an *ad hoc* agreement under Art. 87(5) St.; or, again, on the basis of a Security Council resolution⁵⁷: at the moment, however, none of these cases has been incorporated.

With specific regard to the surrender of certain persons to the Court - e.g. on the basis of an arrest warrant, pursuant to Article 89 St. - the Court may transmit a request for arrest and surrender to *any State* in whose territory that person may be and may request cooperation under Part XI of the Statute⁵⁸. But we come back to the main problem: for a non-State Party there is no obligation to cooperate, except under the terms mentioned above and which, at the moment, are not incorporated in practice; for States Parties, on the other hand, there remain strong limitations of a political nature in complying with requests for cooperation.

The lack of cooperation in the surrender of wanted persons does not only affect the investigation activities but also the actual conduct of the trial: as the trial *in absentia*⁵⁹ is not allowed before the ICC, it would constitute a major obstacle in the judicial reconstruction of the *core crimes* that are the subject of this situation.

La cooperazione con la Corte Penale Internazionale e l'ordinamento italiano, in *La Corte Penale Internazionale. Profili sostanziali e processuali*, ed. V. FANCHIOTTI, M. MIRAGLIA, J. P. PIERINI, Turin, 2014, pp. 177-178.

⁵⁶ V. AZAROVA, T. MARINIELLO, *Why the ICC Needs a 'Palestine Situation'*, cit., pp. 136-137. The authors, recall the 2016 *Report on Preliminary Examination Activities* of the Office of the Prosecutor, which reported on the incident where Israel had banned the ICC delegation from accessing the Gaza Strip - despite having allowed it in the West Bank - presaging Israel's limited cooperation with the Court (https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf - accessed 1 September 2025). On the continuation of the investigation, its progress should be monitored through the annual reports. In the annual report of 2024 (<https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-04-ICC-Annual-Report-OTP-web.pdf> - accessed 1 September 2025), the visit of 29 October 2023 to the Rafah crossing point between Egypt and the Gaza Strip and the arrest warrants are reported, stating the commitment to the continuation of investigations and, if necessary, the issuance of further arrest warrants.

⁵⁷ K. AMBOS, *Treaties on International Criminal Law*, cit., pp. 596-600; R. ROSTAN, *Testing Co-operation*: cit., pp. 441-444.

⁵⁸ A. LANCIOTTI, *La Corte Penale internazionale e la repressione delle gravi violazioni del diritto umanitario*, Turin, 2013, pp. 67-73.

⁵⁹ *Ibid.*, p. 68. K. AMBOS, *Rome Statute of the International Criminal Court.*, cit., pp. 1856-1871.

4. Why a transitional justice on the Israeli-Palestinian conflict? Conclusion

The answer to this question already saw a timid hint at the conclusion of the second paragraph, when the question was asked to what extent absence of criminal investigations and impunity on *core crimes* related to this conflict are fuelling its chronicity.

The histories of the peoples involved are marked by collective traumas - first and foremost, the *Shoah* for Israel and the *Nakba* for Palestine - which, at present, constitute legitimising bases for a loop of violence and human rights violations. Transitional justice can be a key instrument to create a fair and shared historical memory, avoiding victimisation and the imprisonment of each side in its own past⁶⁰: more generally, the main instrument to come to terms with the past and move forward.

On the deployment of judicial and non-judicial mechanisms, however, some concluding remarks.

As far as judicial mechanisms are concerned, Palestine's inability and Israel's unwillingness almost necessarily lead to the idea of transitional

⁶⁰ J. CHAITIN, 'I Need You to Listen to What Happened to Me': *Personal Narratives of Social Trauma in Research and Peace-Building*, in *American Journal of Orthopsychiatry*, Vol. 84, No. 5 (2014), pp. 475-486. The author analyses the importance of victims' narratives of their own suffering from social trauma as a moment of recognition. At the same time, however, these personal narratives, if not channelled into experiences of dialogue involving all parties to the conflict, can have the effect of *fuelling* the conflict - in particular, the feeling of revenge - and build a selective memory. With specific reference to the Israeli-Palestinian conflict, the author states: 'For Israelis, the *Holocaust* remains the chosen trauma, and is often coopted by politicians who use Holocaust metaphors to present Israelis as eternal victims; in doing so, they justify the status quo of the Occupation and continued military presence in Palestinian areas (Zertal, 2005). For Palestinians, *al Naqba* is their chosen trauma, with the Occupation and the siege on Gaza seen as being ongoing extensions of the horrific events that occurred to their elders close to 70 years ago (Bar-Tal, 2013)'. See also, Y. PELED, N. ROUHANA, *Transitional Justice and the Right of Return of the Palestinian Refugees*, cit., pp. 323-332: 'The historicity of the injustice committed should be taken into consideration, without being used as a justification for the injustice. In other words, as much as reconciliation demands remembering, it also demands letting go of the psychologically comforting tendency of the victims to picture themselves as the 'good people': the ones who, from now on, will have the absolute right to command because they were absolutely right in the way they suffered'. The authors consider the recognition of the so-called *right to return* for Palestinian refugees to be fundamental in any transitional justice process in the Israeli-Palestinian conflict. If the *Nakba*, in fact, constitutes the triggering event of the conflict, acting on this - recognising a right to return as a measure of reparation that restores the *status quo ante* - would, according to the authors, be an important step towards resolving the conflict in the long run. Something, however, averted by Israel: such a recognition would result in the destruction of the national identity that the Jewish population has built up after persecution in Europe.

justice through the intervention of the ICC. Although a procedure is already pending, the state of art does not leave room for great optimism with regard to achieving this, for a number of reasons.

First, although the past of this conflict already accounts for a significant amount of human rights violations that amply justify starting work on a path of transitional justice, the time is not fully ripe. Reconciliation, in fact, has to start from an explicit will of the parties involved, which is currently cumbersome, as witnessed by the fragility of the ceasefire agreements in their concrete development. In any case, however, proceedings before the ICC are pending and could be understood as a first step towards accountability, with a view to a future refinement of the past of violence - which, unfortunately, currently complements the present.

From the perspective of a comprehensive transitional justice, however, this is not fully convincing: under the ICC's jurisdiction *ratione temporis*, in fact, a good portion of past violations would remain unaccounted for, lending itself to a transitional justice mutilated from the start. Therefore, ineffective, because moving forward in this way would mean doing so with unresolved past issues, i.e. without accountability⁶¹: fertile ground for the reiteration of human rights violations⁶².

On the other hand, even for crimes falling within the jurisdiction of the ICC *ratione temporis*, the serious obstacles in terms of cooperation in investigations, in the surrender of persons served with arrest warrants and, *pro futuro*, in the appearance of defendants and witnesses at trial⁶³ do not

⁶¹ N. KHOURY, *Transitional Justice in Palestine/Israel. Whose Justice? Which Transition?*, in *Rethinking Statehood in Palestine. Self-Determination and Decolonisation Beyond Partition*, ed. L. H. FARSAKH, Oakland, California, 2021, pp. 153-165. The author argues that, although they were originally aimed at the cessation of hostilities, with the Oslo Accords there was no real transition: in fact, by paying attention only to the arrangement of the present and the future, a dialogue with the past was avoided.

⁶² As proof, the launch of a military operation in the West Bank, in the Jenin refugee camp, just few days after the first ceasefire agreement on the Gaza Strip was finalised: D. GRITTEN, *Ten Palestinians killed as Israeli forces launch major operation in Jenin*, in *BBC*, 22 January 2025, <https://www.bbc.com/news/articles/ckg750yzdr8o> (accessed 1 September 2025). See also R. ABUALOUF, G. WRIGHT, *Israel launches waves of strikes on Gaza with more than 400 reportedly killed*, in *BBC*, 18 March 2025, <https://www.bbc.com/news/articles/c9vy3k4dpzoo> (accessed 1 September 2025).

⁶³ In support of this *distrust*, see C. MELONI, *Giustizia universale?*, cit., pp. 23-47. The author, taking stock of the current state of international justice, focuses on the *double standard* that emerges when comparing the situation in Ukraine and Palestine, noting a general refractoriness of a political nature to the advancement of investigations into the latter *situation*, with inevitable repercussions on the same. On this point, see also T. MARINIELLO, *The ICC Prosecutor's Double Standards in the Time of an Unfolding Genocide*, in *OpinioJuris*, 3 January 2024, <https://opiniojuris.org/2024/01/03/the->

at present bode well for a concrete possibility of judicial reconstruction of the past.

For all these reasons, the deployment of non-judicial mechanisms of transitional justice is indispensable, and even more so the role of civil society: at the moment, a valid candidate in holding a leading role in the reconstruction of international crimes committed in the Israeli-Palestinian conflict. Certainly, the result of the work of civil society organisations - reports, for instance - cannot be considered of equal value to a judgement, being the judgement the discriminating factor between the two reconstructions⁶⁴. It would, however, be an essential contribution in the reconstruction of a past that would otherwise risk remaining buried. Moreover, such a reconstruction is not necessarily destined to remain relegated to an extrajudicial *milieu*: in fact, profiles of dialogue with the proceedings before the ICC - or, should this hypothetically occur, in domestic trials - in terms of documentary evidence cannot be excluded. There remains the urgency of a situation that calls for reasoning on resolving hypotheses from several fronts, since it cannot be delegated, for example, entirely to the sphere of international relations. Even the jurist cannot consider himself exempt from this collective reasoning.

Abstract: After 7 October 2023, the long-standing Israeli-Palestinian conflict flared up again, punctuated by fragile ceasefires. The situation is under the spotlight of international criminal justice and beyond, prompting reflection on whether transitional justice mechanisms should be employed to address the past and facilitate progress. Firstly, the topic will be framed by comparing the functionality of judicial and non-judicial transitional justice mechanisms to ensure accountability for international crimes. Subsequently, having reviewed the literature on this conflict through the lens of international criminal justice, the practicability of transitional justice will be considered, as well as which type of mechanism is more effective in achieving it and its importance in building a future of peace.

Key Words: Accountability, Criminal Justice, Israeli-Palestinian conflict, Truth-seeking, Social movements.

[icc-prosecutors-double-standards-in-the-time-of-an-unfolding-genocide/](#) (accessed 1 September 2025).

⁶⁴ In the light of international law, the judgment that crystallises the judicial finding constitutes a measure of reparation, because it contributes to the public recognition of a violation (and, therefore, to ensuring that the violation is in no way covered up and the victim, forgotten): General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution A/RES/60/147, 2006, §22. See also D. ACCATINO, *¿Por qué no a la impunidad? Una mirada desde las teorías comunicativas al papel de la persecución penal en la justicia de transición*, in *Revista Política Criminal (Scopus)*, Vol. 14, No 27, Art. 2 (Julio 2019), pp. 51-53.