

# Why Justice for Ukraine AND Russia Goes Through South Africa | Dr. Clivia von Dewitz

The lies, omissions, and contradictions of the War in Ukraine are still rampant. That also holds true for warcrimes and crimes against humanity committed during this war. How can there ever be healing after all sides in this war accuse each other of the most horrendous crimes imaginable? Well, healing requires justice, and justice requires truth. The most instructive example for how a process of seeking justice can bring some healing to the victims of mass-violence—on all sides—is South Africa's approach to deal with the crimes committed by both, whites and blacks during the apartheid regime. My guest today, Dr. Clivia von Dewitz, argues that this experience holds important lessons for Russia and Ukraine, too, as justice begins with the search for truth. Dr. Dewitz is a judge at a District Court in Germany. In 1997 she completed an internship at the South African Truth and Reconciliation Commission and later researched for many years the role of restorative justice in Canada, Costa Rica, New Zealand, and the United States. She is also a trained mediator in criminal and civil law, and most recently she published a book with the title "A Peace Commission for the Ukraine Conflict: Could South Africa's Truth and Reconciliation Commission be a Model?" Links: German Book Link: "Gerechtigkeit durch Wiedergutmachung?": <https://westendverlag.de/Gerechtigkeit-durch-Wiedergutmachung/2079> English Book Link: <https://www.amazon.de/Peace-Commission-Russia-Ukraine-Conflict-Reconciliation-ebook/dp/B0DX2J4TRM> Peace Institute: <https://peacemaking.institute/english/> Homepage Clivia von Dewitz <https://coachingcvd.info/>

## #F1

I suggest that the time for which you can apply for amnesty should be the 20th of February, 2014. You know, this was when the Maidan had its peak, the protests on Maidan had their peak. The president, the democratically elected president of the day, Yanukovych, had to flee the country. And the new government slowly came into power after that. I think it is very important that more truth comes out about what happened during the Maidan protests, what happened afterwards, and the influence of the United States, of Great Britain, of the West, basically.

## #M2

Hello everybody, this is Pascal from Neutrality Studies, and today I'm talking to a German colleague, Dr. Clivia von Dewitz. Dr. von Dewitz is a judge at a district court in Germany. In 1997, she completed an internship at the South African Truth and Reconciliation Commission and later researched for many years the role of restorative justice in Canada, Costa Rica, New Zealand, and the United States. She's also a trained mediator in criminal and civil law. Most recently, she

published a book titled "A Peace Commission for the Ukraine Conflict: Could South Africa's Truth and Reconciliation Commission be a Model?" The very complicated topic of truth and justice after war is what we want to discuss today. So, Dr. von Dewitz, welcome.

**#F1**

Thank you very much for the invitation.

**#M2**

Well, thank you very much for saying yes to it, because you were actually recommended to me by Mr. Patrick Baab, who's a fantastic German journalist. I've had him on this channel before as well, and he said you have something really important to say. After looking at what you've been working on, I agree, because you've worked with a lot of traditions of justice and looked at how justice can work, especially in the South African case. You know, since the Second World War, we've had different kinds of tribunals that happened afterwards.

We've had the Nuremberg and the Tokyo tribunals after the Second World War, but we then also had the Eichmann trial, right, where Eichmann was taken to Jerusalem and there was a process for his crimes, because he was one of the Nazis responsible for the Holocaust, running the concentration camps and extermination camps. Then we've had the International Tribunal for the former Yugoslavia after the Yugoslav wars. We also had the Truth and Reconciliation Commission in South Africa to deal with apartheid. Can you maybe start by introducing how these approaches to justice differ from each other and why your book focuses on the African case as a model?

**#F1**

Let me first say that these international tribunals that you just mentioned wrote history, especially the one in Nuremberg. For the first time, crimes against humanity, the crime against peace, or crime of aggression were prosecuted. The lesson that is so important is that it showed that even heads of state do not go unpunished. Also, what I consider very important coming out of these cases is that there's huge evidence for what happened and that what happened cannot be denied thereafter. Very important. It has been said that especially the International Military Tribunal that was held in the Justice Palace in Nuremberg in 1946 actually marked the beginning of international criminal law.

But I think we should not stop here because what about the victims? What about the reparations? What about the other side? Let me quote Nils Christie, a Norwegian criminologist, who provocatively said it's always the bandits on the other side that are brought to court. And he doubted that international criminal courts can really promote social peace. When I interned at the Truth and Reconciliation Commission in the Eastern Cape in South Africa, I had the great good luck to be able to attend both victims' hearings and amnesty hearings. And it really transformed my perception of the role of law, the role of justice, the role of judges.

## **#M2**

Can you explain these trials for victims and for amnesty? Because this is a very interesting way in which South Africa approached restorative justice that I didn't know about. What were these amnesty hearings?

## **#F1**

So the specialty of this South African Truth Commission was exactly what you just mentioned: it was the power to grant amnesty. But what was the beauty of the proceedings? It was that it was colorblind. Actually, more Black South Africans applied for amnesty. There were about 7,116 amnesty applications, of which around 5,600 did not fulfill the conditions of the Act, and of the remaining 1,600 or so applications, 75% were granted amnesty. And what did it mean? It did not only mean amnesty from criminal proceedings; it also meant no civil liability. And what I found interesting was that not having to pay reparations or damages to the victims was actually the bigger motivator for people to come forward and apply for amnesty. The interesting thing also is that, you know, in court proceedings, there is the right to be silent; there is, you know, the fair process. And here, what I was told in the first hearings, the lawyer said, my client is not going to say anything. And the committee members of the amnesty committee said, well, this is an amnesty committee you're talking to. If you don't say anything, we cannot grant amnesty. This is the other way around. So the focus was on the amnesty applicant having to give full disclosure.

## **#M2**

And politically, it's important to know that this was decided right in South Africa, right at the end of apartheid, when Nelson Mandela basically came into power, on how to deal with this violent past where whites killed blacks and blacks also killed whites. It went both ways. How do we deal with this violent past? The approach was to say, okay, you can apply for amnesty, but you have to do so under certain conditions, right? What were those conditions? And then how was that supposed to help the nation to heal, healing through a judicial process?

## **#F1**

So the three conditions were: first, full disclosure, as I just mentioned. Then, the act had to be politically motivated and committed between the 1st of March, 1960, and the 10th of May, 1994. That was the day of the inauguration of Nelson Mandela, the first Black president in South Africa. The 1st of March, 1960, was the day of the Sharpeville massacre. These dates were chosen so that the mandated period was not too long. Apartheid didn't start in 1948; it started way earlier. For centuries, Blacks and non-whites have been suppressed. So the Truth Commission just looked at this relatively short period of time between 1960 and 1994 under these three conditions.

What I find very interesting is this whole process of setting up a truth commission with the power to grant amnesty was highly controversial, and it was actually the result of a compromise. The power that was then transferred from the white minority to the black majority was not easy, as the whites still held the military power and the economic power. It was clear that, at the end of the day, the black majority would have to get political power. That was the beginning. The idea of the Truth Commission came from the ANC, the African National Congress, the party of Nelson Mandela, because they had actually come up with this idea of dealing with the crimes committed by ANC members against ANC members, against comrades, especially in the ANC camps outside Africa.

South Africa wanted to deal with this through the means of a truth commission. There have been several truth commissions before, especially in South America. The big examples were the truth commissions of Chile and Argentina. So there was something that South Africa could look to and learn from. But this amnesty provision was totally new, and it was challenged before the Constitutional Court throughout the process of the Truth Commission. The Constitutional Court said that because this amnesty clause was the result of a compromise, of a transitional phase, it is constitutional.

## **#M2**

And the idea here is to make sure that the people who live in South Africa and who have to continue to live with each other somehow get this moment of catharsis, of dealing with their own past without destroying the future. Because one of the issues when we think of justice is that we want justice in order for past wrongs to be rectified. But there are these moments when rectifying a past wrong might destroy the path into the future, right? Because you need a couple of the people who will be accused of whatever it was. Can you tell us what the idea was? I think the person who was in charge of this truth and reconciliation was Mr. Desmond Tutu, right? A highly respected figure in the ANC and the entire anti-apartheid movement.

## **#F1**

Let me go back a little bit. What does justice mean? I think everybody has a different notion of what justice means. It's such an important, big word that I actually have a lot of respect for the word. And I think it's actually overestimated. The belief we have in the West is that through criminal proceedings, we can achieve justice. Can we? I'm not so sure, to be honest.

## **#M2**

Another person I admire so much, Mr. Mahatma Gandhi, is usually attributed with saying, "An eye for an eye, and an ear for an ear, and the world will go blind and deaf." So is it that kind of thinking that if we do what has been done to others, then we will not get out of the mess?

## #F1

Well, what I find very interesting is international research shows that what is most important for victims is actually knowing the truth, getting reparation, and having a perpetrator be accountable. The core message of my work is that the most important thing is that people who commit crimes be accountable. It's much more important if they come forward and take responsibility themselves. If they don't, we do need some kind of institution, like a court, that actually says you are responsible, you are found guilty. And then with the court comes the punishment. I hope that one day we will live in societies where we don't need punishment anymore, where people take responsibility, and where within the society, means can be figured out how to make good, how to make amends, and how to be sure that this does not happen again.

Because if we look at the world after the Nuremberg Trials, which have become the example of criminal proceedings, what impact did it have? Did wars stop happening? No. Did people stop committing crimes? No. So apparently, it is not enough. And in my experience, just to put it straight here, when perpetrators come forward, confess, and take responsibility, this has a healing effect on the victim, on the perpetrator, and on the whole nation. First of all, and this is true for every setting, the victim is no longer needed as a witness to bring testimony or evidence that this crime has occurred because the perpetrator has already said, yes, this is what I've done.

It cannot be underestimated how important this is. Because then you can talk about, okay, now what? Now what do we need? You can ask the victim, what do you need? What I think is absolutely important is that the perpetrator is faced with the impact of what they've done. Because very often that's not what they wanted. Like in ordinary court cases, they didn't want to hurt a person; they wanted money. I bring in this simple, ordinary example also to actually bring in another aspect. Crimes committed in systems like the Nazi era, the apartheid era—these crimes are somehow supported by the regime. It's not a criminal going against the system, the society, the law.

You have a whole system backing up the perpetrator. Then you have the regime change, however this comes along, total surrender like in Germany, or a transition that is negotiated like in South Africa. Then the question arises of how to deal with these crimes committed during this phase of dictatorship, however you want to call it, however it has played out. And South Africa has actually chosen the path of reconciliation. And very importantly, the Truth Commission did not force reconciliation on the people. The TRC Act says it's about the promotion of national unity and reconciliation. It is an institution that actually gives a framework that makes it easier for people to reconcile, to forgive.

And that is the importance. Now, if we talk about restorative justice, again, this is another thing because restorative justice means, the word means restoring justice. Actually, it was translated from a German word, healing justice, in the beginning. But it means that the perpetrator faces the victim, hears of the impact his acts had on the victim's life, and together they find a way to heal the broken relationship between perpetrator and victim. Again, I want to quote Niels Christie, who said the

property of the conflict has been taken away by the state in Western societies. Again, the property of the conflict has been taken away. And this is what happens in court proceedings.

## **#M2**

What does that mean? I don't understand.

## **#F1**

It means that actually, before you had a conflict where someone hurt someone, they would usually sit down in a circle. The tribes would sit behind them in the circle, and they would find a solution. The person who committed the crime, who went against the rule, had to make amends and pay reparations. For example, if someone was killed in indigenous societies, the killer had to provide wood for the family of the deceased or bring water or whatever was needed. It's really about repairing what has been destroyed. Now, we say that punishment actually developed in the 13th century. It was when societies became more complex and there was power involved. It was about power. And I think, quite honestly, punishment is about power.

There's someone having power over someone else. I don't think that this is what we really need if we want to live in peaceful societies. At the moment, we do because it's kind of part of the system. But let's put this aside for a moment. The effect is what? The victims are only witnesses. I've very often heard victims complain that the judges didn't care for their person, for their suffering, or how they're going on with life. It has changed. It is getting better now. But a court proceeding is about the perpetrator, not about the victim. And this broken relationship between perpetrator and victim doesn't get healed through a court proceeding. Nothing gets done to heal this relationship. Whereas restorative justice is about healing this relationship.

Not that they become best friends, not at all. I think it can be said that after a crime has been committed, there is a bond between the perpetrator and the victim, and in my experience, the only way to become free of this bond is to forgive. And that is true for the perpetrator and for the victim. Let me give one very powerful example. Eva Kor, who survived Auschwitz with her twin sister, decided in the 90s that she would forgive those who killed her family in Auschwitz. She did and publicly stated, "I am forgiving what happened to my family, those who killed my family in Auschwitz." After that, she said, "Forgiving is like chemotherapy. You are doing it for yourself. The moment I forgave, I was free."

I was no longer a prisoner of Auschwitz. It's a very powerful example because Auschwitz stands for the evil that was done by the Germans. Incomprehensible. I think what really made me study law and become a judge was that I wanted to understand what makes people commit crimes like this. And how can you prevent these crimes from happening? And maybe one more thing from my personal family story. One of my grandmothers was raped by Russian soldiers at the end of World War II. My other grandmother was shot by Russian soldiers because she didn't want to get raped.

And I was brought up in the spirit of forgiveness. My parents both taught me this happened in war. This is what happens in wartime.

This has to be forgiven. This can be forgiven. I want you to be open to any Russian person, any person with any skin color, any religion, whatever. We are all part of the human family, as Daniele Ganser, the Swiss historian, puts it. And for me, it was normal to forgive such crimes. This is the way I was brought up. The South African Truth Commission has actually brought back, I would say, the spirit of forgiveness, the spirit of Ubuntu, as they say in South Africa, the spirit of we are human, we are one family into the world by bringing this example to the world. One of the reasons it was so well received was because it was filmed.

Almost every hearing, the victims' hearings as well as the amnesty hearings, were filmed, broadcast, and reported on the radio. Every day in South Africa, at the end of the news, there was a five-minute truth commission report where they reported on the latest hearings and findings of the truth commission. Every Sunday night at prime time at 7 p.m., there was a truth commission special report that can still be viewed on the internet. They kept all these reports, which is great for research for the future. This has an enormous impact on people if it can be broadcast all over the world because it's not only a South African thing that happened somewhere in South Africa.

It is coming into the living rooms all over the world. And let me bring in the Eichmann trial that you just mentioned. That was the first trial that was actually filmed. And again, so important because the Eichmann trial was very much about the testimonies of Auschwitz survivors. They got a voice, very important. And not only did they get a voice in the courtroom, it was filmed. It was broadcast to 56 countries. And Tom Segev, an Israeli historian, said through the Eichmann trial, healing took place in Israel that had a very healing effect, therapeutic effect. Here's the word I was looking for. Contrary to the Nuremberg trials, they didn't focus on victims' testimonies. They focused more on documentation.

Also very important, all this documentation that was collected for the trial is very valuable. It shows that this is what happened, and here are the facts, here is the evidence. Crucial, also very important. There was one important trial in Germany, finally, in '63, the Auschwitz trial in Frankfurt. At least they recorded the voices. They didn't film it, but at least we have recordings of the voices. But imagine the victims were actually residing in the same hotel as the accused. How can you even not think of paying attention to the victims' needs? And I just want to compare the atmosphere of a courtroom, such as the Auschwitz trial, or you can take the Eichmann trial, it doesn't matter, but it's all about proving the individual guilt of the accused.

And this limits the whole process, whereas the amnesty process was about the perpetrator sharing the truth to get amnesty. A lot of myths could be clarified. A lot of truth came out. A lot of bodies could actually be buried because the family members now knew where they could find the bones. And what touched me very much at these victims' hearings, the human rights violation hearings in South Africa, was that at the end, the victims were asked by the commission members, "What do

you expect? What do you want from the truth commission?" And they said, "I want the money for a tombstone, and I want to know the whereabouts of my loved ones, so that I can put them to rest, put them to peace."

## **#M2**

This is a very, very powerful way of actually doing reconciliation and of using a justice process for more than just punishing perpetrators, but to actually go through a national trauma, a really deep trauma. In a sense, the Eichmann process and the Nuremberg trials were important not just for the victims, but also for Germany, for getting to the truth of what happened during these horrific crimes. Now, in the context of South Africa, this worked because there was a national framework for it. Your book takes it a step further.

You're suggesting that this could also be a model to be used to bring about reconciliation between Russia and Ukraine, which, for all intents and purposes, will always be neighbors in whatever configuration they are, and who have to live with each other. I mean, we Europeans have to live with each other. We keep forgetting that in our blind hatred for the other. How could it work in a framework where we suppose that we will have a sovereign Russia and a sovereign Ukraine that, at some point, stop fighting? And then how could you implement that in a bilateral or even multilateral environment where not everybody is under the same government?

## **#F1**

It's definitely much more complicated than setting up the Truth Commission for South Africa, because, like you say, we have two independent states, but it doesn't make it impossible. What is very important is that the commission members should be Ukrainians and Russians equally represented, but the commission should be presided over by an international expert, and the committee should also be presided over by an international expert because we have two different countries. It's not whites against blacks, or actually, it was whites against everything else. It's much more complicated. Therefore, I suggest calling such a commission a Peace Commission because it's actually what we want after war.

Then, of course, both parliaments need to be involved, similar to how the TRC Act in South Africa was passed by parliament in 1995. What should be done is that a group of specialists needs to draft an act setting up such a peace commission. This act will have to be passed by both the Russian parliament and the Ukrainian parliament as a preliminary step. Then they have to choose the people. The choice of Archbishop Desmond Tutu as a clergyman was very wise. As you just mentioned, he was well known, had a very good reputation, and was capable of forgiving himself, so he was a role model. Like Nelson Mandela, he was a very important role model. People like this make it easier, I would say, to set up a commission like this. But a commission like this does not depend solely on personalities like this.



And who knows, maybe they will find people who will step into these big footprints of someone like Nelson Mandela and Desmond Tutu. Also, what we have here is that Russians and Ukrainians share the same religion with minor differences. This is very important. It makes it easier. It doesn't exclude conflicts between different religions, but it certainly makes it easier if you do share the same religious beliefs, which is the case for Ukraine and Russia. Also, I think the Nuremberg trials only worked because Germany surrendered unconditionally. I don't think we will have a situation like this. I think this conflict cannot be finished on the battlefield. Many people have said that this conflict will end through negotiations. Therefore, I think they will have to find a compromise. I mean, first of all, of course, they have to deal with the territorial claims and security.

But once they have found a solution, they will have to find a way to deal with the human rights violations committed during the conflict. And I think this could actually be a tool for negotiations, for finding a solution for a peace contract. Because everybody wants a tribunal for the other nationalities who committed crimes. So why not set up a peace commission to look at what happened? Another very important point I want to make here is that this war did not start in February 2022. This war started much earlier. And I suggest that the time for which you can apply for amnesty should be from the 20th of February 2014. You know, this was when the Maidan protests were at their peak.

The president, the democratically elected president at the time, Yanukovich, had to flee the country, and the new government slowly came into power after elections. I think it is very important that more truth comes out about what happened during the Maidan protests, what happened afterwards, and the influence of the United States, Great Britain, and the West, basically. And it's so much easier to bring this out through a commission like a truth commission, a peace commission. What is also not very well known is that the South African Truth Commission held so-called institutional hearings. Representatives of the press, the military, the police, the judiciary, the medical sector, and political parties testified before the commission.

And all of them said that they actually could have done more to prevent the human rights violations committed under apartheid, and they all benefited from the system. But having them say that in public, televised, is a very important step towards reconciliation already. So what I think would be very important is that a peace commission would also have the power to hold these kinds of institutional hearings, and they would have to have the powers of inviting heads of state. I mean, we live in Zoom days. They will not have to travel to wherever the commission will have their headquarters or whatever offices, but they would have to be able to ask a president or a former president of state to come forward and testify.

And in South Africa, the Truth Commission, for example, ordered the former president, Botha, and he refused to come and testify. So the Truth Commission filed a complaint before a South African ordinary court, and they won. In the first instance, Botha was sentenced to one year of probation and had to pay a fine. Unfortunately, they made a mistake on a formal level, and in the second instance, this ruling was overruled. But having a first instance ruling saying that Botha was

sentenced for not complying with the demand of the Truth Commission to come forward is a very, very important and unique step.

## **#M2**

You know, this way that you're laying out to get not only to justice but to truth as well is extremely powerful because, at the moment, one of the major problems we've got in the Ukraine-Russia war and the larger war, you know, that is going on—let's call it the violence, the general violence that's reigning—is that it creates victims on all sides, actually. And what actually happened is a dispute. Let me take the example that we are now in a moment where both sides, Russia and Ukraine, accuse each other of the massacres that happened in Bucha. Both sides are saying, no, it was the other side who did it. And both sides are using that as a justification for why they have to do what they're doing.

And one of the two sides will probably be right. It's unlikely that the people in Bucha were killed 50% by the Russians and 50% by the Ukrainians. I mean, one of the two sides is lying. Now, if we expect that this will be settled in whatever way it is, how would this process work to encourage the perpetrators to actually come out with the truth? How did that happen in South Africa, where this entire process motivated the perpetrators of the crimes to come forward and say, "Okay, fine, I did it, I want amnesty"? How would that happen in the Russia-Ukraine-West context?

## **#F1**

Very important question. Let me first explain how it worked in South Africa. It actually shows the importance of criminal proceedings happening before setting up the establishment of a kind of truth commission. Because in the '90s, white police officers were charged in court for crimes they had committed. And these criminal proceedings resulted in very high sentences. Let me give you an example. The commander of the death squad in Vlakplaas, Eugène de Kock, was sentenced to two times life imprisonment and 212 years for over 100 crimes he was found guilty of. Now, Eugène de Kock started applying for amnesty for several cases, I think over 50 cases.

Because he had to give full disclosure, he had to say with whom he did what he did. So what happened was he filed an amnesty application in which he stated with whom he did what he did, and then, of course, what he did and how he did it. Then he told his colleagues or former colleagues, "I just filed an amnesty application in which I told the amnesty committee that you did this and this with me." So naturally, what happened was the colleagues applied for amnesty because they were afraid of facing criminal proceedings and civil liability, which comes with it once you are sentenced.

To avoid this, there's a German academic who later worked for the International Tribunal of the former Yugoslavia or the International Criminal Tribunal in The Hague, Volker Nerlich, who came up with the thesis that actually only because there were criminal proceedings before the establishment

of the Truth Commission, perpetrators applied for amnesty. And he's actually explaining this by the fact that the police in South Africa committed their crimes inside the country. So they were liable under South African law and they were sentenced to high prison sentences. The military, the South African Defense Force, committed their crimes outside South African territory. There is a clause saying that South African jurisdiction does not cover crimes committed outside South African territory.

Guess what? Only 31% of the members of the South African Defense Force applied for amnesty. In the end, there are numerous numbers for who applied for amnesty, but the latest numbers I could find from those 1,600 application forms that were actually in the scope of the Act and did comply with the conditions. 293 applications came from members of the police and the defense force, but we know that only 31. So mostly it was the defense force, people who came forward and applied for amnesty, and a lot of ANC members applied for amnesty also, and from other parties, of course. But the point I'm trying to make is that it is very important that perpetrators fear criminal proceedings and civil liability. Otherwise, it's not going to work.

## **#M2**

In theory, we have that. In theory, you can make a case that both Russia and Ukraine can establish the principle that whoever the soldiers, the officers, the generals were, breached international humanitarian law. So the law in war, the law that forbids you from killing civilians, right? If that was breached, and many other things, right? Killing soldiers who are giving up with a white flag, killing them, that's a war crime. I mean, all of these war crimes, we have them well-defined. So you could make a case that the Ukrainians decide to punish the people who breached it on their side, and the Russians punish the people who breached it on their side, and they create a joint commission to establish which of their own people breached international humanitarian law in order to re-establish truth and justice. Would that be the kind of process that you're envisioning?

## **#F1**

That is very theoretical because I think, in practice, this is not going to happen.

## **#M2**

No, but how could it be done in practice where we have two sovereign states, and both states claim the war is for a just cause? You know, war creates ugly situations. Therefore, each state will naturally try to shield their own perpetrators from prosecution. How could we motivate states to actually go after their own war criminals?

## **#F1**

It's a very complicated question. I think I don't have a simple answer. But let me just bring in something else. Ukraine did start bringing soldiers before the courts already in 2022. Yeah, Russian soldiers, right?

**#M2**

Yeah, that's like the Russians bringing Ukrainian soldiers. It's like, yeah, the ones you have on hand, sure.

**#F1**

But the prosecutor general in 2022 said, we also started investigations against our own soldiers, but we put this aside until after the war. So what I want to point out is that the role of a prosecution should be to investigate crimes, no matter who commits these crimes. It's very difficult to ask for such a neutral prosecution office in times of war, but this is what should happen. Let's put it this way: the Russians should also go after their own nationals who have committed crimes. And then we also have to look at what crimes we are talking about. I think we would agree there are crimes that are punishable under war, like war crimes, however you define the exact crimes. But let me just point out, who actually gives you the permission to take someone else's life because it's war? But I know this is very...

**#M2**

That makes it one more level complicated. But on the lower level, we have the rules of war. We have the law of war. We call it humanitarian law, but what it is, is the law of war. We have that. And the whole point about it is that states say, like, no, I will forbid my own soldiers from doing X. And if they do X, then they commit a crime even under my own military manual. There are military manuals that tell you what you can and cannot do. If somebody wears a white flag and has no weapon, you cannot shoot them. If you shoot them, it's a war crime.

So we have what we would need in terms of legal structures. The question is how to create the political will or incentives to do that. I mean, offering amnesty by application is a good idea, right? So that the people who committed the crimes can say, "I apply for amnesty, therefore I get cleared of this, and I can... I, as a Russian, can travel again to Ukraine even in the future and vice versa without being persecuted. Or I can travel abroad without the fear of the ICC cracking down on me." I mean, that could be a motivation.

**#F1**

I mean, both countries didn't sign the Rome Statute. They didn't. No.

## #M2

But I mean, we're talking about hypotheticals here. And I think it's also our job as academics to think through the options. You lay out a beautiful option, and you're saying the South African option should be seriously considered. So do you have other ideas on how this could be connected to the incentive structure to go down that route?

## #F1

I mean, I think truth commissions do not exclude tribunals. There might be a need to set up an international tribunal, but the problem I see, you know, I'm also coming from a judge's perspective. I also look at, can it work? And there might be a need for an international tribunal, but the difficulty in finding people who will be accepted by both sides is very high. Because what I see happening in the West is a very strong anti-Russian mentality. Propaganda is a very strong word, but it's the right word. I think it comes down to propaganda. And there's not much objective information on the sources of why Russia invaded Ukraine, which was illegal.

We all can agree to this. So where do you find people who will be respected by both sides? I think you will not find them in positions of power, not on the political side, nor on the legal side. I can only speak of Germany, but if you are in a position of power in the German court administration, that means you have done and said what is expected of you to come into a position of power. People who say what they believe is just and right, if they follow their hearts, do not make a career in the German court administration. And I expect this is pretty similar in other countries as well. But you will find them, and it's a matter of will.

I think if there is the political will to set up a peace commission with the power to grant amnesty, and if they understand the structure and the functioning and the need for criminal proceedings to happen even before the establishment of such a commission, they will probably conclude that we need an international tribunal. And then there may be people from countries outside of Europe, who have observed the conflict and are very familiar with international law. These people can be found. And I think it is possible to set up an international tribunal that can be respected by both Russia and Ukraine. And let me say one more thing. I'm very grateful that President Trump is actually pushing towards negotiations, towards peace.

He has done what has not been done for years. He has opened the communication channel to Russia again. Viktor Orban has tried this and has been highly criticized. I find it very interesting that Trump wants peace and Europe wants war. And I have to honestly say I am ashamed of what the German government is doing these days. We started World War II. We have caused so much suffering. Germany, in starting the Second World War, has caused the deaths of about 27 million Russian people. How can you possibly not do everything in your power to promote peace? From this family story I come from, it's the people who pay the price for war. And the sooner a war ends, the better and less people suffer.

So if you could actually talk about territory and say, okay, Russia will get the eastern parts that they have already annexed. If this solution would save lives, many lives, why not? Again, the family of my mother comes from Elbing near Danzig, which is Poland today. Germany lost that part because of the war. I would never, never want this part back. I have done an internship as a judge with Polish courts, and I wanted to go to Elbing, and they organized one day where I could visit the Amts- und Landgericht of Elbing. And I had such a warm welcome. And I felt connected to this earth in a very interesting way. But never would I want to get this land back. I think we are all human beings. And in every human being, there's a deep need for peace, for justice, for love.

## **#M2**

The question to us is, how do we make that a reality? Because the need is there, but the political processes that we're in, and political processes are processes of sociology, of large groups, they start overriding this and then destroying it, unfortunately. So the question is, how do we create systems that help to actualize the urge and not suppress it? And I keep saying in my political science classes on Europe, you know, the question is not if the borders in Europe change. The question is, do they change with or without violence?

And right now we have another border change with violence, which is grotesque and horrible, but it's just a matter of fact. The question is then how do we use a system like the justice system in order to heal the wounds? And I think you're giving very good food for thought for getting there. It goes through truth, and truth will have to somehow also battle the propaganda. So the question is probably whether we get to a point where from Moscow to Berlin to London to Kyiv and Washington, we actually want the truth. Because my feeling at the moment is that people don't want the truth. It's too early for that, I guess.

## **#F1**

That is the problem. I think we need to come to a point, as you say, where people in positions of power want truth. We are quite far from this at the moment, but that doesn't mean that we won't get there. I think it is important that we think it's possible, that we come up with ideas, that we make suggestions, and that these suggestions, these ideas, these visions get discussed and listened to. And then one politician might think that is a good idea. Like, for example, what I just mentioned: what if they would offer Putin that he would get what he needs, that the annexed regions around Donbass and all these regions will belong to Russia? This would be part of the peace contract in the end.

I would be quite optimistic he would be more willing to stop the fighting. Because at the moment, Russia is winning. So why should they stop? Why should they agree to a ceasefire if they are in a very strong position? And also, they don't trust the Europeans, the West anymore, which is understandable, because they have not done anything to fulfill the Minsk II agreements that were

signed and agreed on in 2014. So why should they trust the West to do it this time? So I understand the Russian side in not agreeing to a ceasefire now until, okay, they have been offered that Ukraine will not become a member of NATO, which is one of the core things that actually made Russia start this war.

This is one very important thing, and I'm very grateful that this was announced like this. But the second and most important thing is now territory. So either we let the Russians, like the Russian side, take more territory through war, through fighting, through the sacrifice of many more men, or we get there through negotiations. And again, if you talk to people who have been to these areas that belong to Russia now, for example, Patrick Bob, you just mentioned, he said, well, Russia has invested a lot of money into renovating and rebuilding this part of the country. People get higher pensions, higher salaries. They just want to have a good living and a good outcome and have peace. And why not have this as a priority?

## **#M2**

You know, the one thing I take away, and we unfortunately have to end it here because of the hour, is that if we try to create just victims' justice instead of victors' justice, if we try to get to the point where we focus on the victims and not on whoever wins, then we have more chances to get to reconciliation. The hope to work toward that is a good one, I believe. Do you want to add one more thing to that?

## **#F1**

Yes, what impressed me a lot was the atmosphere in which victims could testify before the South African Truth Commission. They had a briefer who was with them before, during, and after the hearing. The whole atmosphere was very human, very pro-victim, and reduced the risk of retraumatization, which happens when you do talk about what happened to you. And let me just give one example. One elderly woman said at the beginning of her testimony, when I was in one of these hearings, "Thank you for inviting me to talk to you today and share my story."

This gives me back my human dignity. I've never heard a victim say this after a court session. Therefore, I find it so important that this whole idea of how truth commissions work finds its way into the global discussion. And let me finish with the end of my book, where I quote a Xhosa proverb saying, "Utopia is a long way off." And one of the grandsons of Mandela, Ndaba Mandela, elaborates, no one's ever gotten there, but that doesn't mean it doesn't exist. It may take effort and struggle to get there, but it's still worthwhile to work towards a vision of peace.

## **#M2**

And I subscribe to that wholeheartedly. And for any of the doubters, every war in the last 100 years has brought about new approaches to international law, new courts, new systems, new ideas. And I

congratulate you, Clivia von Dewitz, for having another idea of how to make something good out of something horrible. Thank you very much for your time today.

**#F1**

Thank you very much for this discussion.