Blending Norms, Bridging Peace: The Impact of the 2016 Colombian Peace Agreement on the Special Jurisdiction for Peace

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Received August 01, 2024
Accepted December 26, 2024
Electronic access January 15, 2025

After decades of civil war in Colombia, the 2016 Colombian Peace Agreement brought the conflict to a close, with its negotiation process involving several unique actors. The result was the creation of the Special Jurisdiction for Peace and Restorative Justice (SJP). This article investigates the implications of the Agreement on its structure and case law through an exploration of norm hybridization, a process in which norms are adapted to fit local ideas, in the context of Colombia's restorative justice processes. By examining case law recently adjudicated by the SJP, as well as an analysis of the SJP's structure, the present work found that due to the negotiation process of the agreement, human rights norms were hybridized to fit local standards. This is reflected in the concept of alternative sentencing, an opportunity for perpetrators to acknowledge responsibility and cooperate with investigation for a reduced sentence, although its implementation varied due to the nature of the crimes committed. This emphasis on human rights and restoration of societal bonds is consistent with the principles of the 2016 Agreement: recognizing victims' rights as the highest priority. By analyzing the restorative process in Colombia, the present analysis can be applied to other post-conflict states around the world working to address human rights abuses.

Introduction

The Colombian civil conflict was a decades-long civil war between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC-EP). It included the involvement of other paramilitary groups and drug traffickers, and displaced millions of civilians[1]. Though there have been many attempts by the Colombian government to curb conflict, this paper will focus on the most recent, successful 2016 Agreement because it was a unique settlement between different political actors that not only resolved conflict, but also did so through a variety of institutions. As parties struggled to meet the interests of specific actors, such as international courts, they chose to propose certain measures and have unique interactions with actors including the public, the Colombian Constitutional Court (CCC), the International Criminal Court (ICC), and more to satisfy these interests[1]. This phenomenon was unseen before the negotiation of the 2016 Agreement; thus, the 2016 negotiators set precedent for future processes in human rights implementation. In the aftermath of the agreement, President Santos was awarded the Nobel Prize on December 10, 2016 for his work in peacefully ending Colombia's civil war[2].

Most significant of the Final Agreement's effects was the establishment of the Special Jurisdiction for Peace and Restorative Justice (SJP) to account for the human rights abuses that occurred during the conflict. The SJP is a hybrid institution responsible for the investigation and adjudication of these abuses. Its first case law was adjudicated in 2018. The SJP is composed of several different units, one of which, the Investigation and Accusation Unit (UIA), accounts for prosecution and compliance of adjudicated cases4. To date, seven cases have been adjudicated, their findings including treatment of FARC members and high government officials*. After the Final Agreement, additional measures were passed to aid its implementation process. As outlined by the International Commission of Jurists (2019), the Colombian Congress has passed certain reforms as to effectively implement the final agreement, including the Legislative Acts 02, 03, and 05; the formation of the National Farming Innovation System; the Law on Amnesty and Pardon; the Opposition Statute, which outlines the procedures of the Special Jurisdiction; and the SJP's Statutory Law. These reforms defined the state's obligation to comply with the agreement, allocated seats in Congress for the new political party created from FARC-EP, prohibited paramilitaries and self-defense groups, and outlined regulation for the SJP's procedures[3].

Due to the unique interaction between international and local actors during the negotiation of the Final Agreement, international norms may have been adapted to fit the local context of Colombia in order to gain support for the Final Agreement

* See the Jurisdicción Especial por la Paz website; all cases— 01 Hostage-taking, serious deprivation of liberty and other concurrent crimes committed by the FARC-EP; 02 Territorial situation of Nariño; 03 Murders and forced disappearances presented as combat casualties by state agents; 04 Territorial situation of Urabá; 05 Territorial situation of Cauca and Valle; 06 Victimization of the UP; 07 Recruitment of girls and boys; 08 Crimes committed by public forces and paramilitaries; 09 Crimes against ethnic peoples; 10 Crimes committed by FARC-EP (8-10 have been just recently opened)

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and fulfill the interests of all parties. This concept is based on McCoy et al. (2021)'s theory of norm hybridization, which is when norms are adapted to fit local ideas[4]. For example, an instance of norm hybridization relevant to this case would be the transformation of the norms of dealing with human rights abuses— international norms stipulate those perpetrators should be prosecuted fully, and victims supported, but after undergoing the process of norm hybridization, the norm in Colombia's restorative justice process is that perpetrators can receive lower sentences in exchange for acknowledging responsibility to the victims. This article investigated two specific SJP cases and analyzed if this had any influence on the country's overall restorative justice process.

The primary question that this work aimed to answer is: what are the implications of the 2016 Colombian Peace Agreement on the structure and case law of the SJP? This paper used the concept of norm hybridization to analyze how international norms, human rights, and accountability morph to fit Colombia's context. To do this, existing literature that analyzes factors that led up to the creation of this institution was reviewed, then macro cases one (Hostage-taking, serious deprivation of liberty and other concurrent crimes committed by the FARC-EP) and three (Murders and forced disappearances presented as combat casualties by state agents) will be analyzed. I argue that there is a relationship between norm hybridization in the 2016 Agreement and the concept of alternative sentencing that is reflected in the findings of the court and the sanctions, or sentences, of perpetrators. This occurs when perpetrators receive special or reduced sentences in return for accepting full responsibility for human rights abuses and cooperating with the investigative process[1]. Norm hybridization contributed to the adoption of alternative sentencing by the SJP, as well as the application of it in the court's findings.

Though it is too soon to provide a study that would aim to investigate the effectiveness of the SJP overall, there is much to gain by analyzing its case law. Scholars should evaluate case law to reveal the process of restorative justice and better understand the SJP. By examining previous international norms and how they were redefined, it can be determined what redefined norms are present in the case law of restorative justice institutions. Colombia's SJP was the ideal choice for this analysis as it exists as a unique case of restorative justice— a democracy with strong rule of law institutions, vibrant political dynamic, and well-organized civil society, human rights, and victims' rights organizations. These factors make Colombia a pathway case that could set precedent for future post-conflict processes[4], such as those regarding systematic human rights violations against ethnic groups. But although this framework could be used to verify how norm hybridization spreads to other post-conflict contexts, this work remains limited due to the lack of similar institutions such as the SJP around the world. That is to say, many regions in the world have undergone conflict and established a restorative justice process, but because of the SJP's unique structure, it would be challenging to connect norm hybridization to other contexts in the globe.

This article is organized as follows. Section one will cover the existing literature regarding restorative justice in post-conflict states, international norm implementation, and the Colombian Peace Agreement. Subsequently, I will give a brief introduction of the role and structure of the SJP. Understanding the cases required one to be aware of how the structure of the SJP differs from other restorative justice institutions around the world. The next section analyzes two SJP macro cases, which deal with restorative justice in the case of combatants, where I then reach my conclusion. Finally, the last section will discuss the methodology of this work.

Literature Review

Negotiations between domestic and international actors have been in the spotlight for scholars studying transnational activism and human rights. These include well-known theories such as the spiral model from Risse and Sikkink (1999) to the multilevel stages of norm implementation, which prescribes three stages for the process[5]. It is important to note that the objective of this paper is not to test Sikkink's model— rather, this work builds off of this foundation of norm implementation and discusses a separate process related to it: hybridization.

What is new about these actors' negotiations in Colombia is that they are happening within the context of restorative justice. The present literature review explores restorative justice processes in other post-conflict states, outlines some theoretical models of transnational activism and negotiations between domestic and international actors to facilitate the understanding of international norm implementation more broadly, and reviews the unique situation during the negotiation of the Colombian Peace Agreement.

Restorative Justice in Post-Conflict States and Hybrid Institutions

As mentioned earlier, Colombia's situation as a post-conflict state with a vibrant and relatively strong political dynamic, civil societies, and rule of law institutions sets it apart from other potential areas of analysis for restorative justice. However, there is still merit in analyzing other post-conflict contexts around the world to emphasize the differences between the situations and highlight the unique features of Colombia's approach. This section explores restorative justice in Rwanda and South Africa, and contrasts these situations with Colombia.

Restorative justice processes are not uncommon overall. After the 1994 Rwandan genocide, gacaca courts— a revival of grassroots movements aiming to address violence— were established. These incorporated elements of African dispute resolution with

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the style of Western criminal courts, and functioned as an approach to both punishment against perpetrators, and healing and reconciliation for victims[6]. During this process, the perpetrator would apologize to the community for their crimes, the victims would ask them relevant questions or share their experiences, and at the end, the community would decide on a punishment. Although this was only available for lower-level offenders remorseful for their actions during the genocide, gacaca courts were valuable in helping communities come together and reconcile[6]. This came to an end in 2012, when the gacaca courts closed. Most importantly, these gacaca courts laid the foundation for the shift towards increased victim participation in international criminal justice[6].

For South Africa's restorative justice process, there are two main aspects to focus on— the Disarmament, Demobilization and Reintegration (DDR) and the South African Truth and Reconciliation Commission (TRC) initiatives. The DDR program sought to integrate the opposing armed forces of the conflict into one national defense force: the South African National Defense Force (SANDF). This was done by having all armed forces in South Africa submit a roster of all personnel to a centralized list, forming the basis of integration[7]. However, due to problems such as dispute over who should be recognized as a combatant, corruption, and general inaccuracy of information, the legacy of the DDR program remains controversial. Among many of its adverse effects are the mistreatment of women and racial violence that occurred during this integration of opposing armed forces into a single military[7]. This program operated independently from other restorative justice initiatives such as the TRC, which will be covered next. As a result, there was little focus on holding former combatants accountable. Authorities merely verified their identity and status during the integration process into the SANDF, with almost no action taken against those responsible for human rights abuses. That is to say, "justice was compromised in an effort to secure short-term stability"[7]. In this way, Colombia's restorative justice process is unique. As will be discussed in detail later on, Colombia's approach to holding perpetrators accountable is a careful balance between the "short-term stability" prioritized in South Africa, and the justice that victims deserve.

The other main aspect of South Africa's restorative process was the idea of amnesty for human rights abuses through the TRC[8]. Although incorporated into South Africa's 1993 constitution, there were a number of different interpretations of how amnesty would play out. For instance, many members of the apartheid security forces maintained that their actions were "justifiable acts of war" under the amnesty provision[7]. The TRC proceedings were fully open to the public in order to ensure transparency, and more broadly, the TRC as a commission was the only one to include amnesty as part of its proceedings[8]. The TRC thus granted amnesty to those who made a "full disclosure of all the relevant facts relating to acts associated with a political objective" and complied with all requirements of the peace agreement[8]. However, the difference between South Africa and Colombia in their respective restorative justice endeavors was Colombia's prioritization of justice. Although Colombia would later offer reduced sentences to perpetrators who acknowledged responsibility and cooperated with investigation, there was no offer of amnesty writ large[1].

It can therefore be surmised that Colombia's approach to restorative justice stands in contrast to other states, demonstrated in both the text of the final agreement and the resulting SJP. The 2016 Colombian Peace Argument was named as "the most victim-centred comprehensive peace agreement ever negotiated"[9]. The key goal of the SJP, and the framework that the Final Agreement operates under supports this notion. It is all based on a victim-centered principle, prioritizing the fulfillment of their rights to "truth, justice, reparation, and non-recurrence"[10]. After examining the SJP proceedings themselves, where victims were highly involved in the adjudication of macro cases one and three, it is clear that Colombia has carried out this principle effectively. Additionally, because the SJP's framework stipulates those victims must be consulted on the special sanctions, or reduced sentences for perpetrators[11], Colombia's restorative justice processes do not fall into the same trap that South Africa's general promise of amnesty did.

International Norm Implementation

The implementation of global human rights norms is outlined by Risse and Sikkink (1999) in the spiral model. Though there may be weak domestic opposition from non-governmental organizations (NGOs) at first, the repression of these rights eventually circles to the international stage, where transnational networks mobilize states and organizations, pressurize the repressive state, and invoke international norms[5]. This can lead to policy changes in the state, or strategic concessions. If there is denial, it often leads to greater domestic opposition, and in turn could result in a regime change. Transnational networks provided support in the accountability of crimes against humanity in Chile through the ousting of former dictator Augusto Pinochet, with similar patterns in Guatemala and Indonesia. All these follow Risse and Sikkink's five-phase spiral model, as transnational networks create pressures from above and below, mobilize domestic opposition groups and NGOs, legitimize their claims and protect them from repression, and put norm-violating states on the international agenda[5].

The interaction between different domestic agents, such as courts, can provide information to transnational networks, expand into the political stage, and allow human rights to assume the center stage in societal discourse[1]. In the case of Colombia, the CCC was called upon to review pieces of legislation from two different peace agreements, the Legal Framework for Peace and the Justice and Peace Law (JPL), after Gustavo Gallon and

a group of lawyers filed 23 challenges against the 2005 JPL, relating to the Rome Statute2. This demonstrates the vibrant civil society of Colombia, as domestic actors interacted with domestic courts by citing international law and jurisprudence for the purpose of bringing human rights to the center stage. Risse and Sikkink (1999) theorized that this sustained multilevel pressure leads to the state adopting these norms through institutionalization and ratification of international treaties, such as the Rome Statute[5].

According to McCoy et al. (2021), the past two decades have brought in new norms for transitional justice, the process in which a post-conflict country or region aims to resolve human rights abuses, and prevent future ones[4]. For example, it is now expected for post-conflict states to institutionally address responsibility for human rights abuses. This was institutionalized by the 2002 Rome Statute of the ICC, which put crimes against humanity, genocide, crimes of aggression, and war crimes under its jurisdiction[12]. McCoy et al. (2021) argues that Colombia is a pathway case for norm evolution and implementation, as throughout the negotiation process of the 2016 Peace Agreement, the negotiators became not only norm-takers, but norm-makers[4]. In democratic countries especially, negotiators must face pressures from both above and below-thanks to international obligations made and domestic actors such as local courts, the Congress, and the public. This creates a multi-level bargaining game that requires creative proposals from negotiators, much more complicated than the traditional peace vs justice debate[4], and adds another layer of nuance to Risse and Sikkink (1999)'s spiral model, which only analyzes the one-way relationship between domestic organizations and international intervention. Colombia's unique case of a democracy with relatively strong rule of law institutions, a vibrant political dynamic, and well-organized civil society, human rights, and victims' rights organizations makes it a landmark case that could set precedent for future civil conflict resolution in the international context.

The spread of international human rights norms undergoes three different stages: norm localization, norm subsidiarity, and norm hybridization. Specifically, the case law presented in this article is an example of norm hybridization, which links back to the concept of alternative sentencing. When norms are localized, they are reconstructed by local actors to fit better with existing cognitive models and identities. That is to say, even though norms are determined by international actors, less powerful states and local actors can shape its implementation based on their own constitutional structures and how they interact with normative conceptions such as sovereignty[4]. This is imperative, as norms "must build on established contextual ideas, be encouraged by locally legitimate actors, and enhance local prestige"[4]. However, states can also reject normative ideas proposed by Western states due to either exclusion from the norm-creation process, or perceived hypocrisy from the part of the Western power enforcing the norm. This is referred to as norm subsidiarity. Finally, norm hybridization occurs when another norm that is a better local fit emerges[4]. Therefore, norm hybridization may occur through phenomena such as practical political compromise, which is what happened in Colombia.

This understanding of norm hybridization is supplemented by Sally Merry Engle's work. To integrate global human rights norms into local communities, Engle argues that four main mechanisms are needed: (i) the universal standards of human rights must be translated into local contexts, (ii) activists must balance challenging existing power relations and presenting human rights claims according to the relevant cultural context, (iii) human rights must be adapted to guarantee funding to have a local impact, and (iv) institutions must balance the implementation of human rights between effectiveness and consciousness[13]; this is because of the relationship between the two. She remarks that "to promote individual rights consciousness, institutions have to implement rights effectively. However, if there is little rights consciousness, there will be less pressure on institutions to take rights seriously"[13].

The SJP embodies this norm hybridization in both the findings of its macro cases, which redefined the norm of human rights to allow for greater focus on restorative justice instead of impunity, and will be more thoroughly analyzed later in this paper, as well as the process the SJP offers, by which international and local norms are combined to enhance the restorative process in Colombia. One of the main examples of norm hybridization is when the Special Jurisdiction released a judgment based on articles 8.2.a.viii and 8.2.c.iii (hostage-taking) of the ICC Statute, defining hostage-taking during international or internal conflicts as a war crime, integrating international norms into the local context. That is to say, an international criminal law deriving from the ICC Statute is then applied by the Special Jurisdiction, which is part of the domestic apparatus of the Colombian court system.

Throughout the negotiation process, Colombia filled in the gaps in the above international norm by defining effective sentencing[1]. According to McCoy et al. (2021), during norm implementation, contestation and debate over the interpretation of the norm became part of the process of norm change. The implementation is the overall process of incorporating the norm into practice, and it includes the three different mechanisms outlined above. Specifically, they explain that during the Colombian negotiation process, "Colombian negotiators were clearly responding to their domestic needs to get a peace deal approved in a democracy, but were also betting that the international community (especially the United States and the ICC) would be willing to accept Colombia's interpretation and implementation of the norm for the sake of peace"[4]. This is a clear instance of norm hybridization. Additionally, factoring in the contributions from public opinion, human rights and victims' rights organizations[1], it is clear that the norm of post-conflict

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states addressing human rights abuses has been adapted to fit the political environment in Colombia.

This is supplemented by research by Huneeus et al. (2018), who argue that different actors in Colombian politics proactively reread international law for a more favorable interpretation. For example, Commissioner Jaramillo of the Office of High Commissioner for Peace acknowledged Colombia's responsibility under the Rome Statute but added that no international court had ruled on cases specific to a transition from armed conflict. By highlighting differences from the Rome Statute and Colombia's current situation, he emphasized that previous rulings were related to post-dictatorial contexts [1]. Accordingly, this created a space of legal uncertainty. Additionally, actors frequently cited the Inter-American Court's 2013 judgment of El Salvador's amnesty decree as reason to support the 2016 Peace Agreement, as the concurring opinion was that in certain transitions between conflict and peace, the state is not obligated to implement international rights and obligations immediately [1].

Negotiation of the 2016 Peace Agreement

The Colombian Peace Agreement has always been enmeshed in the domestic and international context. Whereas previously academics have analyzed how actors have dealt with dictators and transitional justice from Latin America to other sites of the globe, McCoy et al. (2021) points out the need for analyzing the two directions of international interventions [4]. This is referred to as the logic of the two-level game. While Putnam (1988) explains how international politics are inherently marked by two-level diplomacy [14], Madsen (2020) expands this to highlight potential bias of international politics towards domestic political agendas [15]. This is especially true in Colombia, as the human rights accountability norm was adapted to fit domestic political agendas instead of directly adhering to ICC interpretations [4]. While international actors such as the ICC and IACHR performed their own investigations and acted as an important ratifier for the FARC and Colombian government, the two main parties also focused on ratifiers such as the public, victims' groups, Congress, and the CCC [1]. Both parties aimed for inaction from these international actors and prioritized domestic affairs.

By the end of the negotiation process, the International Commission of Jurists (2019) noted that President Santos declared the final outcome of the negotiations would be subject to public approval. Accordingly, he organized a plebiscite, where Colombians would vote to either approve or reject the agreement. This was not an actual requirement, but Santos did so because he thought it to be a confirmation of the agreement's legitimacy [3]. However, ultimately, waning public support, along with other factors, led to the 2016 peace agreement failing in its security guarantees for ex-FARC members [4]. This interaction with international intervention from the ICC and IACHR shaped the 2016 peace agreement because actors were interacting with one another during the negotiation process. Members of the Colombian Congress, President Santos, and other advocacy groups directly communicated with the ICC's Office of the Prosecutor for support [1].

During the negotiation process, Colombian actors strategically used international jurisprudence, working under what Huneeus et al. (2018) termed 'the shadow of the law', to legitimize their claims and constrain opposing policies [1]. By strategically using different legal interpretations of previous cases and of treaties like the Rome Statute, Colombia was able to create a peace agreement that not only referenced these international courts, but caused many changes in international norm implementation such as the concept of alternative sentencing. This is achieved by breaking the concept of accountability in two processes, investigation and punishment, and enhancing one at the expense of the other. This made it possible for perpetrators to have a lighter punishment by cooperating in the investigation process and gave ex-FARC members, paramilitary members, public force members, and other parties the ability to acknowledge responsibility before the SJP. Ultimately, this gave them the opportunity to be reintegrated into society. Overall, alternative sentencing was implemented within the process of punishment, which recasts it as rehabilitation and the restoration of social bonds [1]. Specifically, Sandoval et al. (2022) outlines that "under an ordinary sanction in the SJP, a perpetrator can receive a maximum of 20 years' imprisonment for the most serious crimes all taken together, while under ordinary criminal law in Colombia the punishment for willful killing of protected persons is between 40 and 50 years of imprisonment" [11]. This means they can receive special or reduced sentences in the scenario that they comply with the investigation process; this is achieved by acknowledging responsibility and providing the full truth in the early stages of the Judicial Panel for Acknowledgment of Truth, Responsibility and Determination of Facts and Conducts. This is a main implication on the case law of the Special Jurisdiction, as alternative sentencing changed the previous international norm on accountability.

Context: The Role and Structure of the Special Jurisdiction

To better understand how norm hybridization within the cases of the Special Jurisdiction, it is necessary to capture the functioning and structure of this institution. This hybrid institution is responsible for prioritizing victims' right to truth and overseeing cases relating to the decade-long civil conflict. As outlined in the Final Peace Agreement, "The underlying principles on which the comprehensive system is founded are the recognition of the victims as citizens with rights" [10]. Both the 2016 Agreement and the resulting institution are supposed to prioritize victims' rights

first. It is constituted by three institutions- SJP; the Truth, Coexistence and Non-Repetition Commission (CEV); and the Search Unit for Persons Presumed disappeared in the context and by reason of the armed conflict (UBPD)[3]. These three institutions are meant to fulfill the principle outlined in the Peace Agreement. To do this, the CEV has three main objectives to contribute to the truth. The first is to contribute to clarification through a broad explanation of the conflict, its complexity, and its lesser-known aspects. The second is to promote and contribute to acknowledgment. For victims, it is the acknowledgment of their rights. For perpetrators, it is the acknowledgment of individual and collective responsibility. For society, it is the rejection of what happened and demand that human rights violations are not committed again. Finally, the third objective is to promote coexistence in the different territories through the creation of a transformative environment allowing for a peaceful resolution of the conflicts[3]. This is an example of restorative justice.

The objective of the UBPD contrasts greatly with the other parts of the hybrid institution. Due to the many forced disappearances orchestrated by parties such as the FARC-EP during Colombia's civil conflict, the UBPD aims to amend for these harms. It aims to direct and coordinate humanitarian actions to search for disappeared persons, whether they are dead or alive. With every case, the UBPD will give relatives a report with any information discovered. When death is confirmed, the UBPD recovers and identifies the remains to return to relatives with dignity[3]. Both of these institutions, the CEV and UBPD, function in an extrajudicial nature. While they are crucial to the implementation of the Peace Agreement, the scope of this paper is on the Special Jurisdiction itself. Despite this, to understand how the SJP works in practice, one needs to bear in mind the full organization that resulted from the Peace Agreement.

The SJP is the court designed to be autonomous from the government, responsible for administering justice relating to cases from the civil conflict. The SJP's jurisdiction encompasses any subject matter relating to the armed conflict, including crimes against humanity, human rights violations, war crimes, and political and related crimes. It is also authorized to investigate crimes related to the conflict committed before December 2016, crimes committed during the process of laying down arms, and any violations from the three main parties involved: FARC members, State military members, State officials not part of the military force, and civilians[3]. In these cases, the Final Agreement outlines that the SJP has exclusive jurisdiction, though the ordinary justice system is able to investigate these crimes until they are accepted as subject of the SJP.

The SJP has two main levels, the first being composed of three Justice Panels and the second composed of four Chambers (see Figure 1). These Chambers make up the Tribunal for Peace, the highest body in the jurisdiction. There are also three units: the UIA, the Executive Secretariat, and the Information Analysis Group (GRAI)[3]. Each of the three Justice Panels serve a different purpose: one is for the Acknowledgment of Truth, Responsibility and Determination of Facts and Conducts; one is for Amnesty and Pardons; and the other is for the Determination of Legal Situations. At the second level, the four Chambers making up the Tribunal for Peace are called the Trial Chamber in Cases of Acknowledgment of Truth and Responsibility, the Trial Chamber in Cases of Absence of Acknowledgment of Truth and Responsibility, the Revision of Sentences Chamber, and the Appeals Chamber[3]. In terms of the three units, the UIA is the prosecution unit of the SJP[3]. As it will be shown in the below cases, defendants that refused to acknowledge responsibility were referred to this unit. The Executive Secretariat is responsible for the management of the SJP as a whole, while the GRAI performs analyses of the practices carried out during the armed conflict, as well as any patterns[3]. Finally, according to Sandoval and others, monitoring will also be supported by the UN Verification mission in Colombia. Its mandate is to be carried out by the SJP, with the administrative support of its Executive Secretariat[11].

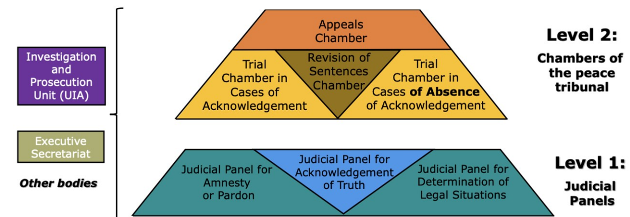

Fig. 1 Diagram showing the structure of the SJP. Source: International Commission of Jurists, Colombia: the special jurisdiction for peace, analysis one year and a half after its entry into operation, (2019).

Analysis of the Cases

Case 1: Hostage-taking

With regard to the facts of macro case one, there have been 21,396 identified victims of the FARC-EP hostage-taking. The case was opened on July 4, 2018 due to reports from the National Center for Historical Memory, the Attorney General's Office, the País Libre, and the Colombian Association of Victims of Forced Disappearance and Other Victimizing Events[16].

Throughout the proceedings, using detailed accounts from victims, the first Order of Determination of Facts and Conduct of the Recognition Chamber of the SJP charged eight members of the former FARC secretariat with crimes against humanity and war crimes. This was before the Resolution of Conclusions and trials before the Peace Tribunal.

Basing their judgment on articles 8.2.a.viii and 8.2.c.iii of the ICC Statute, defining hostage-taking during international or internal conflicts as a war crime, the SJP charged eight members of the FARC Secretariat were charged with serious deprivations

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of liberty and hostage-taking [16]. This judgment is especially significant, as the SJP's integration of international criminal law in its adjudication demonstrates norm hybridization.

Additionally, the Recognition Chamber also charged the FARC Secretariat members with other war crimes related to the treatment of the kidnapped, such as homicide, torture, cruel treatment, attacks on personal dignity, sexual violence and forced displacement. They found that these "retention" policies were not targeted towards any specific social group, and were meant to control the population of certain areas, finance the FARC, and exchange hostages for imprisoned guerrillas. In July 2023, the Recognition Chamber charged ten additional former members of the FARC's Central Joint Command with war crimes of hostage-taking, homicide, attacks on personal dignity, cruel treatment and inhuman acts and crimes against humanity of other serious deprivations of liberty, murder, forced disappearance, slavery, sexual violence, torture and other inhuman acts. The accused were given thirty business days to acknowledge responsibility and provide comprehensive and exhaustive truth about the crimes, or risk being sent to the UIA [16].

Case 2: False positives

There have been 2,428 accredited victims of murders and forced displacements presented as casualties in combat by state agents. The case opened on July 12, 2018 after twenty-two members of the public force and one civilian acknowledged responsibility in the Norte Santander and Costa Caribe subcases. The proceedings went as follows: the First Resolution of Conclusions was issued after the hearings at Ocaña and Valledupar when twenty-two members of the public force and one civilian acknowledged responsibility. The resolutions were then sent to the Special Peace Court to begin the process. Throughout the proceedings, victims were able to request evidence, legal representation, psychological support, file appeals, and make observations [17]. In its judgment, the SJP cited the Declaration on the Protection of All Persons from Enforced Disappearance, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the International Covenant on Civil and Political Rights.

Between 2002 and 2006, the Truth Recognition Chamber determined 6,402 people who were falsely presented as guerrillas killed in combat. The Chamber found that these would not have occurred had it not been for the army's policy of body counting, which put pressure on subordinates to get dead in combat. Twenty-five members of the public force and one civilian were charged with homicide of a protected person and crimes against humanity. In subcases, additional people were charged. Twenty-two army members, two civilians, and one DAS official were charged with the murder of three hundred and three civilians presented as guerrillas in Casanare. In the municipality of Antioquia and Ituango, ten members of the public force were charged, and eight defendants acknowledged responsibility in the case of the Las Mercedes de Dabeiba cemetery. Those who did not accept responsibility were referred to the UIA [17].

Similarities among cases

In the findings of both macro cases, the perpetrators— whether they were members of the FARC-EP, the public force, or civilians— were pressured to acknowledge responsibility before the SJP. This would facilitate the restorative justice process. If they failed to do so, they would be referred to the prosecution unit of the SJP.

However, the concept of alternative sentencing is ever-present during the adjudicative process. As theorized by McCoy et al. (2021) and exemplified in the negotiation process by Huneeus et al. (2018), the Special Jurisdiction is the face of this new approach to restorative justice. They explain, "the guerrilleros who aspire to amnesty must participate in the process, share knowledge they have about criminal acts, and apologize for harm suffered by the victims of their crimes. But drawing on restorative justice theories, the new peace agreement introduces an idea that had been mostly absent from international criminal law: punishment is no longer conceptualized only through the lens of moral desert, but is recast as (also) about rehabilitation and the restoration of social bonds" [1]. All perpetrators charged were given the opportunity to acknowledge responsibility and cooperate with the investigation process to fulfill the victims' right to truth, thus this allowed them to decrease the amount of time spent in jail. This is what is outlined in Huneeus et al. (2018)'s argument on the unique interaction between international courts and the domestic actors working to pass the Peace Agreement.

In these two cases, the maximum sentence given to perpetrators was 20 years in prison. These occurred when perpetrators were referred to the UIA after failing to comply with investigation— after being defeated in court with the UIA, this sentence will go into effect [17]. These sentences reflect a broader trend in the SJP's alternative sentencing. Sandoval et al. (2022) finds that 20 years of imprisonment is the maximum sentence for "the most serious crimes all taken together, while under ordinary criminal law in Colombia the punishment for willful killing of protected persons is between 40 and 50 years of imprisonment" [11]. In the scenario that actors do not accept responsibility, the SJP consists of a multi-level governance structure for these cases. This includes the prosecution unit, the UIA, where uncooperative defendants were referred to. Thus, the restorative process requires individuals to accept responsibility; a lack of acceptance redirects the process to another unit[†]. The issue with this is that the adjudication process would be accordingly longer as the perpetrators are being referred to a separate unit.

† See case findings in macro cases one and three from the Jurisdicción Especial por la Paz.

Differences among cases

Despite the many similar patterns, there is a key difference in the proceedings of the case. This is in the "characterization of the harm" described by Parra-Vera (2022), who argues that macro case one promoted restorative justice in two specific ways. The first is the acknowledgment of victims and the second is the acknowledgment of the harm caused. In this, case one has focused on the voices, expectations, and experiences of the victims involved through the creation of spaces for victims to fully describe their experience. More specifically, the macro case adopts a specific methodological strategy for voluntary statements. This allows for credible information about the crimes that took place, as well as full representation of the scope of harm done [18]. As stipulated by the SJP's official website, these statements are shared through a digital form created by the SJP in collaboration with the Victims Unit and Attorney General's Office [16]. Therefore, macro case one effectively set the foundation for victim participation in SJP proceedings, setting it apart in its unique proceedings.

The second most important difference is the future of the findings. For those with the greatest responsibility for serious crimes, reduced sentences can only be imposed if they comply with certain conditions [11]. For instance, in macro case one, the eight members of the FARC Secretariat could receive reduced sanctions if they fulfilled the conditions on truth, reparations and non-recurrence. In contrast, it is the norm in criminal settings for the perpetrator to provide reparation to victims as established by the tribunal. Sandoval et al. (2022) explains that "this is not the logic behind the work of the SJP and special sanctions, where the link between harm, perpetrator, and reparation is diffused or might not exist" [11]. Accordingly, in a situation such as that of macro case three, where some of the victims were taken from one part of the country (Soacha) to another (El Catatumbo) before being killed, it would be reasonable under the framework of the SJP for the perpetrators to serve their sentence in Catatumbo, even if the surviving victims are in Soacha [11]. This means that there could be potential discrepancies in alternative sentencing for perpetrators between cases one and three due to the nature of the crimes committed; it is much less difficult for perpetrators in case one to directly accept responsibility and receive a special sanction than for those in case three.

Conclusion

The present paper dealt with the implications of the 2016 Colombian Peace Agreement on the structure and case law of the SJP, finding that within the SJP's case law, norm hybridization happened through the concept of alternative sentencing. While Huneeus et al. (2018) dealt with the process of negotiating the peace agreement itself, McCoy et al. (2021) explained how norms get translated into the peace negotiation process through norm hybridization. It was through combining these two main works that the conclusion was reached. What this article adds to the literature is a strong example of norm hybridization in action through its relationship to alternative sentencing. Further, the paper enables readers to explore alternative sentencing through an analysis of SJP cases. Looking into cases one and three, it was found that alternative sentencing worked more successfully in case one. This is because of the complexity of the nature of the crimes committed in case three, which made it more difficult for perpetrators to be directly held accountable. In case three young civilians from the municipality of Soacha were taken by members of the military to El Catatumbo. The decentralization of the committed crimes had an impact in pursuit of accountability, as there was uncertainty over where the prosecuted members of the military would serve their special sanction14. Other authors have also found further differences in the implementation of alternative sentencing while investigating SJP cases. For example, Parra-Vera (2022) contends that the main difference lies in the proceedings, such as in case one, which included a specific methodological strategy for voluntary statements by victims [18].

Though there is still much to uncover on Colombia's unique restorative peace process, it is clear that through the hybridization of international norms during the negotiation of the 2016 Agreement, the changes have widespread implications. This is especially so on the hybrid institution it created, the SJP. The SJP utilizes concepts outlined in the Final Agreement, especially alternative sentencing, allowing defendants to acknowledge responsibility and contribute to the investigation process to lessen time in prison. Not only does this recast punishment into "rehabilitation and the restoration of social bonds" [1], it is also consistent with the principles of the Agreement: to prioritize victims' rights above all else [10].

In terms of future study in this field, other researchers may try to understand the connection between norm hybridization and alternative sentencing in cases two, four, five, six, seven, eight, nine, and ten. This approach would also address a limitation of this work, which only analyzed norm hybridization and alternative sentencing in cases one and three: cases that dealt with general war crimes. Using cases such as two, four, and five, that focused specifically on minority populations such as Indigenous groups would expand this particular body of knowledge, since restorative justice processes may vary based on the specific group it concerns. Moreover, the research design adopted here can be replicated by other scholars examining other jurisdictions or post-conflict contexts similar to the case of Colombia. Aside from these potential areas, there may also be some potential inconsistencies in how the Jurisdiction charges different perpetrators, depending on if they are e.g., higher army officials, former FARC members, or civilians.

Although it is difficult to assume other cases of restorative justice would follow the same direction as Colombia's scenario of alternative sentencing, Colombia is a pathway case for resolving

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future conflicts around the world. Colombia's complex scenario intertwines domestic and international institutions with local actors, demonstrating how they are integrated in an international community. By understanding its case law, it is possible to apply this framework to other post-conflict contexts.

Methods

I started my research by going through the SJP's database (www.jep.gov.co). Considering that the SJP started operating in 2017, it is not surprising that this special tribunal currently has only ten available cases online. Cases eight, nine, and ten are currently being adjudicated, and therefore do not have sufficient documentation available online for this analysis. This caused several challenges to be encountered in case analysis. Out of the ten cases, cases two and five dealt with Indigenous and other minority population rights, case four mostly dealt with women's rights, case six dealt with an insurgency with regards to a specific political party, and case seven dealt with recruitment of children. Finally, cases eight, nine, and ten were all from 2022, which means they are still not resolved. For this reason, it would be impractical to use them in this analysis[19‡].

The criteria used to select the two cases was (i) the amount of information available on the SJP database, and (ii) the similarity between the two. After reading through all ten, I determined that cases one and three fit this criteria the best. Being older than most, both cases had substantial material available online. This fulfills the first point. With regards to the second criterion, case one (hostage-taking) and case three (false positives) dealt with similar situations: war crimes against the general population, committed by high-ranking officials from both sides of the conflict. In contrast, case two, which also had substantial material available, dealt with war crimes committed against Indigenous populations specifically. The difference in the group affected by the crime could have impacted the proceedings and implementation of special sanctions, which is why that case— and ones similar to it— were omitted from this analysis.

Although both cases one and three dealt with systemic crimes against humanity, they are comparable: one considers a high official member of the government, and the other one deals with the former secretariat of the FARC. Therefore, because in both cases, the perpetrators are high-level officials, they are the ideal choices for my analysis. Sentences of lower-level offenders versus high-level ones often vary, as demonstrated in other restorative justice processes such as Rwanda's gacaca courts[6]. It is for this reason that I cannot expand the scope of this analysis, since the contexts of the other SJP macro cases are vastly different from cases one and three.

It is important to note that this work does not attempt to prove a causal relationship between norm hybridization and alternative sentencing. Causal explanations deal with changes in events, whereas constitutive ones are related to properties. For instance, Ylikoski (2013) explains that a causal explanation would be "(EE) e happened in circumstances R, due to events c1, . . . , cn and their (spatial and temporal) organization," whereas a constitutive explanation would be "(CE) System S has causal capacity k in circumstances T, due to S's components s1, . . . , sn and their organization O"[20]. As constitutive explanations focus on the essential parts of a whole, i.e. how a whole is constituted of many parts, this work explains how the essential parts— norm hybridization, alternative sentencing, and the institutions that make up the SJP— determine the properties of the whole— the SJP. To use a more practical example, a constitutive explanation would be that a tree is a tree because of its constitutive parts: its roots, trunk, and branches.

‡ See also: R. Hirschl. The question of case selection in comparative constitutional law. The American Journal of Comparative Law. 53, 125-156 (2005). In addition, one needs to bear in mind that in the SJP, it is expected that most perpetrators accused would be convicted. For this reason, entirely applying Hirschl's comparative case analysis would be counterproductive.

Acknowledgments

I would like to acknowledge and give my warmest thanks to my mentor Caroline De Lima E Silva who made this work possible. Her guidance, passion, and insight in this topic carried me through all the stages of my research.

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