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RESEARCH ARTICLE

Reaching for both justice and peace in Colombia: Understanding the Special Jurisdiction for Peace's mixed approach (using both retributive and restorative justice) to deal with international crimes

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ABSTRACT

In the wake of the five-decade-long armed conflict in Colombia, the Comprehensive System of Truth, Justice, Reparation, and Non-Repetition was created as an ambitious system to deal with past crimes. It aims at engaging with all the pillars of transitional justice to ensure long-lasting peace and stability. Within this system, the Special Jurisdiction for Peace is tasked with delivering justice, while contributing to securing reconciliation and promoting peace. To do so, this transitional judicial body combines both retributive and restorative proceedings and sanctions. It embodies a mixed approach to criminal justice ensuring both justice and peace in the country. This approach, however, has been criticised as a lenient, and less than optimal, way of delivering peace and justice. Some see this as a methodology motivated by practical constraints and the lack of political will to pursue a more rigorous and prosecution-orientated model. This article aims at refuting such a perception by shedding light on the innovative mixed approach. It suggests that this approach might be well suited for delivering national and international criminal justice in transitional settings.

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1. Introduction

The armed conflict in Colombia that endured for over a half century saw massive human rights violations by different armed actors (Uprimny & Saffon, 2005, p. 18), including by government forces, paramilitary groups, and armed rebel groups. The conflict ended, to some extent,[1] in a Peace Agreement, signed on 23 June 2016, between President Juan Manuel Santos and members of the Revolutionary Armed Forces of Colombia (or *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo*, FARC). The Peace Agreement came about after a long period of negotiations, initiated in Havana in 2012. The Agreement was unanimously approved on 30 November 2016 by the Congress of Colombia (Zuluaga & Giraldo, 2020, pp. 32–34),[2] delineating what would become the

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country's Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (CSTJRNR).[3]

For some, this is 'the most ambitious transitional justice system ever created' (Sandoval et al., 2022, p. 17). The CSTJRNR does not use one transitional justice device, but rather a number of approaches to simultaneously deliver justice for the atrocities committed, account for truth, provide for reparations, ensure institutional reform, and, overall, promote reconciliation and peace in Colombia (Meernik et al., 2019, p. 8). Consequently, it incorporates different institutions, such as a Truth Commission, a Search Unit for disappeared persons, and a Special Jurisdiction for Peace (SJP).[4] It also has several mechanisms aimed at victim reparation and guarantees of non-repetition (Valinas, 2020). These are intended to operate in an integrated and collaborative manner, making up a multifaceted, comprehensive, and highly complex transitional system.

Within a holistic framework, the CSTJRNR is grounded on 'prospective justice', i.e. a justice approach which aims at 'rebuilding a society's social fabric' (Roccatello & Rojas, 2020, p. 6), undertaking transitional justice's overall goal of healing societies as a whole.

Colombia's transitional system thus aims to achieve the demanding task of both delivering justice for the atrocities committed during the Colombian conflict and secure long-lasting peace in the country (Merkel, 2014, p. 19). This demanding endeavour embodies what is commonly referred to as the 'justice versus peace' dilemma with which transitional systems have long been faced (Roccatello & Rojas, 2020, p. 6, 10).

This approach needs to be contextualised within the broader transitional justice context. Over time, transitional justice has been confronted with the impossible choice between punishing perpetrators at the cost of long-lasting peace or favouring reconciliation and peace to the detriment of the enforcement of criminal justice (Aiken, 2014, p. 51; Björkdah & Warvsten, 2021, p. 657). This is because criminal trials have often proved to be discouraging of perpetrators' acknowledgment of responsibility, have increased the risk of revictimisation, and have prevented the active participation of affected parties. Thus, such trials have limited the chances of reconciliation and peace in transitions (Roccatello & Rojas, 2020, p. 10). This role, paired with the practical and political constraints of prosecuting the atrocities which are characteristic of transitional settings (Clamp, 2014, p. 121), have led to the broadening of the concept of justice within transitional justice to also include accountability, which is considered to be achievable through the resort to alternative means, such as truth commissions (Beitzel & Castle, 2013, p. 44).

Thus, other transitional processes have resorted to a range of approaches, including restorative justice, in the past. This can be understood as a 'relational, comprehensive, holistic and future-focused' approach to justice (Harbin & Llewellyn, 2016, p. 133), which holds the potential of greatly contributing to 'the overall work of building a peaceful and just world' (Zehr, 2008, p. 5, 13).

However, the SJP stands apart from previous processes, which were constrained by a restrictive understanding of restorative justice (Roccatello & Rojas, 2020, pp. 6/7). The previous processes were seen as mere partial justice, essentially aimed at the goal of peace, and juxtaposed against retributive criminal justice (Harbin & Llewellyn, 2016, p. 133). Therefore, until the creation of the SJP, transitional processes had generally failed to duly acknowledge and embody a restorative nature (Beitzel & Castle, 2013, p. 51; Moore, 2015, p. 15; Wilson, 2001, pp. 533–

534) in a way which could be deemed legal under international law and be adequate to the specificities of transitional settings (Sarkin, 2011–2012, p. 101; Seibert-Fohr, 2009, p. 42; Uprimny & Saffon, 2005, p. 16).

However, what the Colombian processes shows is that in the same way that a solely retributive approach to justice, grounded on criminal prosecution, does not guarantee the success of transitions, and can even harm them (Beitzel & Castle, 2013, p. 50; Björkdah & Warvsten, 2021, p. 657), sacrificing criminal justice for alternative mechanisms of accountability, in the name of reconciliation and peace, is an equally insufficient – and sometimes illegal – choice (Uprimny & Saffon, 2007, p. 20; Appel, 2018, p. 22; Laplante, 2009, p. 985; Sarkin, 2011–2012, p. 100; Sikkink & Kim, 2013, p. 281).

Within such a context, Colombia's transitional justice system, most notably through the SJP – as a transitional judicial body tasked with prosecuting the most serious international crimes committed during the Colombian conflict – reaches beyond a conventional and retributive understanding of criminal justice. It is rooted in restorative justice (Zuluaga & Giraldo, 2020, p. 38), as an approach to justice which is better suited to the broad needs and specificities of transitional settings, most notably reconciliation and peace (Bueno et al., 2016, p. 38; Findlay, 2016, p. 15; Roccatello & Rojas, 2020, p. 6). It is seen to complement retributive justice to ensure accountability for the crimes perpetrated (Doak, 2016, p. 74; Lambourne, 2016, p. 61).

Thus, the SJP has undertaken an unprecedented 'mixed approach' to criminal justice matters, in which both retributive and restorative proceedings and sanctions are conducted and applied to investigate, prosecute, and punish the war crimes and crimes against humanity committed during the Colombian conflict. The aim of this is to try and ensure long-lasting peace in the country (Björkdah & Warvsten, 2021, p. 657). This approach, however, has been criticised and viewed with scepticism, most notably by some victims of the Colombian conflict. Others who are critical of the approach perceive it as a lenient, politically motivated, and less than perfect solution to the delivery of justice for the atrocities committed (HRW, 2018, p. 17; Isacson, 2021, p. 47).

This article examines Colombia's highly promising and ground-breaking approach to the delivery of justice in transitional settings. This model is an important development as it is argued that it can serve as a case-study for how criminal justice matters can be better reconceptualised to enable the enforcement of justice, without sacrificing the opportunities for peace in transitions. The study begins with a theoretical section that examines how the peace versus justice divide can be overcome using an approach which combines retributive and restorative justice to arrive at a hybrid model. The section explores what transitional justice is, how it is understood, and how it previously was seen to be a counterpoint to retributive justice in that it was seen to be against having many prosecutions. The aims of restorative justice are laid out, setting out what it is and what role it can play, in particular when it is combined with a retributive approach. The article then provides an overview of the way in which the Colombian SJP has, in an unprecedented way, effectively combined retributive and restorative proceedings and sanctions. The article then discusses some of the practical considerations regarding the creation and implementation of the SJP's mixed approach and its potential to effectively ensure both justice and peace in Colombia, as well as in other places.

2. Understanding Colombia's process of combining retributive and restorative justice from a theoretical point of view

In the past, societies emerging from conflict and massive human rights abuses have been trapped between deciding between the retributive model and one which understood the practical realities of the peace versus justice dilemma. This meant making a choice between either justice or peace.

This section examines how those stark differences in approach are no longer necessary, and how a combination of restorative and retributive justice is now possible. The issue of how to deal with the past is still deeply mired in controversy. This is evidenced by the dilemma that transitional societies around the world have generally been confronted with, i.e. whether to punish offenders, to the detriment of the chances of peace, or, instead, to favour reconciliation and peace in transitions at the expense of criminal justice – what is commonly referred to as the 'justice versus peace' dilemma (Roccatello & Rojas, 2020, p. 10).

This dilemma has seen numerous countries making a choice about whether to deal with their past using either a retributive justice methodology or using other models or approaches which have often included no or few prosecutions. Thus, transitional justice approaches have been used in many post conflict or other societies in transition. In this context, transitional justice is seen to be 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation' (Annan, 2004, p. 4). It has however been considered the weaker and second-best option to deal with past human rights violations because it is seen to aim to avoid many criminal trials. Thus, in a range of countries, such as Argentina, Cambodia, Chile, Germany, Guatemala, Kenya, Morocco, Northern Ireland, South Korea, and many others, a range of steps were taken to deal with the past. Thus, while transitional justice encompasses the pillars of justice, truth, reparations, guarantees of non-repetition and reconciliation, what has caused the most difficulties is the extent to which there ought to be prosecutions of past criminal offences (Aiken, 2014, p. 41; De Hoon, 2017, p. 604; Sarkin, 2011–2012, p. 89). Many countries in the recent past have not wanted to prosecute many individuals, with the exception of Rwanda (Sarkin, 2001). This is because the question that has been posed to deal with the issue is, what process will best heal societies as a whole, while not creating more long-term tensions that negatively impact peace and stability.

On the other hand, criminal justice alone has long proven insufficient in, and at times even detrimental to, transitional processes. In the face of the serious and large atrocities committed, paired with the constrictions imposed by their complex surrounding political contexts, the 'relatively narrow legal, judicial, criminal and prosecutorial terms' of criminal trials cannot suffice (Clamp, 2014, p. 121). Instead, they tend to lead to discouraging offenders from acknowledging their responsibility, increasing victims' risk of revictimisation, preventing active participation from the affected parties, and overall decreasing the chances of reconciliation, and peace, being achieved. In the words of Lambourne, 'a focus on accountability and prosecutions for war crimes and other past human rights abuses that does not rebuild relationships through some kind of restorative process is unlikely to overcome the societal divisions that undermine peace and security' (2014, p. 26). A prosecutorial approach to justice in transitions has therefore had 'little positive effect

on truth and reconciliation' (Roccatello & Rojas, 2020, p. 10), undermining peace in afflicted countries (Lambourne, 2016, pp. 64–66) and thereby calling into question its overall purpose and legitimacy in transitional contexts (Bueno et al., 2016, p. 43).

Thus, there has been a growing shift away from a traditional retributive understanding of justice as punishment through imprisonment (Lambourne, 2016, p. 57; Laplante, 2009, p. 920) towards a broader and holistic conception of accountability, or justice (Beitzel & Castle, 2013, p. 44). This is referred to as the 'restorative model' of transitional justice (Teitel, 2003, p. 78), or 'restorative-transitional justice frameworks' (Roccatello & Rojas, 2020, pp. 6/7). This conception of accountability has generally been associated with restorative justice and takes the form of different processes and mechanisms – most notably truth commissions, reparation mechanisms and reconciliation programmes (UN, 2020, p. 13). These are seen to be replacements for criminal trials and are believed to better accomplish the difficult but necessary trade-off between justice and peace in transitional processes (Laplante, 2009, p. 298, 917).

This phenomenon is clearly illustrated by the South African Truth and Reconciliation Commission (TRC) which, despite having been expressly labelled restorative by Archbishop Desmond Tutu in 1999 (Lallais, 2012, p. 331), provided for conditional amnesties for perpetrators of crimes committed during apartheid, in exchange for their participation in the national efforts of achieving truth, reparations and reconciliation. Thus, the range of steps taken in South Africa, including the establishment of a truth and reconciliation commission, can be seen to be restorative justice in nature. While the South African process foresaw prosecutions, for those who did not apply for amnesty, or were refused amnesty, few actual trials occurred (Sarkin, 2004). Thus, some argue that the process erred in favouring restorative justice over retributive justice. However, there have been many transitional justice processes around the world, some bringing in restorative justice components. In some places, truth commissions have operated alongside retributive processes (Sarkin, 2019), such as in Sierra Leone and Timor-Leste (Sarkin, 2017).

In this context, restorative justice is seen to be a useful way, together with other approaches, to deal with these difficulties. Restorative justice can be described as an approach to justice which offers a different way of delivering accountability or justice (Zehr, 2002, p. 32). Having emerged about five decades ago within domestic criminal systems, it has rapidly gained ground in the justice field, as it promises to bridge the gaps of conventional retributive criminal justice (Daly & Proietti-Scifoni, 2011, p. 21).

A commonly accepted definition of restorative justice is 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future' (Marshall, 1999, p. 5). However, this novel approach has not yet been universally defined, 'given its diverse roots, broad field of implementation, and current variety of forms' (Walgrave, 2011, p. 95). It is often mistaken for the practices with which it is typically associated – namely victim-offender mediation, family group conferencing, and peace-making or sentencing circles (UNODC, 2020, pp. 4–5; Zehr, 2002, pp. 47–51) – and it has tendentially been defined through the three main contrasting conceptions of 'encounter, reparation and transformation' (Daly, 2015, p. 4; Van Ness & Strong, 2015, pp. 43–44). Moreover, within the field of restorative justice, one finds several critical divisions, specifically in regard to whether it consists of a theory of justice or a mere justice mechanism (Daly, 2015, p. 20), if it ought to play any role in criminal justice systems (Poama, 2015, p. 9), and how it may accommodate the ideals of

reconciliation, apology, forgiveness and punishment (Daly & Proietti-Scifoni, 2011, p. 25; Zehr, 2002, p. 8).

Thus, restorative justice can be summarised as a 'relational, comprehensive, holistic and future-focused' approach to justice (Harbin & Llewellyn, 2016, p. 133) which emphasises the ideals of truth, accountability, reparation and reconciliation (Doak, 2016, p. 74; Lambourne, 2016, p. 61). It is characterised by various core principles, including a focus on the needs of those affected. It is also about tackling the obligations that arise from what has happened, using all-encompassing, cooperative procedures, involving all people who have a genuine role, including those victimised, the wrongdoers, and people in the community, as well as restoring the harm caused (Zehr, 2002, p. 5, 33–34).

Therefore, restorative justice provides an 'alternative framework' (Zehr, 2002, p. 5, 33–34) – contrasted to the failures of a strictly retributive approach (Bueno et al., 2016, p. 38) – for understanding and responding to crime, in which 'the goals of peace and justice are complementary and proceed together' (Beitzel & Castle, 2013, p. 47). It thus promises to greatly contribute to a world with peace and justice (Zehr, 2008, p. 5, 13). Consequently, restorative justice has been conceptually taken from domestic criminal systems, where it originated from in the late 1970s, and placed into transitional contexts (Bueno et al., 2016, pp. 41–42). It has even been proposed as one of the pillars of transitional justice (Lambourne, 2016, p. 64) and is expected by some to come to 'further integrate into a new model of what can be called "restorative transitional justice"' (Bueno et al., 2016, p. 44).

However, the conceptual association of the broadened understanding of accountability in transitional justice with restorative justice is grounded in an 'overlap between the two paradigms' (Doak, 2016, p. 74) which overlooks the core differences between them (Sarkin, 2001, p. 88) and has overall prevented the harnessing of restorative justice's true potential for transitional settings (Beitzel & Castle, 2013, p. 51; Moore, 2015, p. 15). Taking South Africa's TRC as an example, it firstly ought to be noted that the restorative label given to this transitional mechanism of justice mostly stems from the values that the *Ubuntu* national traditional philosophy – on which it is actually grounded – shares with restorative justice. This limits the latter to a form of traditional or indigenous justice (Lambourne, 2016, p. 58; Daly, 2015, pp. 4–5; Strang, 2017, p. 484), which results from a 'colonial pre-conception' of justice (Weitekamp & Kerner, 2002, p. 32) that fails to duly acknowledge the legitimacy and specificity of novel ways of approaching conflict beyond that of conventional criminal justice (Clamp, 2014, 122/123). Restorative justice, although 'reminiscent of many traditional, indigenous non-Western justice processes' (Lambourne, 2016, p. 58), is not limited, nor does it equate to them. Moreover, despite the fact that the TRC, which has a 'victim-centered' nature (Sarkin 2021, p. 89), did encompass characteristic features of restorative processes – namely the promotion of acknowledgment of responsibility by offenders, victim participation, and reparations – said features, on their own, cannot make a mechanism restorative (Clamp, 2016b, p. 28). The supposed restorative justice aspect of the TRC was jeopardised by the TRC's amnesty process, even if only conditional, in exchange for truth, paired with the lack of an alternative prosecutorial response in the country, which overall hindered the chances of true reconciliation being achieved (Clamp, 2016a, p. 2; Findlay, 2016, p. 153). Thus, several later alternative accountability mechanisms have failed to embody a truly restorative approach in transitional settings, instead merely illustrating the conceptual haze perpetuated between

restorative justice and the broadened conception of accountability in transitional justice (Doak, 2016, p. 74; Sarkin, 2021, p. 88).

While there were previous attempts to ensure overlap between restorative justice and transitional accountability mechanisms, they largely failed in their aim. They did not grasp what this novel approach was about (Daly & Proietti-Scifoni, 2011, p. 41) and gave restorative justice 'a bad name' (Wilson, 2001, pp. 533–534). This is because these models resorted to granting some amnesties (such as in Sierra Leone and Timor-Leste), which reduced them to a form of limited justice or one designed specifically for transitional processes (Harbin & Llewellyn, 2016, p. 133). This furthered the idea that justice must be sacrificed to the needs of peace (Aiken, 2014, p. 51; Björkdah & Warvsten, 2021, p. 657).

Thus, restorative justice was framed as being juxtaposed to retributive justice, against the impositions of international criminal law (Laplante, 2009, p. 942; Minow, 2019, p. 9; Seibert-Fohr, 2009, p. 42). It was argued that this was because states lacked the will to prosecute and punish perpetrators of the most serious international crimes.

The resort to alternative accountability, beyond punishment, in transitions has strengthened the undesirable belief that the type of accountability processes taken up in such places must be limited so as to not undermine reconciliation (Aiken, 2014, p. 51). Instead, the fact is that transitional processes can be harmed by conducting criminal trials (Uprimny & Saffon, 2007, p. 20; Sarkin, 2011–2012, p. 100). Criminal trials remain 'unrivalled' in the reinforcement of human rights and as a means to deter violation (Sikkink & Kim, 2013, p. 270). They enforce and rebuild the rule of law (Appel, 2018, p. 22) and signal a break with the past (Laplante, 2009, pp. 921–922; Uprimny & Saffon, 2005, p. 10). In turn, the chances of reconciliation and peace in transitions can be severely compromised if punishment is not ensured in the face of the commission of the most serious crimes (Sarkin, 2011–2012, p. 101; Stahn, 2015, p. 1; Uprimny & Saffon, 2005, p. 8, 11–13). The right of victims to justice also needs to be met (Wenzel *et al*., 2008, p. 376; Hermann, 2017, p. 98).

Finally, how restorative justice has been understood and supposedly applied in transitional justice plainly indicates the theoretical lack of elaboration about how this innovative methodology can and should be resorted to in transitions (Clamp, & Doak, 2012, p. 358; Clamp, 2016c, p. 212). However, it needs to be noted that restorative justice emerged within national criminal systems and has been applied mostly in situations where there has been limited misconduct in mostly non-violent situations (Uprimny & Saffon, 2005, p. 5). Thus, it has been used rather for low-level misdemeanours and for youth offenders (Strang, 2017, p. 494). However, it has now been studied and applied more often in the context of more serious crimes (Braithwaite & Daly, 1995, p. 224). If it is to be so used, it is constrained by a considerable number of challenges (Cuppini, 2021, p. 326). Amongst these, restorative justice may fail, on its own, to adequately respond to the gravity and extent of the crimes that characterise transitional processes. This is because of the sheer number of culprits and victims these crimes typically involve, as well as the highly complex political and other contexts within which such crimes tend to take place (Clamp, 2016a, pp. 3–4). These challenges bring into focus how various restorative ideals, including participation, reparations and reconciliation, can occur in transitions (Bueno et al., 2016, p. 14). Consequently, the broadening of the lens of restorative justice to fit the extraordinary nature of transitional processes cannot be successfully achieved through the mere conceptual transposition of this novel approach

into a transitional process (Bueno et al., 2016, p. 40). Instead, restorative justice must be carefully reconsidered in ways that ensures that its benefits are reaped in transitional settings, without hindering their success (Clamp, 2016b, p. 27; Roccatello & Rojas, 2020, p. 6).

In the same way that retributive justice, on its own, cannot effectively account for justice and peace in transitions (Sarkin, 2011–2012, p. 101), restorative justice does not suffice, nor is it adequate, to ensure the success of transitional processes, when solely understood as an alternative means of accountability suited for transitions (Uprimny & Saffon, 2007, p. 20; Sarkin, 2011–2012, p. 100; Clamp, 2016b, p. 27). Within this context, it has been argued that the notion of justice within the space of criminal justice should be reconceptualised to better meet the real needs of transitional justice (Cahill, 2017, p. 870) – in other words, to enhance its role so as to achieve both justice and peace.

Such is the true potential of restorative justice for transitional settings: ensuring retributive justice is enforced in a way which effectively contributes to reconciliation and peace in transitions (Beitzel & Castle, 2013, p. 51; Moore, 2015, p. 15). This promise, however, has been constricted by the gulf between prosecution approaches and restorative and transitional models (Findlay, 2016, p. 156). This has been maintained by the theoretical intersection between restorative justice and transitional justice, as described above (Daly & Proietti-Scifoni, 2011, p. 52). Restorative justice has come to be seen not as just another form of justice, but as a non-retributive kind (Daly & Proietti-Scifoni, 2011, p. 52). This juxtaposition has 'distracted the development of compatible justice theorizing when applied to global conflict' (Findlay, 2016, p. 154). It has barred the opportunity for a real hybrid approach to criminal justice to emerge that combines retributive and restorative justice elements (Lambourne, 2016, p. 65).

However, restorative justice is not opposed to conventional retributive justice (Daly, 2013, p. 25). While both approaches to justice differ, they also share significant traits and have areas of cooperation (Zehr, 2002, p. 58). They both seek the same objective of accountability for the wrongdoer, the victim, and society (Hermann, 2017, p. 71). In fact, a mixed approach to justice, combining both retributive and restorative features, has for a long time been observable in communities, states and the practices of organisations (Freeman & Orozco, 2020, p. 167; Lambourne, 2016, p. 65).[5] Ultimately, despite retributive justice and restorative justice having long been placed at opposite ends of the spectrum of transitional justice (Roccatello & Rojas, 2020, p. 7), victims do not believe that is a choice to be one or the other (Findlay, 2016, p. 157).

Specifically, and against the broad misunderstandings about restorative justice within transitional settings analysed above, this innovative approach is not opposed to punishment being delivered, even if in the form of imprisonment (Daly, 2013, p. 336). Instead, and even though, in its origin, restorative justice was rooted in the idea of non-imprisonment accountability (Uprimny & Saffon, 2005, p. 16), it has now developed into a broadened understanding that confinement is actually one possibility within the various options available. (Daly, 2013, p. 25). The idea of restorative accountability, is intended to again achieve a 'moral balance' amongst those victimised, the wrongdoers and the society in the wake of the harm (Wilson, 2001, p. 543). It is now understood as the process by which wrongdoers carefully reflect on what they have done and are prepared to shoulder liability for it (Bueno et al., 2016, p. 38). This process is to be authorised through an assortment of plans, processes, and schemes that are not limited in their scope

(Walgrave, 2011, p. 96). Consequently, restorative accountability is achievable by way of diverse, flexible, and imaginative forms (Sarkin, 2017, p. 175; Clamp, 2016b, p. 22). These include punishment, and even imprisonment, as long as these are enforced in a 'humane and rehabilitative' manner (De Hert, 2017, p. 102). Punishment, however, is not a core goal or principle of restorative justice, and it will not be restorative if enforced under a mere 'just-desert' conception of justice (Wenzel *et al*., 2008, p. 376). Nevertheless, it can, and sometimes even should, be used within a restorative approach, as long as it is intended to heal victims, offenders and societies, and is decided upon through their active participation (Bueno et al., 2016, p. 39).

Therefore, restorative justice is not opposed to punishment for the atrocities committed. It instead holds the promise of enriching its delivery, namely by providing a wider range of criminal penalties, beyond imprisonment, which, being rooted in its community context (Marshall, 1999, p. 5), is thus better suited to the specific needs of transitional settings (Clamp, 2016b, p. 26; Findlay, 2016, p. 153; Roccatello & Rojas, 2020, p. 6). In this way it can better respond to the problematic or 'grey areas' that are subjacent to transitional processes (Bueno et al., 2016, p. 51; Braithwaite & Marsavelski, 2020, p. 44; Sarkin, 2021, p. 89). Criminal sanctions can then be devised within a forward-looking framework (Harbin & Llewellyn, 2016, p. 142), which is more attuned to the remaining pillars of transitional justice. This can better complement other transitional mechanisms that can be put in place (Minow, 2019, pp. 504–505; Sandoval et al., 2022, p. 8). Specifically, these sanctions can combine the purpose of punishment with the goal of rehabilitating offenders and providing the opportunity to 're-humanize' the wrongdoer (Stahn, 2015, p. 2). It offers the victims some form of reparation (Bueno et al., 2016, p. 38; Clamp, 2016b, p. 212), delivering truth and ensuring acknowledgment of responsibility, through a meaningful and deliberative process (Roccatello & Rojas, 2020, p. 11). Restorative justice can also enrich criminal sanctions with the tools to empower and incorporate home-grown, customary, or indigenous justice models, thereby contributing to the acceptability of criminal prosecutions in transitional contexts (Clamp, 2014, p. 117; Uprimny & Saffon, 2005, p. 13), as well as increasing the chances of them positively achieving justice in culturally thoughtful ways (Chapman & Campbell, 2016, p. 127).

Thus, overall, restorative justice's true value for transitional settings lies in its complementary role in relation to criminal justice. By replacing 'the lens of two archetypes of justice: retributive and restorative justice' (Stahn, 2015, p. 2) with a mixed approach to criminal justice, restorative justice can enhance criminal trials, bridging their insufficiencies (Stahn, 2015, p. 2), and equipping them with the means to overcome the contradiction between justice and peace in transitional settings (Lambourne, 2014, p. 35).

3. The special jurisdiction for peace: combining retributive and restorative justice in the face of the most serious international crimes

Announced on 23 September 2015, officially established through Act 01/2017, and governed by the Statutory Law for the Administration of Justice (enacted through Act 1957/2019), the SJP consists of various bodies, including the Court for Peace (*Tribunal para la Paz*), the Chamber of Recognition of Truth and Responsibility and Determination of Facts and Conducts (*Sala de Reconocimiento de Verdad y Responsabilidad y de Determinación de los Hechos y Conductas*), the Amnesty and Pardon Chamber (*Sala de*

Amnistía e Indulto), the Juridical Situation Definition Chamber (*Sala de Definición de Situaciones Jurídicas*), and the Investigation and Accusation Unit Chamber (*Sala de Unidad de Investigación y Acusación*).

The SJP was created for a duration of 10 years to investigate and prosecute the crimes committed during the Colombian conflict. Five further years can be added to allow it to conclude all its activities. Yet another five years can be added thereafter.[6] Regarding its scope, in theory the SJP exercises its jurisdiction based on a 'model of appointment of responsibilities across all conflict actors' (Zuluaga & Giraldo, 2020, p. 36). However, in practice, and given the practical constraints imposed by the sheer dimension of this conflict, it mimics 'the ICC's approach in its special prosecutorial focus on the "big fish"' (Freeman & Orozco, 2020, p. 177). Additionally, considering that the parties involved in the final negotiations that preceded the signing of the Peace Agreement were limited to the Colombian armed forces and the FARC, its jurisdiction is only mandatory for the members of said groups, whereas other participants in the conflict may fall under its scope on a mere voluntary basis (Sandoval et al., 2022, p. 10).[7]

In turn, concerning its objective scope, the SJP has jurisdiction to investigate and prosecute all crimes committed during (and in connection with) the Colombian conflict,[8] particularly the most representative crimes, including the most serious international criminal violations, namely war crimes and crimes against humanity (Freeman & Orozco, 2020, p. 196). It is not feasible to prosecute all crimes committed during the Colombian conflict; thus, the SJP was tasked with selecting the most representative cases within the conflict, referred to as 'macro cases (or system crimes)' (Roccatello & Rojas, 2020, p. 29). These cases were selected through qualitative – instead of quantitative – criteria, in order to ensure 'punishment of those most responsible for the most serious crimes' (Freeman & Orozco, 2020, p. 177).

The SJP is also tasked with granting amnesties and pardons,[9] of a conditional nature, depending on a case-by-case assessment of offenders' contributions to truth and reparations.[10] The grant of amnesties in Colombia, despite having been motivated by political and practical necessity, is considered to have had a crucial role in the achievement of a peaceful resolution to the Colombian conflict (Roccatello & Rojas, 2020, p. 6; Zuluaga & Giraldo, 2020, p. 45). However, the possibility of such amnesties and pardons being granted is excluded where serious violations of human rights have occurred, namely international crimes, as defined in the Rome Statute of the ICC. These crimes, instead, are to be investigated, prosecuted, and punished by the SJP through an innovative framework, which is grounded on an unprecedented approach to the enforcement of criminal justice in transitional settings. The aim is to contribute to the achievement of stable and lasting peace in the country (Roccatello & Rojas, 2020, p. 13), through a combination of both retributive and restorative justice (Meernik et al., 2019, p. 8; Roccatello & Rojas, 2020, p. 5).

In terms of this approach, if offenders acknowledge their responsibility and provide for truth before the SJP, a truth and acknowledgement proceeding takes place at the respective Chamber, within which a public hearing may ensue.[11] These public hearings enable the direct participation of both victims and offenders, as well as of victims' organisations and representatives of local or indigenous communities.[12] Their inputs about appropriate sanctions are to be taken into consideration by the Court for Peace when delivering its judgment[13] (Roccatello & Rojas, 2020, p. 5). In such instances, *sanciones proprias* – referred

to by Sandoval, Martınez-Carrillo & Cruz-Rodríguez as 'special sanctions' (Sandoval et al., 2022) – are to be imposed for a period ranging from five to eight years.[14] Being expressly aimed at achieving a restorative function, and the reparation of the harm caused by the crimes committed,[15] these special sanctions will take the form of concrete or symbolic collective reparations. These are to be determined on a case-by-case basis and take into account the degree to which truth and acknowledgement of responsibility is shown by the offender.[16] Therefore, they will not entail imprisonment, but instead participation, for example, in social and community projects, such as rebuilding schools, roads and houses (Roccatello & Rojas, 2020, p. 3, 16–20).[17] To ensure these processes are completed by offenders, as well as to provide guarantees of non-repetition, they will further be accompanied by a restriction of the freedoms and rights of offenders, such as a limitation on the freedom of residency and movement, as deemed necessary.[18]

The retributive part of the process comes into operation when offenders fail to recognise their responsibility and do not provide the truth before the SJP. Then, an investigation will be carried out by its competent Unit. The case can then be referred for trial to Colombia's ordinary criminal system, under which a *sanción ordinaria* ('ordinary sanction') will be applied. This can entail a punishment ranging from fifteen to twenty years' imprisonment.[19] For offenders who acknowledge responsibility and provide for truth only at a later stage of proceedings – more specifically, after the bringing of criminal charges against them – a *sanción alternativa* ('alternative sanction') is applicable. Alternative sanctions can range from five to eight years' imprisonment,[20] or two to five years if the offender is considered to not have had a critical role in the most serious and representative crimes being investigated and prosecuted by the SJP.[21] Finally, the SJP's Court for Peace is tasked with reviewing prison sentences handed down prior to the creation of the SJP by Colombia's ordinary criminal justice system. It can replace such sentences with special or alternative sanctions, depending on the offender's willingness to provide truth and acknowledge responsibility.[22]

For offenders who actively and voluntarily contribute to the broader goals of Colombia's CSTJRNR, the SJP provides for special sanctions, expressly referred to as restorative,[23] and aimed at 'retribution-reincorporation-participation and reparation' (Sandoval et al., 2022, p. 7). This will occur through a participative process and will restrict offenders' freedom without depriving them of it. Concurrently, ordinary, or alternative, sanctions, of a retributive nature – albeit with a reduced sanction, and partially aimed at the social reintegration of perpetrators (Sandoval et al., 2022, pp. 5–7) – are prescribed if the offender is unwilling to provide truth and reparations and acknowledge their responsibility (Roccatello & Rojas, 2020, p. 3, 16–20). By combining such proceedings and sanctions to respond to the atrocities committed during the Colombian conflict, the SJP has undertaken a mixed approach to criminal justice, achieving 'a novel way of conceptualizing justice (. . .) that balances elements of retributive and restorative justice' (Björkdah & Warvsten, 2021, p. 649).

4. The special jurisdiction for peace and the International Criminal Court: overcoming the admissibility test

In 2004, a preliminary examination into the situation in Colombia was opened by the ICC's Office of the Prosecutor (OTP) (ICC OTP, Situation in Colombia, 2022).

However, at the time, negotiations over a transitional model capable of delivering justice for the most serious international crimes committed during the national armed conflict were occurring at the national level. Thus, as a result of the complementary principle, the ICC saw its jurisdiction being affected, and even possibly precluded, under the admissibility test enshrined in article 17(1)(a) of the Rome Statute.

In the face of the SJP's mixed approach, especially the possibility of special sanctions – of a restorative nature – being used as a means to punish perpetrators who committed war crimes and crimes against humanity, it was expected that the SJP would ultimately fail the admissibility test before the ICC (Kelly, 2017, p. 810). This would have been in line with the Court's conservative stance on such issues previously (Cuppini, 2021, p. 340; Minow, 2019, pp. 10–11; Robinson, 2003, p. 502; Wilson, 2001, p. 543). Recommendations were put forward to avoid the Court's prosecutorial intervention, including the SJP emphasising its traditional retributive and prosecutorial features before the OTP (Roccatello & Rojas, 2020, p. 25). However, contrary to these predictions – but in line with the Court's mandate – on 28 October 2021 the ICC's preliminary examination in Colombia was officially closed. This was done as the OTP concluded that genuine national proceedings were being conducted in Colombia. It acknowledged the merit of the country's good faith efforts to deliver justice, even if resorting to an innovative and broader understanding of what justice is (Björkdah & Warvsten, 2021, p. 648).

This does not mean, however, that the ICC's jurisdiction has been completely ousted. The OTP may still reconsider its decision in the future. This will occur if the SJP fails to accomplish its purpose of punishing the most serious international crimes committed during the Colombian conflict. Nevertheless, the position it has adopted regarding the Colombian approach to dealing with such crimes represents a 'notable shift' within the Court (Björkdah & Warvsten, 2021, pp. 653–654). It has adopted a more comprehensive and holistic take on criminal justice in transitional settings, which reaches beyond a mere conventional retributive approach (Björkdah & Warvsten, 2021, p. 655; Cavallaro & O'Connor, 2020, pp. 64–67).

Colombia's endeavours, which remain grounded on formal criminal proceedings and the ideal of punishment, embodied in the special sanctions to be applied by the SJP, have been welcomed by the ICC. This is notwithstanding the fact that these are to occur by way of an innovative and also restorative form. In this regard, then ICC Prosecutor Fatou Bensouda stated that:

> The paramount importance of genuine accountability – which by definition includes effective punishment – in nurturing a sustainable peace cannot be overstated. As a State Party to the Rome Statute of the International Criminal Court, Colombia has recognised that grave crimes threaten the peace, security and well-being of the world and stated its determination to put an end to impunity for the perpetrators and thus contribute to the prevention of such crimes. (Bensouda, 2016)

Accordingly, in the context of the OTP's decision to discontinue proceedings in Colombia, and specifically regarding the resort to special sanctions, another prosecutor, James Kirkpatrick Stewart, has asserted that 'effective penal sanctions may take different forms, as long as they serve appropriate sentencing objectives of retribution,

rehabilitation, restoration and deterrence' (Stewart, 2018, p. 8, par. 142–143), and involve 'restrictions upon liberty, supervision and obligations' (Stewart, 2018, p. 8, par. 149).

By adopting such a stance and disproving the generalised belief that the ICC may only play a very limited, if not harmful, role in transitions (Braithwaite & Marsavelski, 2020, p. 38), the Court has passed what Björkdah & Warvsten considered to be the 'litmus test' (2020, p. 9). For almost 17 years, and in spite of the criticism it has faced for doing so (Ambos & Huber, 2011, p. 10; Easterday, 2009, p. 105), the ICC has played an important role in the construction of the SJP's 'intersubjective and hybrid' understanding of justice (Björkdah & Warvsten, 2021, p. 649). It took part in the design and creation of Colombia's transitional process, pressing the negotiating parties to uphold accountability and leveraging the threat of its jurisdiction to promote conventional criminal justice (Cavallaro & O'Connor, 2020, p. 64). During that process, it showcased commendable sensibility to the specific context and needs of Colombia's transition (Björkdah & Warvsten, 2021, p. 648). A clear example is that, during the initial stages of negotiations, amnesty and pardons were to be granted for the commission of 'non-systematic' international crimes. Those provisions, because of the influence and pressure of the ICC's OTP, did not, at least in part, make it into to the final version of the Peace Agreement (Freeman & Orozco, 2020, p. 179).

Ultimately, the ICC came to acknowledge the SJP's special sanctions as criminal sanctions, i.e. as having a sufficiently punitive function to preclude its jurisdiction (Björkdah & Warvsten, 2021, p. 657). In turn, Colombia, demonstrated unprecedented flexibility and creativity in response to the atrocities committed during the conflict (Björkdah & Warvsten, 2021, pp. 653/654). It has successfully undertaken an approach to criminal justice that is 'shaping the understanding of justice and constructing an alternative sentencing regime' composed of simultaneously retributive and restorative proceedings and sanctions, which the ICC could accept (Björkdah & Warvsten, 2021, p. 657).

5. A mixed approach from theory to practice: achieving both justice and peace in Colombia

It is still too early to assert whether the SJP will be successful in achieving its promised purpose of contributing to both justice and peace in Colombia's transitional process, as it was only in January 2021 that the SJP issued its first indictment, pursuant to Macro Case 1 (Guterres, 2022, p. 13). However, conclusions may already be drawn regarding its creation and implementation so far.

Firstly, it should be noted that the outcomes of Colombia's negotiations for peace, which took place between the government and the FARC, were made possible, to a large extent, because of the final design of the SJP (Zuluaga & Giraldo, 2020, p. 45). Considering that both parties to the conflict were undefeated, and that for FARC representatives, especially during the final decades of armed confrontation, 'ordinary Colombian criminal justice had represented "the enemy's justice"' (Freeman & Orozco, 2020, p. 187), the achievement of a compromise regarding how justice would be delivered was a crucial factor in ensuring the possibility of reconciliation and peace in the country (Greig, 2019, p. 59). Such an achievement was made possible through the mixed approach to criminal justice undertaken by the SJP, which aims to achieve 'a better compromise between the demands of peace and the demands of justice' (Freeman & Orozco, 2020, p. 170). This approach deviates from Colombia's domestic criminal system and anticipates the

possibility of sanctions other than imprisonment (Zuluaga & Giraldo, 2020, p. 45). However, it is also important to highlight that the mixed approach is not meant to be seen as 'justifiable only to the extent it is able to facilitate the end of a war' (Freeman & Orozco, 2020, p. 197). Instead, it is meant to be a lawful way to better implement national and international criminal justice in transitional settings. This was confirmed by the ICC and has also been resolved by the Constitutional Court of Colombia (*Corte Constitucional de Colombia*). In its Rulings C-579 of 2013 and C-674 of 2017, the Court asserted that the legal framework within which the SJP was created does not violate Colombia's Constitution, nor does it breach international human rights law or international criminal law. Restorative justice has been enshrined in the Colombian Constitution and mixed mechanisms have now been arranged for the ordinary criminal justice system (Uprimny & Saffon, 2005, p. 1).

This system is now supported by many, having been preceded by a noteworthy reflection 'on comparative experiences of transitional justice processes and lessons learned from approaches that were purely retributive or mainly restorative' (Roccatello & Rojas, 2020, p. 10). It was in light of such reflection that the SJP has achieved, at least in theory, what has long been attempted in transitional settings – pursuing justice and peace together, rather than these being juxtaposed (Sarkin, 2016, p. 304). Ultimately, by 'envisaging forms of punishment other than imprisonment for the gravest human rights violations while emphasizing reparation of the social tissue damaged by the crimes committed' (Sandoval et al., 2022, p. 18), this transitional judicial mechanism is considered to have reached a novel understanding of how criminal justice can be effectively enforced. This happens while at the same time contributing to the remaining pillars and needs of transitional settings, especially reconciliation and, thereby, peace (Björkdah & Warvsten, 2021, p. 657). However, also important in the Colombian context are truth and reparations.

Notwithstanding the SJP's great achievement, which is expected to contribute enormously to transitional justice in the future (Sandoval et al., 2022, p. 18), this judicial body still faces several obstacles. Amongst these are budgetary, temporal, and practical constraints. This has led to questions about its long-term sustainability and success (ICJ, 2019, pp. 5–7; Roccatello & Rojas, 2020, p. 18; Sandoval et al., 2022, p. 11). In fact, Colombia faces much wider and more structural problems than those the SJP can hope to overcome. These include the illicit drug trade, as well as political instability, social injustice, and corruption. Also critical is the dissidence from the FARC and also the vast areas controlled by armed groups.

Most importantly, the SJP's overall goal of achieving reconciliation in Colombia faces the risk of being severely undermined by accusations of leniency (Freeman & Orozco, 2020, p. 165; ICJ, 2019, p. 7; Uprimny & Saffon, 2005, p. 20). However, scepticism towards the SJP has also been exacerbated by political instability in the country, particularly by former President Iván Duque Márquez, whose electoral campaign for the presidency revolved around questioning the SJP's legitimacy and desirability (Liévano, 2020).

As far as victims of the Colombian armed conflict are concerned, they have played important roles. They have provided testimony and have made recommendations to these institutions (Kelly, 2017, p. 822). Some have played a noteworthy role in pressuring the negotiating parties towards a stronger retributive inclination than initially proposed. This is because of the 'the massive demand by public opinion and many NGOs that the

FARC chiefs should go to jail' (Freeman & Orozco, 2020, p. 240). However, there have been problems with certain aspects of victim participation in the SJP (Sandoval et al., 2022, p. 12), such as the fact that indigenous participation took a long time to occur and remains unsatisfactory.

Even though victims have generally participated in the SJP's proceedings, they appeared initially at least to be dissatisfied with the mixed approach adopted in the final Peace Agreement (HRW, 2018, p. 17). It has been reported that by November 2021 the SJP "had carried out 169 hearings, received 469 evidence reports from victims' organizations and state institutions, and accredited 322,857 individual victims" (Isacson, 2021, p. 46). However, at that point the work was deemed insufficient to overcome victims' scepticism in the face of the 'prospect of seeing individuals responsible for destroying hundreds or even thousands of lives given five to eight years in "non-prison establishments"' (Isacson, 2021, p. 47).

Resistance to the Colombian approach was, however, to be expected. After all, the SJP sets out to 'design and develop a system that has no precedent in transitional justice experiences elsewhere in the world' (Roccatello & Rojas, 2020, p. 13). Unsurprisingly, at least some victims demanded more severe punishment. Some will seek imprisonment, given the gravity of the harm they had to endure (Gromet & Darley, 2009, pp. 51–53). This resistance by victims, however, called into question the SJP's overall effectiveness in ensuring both justice and peace in Colombia, irrespective of its theoretical merit and lawfulness. This lack of support from victims does potentially impact the achievement of reconciliation and, consequently, of long-lasting peace in the country. To overcome such a risk, it has been proposed that cases at the SJP should be more proficiently publicised and greater and more meaningful forms of participation from victims and affected communities ought to be promoted (Sandoval et al., 2022, p. 15). In addition, the prescribed procedural safeguards for victims must be put in place and reinforced (Comisión Colombiana de Juristas, 2022, p. 3). This means that other forms of indirect participation and processes to enable victims to be accompanied during proceedings must occur. This will ensure that the SJP complies with victims' rights and that they are empowered – and not revictimised – by its endeavours (ICJ, 2019, p. 8; Roccatello & Rojas, 2020, pp. 16–20). Moreover, the framework of a mixed approach to criminal justice, within which the SJP was created, should be better tailored to victims and to the public in general. This must be done to clarify its reasoning and overcome the accusations of leniency levelled against it (Roccatello & Rojas, 2020, p. 18). More also needs to be done to promote engagement with the collective effort of national reconciliation (Gromet & Darley, 2009, pp. 51–53). This concern may dissipate as the SJP continues to fulfil its mandate, for example if its proceedings and sanctions are effectively carried out, properly monitored and communicated to the public (Sandoval et al., 2022, p. 11). That this may occur over time can be seen in the fact that 'criticisms of the JEP calmed a bit after it issued its first indictment, in January 2021, accusing the FARC's seven most senior leaders for the kidnapping of more than 21,000 people during the conflict' (Isacson, 2021, p. 45).

Over time, victim satisfaction with the process seems to have improved, although difficulties remain. Part of this is because the SJP is being seen to fulfil its mandate. It is seen that the SJP proceedings and sanctions are being effectively carried out and being properly monitored and communicated to the public (Sandoval et al., 2022, p. 11). The way victims see the process has also improved (Liévano, 2023) because of improvements

to the victims' accreditation process and enhancing additional and more effective forms of indirect participation (Comisión Colombiana de Juristas, 2022, p. 3). There has also been greater acknowledgement and protection of the rights of victims (Comisión Colombiana de Juristas, 2023). The SJP has also made notable efforts to communicate its endeavors to the general public, and especially to victims (Trujillo, 2022). It has created a variety of awareness raising activities and has published information about the cases that are being prosecuted. These efforts have contributed to a shift in stakeholder's perceptions of the SJP, which is growingly being perceived as being apt to 'provide some form of accountability and a sense of justice and thus be an alternative to imprisonment,' but remains highly conditional on "offenders fulfilling certain preconditions, the participation of victims, offenders' rank and affiliation, type of crime and the sanctions' correct implementation" (Mayans-Hermida et al., 2023, p. 19).

In conclusion, the SJP still faces major obstacles to its arduous and ambitious quest of contributing to rebuilding Colombia's 'social fabric' through the enforcement of a mixed approach to justice (Roccatello & Rojas, 2020, p. 6). There are a range of challenges to the chances of reconciliation and peace in the country posed by victims' negative perceptions of this approach. However, such difficulties should not discourage its endeavours. Instead, they ought to be continuously assessed and duly considered and countered, to ensure that the potential held in the SJP's innovative and promising approach is reaped, and that lessons are learned for future transitional models (Kelly, 2017, p. 838). Most notably, the lesson should be learned of 'what mix of retributive and restorative justice methodologies may work best' for transitional settings to achieve both justice and peace (Meernik et al., 2019, p. 8).

6. Conclusion

Colombia's SJP has been entrusted with the arduous task of delivering justice for the most serious international crimes perpetrated during the Colombian conflict, namely war crimes and crimes against humanity, all the while contributing to promoting reconciliation and, ultimately, securing long-lasting peace in the country. This is one of the most ambitious and holistic transitional systems that has been adopted.

To attain its goals of achieving a balanced approach, the SJP prescribes special sanctions, of a primarily restorative nature, to be carried out when offenders provide for truth and acknowledge their responsibility for the atrocities committed. These sanctions, which are decided upon with the effective participation of offenders, victims, and the representatives of affected communities, have seen imprisonment being replaced with other forms of punishment. This is done in order to achieve the social reintegration of offenders and to aid victims and communities.

However, if there is offender resistance, or if they are unwilling to cooperate with the process, and to acknowledge their responsibility, imprisonment should be the sanction through conventional criminal proceedings. These sanctions, being primarily retributive in nature, are still aimed, however, at the social reintegration of offenders, and achieving reconciliation in the country.

The SJP is therefore undertaking a mixed approach to criminal justice. This is intended to overcome the justice versus peace dilemma of transitional contexts. It combines both retributive and restorative proceedings and sanctions so as to appropriately respond to

the most serious international crimes in ways that ensure justice is delivered, while contributing to the chances of peace in Colombia.

This approach was seen to be at risk in the face of the ICC's preliminary proceedings concerning Colombia. However, because the SJP's framework is based on an understanding of justice which does not preclude, but instead complements and enriches punishment, the ICC has deemed Colombia's transitional model to be sufficient to meet the complementarity goal. In fact, the Court itself contributed to the final design of the SJP.

The ICC's positive stance towards the mixed approach to criminal justice has gone a long way to bolster the Colombian approach. Domestically, this was the result of the pragmatic need to reach a compromise between the negotiating parties to the Colombian conflict. This approach is, however, rooted in an innovative, lawful and commendable theoretical understanding of justice. It holds the potential to effectively deliver justice for the atrocities committed, while contributing to long-lasting peace in transitional contexts. However, whether the SJP will be seen in a positive light overall by victims remains to be seen.

While victims of the Colombian conflict were able to participate in the peace negotiations which led to the final design of the SJP, and participate in its proceedings, they have showcased a perception of the SJP as being lenient. Some have instead demanded a harsher form of punishment, most notably imprisonment. This type of stance, which is to be expected, puts at risk the core goal of reconciliation in Colombia. This position must be considered, prevented, and countered by various means, including the effective application, monitoring, and critically positive communication about the novel set of sanctions prescribed by the SJP.

Overall, it is still too early to assess whether the mixed approach to criminal justice being practised by the SJP will be successful in ensuring both justice and peace in Colombia. However, Colombia's transitional model has undoubtedly come to reconceptualise the understanding of justice in transitional settings. It provides a novel approach for delivering national and international criminal justice, all the while contributing to the chances of peace in transitions. It is now up to the international community to continue supporting and assessing the developments within Colombia's transitional process. If these turn out as positively as expected, it can and should serve as both a model for future transitional settings and a source of learning for how a mixed approach to criminal justice may best be implemented in transitions to ensure their success.

Notes

1. Even after the dissolution of the FARC, and despite the Government's most recent efforts to ensure ceasefire and continue the peace talks, the Colombian conflict persists, namely, for the other armed groups, such as the National Liberation Army (*ELN*, or *Ejército de Liberación Nacional*), which remain active in the Country.
2. The Peace Agreement was rejected by a slim majority in a plebiscite on 2 October 2016.
3. This was not the first time Colombia adopted transitional justice, incorporating restorative justice principles. There was the 'Justice and Peace Law' that was adopted in 2005 after the peace agreement between the State and paramilitary units.
4. Also commonly referred to by its acronym in Spanish, 'JEP', i.e. *Jurisdicción Especial para la Paz*.

5. Most notably, the ICC has incorporated supposedly restorative features within its proceedings such as victim participation and reparations (Llorente, 2013, p. 5) with the intent of equipping this Court with the means to effectively enforce international criminal justice all the while contributing to reconciliation and long-lasting peace in transitions (De Hoon, 2017, p. 612; Findlay, 2016, p. 153). However, this incorporation remains deeply rooted in the conceptual overlap between retributive and restorative justice described above (Daly & Proietti-Scifoni, 2011, p. 52). However, it sets an important precedent that should not be overlook (De Hoon, 2017, p. 612) – that of resorting to restorative justice to make criminal trials better suited for transitional settings, but others as well.
6. Article 9 of Act 1957/2019.
7. The voluntariness required for offenders' participation in proceedings has led to criticism and concern in regard to the SJP's success (Sandoval et al., 2022, p. 10), and recommendations have been made for this judicial body to actively engage in the promotion of voluntary participation (ICJ, 2020, p. 10). Nevertheless, adhesion to the SJP insofar has proven to be considerably high (Liévano, 2020).
8. Article 62 of Act 1957/2019.
9. Under Act 1820/2016, amnesties are to be granted to FARC members for the commission of so-called political crimes, i.e. crimes considered inherent to the military practice of rebellion (Freeman & Orozco, 2020, pp. 241–242). In turn, State agents may not receive such amnesties nor pardons, but benefit from parallel processes, such as the waiver of criminal prosecutions, which, under article 46 of Act 1820/2016, are to be granted in similar terms.
10. Article 40(2) of Act 1957/2019.
11. Article 80 of Act 1957/2019.
12. Articles 15(g) and 80 of Act 1957/2019.
13. Article 141 of Act 1957/2019.
14. Articles 126 and 141 of Act 1957/2019.
15. Article 125 of Act 1957/2019.
16. Article 125 of Act 1957/2019.
17. Article 141 of Act 1957/2019. The SJP is still drafting – with the participation of several relevant stakeholders -, the concrete way in which such special sanctions will be effectively carried out (UN, 2022, p. 13).
18. Article 127 of Act 1957/2019.
19. Articles 130 and 143 of Act 1957/2019.
20. Article 128 of Act 1957/2019.
21. Article 129, in reference to article 84(h), of Act 1957/2019.
22. Article 97 of Act 1957/2019.
23. Article 141 of Act 1957/2019.

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