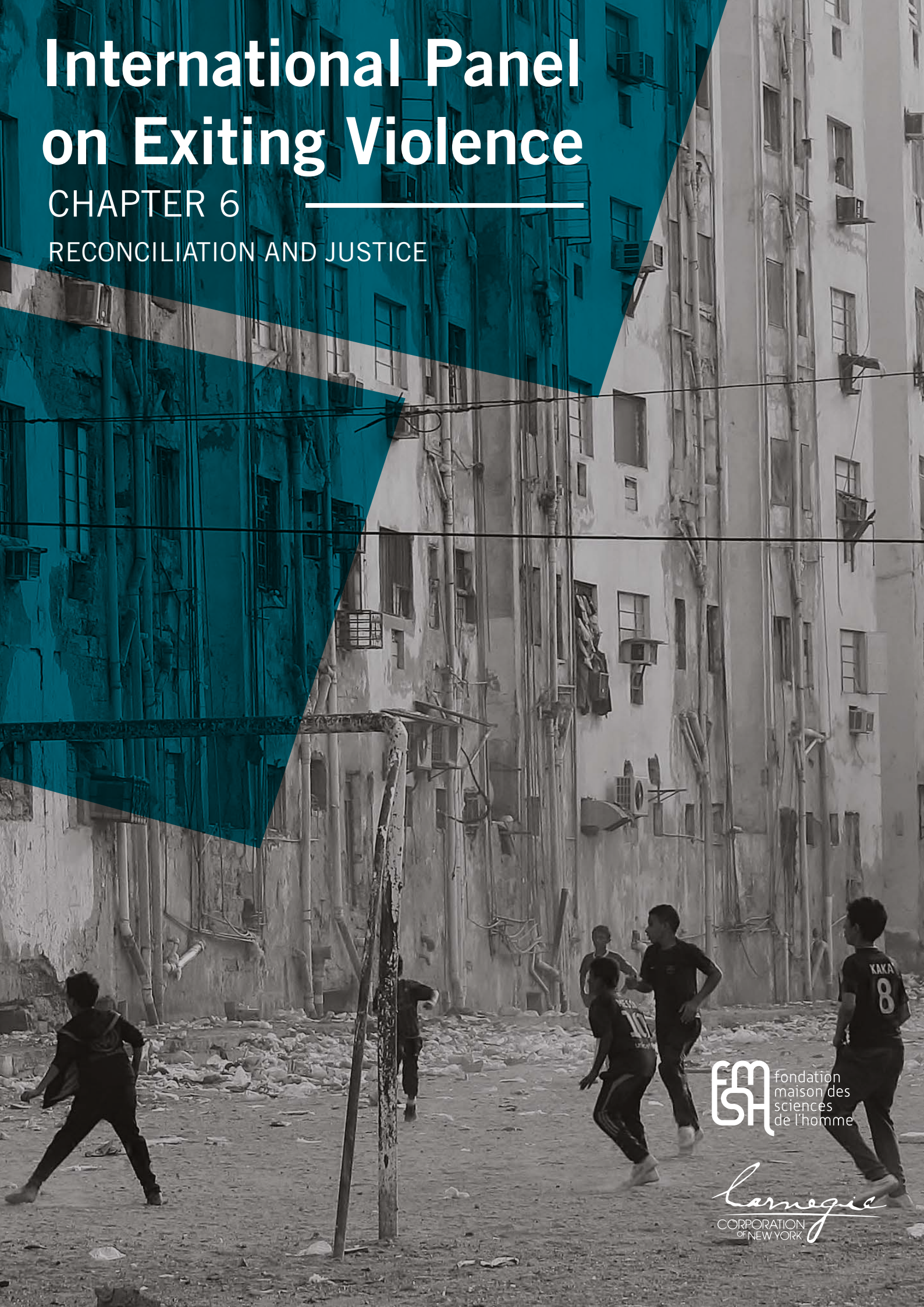
International Panel on Exiting Violence

CHAPTER 6

RECONCILIATION AND JUSTICE



fondation maison des sciences de l'homme

carnegie CORPORATION OF NEW YORK

CHAPTER 6

Reconciliation and Justice

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Introduction

The work of our group focuses on the politics of "justice and reconciliation" implemented in post-violence contexts, following either armed conflicts or authoritative and repressively violent regimes. Both types of violence have been present in certain cases, for example, in Colombia. We analyse the three main types of post-violence justice using different theories of justice: the extra-judicial commissions based on the model of the truth and reconciliation commission (TRC); criminal, national, international, or hybrid solutions; and, amnesties (direct or indirect, total or partial, conditional or unconditional).

These formulas may be combined, added to, or successive, or may be mutually exclusive from one moment to the next. These different practices are now commonly described using the expression "transitional justice", and are an integral part of greater political measures for transition governments, which are often aided by international organizations who act as conditional backers.

"Truth and Reconciliation" Commissions in Latin America

Since the first truth and reconciliation commissions in South Africa and South America were first set up some forty years ago, many other commissions have been established, and have completed or abandoned their mission, all over the world. The empirical cases presented in this group report show that the application of international humanitarian law, or of a right to truth, is far from automatic. It is more often the result of persistent rallying and long-term struggles by certain parts of civil society against a politics of silence and forgetfulness. Amnesties are, more often than not, presented as a solution by successor governments as the very condition of reconciliation, at the expense of measures, judicial or otherwise, designed to clearly establish the facts[1]. This happens in societies which remain economically and socially polarized, and where access to power is more dissymmetric, as well as in more egalitarian and democratic societies.

Nevertheless, critics of these approaches from civil society argue that numerous TRC frameworks allow governments to circumvent legal proceedings (the prosecution and public sanction of accused persons through judicial investigations and fair trials), to control the scope of accusations and those who can be charged, to control the opportuneness of prosecutions. Finally, even if critics acknowledge the many kinds of innovations and positive qualities of these TRC frameworks, notably in South Africa and Latin America, they nevertheless denounce them as being only the implementation of a less violent justice unfettered by the violent elements that usually constitute a

1. For example, Ilan Lax's article, in the volume edited by Cassin, Cayla & Salazar (2004), opens with these same terms.

retributive criminal justice. The latter is effectively accused, in this context, of preserving elements of vengeance[2] and of overly polarizing the positions of the accused and the plaintiff. Whatever their qualities, TRCs are accused by their critics of functioning to elude or prevent legal proceedings that would publicly prosecute and punish the accused.

The democratic transition in Spain in 1975, followed by that in Latin America beginning in the mid-1980s allowed "transitology" (Jaffrelot 2000)—a theoretical corpus which has been influential enough to merit its own sub-discipline in political sciences—to make the ideas of "consensus among the elite" and "political stability" central pillars of the theories of transition to democracy. In a simplistic way, these theories, which opposed political stability, social peace, and national reconciliation on the one hand, and the possibility of criminal justice for crimes committed during the conflicts on the other hand (Doran 2010, 2016), enabled amnesty on the matter of serious rights violations to be considered as the only possible alternative that would achieve national reconciliation, and that would not "rekindle past hatred". Certain advances in international law, such as the implementation in the 1990s of international criminal tribunals, which were established in the name of the fight against impunity (including that of highly placed leaders), may thus be seen as blows made against a fundamental generalized tendency to consider amnesty, in cases of serious human rights violations, as the only possible solution to secure the social consensus and political stability necessary to put an end to the violence and successfully manage post-conflict situations. From a normative point of view then, we have two typical visions of justice and its relationship to peace as an ending: amnesty vs criminal sanctions.

Let us look succinctly at some normative definitions of the different forms of justice, which have been distinguished for around twenty years now in political philosophy following on from the work of John Rawls. Of these, two main normative models of justice take centre stage—retributive justice and restorative justice. According to its legal definition, retributive justice rewards or punishes breaches of the law, crimes and misdemeanours, *depending on the criminal value of the acts*, without taking into account (first of all) circumstances, instead focusing on the perpetrator and the damage caused by their act. The circumstances and the context, including "extenuating circumstances", may have an influence in increasing or decreasing the harshness of the sentence but are never an element of relativization for qualifying the act and establishing its severity. The guarantee of legitimacy and the fairness of retributive justice reside in the fact that these so-called incriminating acts are socially acknowledged as transgressions, and are defined and listed in advance in public laws. The judgement of these acts (the establishment of infringement) is carried out following a set public procedure guaranteed by law in democratic regimes. The emphasis is placed on punishing the guilty person, which is perceived to be an act of reparation for the law, the society, and the victims. The focus of the more contemporary form of restorative justice is social reparation, which considers that the act of transgression targeted social cohesion above all else. It endeavours to include the perpetrator of the crime or misdemeanour in the reparation that they owe to the victim, working in various ways with the victim and the community against whom the crime was committed. In these frameworks, the perpetrator must publicly acknowledge their responsibility for their actions and, in exchange, receives a guarantee of exoneration from criminal prosecution, and thus also from the risk of incarceration. These principles have been transposed to mass crimes through truth and reconciliation commissions by using the formula of "full public admission for exoneration from criminal prosecution" except for the most serious crimes, which may be prosecuted (this was the underlying principle of the South African commission).

After Spain had set the precedent, further truth and reconciliation commissions were slowly

2. See the critic of Olivier Cayla (2004) on the retributive character of so-called restorative justice and inversely, the arguments for the promotion of restorative justice in opposition to violent justice in the respective articles in Cassin, Cayla & Salazar (2004).

established in Latin America in the 1980s, followed by the South African commission in the 1990s. It was also in the 1990s, and at the end of a long process (which we do not have space to discuss here), that international criminal tribunals appeared—the International Criminal Tribunal for Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. These *ad hoc* tribunals were followed by the establishment of the permanent International Criminal Court (ICC) and by hybrid tribunals in Cambodia and Sierra Leone. The first hearing of the South African TRC was held on 15 April 1996, and the first hearing of the ICTY—the Tadic trial—was held on 7 May 1996. Thus, the 1980s and 1990s saw much progress in the spread of international human rights standards, and of international law in general, resulting in a current proliferation of these forms throughout the world with the inclusion of international crimes (genocide, crimes against humanity, war crimes) within the internal penal codes of states that have ratified the Rome Statute, and thus able to prosecute on behalf of the universal jurisdiction.

However, if we observe more closely the effective acts of these different politics of reconciliation, we realize that international law does not follow an easy or automatic path. Let us examine a series of empirical cases, starting with Latin America. In these different states (here, notably, Colombia, Peru, Chile, and Argentina), the process of reconciliation often immediately takes the form of amnesty measures that prevent any use of criminal prosecutions—that is, preventing any impartial investigation of what happened, and of perpetrators, individual responsibility, and the organization of crimes.

Colombia

In 2016, Colombia, after nearly sixty years of armed conflict and a succession of political regimes that used armed violence, raised the hopes of the whole world when, under the government of Juan Manuel Santos and after four years of negotiations, it reached an agreement that resulted in the signing of a peace agreement with the oldest guerrilla organization in Latin America, the Revolutionary Armed Forces of Colombia–People's Army (FARC-EP) (Pizarro 2016). Indeed, in the case of armed conflicts, negotiations for the surrender of armed groups are one of the major elements of post-conflict (militiamen accept disarmament only on condition of amnesty).

Colombia has been anxious to include advances in international law in its national legislation and its constitution, and has been strongly influenced by the "restorative" and extrajudicial (rather than the judicial) component of the spectrum of feasible frameworks for transitional justice. As is often the case, however, Colombia presents a mix case of agreements, as a large number of perpetrators who have not committed "crimes against humanity", as defined in international humanitarian law and international criminal law, have benefited from amnesty measures implemented during paramilitary demobilization in 2006 and FARC-EP demobilization in 2017. Yet ordinary criminal justice has not ceased to function for those perpetrators who refuse to tell the truth during Justice and Peace trials, which is the judicial part of the process. Members of armed groups (rebels or otherwise) consistently and immediately request the assurance of protection from eventual criminal prosecution as a condition of their demobilization. In Colombia these frameworks allowed the *early release* of more than 2,800 members of paramilitary groups of the extreme right who were perpetrators of crimes against humanity within the framework of the Justice and Peace Law (Daviaud 2010: 264-322), the only criminal law part of the "Integrated System of Truth, Justice, Reparation and Non-Repetition". The peace agreement that was signed on 24 November 2016 after four years of difficult negotiations between the Colombian government and the FARC guerrillas defines the conditions, including territorial conditions, of the reincorporation of the combatants into civilian life following the process of surrendering arms under the supervision of UN observers responsible for assuring the FARC demilitarization operations. Drafted over a long period, this peace agreement

has included since 2015 the acceptance by the parties of the creation of an extra-judicial "Truth Commission", responsible for "bringing the truth to light" and with the purpose of assuring coexistence and the non-repetition of violence. This commission had been guaranteed beforehand, in 2012, by a constitutional amendment that proposed a legal framework for peace, "allowing the government to establish instruments for transitional justice" (Rowen 2017). This agreement then led the parties to finalize an "agreement on the rights of victims". The agreement foresaw that the main FARC rebel leaders would be judged by special tribunals and could be subject to "freedom depriving sentences"—not necessarily prison, but instead favouring restorative measures.

At the end of the bill proposed by the Uribe government on alternatives to criminal prosecution bill, the framework of paramilitary demobilization saw an important reshuffling due to the rallying of a coalition of different stakeholders in the process: members of parliament from different political leanings, national and international human rights NGOs, and the Constitutional Court (Daviaud 2010, chapter 7). Thus, the final version of the Justice and Peace Law foresees, in article 3, suspending criminal prosecution against perpetrators of massive human rights violations and replacing them with alternative sentences if the latter contribute "to national peace, to justice, and to reparations for victims"[3]. Furthermore, as Arango García (2013: 118) and Doran (2017b) have explained using the rules of temporal jurisdiction, the Justice and Peace measures apply only to crimes committed by the different armed groups and not to those committed by the Colombian state, which are certainly less abundant but nevertheless very problematic. The Colombian state now finds itself above the rule of law, even though numerous international human rights violations were committed by its agents—*the fuerza pública* (public forces) and the police (special armed squads) during the conflict. Not acknowledging the mistakes of armed state agents was the norm until 2013, although there was no formal amnesty law designed to exonerate soldiers (Daviaud 2010, chapter 5). Felipe Arango García (2013: 118) has explained that the Colombian government has always defended the idea that serious human rights violations committed by soldiers were due to "non systematic army misconduct" in the performance of their duties. These violations were also committed without the knowledge of the government, a claim that has been strongly contested in countless reports by national and international organizations. This situation is partly explained by the nature of Colombian democracy, which is "low-intensity" (Avilés 2006) and in which social movements are traditionally considered as allies of Marxist guerrilla groups—a fact that explains why such a great number of civilians were victims at the hands of paramilitary and regular soldiers. In this context of intense combat against social conflict, which is reminiscent of anti-conflict Chilean democracy, not punishing those responsible for state violence during the conflict may act as a sign of encouragement for the forces of order to continue to consider social movements and citizens as enemies to eliminate.

Thus, the peace agreement is composed of several extrajudicial and coordinated judicial mechanisms, and includes several bodies. First is an extrajudicial commission "for the clarification of the truth, coexistence and non-repetition", which has the objectives of listening to the victims, getting certain perpetrators of violations to tell the truth about what happened and getting them to acknowledge and admit their responsibility in committing criminal acts, for the purpose of establishing the historical framework of violence and the rights of the victims. A second component is a "Search Unit for Missing Persons", as well as the identification of their remains; while a third is a reparations framework integral to the construction of peace, that is, a non-judicial framework for those who confess their crimes that organizes acts of reparation to the victims (acts of collective

3. Official Journal 45.980, LAW 975, 25/07/2005: "By which are enacted provisions for the reincorporation of members of organized armed groups outside the law, that contribute in an effective way to the attainment of national peace and enacts other provisions for humanitarian agreements".

reconstruction, restitution of land, return of the displaced, psychosocial care, etc.). Finally, a fourth part, which is judicial, was created in 2015—"the special tribunal for peace". This was to satisfy, in the language of the law, the victims' rights to justice and to peace. At the end of investigations, the Colombian government is committed to prosecuting and judging the serious violations of human rights and international humanitarian law (or armed conflict rights). This tribunal also has a temporal jurisdiction, limiting the violence to the period of armed conflict with FARC.

The Colombian peace agreement between the government and the FARC guerrillas has been subject to high tension and strong disagreement. Indeed, the process has incited and elicited states of tension in the political class; among soldiers, paramilitaries, and police forces; in the guerrilla ranks; and in the heart of civil society. It has reactivated and elicited in the public sphere conflicts of interest, conflicts of political culture, and territorial conflicts that were already old. Indeed, partisans of the agreements negotiated with FARC and supporters of a military solution against the rebel groups continue to confront each other in public life. Such contests have been reactivated with the election in August 2018 of a conservative, Ivan Duque, who, after two terms of the Santos government, now wants to review all of the agreements with FARC.

Chile and the force of amnesty

Chile, which is considered a model of democratic transition (Joignant 2005) and of "reconciliation democracy" (Doran 2016: 73ff.), constitutes an indispensable case for the analysis of the normalization and acceptance of amnesties for crimes committed during the dictatorship. In numerous other Latin American countries, it can be seen that the effects of amnesty justification and the will to not go back to the past have had noticeable effects on the perpetration of violence, notably the violence of state agents against the civilian population. Chile, Argentina, Brazil, Uruguay, and Bolivia have all implemented a political justification for amnesties, founded on overlooking the harm done by the soldiers in favor of blaming the victims of the regime. The case of Chile perfectly illustrates the justifications used in numerous countries that have lived through dictatorships and state terror (Pion-Berlin 1989), notably all the countries of the Latin American Southern Cone—Argentina, Brazil, Uruguay, Paraguay. They also all cooperated with each other during the period of military regimes through the infamous Operation Condor, which allowed for the exchange not only of political prisoners and information, but also of torture and execution techniques.

The emblematic case of Chile illustrates the legal, political, and social consequences of an account justifying amnesty for military crimes, an account in which state violence is completely removed and in which victims are viewed as deserving of their lot. Indeed, in this country, which was subjected to a long dictatorship between 1973 and 1989, the amnesty law implemented by the dictatorship in 1978 is still in force. Although this has been offset by certain advances in international law carried through by the demand of populations (Doran, 2010), these advances have been strongly contested by various governments in spite of the return to democracy in 1990, with the exception of the first government of Michelle Bachalet in 2006. There is an almost permanent confrontation between social forces that together have taken part in the great "epic for justice" (Riesco 2001), which began in 1998 with the attempt at trying Pinochet in Spain and his defense by the government and political forces, including the centre-left, that defended the Chilean "reconciled democracy". However, this protection of Pinochet ignited the outrage of civil society and elicited a popular demand for justice, which grew in scope in the 2000s.

While numerous transitologists (Bazzana 2000) have praised the reconciled democracy, it involved both not challenging the amnesty on crimes committed by the state, so as not to rekindle tensions, and banishing social conflicts, which were seen as bearers of instability and violence and, according to these views, had brought on the dictatorship. Taking the denial of justice as a target in

this restrained democracy, the confrontation between upholders of justice and upholders of "stable democracy" took on such a stature that numerous new political sectors on the left have proposed since 2011 a constitutional assembly to finally get rid of the constitution inherited from Pinochet, which was still in force in spite of reforms finally implemented in 2015 and "post-dictatorial" nature of the democracy (Doran 2016: 83ff.). While imposing on the population a "reconciliation" without any admission of guilt or request for forgiveness by the soldiers who committed crimes against humanity during the dictatorship, one of the most important consequences of the force of the amnesty in Chile was, in addition to blocking any possibility of justice, to impose a dominant account that justified state violence against the population. In the absence of armed guerrilla groups, Chilean soldiers justified the coup d'état and the bloody regime that ensued through the "excess of social demands" favoured by the elected socialist government of Salvador Allende's *Unidad Popular* (Popular Unity), as well as the political polarization and disagreement of that time. This argument was, of course, combined with the fear of communism during this period of the Cold War. In this account, which Alejandra Barahona de Britto characterizes as true "victim blaming", the peaceful civilian population was thus made responsible for having provoked the reaction of the military.

This victim-blaming account, which was shared by the totality of the Chilean political elite that negotiated the transition and that excluded representatives of the people in the process of democratization (Bermeo 1999), notably the *pobladores* (inhabitants of the shantytowns who had been involved in the large *protestas* (protests) for democracy and who had paid with their lives), had a legal, political and social price. Thus, since the return to democracy following the first presidential elections in December 1989, successive Chilean governments have not stopped politically blocking any development in international law that would have challenged the amnesty law (Doran 2016, chapters 4-7). These political initiatives, which preserve the heritage of the amnesty in the name of a "fear of popular violence" and of victim blaming, were also prolonged by a legal architecture that favored impunity for state violence (UN Committee Against Torture 2014) and seriously harmed the civil and political rights of the population. Thus, in Chile, a set of laws inherited from the dictatorship has been reinforced democratically, for example, by the Anti-Terror Law, which continues to systematically violate the individual, civil, and political rights of Chile's indigenous peoples, especially the Mapuche, by labeling them as terrorists (Inter-American Court of Human Rights 2014). Sentences of several years handed out on the basis of nothing more than suspicion, systematic torture in Chilean prisons, as well as extrajudicial executions and forced disappearances since 2000 illustrate the effects of a system in which amnesty, on the one hand, and victim blaming, on the other, have allowed previous state violence to be legitimized and for such violence to still be carried out in other forms.

According to a report by the International Federation for Human Rights (Fédération internationale des Ligues des Droits de l'Homme) in 2012, Chile is among five Latin American countries that target social movements the most, a practice that has given rise to the phenomenon of the *criminalization* of social movements (Le Bonniec 2003, Peñafiel 2015, Doran 2017a). In an amnesty situation, the claim for justice by populations or by social groups who have an interest in acknowledging it, is a constant challenge. In a country like Chile, in which its supporters celebrated the amnesty as a sign of the "success" of the reconciliation process and of a democracy "without social conflicts", the very formulation of a justice claim was a considerable challenge. It would take more than eight years before the accusation of an "illegitimate claim for justice" could be undermined by struggles against impunity, and a new and deeply revitalized democratic period could begin through the claiming of justice (Doran 2010, 2016).

Sociological studies of rallying have shown that the multiplication in the number of trials has been influenced less by international standards against impunity and more so by collective rallying

against impunity, which seems to be a determinate factor in Latin American territories, especially in Argentina, Peru, and Colombia. In these three countries, where TRCs were established as a way to end political violence, or where the creation of a TRC was foreseen in the peace agreements with FARC, everything happens as if transitional justice *no longer prevented the exercise of criminal justice*, but was a part of it. In this context, the issue of time seems to be essential. We can observe that the first Latin American countries to establish transitional justice frameworks (Argentina, Chile) were also those that, more than thirty years after the dictatorships ended, saw what Henri Rousso (2000) qualifies as a "second purge"—a reference to the trials brought against Nazis leaders in the 1960s for crimes against humanity. In the cases studied, following the development of transitional justice policies, "a response time" was necessary before those justice policies that were adopted during the transition, which were nothing short of "policies of injustice" (Lefranc 2002), could be challenged under the momentum of rallying by civil society upon the arrival of new governments.

Argentina

In Argentina, Alfonsin's new democratic government made the demands and values of the human rights movement its own: the first three military juntas were judged, and a National Commission on the Disappearance of Persons (CONADEP), with the purpose of carrying out investigations into crimes committed during the dictatorship, was created. The 1985 trial provoked a growing anxiety in the military as well as several kidnappings (in 1986 and 1987), which the government reacted to by pushing for the adoption of measures that would prevent further trials being held. After two further military insurrections, President Menem issued presidential pardons in 1989 to free soldiers convicted of human rights violations during the dictatorship, including junta ex-commandants and former guerrillas. However, Elizabeth Jelin (2006) has shown how, in spite of impunity laws, human rights movements in the country have shown a considerable degree of ingenuity in keeping claims for justice in the public sphere. There have been increasing numbers of lawsuits both abroad but also in Argentina itself: charges were filed in Spain by Judge Baltasar Garzón in April 1996 and charges for kidnapping minors were filed in December 1996 by the Grandmothers of the Plaza de Mayo, circumventing the amnesty laws, which did not cover crimes of appropriation that involved falsifying identities.

Furthermore, based on legal arguments developed during the previous years, "truth trials" began in 1998. A new turn in the struggle against impunity for the crimes during the dictatorship took place on 6 March 2001 when Federal Judge Gabriel Cavallo declared the impunity laws to be "unconstitutional and void". This sentence was upheld by the Supreme Court in 2005 and marked the renewal of hundreds of legal proceedings.

With the arrival in power of Nestor Kirchner in 2003, a real window of opportunity opened up for movements against impunity. He managed to have the amnesty laws repealed by the Chamber of Deputies in 2003, and then by the Supreme Court in 2005. In addition, after nullifying the amnesty laws, Nestor Kirchner and his wife, Cristina, implemented a public policy that advocated trials by awarding considerable financing to federal courts that were responsible for judging the perpetrators of crimes against humanity, as well as to educational programs emphasizing the pedagogical value of the trials.

Hybrid Legal Frameworks

Lebanon

In Lebanon, a society organized on a community model, the end of the war was organized through

the state negotiating the Taif Agreement. In its preamble, that agreement renewed the pact of communal life and the coexistence of different and diverse religious families. One of the major justifications for this was restraining the violence that had triggered cycles of family and community vengeance. It unequivocally acknowledged the multifaith makeup of the nation and that religious pluralism is one of its pillars. On the other hand, the agreement did not include any clauses concerning the war, a conflict that had claimed 500,000 victims (if the number includes those killed, injured, and handicapped, as well as the thousands who disappeared). Neither those who waged the war nor the human rights violations that took place were mentioned, with the agreement remaining silent on the matter of the victims, dead or alive. The mechanisms by which war crimes could be brought to light, and the diagnosis of the reasons which led to them, were not broached, neither was any reflection begun on how to avoid the repetition of human rights violations. The victims remained on the margins of national priorities. Thus, a "public acknowledgment" of the events of the war—that is, "stating the facts publicly", and "admitting that they are not only a historical reality but that they were also mistakes", to quote A. Garapon (2002)—did not take place. On the contrary, what the Taif justification system and its model of reconciliation responded to was, to borrow Paul Ricœur's expression on the amnesty, a need for "emergency social therapy, under a sign of utility, not truth" (Ricœur 2000: 589).

The "General Amnesty Law for crimes committed before March 28th 1991 which were subject to specific conditions" of the agreement, was passed in 1991. Article 3 lists the crimes excluded from this law, which include "crimes received by the Justice Council before the expiration date of the law; murders and attempted murders of religious leaders, political leaders, Arab and foreign diplomats" ("Al-'uqûbât" 2000). The jurist Nizar Saghiyé qualifed these exceptions as "unacceptabe distinctions": "By establishing this distinction, the legislator seems to assign a higher value to the leader. Only the murder of a leader is deemed punishable while the collective massacres, the crimes against humanity, and the ordinary victims are forgotten" (Amnesty International 2007).

The government established official commissions on the disappeared without seeking consent on the results from families. The establishment of an independent commission, which would shed light on human rights violations, as well as the drafting of bills to ensure that these violations were not repeated have been the main demand made to public authorities over the years. In this way, the right to the truth is one of the main claims made by families of the disappeared and the human rights organizations that support them, as well as by numerous civilians committed to remembering the war.

The period between 2007 and 2008 was marked by deadly confrontations between soldiers from two factions formed the day after the murder of Prime Minister Rafic Hariri, and the need to "remember the war" of 1975 was openly considered as necessary to prevent a falling back into violence by several civil organizations that formed spontaneously in reaction against more violence. Various organizations and many members of the public share the vision that remembering deceased victims, establishing that violations of humans rights took place, and creating a space for surviving victims to tell their stories will all contribute to establishing a way to foster collective memory and bring together conflicting accounts. Since the end of the war, various Lebanese artists (filmmakers, photographers, writers, dramatists) have settled on the theme of memory in Lebanon as a way to explore identity. In this context, remembrance is a way of compensating for the silence of Taif on war crimes.

Socially and politically, the Taif Agreement may be viewed as "continuity without transition". First, there is continuity in the socio-religious system, which is based on the religious community and its political leader, just as it was previously. Murders and attempted murders of political leaders of religious communities are excluded from the scope of the amnesty law, which, in the name of "national reconciliation", grants ministerial terms to certain leaders who were leaders of militias

during the war. Second, there is an absence of transition because no way exists to shed light on the events of the war and bring justice to victims. No reflection has begun on how to avoid repeating these events. No structure or framework, such as an independent truth commission, has been established to shed light on violations, establish facts, or create a space for the surviving victims to speak out. Furthermore, the duals task of remembering and of writing history (by professional historians) remains to be done. This could help to bring together partial memories and, in so doing, create the foundations for a shared memory.

Morocco

As has already been seen, the histories and experiences of political reconciliation as a way to put an end to violence depend on several factors: the nature of the regimes in place; the nature of the ruptures and the political transitions; power relations; historical and geographical contexts; the degree of empowerment of civil society and of the victims of violations; the nature of victims' claims; and the nature of the violations and to what extent they were systematic.

In contrast to the Lebanese process, the Moroccan experience of reconciliation includes a truth commission. The experience began in the 1990s, mainly after media coverage of certain serious human rights violations, and at a moment when the democratic transitions in Latin America and Eastern Europe were starting. For the first time, the regime found itself having to acknowledge its abuses and to undertake the dismantling of the system of exception, which had stiffened during the violent conflicts that had marked the Kingdom after independence. In the political language of Morocco, "turn the page" means a willingness to put an end to the political violence of the "Years of Lead".

The history of the reconciliation process is marked by the successive creation of two different commissions (Slymovics 2001, 2005, 2008; Linn 2011; Loudiy 2014; Rhani *et al.* 2016; Laouina 2016; Rhani 2017). First of all, the Independent Arbitration Commission was created in 1999 to identify and compensate former victims of forced disappearance and arbitrary detention. Due to its restricted definition of "victim"[4], the commission did not consider other forms of individual reparation, such as medical care, psychological care, or social rehabilitation. Neither did the commission consider collective forms of reparation, such as commemoration, the identification of burial sites, the return of victims' remains to their families, and the rehabilitation of those indirectly affected by the violence and of victim regions.

As a result of these limitations, the policy of reparation was strongly contested by former victims and human rights activists, and the granting of a *de facto* amnesty to the torturers and the influencing of the compensation process by denying a right to appeal was heavily criticized. Opposition was consolidated by the creation of the Moroccan Forum for Truth and Justice (FMVJ), which advocated for a national reconciliation process that was both wider in scope and more inclusive, following the example set by truth commissions in Latin America and South Africa. Thinking beyond financial compensation, they wanted the process to consider both the collective and individual suffering of victims through tangible actions, including medical care, socio-economic integration, legal rehabilitation, the return of disappeared persons, as well as commemorative celebrations, the construction of memorials, and programs to address the historiography of the conflict.

The efforts of the FMVJ and of human rights organizations resulted in the creation of a new

4. The Independent Arbitration Commission decided to examine certain cases submitted for examination beyond its scope of inquiry, including: death following injury from bullets suffered during a determined incident; capital execution in application of a judicial sentence; incarceration in certain secret detention centres; requests for social rehabilitation; request for medical care and for the restitution of possessions and property.

commission in 2004: the Equity and Reconciliation Commission (IER). The IER program included carrying out investigations into human rights breaches that occurred between the independence of the country and the establishment of the Independent Arbitration Commission—which also coincided with the death of the previous king, Hassan II. In its examination of the previous commission, the IER highlighted three main limitations of the first attempt at reparations, notably the focus on legal proceedings and financial compensation for victims (Instance Equité et Réconciliation 2010). The IER thus tried to go beyond a strictly legal and financial conception, displaying a more comprehensive approach in which reparation processes are "a form of public institution of victims' truths and survivors' experiences". Inspired by experiences of transitional justice in various countries, the IER reparations approach looked to take into account a group of measures that the state should take to favor equity and justice, to guarantee "non-repetition" and to "preserve memory". In so doing, the notion of victim became redefined to include all physical and psychological violations endured collectively or individually. In this new perspective, a "victim" could be a dependant, a close family member or a member of the victim's household, or a person who, in intervening to help a victim or prevent other violations from occurring, suffered physical, mental or material injury (Instance Equité et Réconciliation 2010). In addition to financial compensation for physical and moral injuries, reparation in the IER program also refers to medical and psychological rehabilitation, to social and legal reinsertion[5] —notably nullifying charges on police records[6] — and to forms of collective reparation. Together with the organization of public hearings for victims, these types of reparations have the ambition of transforming certain spaces that were the theatre of "serious violations" into socio-political projects and places of remembrance, notably museums. Despite not being a judicial body, the IER has indeed been able to carry out investigations, gather witness statements, build archives, and analyze a considerable quantity of depositions and reparations requests.

Despite its other goals, the IER has assigned an "extreme importance" to financial compensation, and considers it as the state effectively acknowledging the serious violations suffered by the victims. Although the collective reparations program is still only a proposal, social integration, resolving administrative problems, and certain aspects of medical rehabilitation may also be included within the scope of overall financial compensation. The first generally corresponds to material compensation—housing, access to transport, or sometimes their monetary equivalent. The second generally consists of settling the situation of persons suspended or dismissed from their jobs, either by counting the period of suspension in the administrative operation, or by reintegrating them into administrative life—granting them overall compensation and paying damages—or by compensating them if they choose not to return to their job, which is often the case. The third is connected to the nature of the consequences and whether they can be medically treated. If treatable, the victims are eventually offered medical coverage, but if they're not, victims are compensated for any permanent partial handicap (*invalidité partielle permanente*, or IPP)[7].

Thus, in spite of a comprehensive reparations project, the reparations approach implemented

5. Social reinsertion applies to several categories: notably, victims who, not having a previous social situation before the violation, finds themselves, due to their age or state of health, incapable of successful social reintegration; victims who lost their jobs in the private sector; victims who were studying and were unable to obtain their diplomas during their period of incarceration; victims who, as schoolchildren or university students, were not able to complete their studies during their period of incarceration (Instance Equité et Réconciliation 2010).

6. Notably, victims of arbitrary detention and forced exile who, afterwards, were subject to legal proceedings and correctional or criminal judicial sentences, or persons who were subject to legal proceedings or sought without being convicted. Legal reparation also refers to stopping harrasment at border posts and the restitution of the person's passport (Instance Equité et Réconciliation 2010).

7. This approach measures the physical and psychological consequences of an accident, thus allowing the determination and compensation of damages that correspond to a medically assessed incapacity.

by the IER is still quantitative and material in certain aspects. This was true to such an extent that the decisions taken were contested by several victims and human rights organizations, as was the case with the first commission. They were especially criticized for being discriminative and exclusive: excluding certain persons from being compensated, not granting social rehabilitation to everyone, not granting compensation equally, and, especially, rejecting a considerable number of reparations cases deemed to fall outside the specified time period. Those affected feel that they are once more the victims of an injustice perpetrated by a process and a system that supposedly wishes to reconcile them and award them reparations.

Furthermore, the temporality of reconciliation does not concern only the specified time period for reparations but also the historical period, an issue that is addressed only in a restrictive manner by the IER. The commission's program, as we have seen, consists of carrying out investigations on breaches of human rights for the period from independence until the end of Hassan II's reign. The victims of violations before and after this period are excluded from any reconciliation process, the goal of which has proven to be less ethical and moral and more political—assuring a peaceful political transition between the two reigns.

Thus, political reparation is not an open process but an operation that is controlled and limited in both meaning and time. According to several victims that we interviewed, financial compensation and medical rehabilitation—the only tangible means of reparation established by the state—need to be complemented with other forms of compensation (e.g., looking for disappeared persons; the identification and reburial of the disappeared's remains; public apologies; the presentation of accounts and prosecution of those responsible; cultural and political actions of commemoration; and revaluation of places that were theatres of violence). Only this type of global and comprehensive approach to reconciliation and reparation could, in their opinion, give some semblance of an ending to the inconsiderate use of violence and force.

Indeed, the philospher Loudiy (2014)—herself a victim of violence—sees the Moroccan experience of transitional justice as lacking coherence, rarely attaining the goals of justice—the truth has not been revealed, justice has not been rendered, and no other symbolic form of justice has been proposed. In other words, the regime did not consider lustration—which consists of dismissing those responsible for crimes from all state functions—as a means of symbolic justice, just as it refused to apologize to the Moroccan people for previous mistakes and past violations. In Loudiy's opinion, not establishing the right distance between torturers and victims is a sign of an attitude of tolerance towards the violence to which citizens were subjected as well as the suffering they endured, which additionally contributes to reiterating the violence and suffering. An appropriate legal distance demands another form of political distancing, a break with former practices of power: "no impartiality and distance without a break [with the past]", as was so well expressed by one of my informants, for whom the Moroccan reconciliation is less about a willingness to break with the past than a logic of cooperation and staging in an attempt to clean up the image of a country that has been stained by human rights violations.

According to the victims of political violence, a real end to past and present violence is possible only through the expansion of a global culture of reparations and justice. Of course, such justice will never be capable of rectifying all the mistakes made, but its importance comes from the political and symbolic efficacy of prosecutions rather than the exhaustiveness of the prosecutions made (Borneman 2002, 2011; Loudiy 2014). What matters, in other words, is a sincere effort to establish and reinforce the independence of judicial powers, and thus to start to build citizens' trust in institutions. An end to the violence is possible only if the steps taken for transitional justice are made with a willingness to strive for more global justice. Reconciliation then becomes a corollary to a serious process of democratization.

Democratic Republic of Congo (DRC)

The post-conflict frameworks in the DRC have been undertaken more recently and have raised a new set of questions. The Democratic Republic presents a (now more frequent) case of a convolution of frameworks in a situation where internal or internationalized armed conflicts, of varying intensity, have not ended, especially in the East of the country. Since 2003, four laws that enshrine amnesty in various legal documents (a decree law and three amnesty laws) have been passed—in 2003, 2009, and more recently, in 2014. However, all these laws exclude amnesty for the crimes of genocide, war crimes, and crimes against humanity (the so-called international crimes)—and so allowed the DRC to send several leaders of armed rebel groups to the International Criminal Court in the Hague[8], on the basis of these main accusations. Nevertheless, the laws do include amnesty for other crimes, under the scope of different agreements made between the DRC government and different rebel movements. It is also very revealing to note that these amnesties are presented as necessary to reconciliation, tolerance, and peaceful cohabitation among Congolese populations. Even those political and social forces that did not take sides between the armed groups and the government are affected by the injunction to accept the amnesty in the name of tolerance and reconciliation. It should also be noted that certain amnesty laws, such as Law n°09/003 (7 May 2009) concerning amnesty for acts of war and insurrection committed in the Provinces of North Kivu and South Kivu, are applicable to all perpetrators of violence living in the DRC territory and abroad. The 2014 amnesty law suspended prosecutions in progress, which further limits the claims made for justice with respect to breaches of law other than international crimes.

New forms of violence and the consideration of "grey zones" have led to a challenge to the dichotomy between war and peace. Thus, together with the more classic frameworks for ending violence—which, depending on the context and the period, may constitute amnesties made up of peace agreements and criminal trials (which may, as we have seen, be the product of long social, legal and political struggles)—another form has emerged, that of the of the truth and reconciliation commission. These three main frameworks are guided by their own institutional logic. Once the decision has been taken to use criminal proceedings (whether international/internationalized or by way of universal jurisdiction), the legal logic of criminal rationality leads to the search for individual criminal responsibility of the accused[9] founded on the legal truth that emerges from the establishment of the facts. On the other hand, at the same time, the "post-conflict" engineering of organizations/NGOs promotes (often national) "reconciliation" goals, as a standard of construction for the establishment of facts, while the construction of memory policies implements transitional justice (Gensburger & Lefranc 2017; Rousso 2016, chapter 10). Finally, the negotiation for the end of violence through elaborate peace agreements is marked by transactions between the government and/or armed groups, for a new redistribution of powers and protection for the perpetrators of violence. These different logics in the fields of law and morality, and the political strategies of those involved, lead, on the one hand, to recourse to two models of justice—judicial and transitional—and, on the other hand, to the technologization of ending violence. These fragments of politics lead, paradoxically, to depoliticization effects on collectives undone by violence.

8. Thomas Lubanga, Germain Katanga, Matthieu Ngudjolo (acquitted), and Bosco N'taganda, armed militia leaders in Ituri, in the east of the Congo, were sent before the International Criminal Court by the DRC State (Kabila government) for war crimes and crimes against humanity committed in the 2000s (Claverie 2015).

9. The amnesty constitutes the legal form of a "right to forget". As for criminal responsibility, the principle of individual responsibility of physical persons was adopted in the London Agreement, after legal discussions. According to a principle of the Nuremberg law, also founding principle of classical criminal law, the examination of criminal responsibility may lead to a declaration of criminal irresponsibility, acquittal, or a declaration of responsibility, leading to the determination of a punishment. On the principle of individual criminal responsibility of subordinates, see Liwerant (2000).

In the context of interstate and intra-ethnic conflicts between government and armed groups, the first consequence of ending violence generally concerns stopping acts of violence through negotiations, sometimes under the supervision of international organizations, to obtain a peace agreement[10] or a ceasefire. Thus, we see various techniques and concepts being used by international organizations, including, primarily, the United Nations. On the African continent, the management and resolution of conflicts by the pan-African Organization of African Unity (now the African Union) went from the principle of non-intervention to non-indifference on genocides, crimes against humanity, and war crimes[11]. "Peace", insofar as it concerns the process of exiting violence, is associated with the combination of the concepts of security and development, which led to the primacy of the "human security" principle at end of the Cold War. The example of the Framework Agreement for Peace, Security, and Cooperation for the Democratic Republic of Congo and the Region signed in Addis Ababa on 23 February 2013 reveals traces of the development-peace connection as well as the application of new methodologies greatly inspired by management techniques.

Given that "the East of the Democratic Republic of Congo continues to suffer from cycles of recurrent conflicts and persistent violence from national and foreign armed groups"[12], the Framework Agreement for Peace, Security and Cooperation between the Democratic Republic of Congo and the Region (hereafter the Framework Agreement) was signed by 13 states, under the supervision of four international organizations. Considered as "the Agreement of hope"[13], it prescribes tangible actions through three levels of commitments: those of the international community, those of the signatory countries, and those of the Democratic Republic of Congo[14].

Under the Framework Agreement, the Democratic Republic of Congo has agreed to six commitments, which make this international agreement unique. Indeed, it envisages reforms covering almost the totality of the sectors that make up the state, focusing on all public, private, and intimate spaces: the "consolidation of the authority of the State", the "structural reform of State institutions", the "promotion of economic development", and even "national reconciliation" and "tolerance", via pursuing reforms in the security sector and decentralization processes. If regional[15]

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10. Certain agreements anticipate amnesty frameworks, such as that for the Democratic Republic of Congo, Decree Law N°03-001 of 15 April 2003, which accorded a provisory amnesty following the 2002 Global Inclusive Agreement for war events and breaches of politics and opinion. On the amnesty, see above.

11. The Protocol for the creation of a Peace and Security Council, adopted in Durban in July 2002, describes the African Peace and Security Architecture (APSA). Resulting from the transformation of the Organization of African Unity into the African Union, the latter established a close collaboration with regional economic entities and regional mechanisms for prevention, management, and resolution of conflicts.

12. Paragraph 2 of the Framework Agreement of Addis Ababa.

13. This expression, coined by Mary Robinson, Special Envoy for the Great Lakes Region, has been widely adopted by both the Congolese and international stakeholders.

14. So that the Democratic Republic of Congo, its regional partners, and the international community may act in a "synchronized way" (article 6 of the Framework Agreement), articles 7 and 9 anticipate the establishment of a Regional Monitoring Mechanism (MSR) to review progress in the implementation of the regional commitments, and of a National Monitoring Mechanism (MNS) which will accompany national commitments. The latter was created on 13 May 2013 by Presidential Order.

15. The Region has subscribed to seven commitments:
- to not interfere in the internal affairs of neighbouring countries
- to neither tolerate nor provide assistance or support of any kind to armed groups
- to respect the sovereignty and territorial integrity of neighbouring countries
- to strengthen regional cooperation
- to respect the legitimate concerns and interests of the neighbouring countries, in particular regarding security matters
- to neither harbour nor provide protection of any kind to persons accused of war crimes, crimes against humanity, acts of genocide or crimes of aggression, or persons falling under the United Nations sanctions regime
- to facilitate the administration of justice through judicial cooperation in the region.

and international community[16] commitments are coherent, and even readable, in terms of the goal of the *consolidation of peace*, national commitments, on the other hand, appear "hybrid". Focusing on state sector reforms favors a technical dimension rather than a political dimension of the peace agreement. This "decoupling" from peace, worded in paragraph 4 of the Framework Agreement as "putting an end to cycles of recurrent violence", was reinforced by the choice of monitoring methods for national commitments. Indeed, following the signature of the agreement, the work to list the criteria for monitoring and evaluation of national commitments using benchmarking techniques led to the development of a "Matrix of criteria and indicators for monitoring and the implementation of national commitments of the Framework Agreement", including 56 criteria comprising 379 indicators[17]. This "matrix", as well as being the last instrument for prioritizing activities to be carried out[18], constituted the reference for monitoring and evaluating the progress of national commitments. Thus, the proposition of "getting down to the underlying causes of the conflict" becomes an evaluation of state sector reform policies leading to stripping the Framework Agreement of its political dimension and goal.

The technologization of peace and the use of engineering techniques, relatively similar to those of the "development support" sector, lead to depoliticization effects. And in contexts laid out in dynamics of volatile alliances between actors and in which private and public are not always operating categories, building a "policy" demands asking what the "collective" is and how to build a consensus from dissensus. In addition, rights as arms of power, as much in its jurisdictional dimension as in its establishment one and the implementation of peace treaties, begs the question of what opposing powers are available. In addition, law as a weapon of power, as much in its jurisdictional dimension as in the establishment and implementation of peace treaties, raises the question of what opposing powers are available.

As for the legitimacy of a political project susceptible to bring a group together, social and legal fictions, and, more widely, the functional equivalents of "justice" and the modalities of such a narrative, are challenged. New spaces of "justice", or any other category having a similar social function, may draw on the repertoires of different actors, authorities considered as legitimate, and ways in which discourse circulates, and this, when it concerns facing up to another political project founded on violence (Liwerant 2009).

International Criminal Justice, the Constitution of a Network

In the 1990s then 2000s, new courts appeared in the public space: international criminal jurisdictions, building on the legal and moral legacy of the Nuremberg Trials, but also on a long tradition

16. The five commitments of the international community are as follows:
- the Security Council would remain seized of the importance of supporting the long-term stability of the Democratic Republic of Congo and the Great Lakes region;
- a renewed commitment by bilateral partners to remain engaged in supporting the Democratic Republic of Congo and the region;
- a renewed commitment to work towards the revitalization of the Economic Community of the Great Lakes Countries (CEPGL) and support the implementation of its economic development and regional integration agenda;
- a strategic review of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO);
- appointment of a United Nations Special Envoy to support efforts to reach durable solutions.
Through Resolution 2098 of March 28th 2013, the Security Council approved the appointment by the UN Secretary General of a Special Envoy for the Great Lakes Region and the DRC to support the peace process.

17. This Matrix was approved on 17 September 2014 by the Head of State of the Democratic Republic of Congo, in the name of the President of the Management Committee for National Monitoring Mechanism and the Implementation of commitments undertaken in the name of the Framework Agreement for Peace, Security and Cooperation for the Democratic of Republic of Congo and the Region.

18. See the Summary Report of the National Seminar of appropriation and identification of priority actions for the operationalization of national commitments of the Framework Agreement of Addis Ababa finalized on 4 June 2015.

of activism and the work of criminal and international jurists in defining international crimes and the various elements that make up these three crimes (war crimes, crimes against humanity, genocide). Thus, in 1993 the ICTY appeared (Hagan 2003; Bass 2000; Maison 2010; Claverie 2019), established by UN Security Council resolution to confront the reappearance in Europe of ethnic cleansing practices; then in 1994, the ICTR (Maison 2017) was established to publicly judge the perpetrators of the genocide of Tutsi in Rwanda and the different levels of responsibility for this crime. These tribunals were founded on claims with respect to several principles of justice: "fight against impunity", "accountability" (the principle under which criminals have to publicly acknowledge their crimes before a fair and impartial tribunal); and "fight against immunity" (the principle that political, military, and religious leaders be subject to the tribunal and not protected by the immunity associated with their position). However, the jurisdiction of these two tribunals applies only within the scope of a predefined space (the former Yugoslavia in one case, and Rwanda in the other) and within a specified time period. Their main mission was to carry out criminal prosecutions— that is, investigate what happened at the crime scenes and who was responsible, hold trials, judge fairly, and punish (Joinet 2002), all in the name of imposing individual responsibility on the perpetrators of crimes. Just as at Nuremberg, it is indeed the individual responsibility of the perpetrators (Milosevic, Katanga), and not the collective one of the groups—"the Germans", "the Hutu", "the Serbs"—that is envisaged. Nonetheless, this does not prevent tribunals from fulfilling the duty of demonstrating the different types of responsibility and participation, the hierarchical relations (e.g., commandant responsibility), the precise ways in which persons or entities (e.g., state, party, etc.) associated with each other so as to demonstrate how they acted together, the exact organization of (criminal) political projects, and the evolving organization of ethnic cleansing (i.e., using rallying techniques up to effective practices of killing and forced displacement). These two tribunals are extra-territorial, set up in a host state, which was not one in which the crimes were committed: Arusha in Tanzania to judge the genocide of the Tutsi in Rwanda; The Hague, in the Netherlands, to judge the crimes committed in the countries of former Yugoslavia. Finally, in 2002, the ICC, which is housed in The Hague, appeared. This Court, which has the jurisdiction to judge international crimes, is no longer an *ad hoc* tribunal but a *permanent* Court.

The ICC was founded by a treaty, the Rome Statute, which defines the crimes, the procedures, the jurisdiction, and the admissibility of cases. A fourth crime, the crime of aggression, was added to the three international crimes previously cited, and has been applicable since 17 July 2018. The Court was founded on the basis of an international conference, the Rome Conference, and only countries that have signed and ratified the treaty, which are called State Parties, can be prosecuted. The United States, China, Russia, and Israel, among other states, are not signatories. The treaty was signed in Rome on 17 July 1998 and came into force on 1 July 2002. The Court cannot judge, according to the inapplicability of *ex post facto* law, crimes and criminal situations anterior to the effective foundation of the Court in July 2002. The State Parties are committed to cooperating in all activities and finance the Court. Cases can be referred to the Court in three ways: 1) the UN Security Council requests the Court Prosecutor to file charges, 2) the Court Prosecutor directly refers a case to them, or 3) a state sends "a situation" to the Court. Finally, it should be added that while both *ad hoc* tribunals, the ICTY and the ICTR, had the priority of referral over national tribunals, this is no longer the case for the ICC, which is a complementary court and admits only cases that national states cannot or do not want to judge. Furthermore, to accelerate the processing of cases, the Security Council encourages sending certain criminal cases back to national jurisdictions (Serbia, Bosnia, and Croatia) under certain conditions for holding trials. The jurisdiction of these courts is also territorial, and can be exercised under the active personality principle (dependent on the nationality of the perpetrator) or passive personality principle (dependent on the nationality of the victim. It should be added that international criminal jurisdictions are intrinsically connected to

international peace and security agendas, either directly so, for the ICTY and the ICTR, or indirectly so, for the ICC. This is due to their connections with the UN Security Council, which created the ICTY and ICTR on the basis of Chapter VII of the United Nations Charter ("Action in the case of a threat to the peace, a breach of the peace, or an act of aggression"). Reconciliation is thus conceived as a means of assuring and politically guaranteeing peace and international security.

The jurisdiction of these three courts will soon extend to other jurisdictions to prosecute the same types of crime, forming a network and an area for the spread of international humanitarian law as well as international criminal law. The personnel of these jurisdictions, who come from various states, include numerous young interns from law schools, who circulate among those states. What has thus appeared in a certain number of cases are so-called hybrid jurisdictions—that is, jurisdictions with both national and international components, such as the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), or the Special Tribunal for Lebanon (STL). Finally, a number of states, notably signatory states to the Rome Statute, may now judge international crimes in their own territories, in the name of universal jurisdiction[19]. On the condition of having defined the crimes in their internal criminal laws and of judges having jurisdiction on this basis, they may now prosecute persons who are present in their territory and suspected of these crimes. This is the case, for example, in France, which added inside the Paris District Court a centre specializing in crimes against humanity, war crimes and misdemeanors, acts of torture, and forced disappearances. This centre has jurisdiction if the victims are French, but also when perpetrators who are French nationals are implicated, or when the perpetrators of the crimes are foreign nationals who are present or habitually resident in French territory and who have committed crimes abroad against foreign persons. In the past few years, the centre has judged Rwandan nationals in the *Cour d'assises* (Assize Court) in trials by jury.

Contrary to international courts, these internal state courts rule on the basis of internal laws. These jurisdictions act in the name of the principles "no peace without justice" and "access to at least the judicial truth," and they act in this capacity in two directions and for two parties: the "international community", founder of the ICC via the intermediary of the State Parties, and the affected populations. For the international community, they have a role in producing standards on issues of violence in armed conflicts (promotion of international humanitarian law applicable in internal armed conflicts, whatever the nature of the conflict, even and especially if it implicates state forces against a civilian population), and are now, through judicial rulings where hearings have been put online for certain armed conflicts, the major descriptors of organizational and political structures of violent enterprises carried out during "civil wars", either by states or by other armed groups supported by external neighbors. They are one of the sources of objectification of what we have called "the new wars", including asymmetric wars (armed groups against civilian populations).

If they have only an indirect role in reconciliation, the investigations that they carry out are a tangible step in the struggle against the denial of events by their perpetrators, and an assurance for the victims of these violations that they really happened. These jurisdictions then act toward the affected populations in various ways. First, they invite witnesses in their depositions to describe what they saw, heard, and experienced. Once corroborated through cross-examination (the ICTY, the ICTR, and the ICC, are ruled by Common Law, and practice cross-examination), their deposition will be included in a final account of events, and having gone through the ordeal of a trial, may be included in a political history of the situation that they lived through. Finally, in the ICC, victims

19. "Universal jurisdiction" designates the criminal jurisdiction of a national judge who may rule on a case without the crime having been committed in their state's territory and without the victim or the perpetrator being a national of their state. However, the power of the International Criminal Court has no connection with the technical notion of "universal jurisdiction". It is based on the Treaty of Rome and is applied through its different frameworks

of serious violations are collectively represented at trial by a lawyer appointed for the hearing. If the accused are found guilty, the victims have the right to compensation (often in the form of collective compensation). Thus these jurisdictions act through their investigations, the establishment and acknowledgement of facts, the precise determination of the guilt of the accused (who may be acquitted), and granting compensation.

Finally, several trials led by the ICC have addressed the issue of child soldiers and have highlighted the ambivalent nature of their status as victims: they were kidnaped, then mistreated and often forced to "participate in hostilities"—that is, to subject themselves to criminal activities, as per the standards of the court (e.g., the G. Katanga and Th. Lubanga trials, as well as the trial of Dominic Ongwen, second-in-command to Joseph Kony of the Lord's Resistance Army). The questions raised by their demobilization and social reintegration have been studied by a member of our group, Christophe Charles-Alfred, who shows the legal vacuum with regard to child soldiers who are from 15 to 18 years of age. Children are generally protected as minors in many states, but children recruitment by militias incriminate the leaders only if the children are under 15.

Trials in front of international criminal jurisdictions do not, by themselves, have an immediate and direct impact on the processes of reconciliation, nor, whatever the procedures and standards that produce it, is the truth immediately revealed. Nuremberg, for example, played only a progressive role in Germany in wider economic measures and denazification procedures. These were generally accepted, when they were accepted, only several generations later. The findings of Nuremberg have not prevented Nazi arguments being taken up again from time to time, including currently. Indeed, it is certain that the Eichmann Trial did not extinguish conspiracy theories or anti-Semitism. The political and psychic economy of indifference, on the one hand, or (at the other extreme of a spectrum of various attitudes) of denigration or claiming of repetition (Vidal-Naquet 1995), which form, for instance, the heart of certain ideologies, is reiterative. This supports the necessity for frameworks of standards that oppose, at least, an argumentative barrage, and for explicative frameworks of cause and effect that allow political collectives to be pre-emptive.

Indeed, we now know that these types of violence generate a great number of victims as well as a great number of perpetrators, whatever form the violence and confrontations take, and taking into account that international crimes are from the outset cases of "extreme violence" or community or collective confrontations. The perpetrators generally find that they were right to act the way they did or consider that, at best, they were only following the crowd, or they were seeking revenge, notably in ultra-nationalist conflicts. We obviously do not see sudden critical reversals by those accused of war crimes and their social support, or of their version of events. The reversals that would be produced through force of conviction would, it goes without saying, immediately establish the facts as if examined by a criminal court. The support received by the perpetrators from certain national groups remains, of course, unwavering in the long term, and their versions of events eventually become family accounts shared and passed on, going beyond the domestic sphere, and are taken up and retold collectively in certain spheres. This was seen in the former Yugoslavia in the long term, in accounts about who are, indeed, the true victims of the Second World War, or about the "real victims" of the Bosnian War. What may be subjectively true, and is opposed to individual responsibility, is collective victimization. But these frameworks of support for war criminals are not always silent, nor are their supporters unorganized, and elements of the successor regimes that sometimes support them, openly or underhand, are not always democratic. This is still the case in certain states of the former Yugoslavia, now withdrawn into the internal borders set by ethnic cleansing. If the trial/reconciliation connection were to be examined, it would be seen that its efficacy resides not in its immediate relationship with the present, and that the mediating role of the trials cannot be determined in the here and now. However, the trials are a crucial contribution to certain central elements for the implementation of reconciliation, or, maybe, of a change of regime that

sees itself as warriors, with the help of third parties.

Conclusion

At the normative level, transitional justice covers both political transformation processes and the study of them within the framework of a new domain of the theory of justice, combining philosophical theories of justice, criminal law, human rights, domestic politics, and international relations. The rise of transitional justice goes hand in hand with the idea that, when mass crimes or serious breaches of human rights have occurred, societies seeking to rebuild should not forget their own crimes, but lead the work of collective remembering, of justice, and of reparation, as they are the only one able to anticipate the repetition of crimes and to rebuild these societies on the basis of liberal standards. As part of the tradition of human rights that it is determined to promote, transitional justice begins with facing up to the fact that unforgivable crimes have been committed and that justice solutions should facilitate overcoming their effects. It is based on the demand for public awareness of the crimes and responsibilities, and the ideal of a reconciled society or one capable of guaranteeing at least a minimum of political and social stability for the individuals that make up that society (Saada & Nadeau 2013). Transitional processes are present in criminal trials as soon as they seek to punish criminals, but they also shed light on a violent past and work toward public remembrance, reparations, and the acknowledgment of victims. But these are not themselves guarantees of political transition, which requires measures for acknowledgment; reparation; social and institutional reconstruction; apologies; policies for remembrance, acknowledgment, and inclusion; and economic policies. Trials are also an element in putting an end to long-term conflict, and criminal justice is often sacrificed for the goal of an immediate peace, which then fails to manifest. Indeed, putting an end to violence should not be thought of and analyzed within a temporal linearity: in many cases, adopting amnesties in the name of restorative justice and to the detriment of criminal justice leads to a resurgence in violence, sometimes a long time after peace has been reached, or, in a lesser form, to expressions that highlight the lack of public acknowledgement. If the solutions adopted with the goal of putting an end to violence remain silent about certain crimes, social tensions will be revived, at the risk of once more falling into violence.

RECOMMENDATIONS

1. How and according to which criteria should the results of post-violence mechanisms (TRCs and criminal courts) be assessed given the complexity of the situations under examination? The assessment of a reconciliation scenario is a gradual process, which must comply with public auditing procedures provided by democratic mechanisms, as was for example the case when measuring the effects of denazification in Germany. Neither criminal trials nor TRC mechanisms can bring about a state of reconciliation on their own. They are nonetheless essential to a state's moral, political and memorial economy and must, through their powers and public apparatus of truth-seeking, remain strictly enforceable against any public policy of denial. Other frameworks - historical, educational, etc. - will serve to further refine these criteria and assess their relevance. The judicial and paralegal sectors, for their part, judge criminal cases according to the standards of criminal law.
2. With respect to criminal justice, fair trials must be ensured, at every stage of the proceedings (rights of the accused, of the defense). Rulings must establish criteria for liability and the facts determined on the basis of public criteria must be robust enough to withstand any attempt at public denial.
3. Try to identify, at the macro level, the inequalities and different forms of inequality that drive

violence and impact efforts to withdraw from violence.

4. Improve our understanding (surveys) of victims' roles in the different transitional justice systems and the effects these systems have on them.
5. Clarify and better define (through new case studies and failed implementations) the transitional landscapes and political and normative transformations that are introduced following mass crimes, severe human rights violations, or the withdrawal of totalitarian political regimes.
6. Examine transitional justice within political transitions (how it affects political transitions).
7. Critical examination of justice-oriented judicial mechanisms (retributive judicial institutions and injunctions for reconciliation), and their tensions with criminal law theory.
8. Better identify the issues underlying the tensions between criminalists and internationalists, the mandates of criminal and international law, promote signatory states' commitment to the Rome Statute as regards criminal law, and the application of universal jurisdiction in states which have ratified it.

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