

# Making Peace or Doing Justice

A case study of the Colombian peace process 2012-2016 with regards  
to the dilemma of peace versus justice

Nina Davidsson

# Abstract

This thesis analyzes the way peace and justice interact within the latest Colombian peace process between 2012-2016. This process was the first attempt at ending hostilities between the Colombian government and the FARC-EP in a decade. This thesis is carried out as an idea analysis of three different material categories: joint material from peace-negotiations, and materials attributed to the government or the FARC-EP separately. The material is examined through transitional justice theory with the aim to determine whether there are tensions between peace and justice in the Colombian peace process. The analysis is divided into two parts. First, the material is analyzed with regards to contextual factors that have relevance for how peace and justice interact. Second, in correspondence with the idea analysis, four dimensions structure the analysis on peace and justice specifically. These are: retributive justice, restorative justice, negative peace, and positive peace. The thesis found that some aspects of justice relax or heighten the tension with peace. In the case of Colombia retributive justice heightens tensions, and restorative justice relaxes tensions.

*Key words:* Transitional justice, Colombia, Peace versus justice, FARC-EP

*Word count:* 8908

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# Abbreviations

<b>AUC</b>	United Self-Defense Forces of Colombia ( <i>Autodefensas Unidas de Colombia</i> )
<b>CSTJNR</b>	Comprehensive System for Truth, Justice, Reparation and non-Reparation ( <i>Sistema Integral de Verdad, Justicia, Reparación y No Repetición</i> ).
<b>FARC-EP</b>	The Revolutionary Armed Forces of Colombia – People’s Army ( <i>Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo</i> )
<b>ICC</b>	International Criminal Court

# 1 Introduction

We are going to achieve an end to our conflict; but make no mistake, this does not mean that we will relinquish justice, and much less the truth and the reparation of the victims.<sup>1</sup>

The current Colombian President Juan Manuel Santos made this statement in front of the United Nations General Assembly in September 2013. The latest efforts to negotiate peace with the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP) had been going on for a year.

Often described as the world’s longest civil war, the armed conflict in Colombia has raged for over sixty years with approximately 200,000 people killed and millions internally displaced. Crimes such as torture, kidnappings, and mass killings have been targeted towards officials and civilians alike.<sup>2</sup> Guerrillas and paramilitary groups, also involved in drug trafficking<sup>3</sup>, as well as state agents and members of the Colombian army are actors and responsible for heinous crimes.<sup>4</sup> The multitude of actors add to the complexity of the situation.

Similar to other South and Central American countries, Colombia has engaged in efforts to stop the ongoing violence. However, unlike many South and Central American countries, Colombia’s efforts derive from an effort to achieve peace, not

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<sup>1</sup>Juan Manuel Santos, Remarks By The President Of The Republic Of Colombia, Juan Manuel Santos, Before The General Assembly Of The United Nations Organization In The 68th Period Of Ordinary Sessions, New York, September 24, 2013. Available at:

[http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130924\\_11-Palabras-del-Presidente-Santos-ante-la-Asamblea-General-de-la-Organizacion-de-las-Naciones-Unidas.aspx](http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130924_11-Palabras-del-Presidente-Santos-ante-la-Asamblea-General-de-la-Organizacion-de-las-Naciones-Unidas.aspx). Accessed: 2016-11-25.

<sup>2</sup>Weiner, Allen S., “Ending Wars, Doing Justice: Colombia, Transitional Justice, And The International Criminal Court”, in *Stanford Journal of International Law*, Vol. 52, No. 2, 2016: 212.

<sup>3</sup>Guembe, Maria José & Olea, Helena, “No justice, no peace: Discussion of a legal framework regarding the demobilization of non-state armed groups in Colombia”, in Roht-Arriaza, Naomi & Mariezcurrena, Javier (eds.), *Transitional justice in the twenty-first century: beyond truth versus justice*, Cambridge University Press, Cambridge, 2006: 120.

<sup>4</sup>International Criminal Court – The Office of the Prosecutor, *Situation in Colombia. Interim Report*, November, 2012: 28. Available at: <https://www.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285102/OTPCOLOMBIAPublicInterimReportNovember2012.pdf>. Accessed: 2016-12-03.

democracy. Moreover, Colombia is a country trying to transition to peace amidst continuing armed conflict.<sup>5</sup>

Efforts to engage in peace talks with the FARC-EP was initiated by President Santos in August 2012. The official negotiations took place in Havana, Cuba and were the first in a decade. After four years of dialogue a peace agreement was finally signed in September 2016 by President Santos and FARC-EP leader Timoleón Jiménez amongst others.<sup>6</sup> In October 2016 a referendum was held on whether to accept the deal or not, a referendum that resulted in the agreement being rejected.<sup>7</sup> Dealing with over half a century of conflict has proven to be difficult.

Theories about how a society can deal with extensive abuses, violations, and wrongdoings of a state or armed opposition is the main topic of the research field of transitional justice.<sup>8</sup> This question, however, is not without controversy. Initially the debate between transitional justice scholars was dichotomous and argued over which were the central aims in a transitional process: peace or justice? This dilemma has been the principal academic divide of the field. Today, many transitional justice scholars and decisions-makers believe there is error in such categorizations. The goals of peace and justice are often interdependent and cannot be isolated from each other.<sup>9</sup> Furthermore, peace is not categorically either undermined or promoted by the pursuit of justice. Depending on the circumstances, it can do either one or both.<sup>10</sup> However, in a recent study Allen S. Weiner argues that the Colombian efforts to end its civil conflict might present an actual struggle

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<sup>5</sup> Restrepo, Elvira María, “Transitional justice without a compass: Paramilitary demobilization in Colombia”, in Popovski, Vesselin & Serrano, Mónica (eds.), *After oppression: Transitional justice in Latin America and Eastern Europe*, United Nations University Press, 2012: 114.

<sup>6</sup> BBC News, “Colombia peace deal: Historic agreement is signed”, September 27, 2016. Available at: <http://www.bbc.com/news/world-latin-america-37477202>. Accessed: 2016-11-20.

<sup>7</sup> Brodzinsky, Sibylla, “Colombia referendum: voters reject peace deal with Farc guerrillas”, *The Guardian*, October 3, 2016. Available: <https://www.theguardian.com/world/2016/oct/02/colombia-referendum-rejects-peace-deal-with-farc>. Accessed: 2016-11-05.

<sup>8</sup> Hayner, Priscilla B., *Unspeakable truths: transitional justice and the challenge of truth commissions*, 2. ed., Routledge, London, 2011: 7-8.

<sup>9</sup> Lutz, Ellen, “Transitional justice: Lessons learned and the road ahead”, in Roht-Arriaza, Naomi & Mariezcurrena, Javier (eds.), *Transitional justice in the twenty-first century: beyond truth versus justice*, Cambridge University Press, Cambridge, 2006: 327. See also: Biggar, 2003; Sriram, 2004; Goldstone, 1998.

<sup>10</sup> Albin, Cecilia, “Peace v. Justice – and Beyond”, in Bercovitch, Jacob, Kremenyuk, Viktor Aleksandrovich & Zartman, I. William (eds.), *The SAGE handbook of conflict resolution* [Electronic resource], SAGE, Los Angeles, 2009: 13. Available at: [http://sk.sagepub.com.ludwig.lub.lu.se/reference/hdbk\\_conflictresolution/n31.xml](http://sk.sagepub.com.ludwig.lub.lu.se/reference/hdbk_conflictresolution/n31.xml).

between the goal of justice and the goal of peace. Where justice represents an obstacle for achieving peace.<sup>11</sup> With these theoretical thoughts in mind, this thesis aims to investigate the relationship between peace and justice within the Colombian peace efforts stretching from 2012 to the signing of the first peace agreement in September 2016.

## 1.1 Purpose and research questions

With regards to the contested dilemma of peace versus justice, the purpose of this thesis is to analyze the two concepts and how they relate to each other in the Colombian context. This will be done by applying theories on peace and justice within the transitional justice field. Hence, the question this thesis aims to answer is the following:

*Are there tensions between peace and justice in the Colombian peace process 2012-2016?*

## 1.2 Disposition

Chapter 2 will start with an account for previous research on Colombia and transitional justice. Then, the theoretical framework of transitional justice will be introduced as well as the peace and justice dilemma specifically. Chapter 3 on methodology will discuss the method of idea analysis and present the analytical framework in relation to theory. Lastly, the chapter will conclude with a presentation and discussion on the chosen material. Chapter 4 consists of analysis, divided into two parts based on the analytical strategy. Results and conclusions will be discussed in Chapter 5.

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<sup>11</sup> Weiner, 2016: 213.



## 2 Theoretical framework

To adequately analyze the given material this thesis assumes two different approaches that make up the theoretical framework. The first main part consists of theories on peace and justice. The second part, which will serve as a complementary aspect, are contextual factors that may influence how peace and justice interact.

This chapter begins with an account of previous research done on Colombian peace efforts. Next, transitional justice as a site for academic inquiry will be introduced. Lastly, special attention will be given to the peace versus justice dilemma and the theoretical point of departure.

### 2.1 Previous research

Since transitional justice studies began with the surge of transitions in South America, these countries dominate the field.<sup>12</sup> Examples include Argentina, Chile, Guatemala, and El Salvador. African nations such as Sierra Leone, South Africa, and Rwanda have also been given academic attention, as well as Asian cases like Cambodia and Timor-Leste. However, the number of academic inquiries about Colombia are fewer. One of the most comprehensive studies to date is the anthology *Colombia: building peace in a time of war*<sup>13</sup> in which Colombian peace efforts are analyzed from several different perspectives. Furthermore, numerous academic articles have been published on the topic of Colombian peace efforts. Some examine the workings of international law in Colombia.<sup>14</sup> Some look exclusively

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<sup>12</sup> Roht-Arriaza, Naomi, “The new landscape of transitional justice”, in Roht-Arriaza & Mariezcurrena, 2006: 2-3.

<sup>13</sup> Bouvier, Virginia M. (ed.), *Colombia: building peace in a time of war*, United States Institute of Peace, Washington, D.C., 2009.

<sup>14</sup> Acosta Arcarazo, Diego, Buchan, Russell, & Uruña, Rene, “Beyond Justice, Beyond Peace? Colombia, The Interests of Justice, and the Limits of International Criminal Law”, in *Criminal Law Forum*, No. 26, 2015: 291-318; Weiner, 2016.

on truth, memory, and reparations.<sup>15</sup> While others examine demobilization and establishing peace within ongoing violence.<sup>16</sup> However, since the latest peace effort recently took place, extensive works analyzing it have not yet been published.

## 2.2 Transitional justice

In its broadest definition, transitional justice encompasses all measures taken in dealing with a violent past and violations against human rights. Making political and judicial reforms, creating memorials, and changing school textbooks are some examples.<sup>17</sup> Most commonly it is defined as

[...] the task of doing justice in the time period following the end of a conflict or repressive rule, during which a new peaceful, stable, and democratic society is being established.<sup>18</sup>

Naturally, there are several ways to go about this task. In the literature on transitional justice four core theoretical approaches can be identified. The first three approaches – maximalist, moderate, and minimalist - study the value of specific mechanism for transitional justice. When placed on a spectrum of accountability, as can be seen below, these approaches advocate different mechanisms.

DENIAL			ACCOUNTABILITY			
Amnesia	Amnesty	Forgiveness	Truth Telling	Reparations	Purges	Trials
-----Restorative Justice-----			-----	-----Retributive Justice-----		
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Table 1. Transitional Justice Strategies. Source: Amstutz, 2005: 18.

The highest level of accountability, achieved through trials and retributive justice, is promoted by a maximalist approach. Refraining from judicial methods, a

<sup>15</sup> Riaño Alcalá, Pilar & Uribe, Victoria, "Constructing Memory amidst War: The Historical Memory Group of Colombia", in *International Journal of Transitional Justice*, No. 10, 2016: 6-24.

<sup>16</sup> Chernick, 1999; Gueembe & Olea, 2006.

<sup>17</sup> Roht-Arriaza, in Roht-Arriaza & Mariezcurrena (eds.), 2006: 1-2.

<sup>18</sup> Llewellyn, Jennifer J., "Restorative Justice in Transitions and Beyond: The Justice Potential of Truth-telling Mechanisms for Post-Peace Accord Societies", in Borer, Tristan Anne, *Telling the Truths: truth telling & peace building in post-conflict societies*, University of Notre Dame Press, 2006: 83.

moderate approach advocates truth commissions and restorative justice mechanisms. The minimalist approach is apprehensive towards accountability altogether, and promotes amnesties for perpetrators as a stable foundation for peace and democracy to be built on. In contrast to these strategies, the holistic approach argues that several mechanisms must be combined when coping with the problems of a post-conflict society. Not one or the other.<sup>19</sup> Having introduced the transitional justice field, definitions of justice and peace will be explored further.

## 2.3 Justice and peace definitions

When confronting criminal offenses, governments traditionally have two different approaches to justice: retributive and restorative justice. Retributive justice has been the dominant strategy for governments dealing with serious crimes. Simply put, it advocates holding criminals accountable for their actions. The principles of retributive justice argue that only by publicly condemning offenders can restore the moral equality between people, and the relationship between victim and victimizer be mended.<sup>20</sup> Complete justice can only be achieved if offenders pay for their crimes.<sup>21</sup>

Restorative justice has emerged as an alternative approach to retributive justice. Instead of punishing, the goal is to heal and repair the broken relationship between victim and victimizer, and give victims vindication by other means.<sup>22</sup> Vindication in the sense that previously hostile groups and individuals reach acceptance and cooperation. Restorative justice claims that not only judicial mechanism can restore the moral equality between victim and victimizer. The moral equality can be restored just as well by having offenders express remorse and assume responsibility for their crimes.<sup>23</sup>

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<sup>19</sup> Olsen, Tricia D., Payne, Leigh A., Reiter, Andrew G., “The Justice Balance: When Transitional Justice Improves Human Rights and Democracy”, in *Human Rights Quarterly*, Vol. 32, No. 4., 2010: 982-983.

<sup>20</sup> Amstutz, Mark R., *The healing of nations: the promise and limits of political forgiveness*, Rowman & Littlefield Publishers, Lanham, Md., 2005: 106.

<sup>21</sup> Amstutz, 2005: 107.

<sup>22</sup> Amstutz, 2005: 110.

<sup>23</sup> Amstutz, 2005: 110–111.

Like justice, peace has frequently been divided into two categories based on the work of Johan Galtung. However, to understand peace one must understand violence. Accordingly, violence has three dimensions. First, there is *personal* violence, suggesting one actor hurting another. Second, there is *structural* violence, which manifests itself as social injustices due to the social structures themselves. Third, there is *cultural* violence, which is symbolic structures such as religion or ideology that legitimizes personal and structural violence.<sup>24</sup> With an understanding of violence, peace can be defined. Galtung proposes that peace be defined as *negative* and *positive*. Negative peace implies the absence of personal violence, often perceived as the end of armed conflict and hostilities. Positive peace indicates the absence of structural violence and the establishment of social justice.<sup>25</sup>

## 2.4 Peace versus justice dilemma

As before stated, the debate about peace versus justice has been the principal academic divide of the transitional justice field. The conceptual paradigm that contrasts peace and justice regards the concepts as independent. Richard J. Goldstone argues that justice within this paradigm is regarded as being concerned only with the past. Justice is intended to attain retribution for past abuses and its victims. In turn, peace within the paradigm is a concept concerned mainly with the present. To end conflict and hostility here and now. Goldstone strongly opposes this juxtaposition of peace and justice because it fails to recognize the relationship between them. Under certain circumstances the relationship between peace and justice is so complex that settling peace without pursuing justice is worthless.<sup>26</sup>

Goldstone further argues that the meaning of justice varies depending on the context. Justice can imply criminal prosecution by a court or international tribunal, but it can also mean implementing a truth commission. Shared features of these

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<sup>24</sup> Galtung, Johan, "Violence, Peace, and Peace Research", in *Journal of Peace Research*, 6:3, 1969: 171; Galtung, Johan, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*. Sage, London, 1996: 2, 197.

<sup>25</sup> Galtung, 1969: 183.

<sup>26</sup> Goldstone, Richard J., "Bringing War Criminals to Justice during an Ongoing War", in Moore, Jonathan (ed.), *Hard choices: moral dilemmas in humanitarian intervention*, Rowman & Littlefield, Lanham, Md., 1998: 198-199.

measures are that truth and acknowledgment recognize the victims' sufferings. Furthermore, they are coupled with responsibility for perpetrators and relevant punishments.<sup>27</sup> Moreover, Cecilia Albin claims that the debate between peace and justice, in fact incorporates a variety of approaches. All of which do not view the two values as being at odds with one another.<sup>28</sup> As mentioned above, many perceive the two terms to be interdependent, and view the peace versus justice dichotomy as false.<sup>29</sup> Albin shares this view. The problem is not one value at odds with another, and which should be chosen over the other, they are both in some form needed for durable conflict resolution. Albin argues that peace is not always undermined or promoted by the pursuit of justice. Depending on the circumstances, it can do either one or both.<sup>30</sup>

Further, Albin underlines four key contextual factors that are necessary when trying to understand and examine how peace and justice affect each other. These factors will be utilized in the analysis below. *First*, the way peace and justice relate differs between peace process phases. Different phases in a peace process give rise to different issues and principles of justice, which in turn affects the peace-making. Since this thesis is limited to the negotiating phase, this factor is made redundant, and will not be applied.

*Second*, some issues of justice are easier to deal with than others. In other words, some parts of justice reduce or even remove the tension with peace while others tend to heighten it.<sup>31</sup> For instance, Nigel Biggar views the tensions between peace and justice as dependent on how judicial justice is perceived. There is a possibility of lessening the tension when judicial justice is not exclusively thought of as punitive justice. Biggar argues that judicial justice should be about restitution for victims. If peace is achieved without victims viewing the taken measures as just,

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<sup>27</sup> Goldstone, in Moore (ed.), 1998: 200.

<sup>28</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 2.

<sup>29</sup> See: Biggar, 2003; Sriram, 2004; Goldstone, 1998.

<sup>30</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 13.

<sup>31</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 3.

there will not be a stable peace.<sup>32</sup> Moreover, peace and justice relations will benefit from parties having compatible or reconcilable notions of justice.<sup>33</sup>

*Third*, how power is distributed between the negotiating parties will affect the way justice is taken into consideration.<sup>34</sup> For instance, Chandra Lekha Sriram has shown that the degree to which justice is compatible with peace in post-civil war societies is influenced by the power-balance between former opponents.<sup>35</sup> *Lastly*, the pressure of ending hostilities may demand compromise on justice in the present, but not in the future.<sup>36</sup> Since the scope of the thesis is limited to the peace process negotiations only, this last contextual factor will not be analyzed extensively.

In addition to previous factors, this thesis adds the impact of international legal pressure on the relationship between peace and justice to Albin's contextual factors. This addition builds on the importance of international law that some previous research on Colombia suggest.<sup>37</sup> International institutions and legal frameworks can pressure governments to handle victimizers more severely and to ensure victims' rights.<sup>38</sup>

## 2.5 Point of departure

To summarize, the point of departure of this thesis is the proposed dilemma between peace and justice. Up till now the research literature has analyzed the peace versus justice dilemma within one stage of the process, and presented the problem as being one value against the other.<sup>39</sup> To stay within the scope of this thesis, the time-frame has been limited to the negotiation phase. A phase which can be investigated further according to Albin.<sup>40</sup> However, this thesis will nuance the relationship between

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<sup>32</sup> Biggar, Nigel, "Peace and Justice: a Limited Reconciliation", in *Ethical Theory and Moral Practice*, No. 5, 2002: 168-169.

<sup>33</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 9.

<sup>34</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 3.

<sup>35</sup> Sriram, Chandra Lekha, *Confronting past human rights violations: justice vs. peace in times of transition*, Frank Cass, London, 2004.

<sup>36</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 3.

<sup>37</sup> Acosta Arcarazo, Buchan & Urueña, 2015; Weiner, 2016.

<sup>38</sup> Acosta Arcarazo, Buchan, & Urueña, 2015: 306; Riaño Alcalá & Uribe, 2016: 10-11.

<sup>39</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 13.

<sup>40</sup> Albin, in Bercovitch, Kremenyuk, & Zartman (eds.), 2009: 6.

peace and justice, avoiding pitting the values against each other. How this is done will be explained further in the next chapter.

The methodological approach, presented below, will be based on the definitions of peace and justice stated above. This is believed to give the thesis theoretical generalizability. Yet, as Albin explains, the relationship between peace and justice is dependent on its context. Therefore, two of Albin's four contextual factors will be utilized in the analysis. Thus, creating a greater understanding for how peace and justice relate within Colombia specifically.

## 3 Method and material

This section will focus on how the theoretical framework presented above will be applied to the case of Colombia. In addition, the source material will be explored with regards to its advantages and shortcomings. First, the methodical approach will be explained.

### 3.1 Case study

This thesis is a theory-guided idiographic case study, which strives to explain and/or interpret a single case. However, this kind of case study is guided and structured by a theory or conceptual framework. Thus, drawing attention to certain facets while overlooking others.<sup>41</sup> Naturally, there are apprehensions about the degree of generalizability, therefore a single case study relies on how well it can be theoretically motivated. To remedy these apprehensions, the analytical strategy will be carefully explained and the theory linked to the results later on.<sup>42</sup> Thus, enabling the thesis to be recreated and contested.

### 3.2 Idea analysis

The methodological basis of this thesis is an idea analysis. Depending on the research question an idea analysis can take many forms, but always with the aim of

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<sup>41</sup> Levy, Jack S., "Case Studies and Conflict Resolution", in Bercovitch, Jacob, Kremenjuk, & Zartman, I. William (eds.), *The SAGE handbook of conflict resolution* [Electronic resource], SAGE, Los Angeles, 2009: 3. Available at: [http://sk.sagepub.com.ludwig.lub.lu.se/reference/hdbk\\_conflictresolution/n5.xml](http://sk.sagepub.com.ludwig.lub.lu.se/reference/hdbk_conflictresolution/n5.xml).

<sup>42</sup> Teorell, Jan & Svensson, Torsten, *Att fråga och att svara: samhällsvetenskaplig metod*, 1. edition., Liber, Stockholm, 2007: 82-83; Esaiasson, Peter, Gilljam, Mikael, Oscarsson, Henrik & Wängnerud, Lena (eds.), *Metodpraktikan: konsten att studera samhälle, individ och marknad*, 4., [rev.] edition., Norstedts juridik, Stockholm, 2012: 109, 159.



scientifically studying political communication.<sup>43</sup> This thesis has a descriptive purpose as it aims to analyze the concepts of peace and justice and how they relate to each other in the Colombian context. By reading texts through a theoretical lens a describing idea analysis aims to uncover and analyze messages.<sup>44</sup>

To structure the material this thesis will rely on an analytical instrument based on idea analysis. Such analytical instruments are commonly constructed in two ways: through *dimensions* or *ideal types*. This thesis will be based on the former category. The dimensions are dependent on theory, but can be creatively constructed with regards to material, research questions and purpose. Their function is to frame aspect of the material that are of interests and relevance for the analysis. Dimensions are useful for this thesis because they can be made to distinguish different claims, as well as different specifications of one single claim.<sup>45</sup> However, dimensions are problematic as they can appear to be forced onto the chosen material, a problem that will be remedied by reconnecting the research question and analysis in the final chapter.<sup>46</sup>

### 3.3 Analytical strategy

The abovementioned theories on peace and justice lend themselves well to the construction of dimensions. Within transitional justice theory justice is divided into two types: restorative and retributive. These types will serve as two dimensions for analyzing the concept of justice. When analyzing peace, the two dimensions will be based on Galtung's categories of peace: negative and positive.

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<sup>43</sup> Beckman, Ludvig, *Grundbok i idéanalys: det kritiska studiet av politiska texter och idéer*, Santérus, Stockholm, 2005: 11, 14.

<sup>44</sup> Beckman, 2005: 49–50.

<sup>45</sup> Beckman, 2005: 25–28.

<sup>46</sup> Bergström, Göran & Boréus, Kristina, "Samhällsvetenskaplig text-och diskursanalys", in Bergström, Göran & Boréus, Kristina (eds.), *Textens mening och makt – metod i statsvetenskaplig text-och diskursanalys*, 2 ed., Studentlitteratur, Lund, 2005: 49–50.

Contextual factors

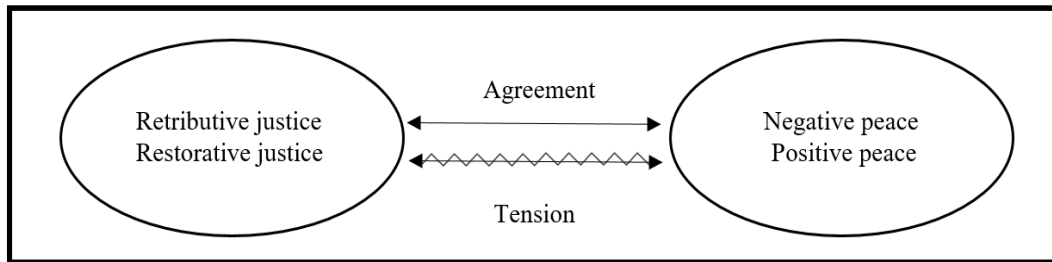


Table 2. Analytical dimensions

With regards to the dimension of *restorative justice* topics such as reconciliation efforts in the form of ceremonies, meetings between victims and perpetrators, and efforts for uncovering the truth will be analyzed. To clarify, the pursuit of truth is regarded as form of restorative justice in accordance with Goldstone and Biggar. In turn, concerning the dimension of *retributive justice*, topics such as punishment, accountability, reparations for victims, and trials will be analyzed.

Negative peace in peacebuilding praxis is perceived as the end of hostilities and armed conflict, which is how it will be operationalized in the analysis. In turn, positive peace is the absence of structural violence, in other words a durable long-term peace in peacebuilding praxis. Finally, tensions between the goal of peace and the goal of justice are understood as tensions between the negotiation parties. It is between these two that peace and justice will be negotiated, therefore agreements or disagreements on appropriate measures, or expressed difficulties with negotiations or reaching goals are understood as tensions.

As mentioned earlier, two of Albin's four contextual factors will be utilized in the analysis as complementary to the analytical dimensions above. In order to make them more applicable in the analysis they have been divided into smaller parts. These are:

- Some aspects of justice reduce or heighten the tension with peace.
- How power is distributed between negotiation parties will affect the degree to which justice is compatible with peace.
- Peace and justice relations will benefit from parties having compatible or reconcilable notions of justice.

The factors will be given their own sub-section in the analysis, aside from the first factor because it is incorporated into the analysis of peace and justice exclusively.

Based on the importance of international law suggested by previous research on Colombia<sup>47</sup>, this thesis will add a third factor:

- International legal institutions and frameworks can pressure governments to handle victimizers more severely and to ensure victims' rights.<sup>48</sup>

### 3.4 Material

In order to grasp the complex relationship between peace and justice within the Colombian peace negotiations different types of materials will be utilized. When studying cases of conflict resolution Daniel Druckman emphasizes documents as important sources of material. Discussions between negotiating parties, speeches by leaders or representatives, and events observed by scholar-researchers are some examples. Primary sources are preferable, however Druckman explains that both first and second-person documentation have been used when analyzing different topics of conflict resolution.<sup>49</sup>

To achieve a satisfying depiction of the way peace and justice relate within negotiations and between parties, the source material comes from various contexts. Official documents constitute one such category. For instance, the first peace agreement *Final Agreement to end the Armed Conflict and Build a Stable and Lasting Peace* (signed in September 2016), and Joint Communiqués published by the government and the FARC-EP during negotiations. The parties decided to issue Joint Communiqués directly from the negotiations to facilitate public disclosure about the negotiations. These sources are thought to represent the parties shared notions concerning the peace process. However, it is possible that they withhold

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<sup>47</sup> Acosta Arcarazo, Buchan & Urueña, 2015; Weiner, 2016.

<sup>48</sup> Acosta Arcarazo, Buchan, & Urueña, 2015: 306; Riaño Alcalá & Uribe, 2016: 10-11.

<sup>49</sup> Druckman, Daniel, "Doing Conflict Research through a Multi-Method Lens", in Bercovitch, Jacob, Kremenjuk, Victor, & Zartman, I. William (eds.), *The SAGE handbook of conflict resolution* [Electronic resource], SAGE, Los Angeles, 2009: 14. Available at: [http://sk.sagepub.com.ludwig.lub.lu.se/reference/hdbk\\_conflictresolution/n8.xml](http://sk.sagepub.com.ludwig.lub.lu.se/reference/hdbk_conflictresolution/n8.xml)

information regarding possible tensions or conflicts between negotiation parties. To remedy this concern, separately produced source materials from either the government or the FARC-EP are included. Examples are interviews, blog entries, and transcribed speeches. This material derives from the leaders of both parties. The Colombian Government is represented by President Santos, and the FAR-EP by their current Commander in Chief Timoleón Jiménez. Seeing that these materials did not emerge from negotiations, it could be possible that leaders and representatives speak more freely about their concerns and apprehensions.

<b>FARC-EP material – Commander in Chief Jiménez</b>	<b>Joint material</b>	<b>Colombian government material – President Santos</b>
Blog Entries (6) Official Statements (2)	Joint Communiqués from 2012-2016 (8)  <i>Final Agreement to end the Armed Conflict and Build a Stable and Lasting Peace</i> (Signed September 2016, rejected by referendum October 2016)	Official statements/speeches (4)  Interviews (3)

Table 3. Material Categories.<sup>50</sup>

Due to linguistic shortcomings, the material will be limited to documents originally in or translated to English. An English translation of the peace agreement signed in September can only be retrieved from the official website of FARC-EP. Websites of the Colombian government has so far only published the agreement in Spanish. Initially, this seemed like an obstacle for source credibility. However, when comparing the Spanish peace agreement with the English translation there seem to be the same structure and content. The agreement on the FARC-EP website should not be any different than the one published by the government. FARC-EP has made their own stance clear by stating their opinions in sections separate from the agreement.

<sup>50</sup> The numbers within parenthesis indicate the number of materials that were analyzed.

The peace agreement consists of six items with sub-agreements. These items concern everything from rural reform and political participation, to ending ceasefires and solving the problem of illicit drugs. Not all items are of relevance for the aim of this thesis. Therefore, special attention will be given to the fifth extensive agreement on “Victims” which discusses accountability, reparation, and truth amongst other things.<sup>51</sup>

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<sup>51</sup> Joint Communiqué #93, Havana, Cuba, August 24, 2016. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-93-24-de-agosto-de-2016-vf-ingles-1472131587.pdf>. Accessed: 2016-11-29.

## 4 Empirics

This section is divided into two parts. First, the contextual factors mentioned above will be examined and illuminated with examples from the material. Second, having explored the factors that might influence the way peace and justice relate in Colombia, attention is turned towards the dimensions for idea analysis. These were retributive and restorative justice, as well as negative and positive peace. Instead of giving each dimension its own section, which would make the analysis incoherent, it is divided into the parts retributive and restorative justice. The two dimensions of peace are still there, but not under individual sections. This is believed to make the analysis more cohesive.

### 4.1 Contextual factors

#### 4.1.1 Compatible or reconcilable notions of justice

As mentioned in the chapter on theory, peace and justice relations will benefit from parties having compatible or reconcilable notions of justice. What are the notions of justice in the Colombian peace process? In general, justice is thought of as satisfying victims' rights and vindications since it is them who have been wronged.<sup>52</sup> It is an overall theme that is found in the agreement, several Joint Communiqués, and official statements.

However, the Colombian government and the FARC-EP have somewhat differing notions about what kind of justice, restorative or retributive, is preferable. On the one hand, the government continuously express their commitment to justice as

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<sup>52</sup> First peace agreement, Item 5, Agreement on Victims. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-29.

various values such as victim's rights, reconciliation, and responsibility.<sup>53</sup> On the other hand, the FARC-EP itself states that “restorative justice is the best way to achieve the recovery of social morale, decontaminate political conducts and sow the seeds for the possibility of a general welfare”.<sup>54</sup> Before negotiations began in October 2012, the FARC-EP expressed their concerns with a future peace agreement, asking for pardons and amnesties for possible crimes.<sup>55</sup> Regarding the agreement on transitional justice, the FARC-EP would not engage in negotiations if its leaders would face imprisonment for crimes against humanity.<sup>56</sup> Possibly explaining the FARC-EP's emphasis on restorative measures.

Furthermore, the time-frame allowed for different parts of the agreement exemplify how difficult an agreement on justice was to reach. At the end of 2013, the negotiations had resulted in an agreement on the first point of the agenda: rural reform and political participation. However, the points on how to end the conflict and establish justice for its victims turned out to be significantly more difficult.<sup>57</sup> In May 2015 the dialogue on victims was extended in order to further the discussion.<sup>58</sup> The first three points of the agenda took 18 months to agree on. In comparison “Victims” and “End of Conflict” needed 28 months.<sup>59</sup> However, it's also important to note that victim participation in negotiations contributed to it being extended.<sup>60</sup> In summary, justice is thought of as satisfying victims' rights and vindications. Yet,

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<sup>53</sup> First peace agreement, Item 5, Agreement on Victims. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-29.

<sup>54</sup> FARC-EP, “FARC's point of view on victims”. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-15.

<sup>55</sup> Alsema, Adriaan, “FARC will demand pardon, amnesty in peace talks”, *Colombia Reports*, September 10, 2012. Available at: <http://colombiareports.com/farc-will-demand-pardon-amnesty-in-peace-talks/>, Accessed: 2016-11-29.

<sup>56</sup> Aguirre, Mariano, “How the guerillas were led to the negotiating table – and stayed”, *The World Today*, Vol. 71, No. 6, 2015. Available at: <https://www.chathamhouse.org/publication/twt/peace-within-colombia-s-grasp>. Accessed: 2016-11-29.

<sup>57</sup> Alsema, Adriaan, “Colombia's 2016 peace process – fact sheet”, *Colombia Reports*, September 25, 2016. Available at: <http://colombiareports.com/colombias-2016-peace-process-farc-fact-sheet/>. Accessed: 2016-11-29; FRANCE 24 English, *Exclusive interview of Colombian president Juan Manuel Santos*, [online video], January 26, 2015. Available at: <https://www.youtube.com/watch?v=pKbjmHX7KOo>. Accessed: 2016-11-29.

<sup>58</sup> Joint Communiqué # 52, Havana, Cuba, May 31, 2015. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/joint-communicue-no-1434034926.-52-may-31-2015-version-ingles-1434034926.pdf>. Accessed: 2016-11-29.

<sup>59</sup> Aguirre, Mariano, “How the guerillas were led to the negotiating table – and stayed”, *The World Today*, Vol. 71, No. 6, 2015. Available at: <https://www.chathamhouse.org/publication/twt/peace-within-colombia-s-grasp>. Accessed: 2016-11-29.

<sup>60</sup> Alsema, Adriaan, “Colombia's 2016 peace process – fact sheet”, *Colombia Reports*, September 25, 2016. Available at: <http://colombiareports.com/colombias-2016-peace-process-farc-fact-sheet/>. Accessed: 2016-11-29.

the government and the FARC-EP, who are both accused of crimes, have somewhat conflicting notions of what constitutes the most appropriate justice measures.

#### 4.1.2 Power distribution between negotiating parties

As previously mentioned in the chapter on theory, Albin suggests that how peace and justice relate can be influenced by the distribution of power between negotiating parties. Power in the sense of one side's capacity to move the other side in a specific direction and accomplish outcomes satisfactory to itself.<sup>61</sup>

A feature of the Colombian conflict and peace process that is significant, with regards to the distribution of power, is that almost all issues will be negotiated. An end to the conflict will not come about with one side winning and the other losing. During victors' justice it is likely that victors impose criminal prosecution on their former enemies.<sup>62</sup> Should the end of hostilities be negotiated with both sides guilty of serious crimes, it is also likely that the parties have conflicting ideas about accountability.<sup>63</sup> The Colombian military has been accused of so called *falsos positivos* (false positives). These are killings of civilians carried out in order to boost success rates. In some cases, the killings were committed in cooperation with paramilitaries.<sup>64</sup> In sum, for Colombia this means that the opinions of both sides need to be considered.<sup>65</sup>

With regards to the fact that there is no winning side in the Colombian conflict, both sides are prepared and able to end negotiations and continue war. Statements made during a military ceremony in July 2015 by President Santos might shed some light on this. President Santos stated that the Colombian Armed Forces would protect the FARC-EP's right to political dissent, should they decide to lay down their weapons. The FARC-EP has two options: disarm and engage in politics peacefully, or

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<sup>61</sup> Albin, Cecilia, *Justice and fairness in international negotiation*, Cambridge University Press, Cambridge, 2001: 41.

<sup>62</sup> Weiner, 2016: 220.

<sup>63</sup> Weiner, 2016: 220.

<sup>64</sup> International Criminal Court – The Office of the Prosecutor, *Situation in Colombia. Interim Report*, November, 2012: 3. Available at: <https://www.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285102/OTPCOLOMBIAPublicInterimReportNovember2012.pdf>. Accessed: 2016-12-03.

<sup>65</sup> Weiner, 2016: 220.



continue to wage war. Either way, President Santos stated, “the Armed Forces are prepared for one or the other”.<sup>66</sup> A declaration the FARC-EP perceived as arrogant.<sup>67</sup> Clearly, the relationship between the negotiating parties is marked by the impending threat that conflict can pick up where it left off.

As mentioned above, negotiations between two guilty sides are likely to result in conflicting ideas about accountability.<sup>68</sup> Since doing justice to victims implies naming victimizers some parts of the material suggested a struggle over who should assume responsibility. The FARC-EP has spoken openly about their apprehensions about the role of perpetrator. Under the tab “FARC’s point of view on victims”, an introductory statement to the Agreement on Victims, FARC-EP express their concern for the stigmatization of only one party to the conflict as exclusive perpetrator.<sup>69</sup> Similarly, in a blog entry on the FARC-EP website, FARC-EP leader Timoleón Jiménez argues that their organization is being unfairly branded as the worst offender. In contrast to state agents, who according to Jiménez are viewed as having individual and specific responsibilities, the FARC-EP has collective responsibilities and is perceived as a group.<sup>70</sup> In other blog entries, Jiménez explains that the guerilla is not exclusively responsible for the Colombian armed conflict. Something that he urges negotiators to keep in mind during discussions.<sup>71</sup> In Jiménez’s view, the FARC-EP is extensively portrayed as underdogs who should be “condemned without mercy”<sup>72</sup>, while police and military are given special

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<sup>66</sup> Presidencia de la República, “The FARC will have every guarantee to dissent, but without weapons: President Santos”, Bogotá, July 9, 2015. Available at: [http://wp.presidencia.gov.co/sitios/en/press-room/2015/july/Paginas/20150709\\_01-The-FARC-will-have-every-guarantee-to-dissent-but-without-weapons-President-Santos.aspx](http://wp.presidencia.gov.co/sitios/en/press-room/2015/july/Paginas/20150709_01-The-FARC-will-have-every-guarantee-to-dissent-but-without-weapons-President-Santos.aspx). Accessed: 2016-12-02.

<sup>67</sup> Jiménez, Timoleón, “The FARC-EP must appear to be the evil ones”, 12 July, 2015. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/784-the-farc-ep-must-appear-to-be-the-evil-ones.html>. Accessed: 2016-12-02.

<sup>68</sup> Weiner, 2016: 220.

<sup>69</sup> FARC-EP, “FARC’s point of view on victims”. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-15.

<sup>70</sup> Jiménez, Timoleón, “The real focus of the discussion on victims”, July 28, 2014. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/463-the-real-focus-of-the-discussion-on-victims.html>. Accessed: 2016-11-30.

<sup>71</sup> Timoleón, Jiménez, “Unravelling ideas (I)”, October 22, 2013. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/215-unravelling-ideas-i.html>. Accessed: 2016-12-02; Timoleón, Jiménez, “So much rhetoric is harmful, Santos”, September 25, 2013. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/179-so-much-rhetoric-is-harmful-santos.html>. Accessed: 2016-12-02;

<sup>72</sup> Timoleón, Jiménez, “Despite everything, we will persist”, August 9, 2014. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/479-despite-everything-we-will-persist.html>. Last modified: 2016-03-15. Accessed: 2016-12-02.

treatment.<sup>73</sup> Due to these views the FARC-EP also strongly opposed the legal framework, arguing it did not address the main responsibility of the State in the conflict.<sup>74</sup> More on this later on.

### 4.1.3 International legal pressure

In addition to previous factors, this thesis adds the impact of international legal pressure on the relationship between peace and justice to Albin's contextual factors. This addition builds on the importance of international law suggested by previous research on Colombia.<sup>75</sup> In the past, Colombia has tried both maximalist and minimalist approaches to transitional justice. According to Diego Acosta Arcarazo et al, both approaches were deployed because of the possible involvement of the ICC.<sup>76</sup> Moreover, that possible involvement pressures the Colombian government to handle victimizers more severely and to ensure victims' rights.<sup>77</sup> However, Pilar Riaño Alcalá and Victoria Uribe suggest that the recent importance of victims, memory, and reconciliation in Colombia should be understood as results of global trends within transitional justice. Since the mid-2000s human rights have been universalized and nation states put under pressure from international institutions.<sup>78</sup>

President Santos gave a statement in relation to this development when he said that justice today

[...] is a legal and political, domestic and international obligation, because we are subject to the treaties we have signed, to our own Constitution, as well as to the will of our people and the international community's opinion<sup>79</sup>

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<sup>73</sup> Timoleón, Jiménez, "What is so concerning about Santos' discourse on peace", July 18, 2014. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/454-what-is-so-concerning-about-santos-discourse-on-peace.html>. Last modified: 2016-03-15. Accessed: 2016-12-02.

<sup>74</sup> The FARC-EP, "5 Arguments Against the Legal Framework for Peace", July 6, 2015. Available at: <http://farc-epeace.org/background/item/778-5-arguments-against-the-legal-framework-for-peace.html>. Accessed: 2016-12-02.

<sup>75</sup> Acosta Arcarazo, Buchan & Urueña, 2015; Weiner, 2016.

<sup>76</sup> Carrillo, Arturo J., "Truth, Justice, and Reparations in Colombia", in Bouvier, Virginia M. (ed.), *Colombia: building peace in a time of war*, United States Institute of Peace, Washington, D.C., 2009: 135-136.

<sup>77</sup> Acosta Arcarazo, Buchan, & Urueña, 2015: 306.

<sup>78</sup> Riaño Alcalá & Uribe, 2016: 10-11.

<sup>79</sup> Presidencia de la República, "President Santos tells the FARC that it's time to make decisions to see whether there is peace or whether we are to remain at war", Bogotá, July 9, 2015. Available at:

President Santos further expressed that he refuses to

conceive of an international justice system that hinders the path of a nation that seeks, without neglecting its victims or neglecting the right to the truth, to end a conflict of half a century.<sup>80</sup>

Further reiterating that “[j]ustice can not be an obstacle for a country that seeks peace”.<sup>81</sup> Peace negotiators would rather not include the international justice system in the process since that risks justice becoming an obstacle for peace. In that respect ending a long conflict and achieving negative peace is prioritized.

As a further testament to the pressure of the ICC, Colombia’s government has during earlier peace processes decided to make use of the Rome Statute Article 124. The Article, called *Transitional Provision*, allows ratifying countries to refuse to accept the authority of the ICC with respect to war crimes committed by its nationals or on its territory for a seven-year period.<sup>82</sup> Arguments made for using Article 124 were that it would encourage illegal armed groups to continue negotiation with the government.<sup>83</sup>

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[http://wp.presidencia.gov.co/sitios/en/press-room/2015/july/Paginas/20150709\\_02-President-Santos-tells-the-FARC-that-its-time-to-make-decisions-to-see-whether-there-is-peace-or-whether-we-are.aspx](http://wp.presidencia.gov.co/sitios/en/press-room/2015/july/Paginas/20150709_02-President-Santos-tells-the-FARC-that-its-time-to-make-decisions-to-see-whether-there-is-peace-or-whether-we-are.aspx). Accessed: 2016-12-02.

<sup>80</sup> Presidencia de la República, “I refuse to conceive of an international justice system that hinders the path of a nation that seeks to end a conflict’: President Santos”, Cartagena, September 13, 2013. Available at: [http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130913\\_04-niego-concebir-sistema-justicia-internacional-obstaculice-camino-nacion-terminar-conflicto-Presidente-Santos.aspx](http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130913_04-niego-concebir-sistema-justicia-internacional-obstaculice-camino-nacion-terminar-conflicto-Presidente-Santos.aspx). Accessed: 2016-12-02.

<sup>81</sup> Presidencia de la República, “I refuse to conceive of an international justice system that hinders the path of a nation that seeks to end a conflict’: President Santos”, Cartagena, September 13, 2013. Available at: [http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130913\\_04-niego-concebir-sistema-justicia-internacional-obstaculice-camino-nacion-terminar-conflicto-Presidente-Santos.aspx](http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130913_04-niego-concebir-sistema-justicia-internacional-obstaculice-camino-nacion-terminar-conflicto-Presidente-Santos.aspx). Accessed: 2016-12-02.

<sup>82</sup> UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), Article 124. Available at: <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>; Acosta Arcarazo, Buchan, & Urueña, 2015: 294.

<sup>83</sup> Acosta Arcarazo, Buchan, & Urueña, 2015: 294.

## 4.2 Peace and justice

### 4.2.1 Retributive justice

#### 4.2.1.1 Prosecution and accountability

The basis of justice expressed in the agreement is an extensive and genuine response to the rights of victims.<sup>84</sup> In June 2014, the Colombian government and the FARC-EP agreed on a set of principles when discussing the agenda of victims. By combining judicial and extra-judicial mechanism, rights such as *recognition of the victims*, *recognition of responsibility* before the victims, *clarification of the truth*, and *principle of reconciliation* are believed to be satisfied.<sup>85</sup>

Yet, a couple of months later in December 2014 protesters across Colombia argued that the ongoing peace process was too lenient on the FARC-EP regarding prosecution for human rights abuses and crimes.<sup>86</sup> Therefore, attempts at achieving a balance between satisfying victim's rights and achieving peace is apparent throughout the agreement and several Joint Communiqués. This balance between peace and justice is illustrated in a Joint Communiqué released in September of 2015. Here the Colombian government and FARC-EP reaffirm their commitment to

[...] a justice formula that should satisfy the rights of the victims and contribute to the construction of a stable and long-lasting peace.<sup>87</sup>

The making of a “justice formula” lends itself to the idea of Colombia as a site for innovation with regards to creating the ideal peace settlement. President Santos

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<sup>84</sup> First peace agreement, Item 5, Agreement on Victims. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-29.

<sup>85</sup> Joint Communiqué, Havana, Cuba, June 7, 2014. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/Comunicado%20Conjunto%2C%20La%20Habana%2C%2007%20junio%202014-Versi%20n%20Ingl%20s.pdf>. Accessed: 2016-11-29. First peace agreement, Item 5, Agreement on Victims. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-29.

<sup>86</sup> Weiner, 2016: 217; BBC, “Farc 'amnesty': Colombian marchers reject 'impunity'”, *BBC*, December 14, 2014. Available at: <http://www.bbc.com/news/world-latin-america-30467655>. Accessed: 2016-11-29.

<sup>87</sup> Joint Communiqué # 60, Havana, Cuba, September 23, 2015. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-60-ingles-1443452175.pdf>. Accessed: 2016-11-29.

himself described the Colombian peace process as a pilot model which, if successful, could be an example to other nations.<sup>88</sup>

To reach the goal of creating a satisfying justice formula the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (hereinafter CSTJNR) has been developed. With regards to the previous literary review, CSTJNR has a holistic approach to transitional justice. It combines several different mechanisms in the pursuit of truth, justice, reparation, and non-repetition. Within the CSTJNR there are three complementary mechanisms with different functions: a Truth Commission, a Special Jurisdiction for Peace and an Amnesty Law.<sup>89</sup> Also, it should be noted that the judicial framework established to ensure justice for victims is called “Special Jurisdiction for Peace”, containing a “Peace Tribunal” where serious crimes will be investigated and prosecuted.<sup>90</sup> Deciding to incorporate peace in the naming of these institutions, instead of calling it “criminal tribunal” for instance, may say something with regards to the relationship between peace and justice. Rather than having peace versus justice, Colombia is trying to achieve peace with justice. As President Santos himself stated: “[w]e want as much justice as possible that will allow us to reach peace.”<sup>91</sup>

Regarding accountability, the System also adopts a holistic approach. It seeks to make all participants in the conflict, both combatants and non-combatants, responsible for their violent actions.<sup>92</sup> The Colombian State will issue “the broadest possible amnesty”<sup>93</sup> for crimes related to the conflict. Though, it will not grant

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<sup>88</sup> Presidencia de la República, “‘I refuse to conceive of an international justice system that hinders the path of a nation that seeks to end a conflict’: President Santos”, Cartagena, September 13, 2013. Available at: [http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130913\\_04-niego-concebir-sistema-justicia-internacional-obstaculice-camino-nacion-terminar-conflicto-Presidente-Santos.aspx](http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130913_04-niego-concebir-sistema-justicia-internacional-obstaculice-camino-nacion-terminar-conflicto-Presidente-Santos.aspx). Accessed: 2016-12-02.

<sup>89</sup> Joint Communiqué # 60, Havana, Cuba, September 23, 2015. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-60-ingles-1443452175.pdf>. Accessed: 2016-11-29.

<sup>90</sup> First peace agreement, Item 5, Agreement on Victims. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-15.

<sup>91</sup> Weymouth, Lily, “An interview with Colombian President Juan Manuel Santos”, *The Washington Post*, August 7, 2014. Available at: [https://www.washingtonpost.com/opinions/an-interview-with-colombian-president-juan-manuel-santos/2014/08/07/3eaff428-1ced-11e4-82f9-2cd6fa8da5c4\\_story.html?utm\\_term=.775690fb65cf](https://www.washingtonpost.com/opinions/an-interview-with-colombian-president-juan-manuel-santos/2014/08/07/3eaff428-1ced-11e4-82f9-2cd6fa8da5c4_story.html?utm_term=.775690fb65cf). Accessed: 2016-12-02.

<sup>92</sup> First peace agreement, Item 5, Agreement on Victims. Available at: <http://farc-epeace.org/peace-process/agreements/agreements/item/939-agreement-victims>. Accessed: 2016-11-29.

<sup>93</sup> Joint Communiqué # 60, Havana, Cuba, September 23, 2015. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-60-ingles-1443452175.pdf>. Accessed: 2016-11-29.

amnesty or pardon for the most serious crimes such as crimes against humanity, genocide, torture, and executions.<sup>94</sup> The government and FARC-EP were also sure to emphasize that they, in relation to the recognition of responsibility, would not exchange impunity.<sup>95</sup> The peace deal has been criticized for delivering impunity for criminals, as well not punishing former FARC-EP combatants who cooperate with the government.<sup>96</sup> Concerning this President Santos expressed the belief that some measure of justice will be sacrificed in order to reach a peace deal. President Santos views leniency towards cooperating ex-fighters as reasonable since the alternative is continuing conflict.<sup>97</sup>

With regards to the Special Jurisdiction for Peace tensions quickly emerged. The FARC-EP strongly opposed the legal framework on several grounds. The FARC-EP believed the framework was unilaterally imposed on them by the government. With regards to Weiner's previous claims the FARC-EP states that the conflict in Colombia does not have "any winners or losers". Therefore, the government cannot "act as if they had won the war and impose their decisions or their will", the FARC-EP must be treated as equals.<sup>98</sup> Furthermore, the framework follows the structure of transitional justice, which they believe is an accusatory and punitive process. Instead they promote a transition to social justice.<sup>99</sup>

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<sup>94</sup> Joint Communiqué # 60, Havana, Cuba, September 23, 2015. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-60-ingles-1443452175.pdf>. Accessed: 2016-11-29.

<sup>95</sup> Joint Communiqué, Havana, Cuba, June 7, 2014. Available at: [https://www.mesadeconversaciones.com.co/sites/default/files/Comunicado%20Conjunto%20La%20Habana%202007%20junio%202014-Versi\\_n%20Ingl\\_s.pdf](https://www.mesadeconversaciones.com.co/sites/default/files/Comunicado%20Conjunto%20La%20Habana%202007%20junio%202014-Versi_n%20Ingl_s.pdf). Accessed: 2016-11-29.

<sup>96</sup> Rosenberg, Mica, "Colombia President Santos: Some justice sacrificed for peace deal", Reuters, September 20, 2015. Available at: <http://www.reuters.com/article/us-colombia-president-idUSKCN0RU2NR20150930>. Accessed: 2016-12-03.

<sup>97</sup> Rosenberg, Mica, "Colombia President Santos: Some justice sacrificed for peace deal", Reuters, September 20, 2015. Available at: <http://www.reuters.com/article/us-colombia-president-idUSKCN0RU2NR20150930>. Accessed: 2016-12-03. LÄGG TILL MER

<sup>98</sup> The FARC-EP, "5 Arguments Against the Legal Framework for Peace", July 6, 2015. Available at: <http://farc-eppeace.org/background/item/778-5-arguments-against-the-legal-framework-for-peace.html>. Accessed: 2016-12-02.

<sup>99</sup> The FARC-EP, "5 Arguments Against the Legal Framework for Peace", July 6, 2015. Available at: <http://farc-eppeace.org/background/item/778-5-arguments-against-the-legal-framework-for-peace.html>. Accessed: 2016-12-02.

## 4.2.1 Restorative justice

### 4.2.1.1 Restorative measures of responsibility

In addition to retributive and judicial measures there are restorative measures of assuming responsibility, such as ceremonies of public recognition. In 2002, due to combat between FARC-EP and the now demilitarized paramilitary group AUC, a massacre of approximately 119 civilians took place in Bojayá.<sup>100</sup> With regards to the goals of accountability and responsibility in the peace process, a “ceremony of recognition of responsibility”<sup>101</sup> was held by FARC-EP in Bojayá on December 6, 2015.<sup>102</sup> In September 2016 a similar ceremony of public recognition was held with victims of the La Chinita massacre.<sup>103</sup> Both negotiating parties are committed to such restorative acts. Unlike the discussion about accountability and prosecution above, no apparent tensions have been identified between restorative measures such as ceremonies and the possibility of peace, negative or positive. However, similar to the discussion about accountability above, the FARC-EP has expressed concerns over the state not assuming their responsibility in the same capacity.<sup>104</sup>

### 4.2.1.2 The pursuit of truth

In the summer of 2015 the establishment of the *Commission for the Clarification of Truth, Coexistence, and Non-Repetition* was announced.<sup>105</sup> At that time, this was the first point of agreement settled within the agenda on “Victims”, which had been

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<sup>100</sup> Alsema, Adriaan, “FARC asks forgiveness for killing 79 in 2002 Bojaya massacre”, *Colombia Reports*, December 18, 2014. Available at: <http://colombiareports.com/farc-asks-forgiveness-2002-bojaya-massacre/>. Accessed: 2016-12-03.

<sup>101</sup> Joint Communiqué # 79, Havana, Cuba, July 4, 2016. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-79-ingles-1469199739.pdf>. Accessed: 2016-11-29.

<sup>102</sup> Joint Communiqué # 79, Havana, Cuba, July 4, 2016. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-79-ingles-1469199739.pdf>. Accessed: 2016-11-29.

<sup>103</sup> Joint Communiqué # 99, Havana, Cuba, September 12, 2016. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-99-english-1481637615.pdf>. Accessed: 2016-11-29.

<sup>104</sup> The FARC-EP, “5 Arguments Against the Legal Framework for Peace”, July 6, 2015. Available at: <http://farc-epeace.org/background/item/778-5-arguments-against-the-legal-framework-for-peace.html>. Accessed: 2016-12-02.

<sup>105</sup> Joint Communiqué, Havana, Cuba, August 5, 2014. Available at: [https://www.mesadeconversaciones.com.co/sites/default/files/Comunicado%20Conjunto%2C%20La%20Habana%2C%2005%20de%20agosto%202014-Versi\\_n%20Ingl\\_s.pdf](https://www.mesadeconversaciones.com.co/sites/default/files/Comunicado%20Conjunto%2C%20La%20Habana%2C%2005%20de%20agosto%202014-Versi_n%20Ingl_s.pdf). Accessed: 2016-12-02 .

going on for a year.<sup>106</sup> On the one hand, truth is perceived as a prerequisite for establishing coexistence and reconciliation, positive peace. On the other hand, truth is viewed as an outcome of ending hostilities, negative peace.<sup>107</sup> Moreover, truth is said to “satisfy the vindications of those who have been affected by the long confrontation.”<sup>108</sup>

Furthermore, a generational aspect comes across in the Colombian peace process that also relates to truth. As stated in Joint Communiqué # 93, potential justice should recognize the fundamental rights of young and future generations. Future generation have the right to know their ancestries and identity, and should not be held accountable for the actions of the preceding generations.<sup>109</sup> As mentioned in the chapter on theory, Goldstone argues that justice often is regarded as being concerned only with the past. Intended to attain retribution for past abuses and its victims.<sup>110</sup> In the Colombian context however, justice as generational lends itself to their comprehensive and holistic ambition. Justice should not only apply to past abuses, but also to future generations.

The pursuit of truth does not appear as a hindrance to ending the conflict in Colombia. Moreover, truth is perceived as a prerequisite for stable peace. In addition, how truth has been perceived in the current Colombian peace process corresponds to the findings of Priscilla B. Hayner. Hayner’s extensive work on truth in transitional settings concludes that truth commissions overall do not hurt peace negotiations. Moreover, Hayner claims that both rebel and government negotiators agree with relative ease to the proposal of initiating a truth commission.<sup>111</sup> In summary, both negotiating parties seem in favor of truth being a main objective in

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<sup>106</sup> Icacson, Adam, “What Colombia’s ‘Truth Commission’ Can, and Can’t Do”, WOLA – Advocacy for Human rights in the Americas, June 8, 2015. Available at: <https://www.wola.org/analysis/what-colombias-truth-commission-can-and-cant-do/>. Accessed: 2016-12-02.

<sup>107</sup> Joint Report, Havana, Cuba, June 4, 2015. Available at: [https://www.mesadeconversaciones.com.co/sites/default/files/informe-avances-comision-punto\\_5-english-1435355760.pdf](https://www.mesadeconversaciones.com.co/sites/default/files/informe-avances-comision-punto_5-english-1435355760.pdf).

<sup>108</sup> Joint Communiqué # 64, Havana, Cuba, December 15, 2015. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/joint-communicue-64-december-15-2015-1450285397.pdf>. Accessed: 2016-11-29.

<sup>109</sup> Joint Communiqué #93, Havana, Cuba, August 24, 2016. Available at: <https://www.mesadeconversaciones.com.co/sites/default/files/comunicado-conjunto-93-24-de-agosto-de-2016-vf-ingles-1472131587.pdf>. Accessed: 2016-11-29.

<sup>110</sup> Goldstone, in Moore (ed.), 1998: 198-199.

<sup>111</sup> Hayner, Priscilla B., *Unspeakable truths: transitional justice and the challenge of truth commissions*, 2. ed., Routledge, London, 2011: 14.



the peace process. So, truth itself does not appear to create any tensions with the possibility of peace and an end to hostilities. Although, it should be noted that the FARC-EP had apprehensions regarding how the truth was to be told. In another blog entry, FARC-EP commander Jiménez fears that the Colombian government will use truth to further their own ambition. Masking uncomfortable testimonies and emphasizing those useful to them.<sup>112</sup>

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<sup>112</sup> Jiménez, Timoleón, “The real focus of the discussion on victims”, July 28, 2014. Available at: <http://farc-epeace.org/blogs/timoleon-jimenez/item/463-the-real-focus-of-the-discussion-on-victims.html>. Accessed: 2016-12-02.

## 5 Concluding discussion

This thesis set out to analyze the concepts of peace and justice and how they relate to each other in the Colombian context. With regards to the contested dilemma of peace versus justice the thesis aimed to answer whether there are tensions between peace and justice in the Colombian peace process 2012-2016.

The aspect of justice that seem to heighten tensions with peace the most is related to retributive justice measures such as accountability and prosecution. The peace negotiations had been accused of leniency on FARC-EP offenders. Something that has been deemed necessary since the alternative is understood as continuing the conflict. Justice in terms of widespread prosecution is perceived as incompatible with achieving an end to the conflict. Thus, the agreement and several Joint Communiqués express the attempt at achieving a balance between satisfying victim's rights and achieving peace, both negative and positive. On one hand satisfying the victim's rights in terms of prosecuting victimizers appear as important to establishing durable peace. On the other hand, sacrifices on retributive justice must be made to end the hostilities. Furthermore, the analysis showed that the topic of responsibility and accountability created disagreements and tensions between the government and the FARC-EP. The FARC-EP accused the government of deliberately portraying them as the worst offender.

The contextual factor of international legal pressure on the relationship between peace and justice further emphasized the tensions between retributive justice and peace. Peace negotiators would rather not include the international justice system in the process since that risks justice becoming an obstacle for peace. In that respect ending a decades long conflict is prioritized. However, the government realizes that justice incorporates both domestic and international obligations, and Colombia is subject to the international community's opinion. As the peace agreement and the CSTJRNR demonstrates, these aspects are considered.

Conducting part of the analysis with emphasis on contextual factors has illuminated other important aspects of the peace and justice relationship in Colombia. The analysis established that the absence of a victor has consequences for the way peace and justice interact. Everything must be negotiated and no side can punish on the other unilaterally. A further consequence of the absence of a victor in Colombia is that the relationship between the negotiating parties is marked by the impending threat that conflict can pick up where it left off. In sum, for Colombia this means that the opinions of both sides need to be considered. In addition, the claim that negotiations with both sides guilty of serious crimes will result in them having conflicting ideas about accountability is reinforced. As mentioned above the topic of accountability created disagreements and tensions between the negotiating parties.

The features of justice that seem to relax the tension with peace the most are restorative measures. Both negotiating parties are committed to acknowledging responsibility through ceremonies and meetings with victims, as well as to the pursuit of truth. However, the same tensions regarding retributive measures can be found with restorative measures. Again, the FARC-EP expressed concerns over the state not assuming their responsibility in the same capacity. However, should the state not engage in similar ceremonies it does not appear as a hindrance to achieving neither negative or positive peace. As previously mentioned, the FARC-EP itself prefer restorative justice measures.

In summary, by combining a contextual analysis with a structured idea analysis based on transitional justice theories, this thesis has contributed to the argument that some aspects of justice relax or heighten the tension with peace. Whereas retributive justice heightens the tension with peace, both in terms of ending conflict and establishing durable peace, restorative justice relaxes the tension. Therefore, in line with several scholars, it would be inaccurate to state that justice and peace in Colombia are categorically undermining each other.

However, it is important to note that these findings are based on material produced by the two negotiating parties. To achieve an even greater understanding on how peace and justice relate within Colombia the method could be improved by incorporating civil society and victim's groups. With regards to the method of idea

analysis, which lends itself well to comparison over time, a favorable development would be to examine Colombia's previous attempts at peace. Examining if there has been changes in how peace and justice interact. Another desirable addition to the analysis of peace and justice in Colombia would be to analyze how political and economic interests impact the peace process. Either way, there are plenty of opportunities for further exploration of the Colombian peace processes and the contested dilemma of peace and justice.

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