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## The special jurisdiction for peace in Colombia: possible International conflicts of jurisdiction\*

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### ABSTRACT

This research discusses the issues of the Special Jurisdiction for Peace in Colombia regarding its international jurisdiction. Subject matter jurisdiction, personal jurisdiction, and applicable law to its proceedings will be discussed in order to identify the scenarios where the SJP could come across a forum conflict. Thus, the scope of jurisdiction of the International Criminal Court (ICC), the application of the complementary principle, amnesty recognition in foreign forums, universal jurisdiction, and extradition will be studied vis-à-vis the SJP. More importantly, this paper will help to understand the relation between the SJP and foreign forums regarding *res judicata* and judgment recognition. The principal objective of this paper is to identify in which scenarios the SJP would come across with an international conflict of jurisdiction. Methodologically, this research draws on both theoretical and analytical methods. It refers to both domestic and international law, and case-law to determine the applicable legal framework to the SJP. By the same token, it analyzes in which scenarios conflicts of jurisdiction issues would arise

and how these issues could undermine SJP's effectiveness. In short, this paper concludes that the SJP has overlapping jurisdiction with the ICC. Likewise, it draws upon the idea that foreign governments could instate parallel proceeding should they find that amnesty and pardon in Colombia are not grounds for dismissing criminal charges or civil liability lawsuits in their own jurisdiction.

**KEY WORDS:** Special Jurisdiction for Peace, conflict of jurisdiction, amnesty and pardon.

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## **La jurisdicción especial para la paz en Colombia: posibles conflictos internacionales de jurisdicción**

### **RESUMEN**

Esta investigación discute las problemáticas de la Jurisdicción Especial para la Paz con relación a la jurisdicción internacional. Se analizará la jurisdicción material y personal, así como la ley aplicable a sus procedimientos, con el objetivo de identificar los escenarios en los cuales la JEP podría estar envuelta en un conflicto de foro. Por ello, el ámbito jurisdiccional de la Corte Penal Internacional, el principio de complementariedad, reconocimiento de amnistía en foros extranjeros, la jurisdicción universal y la extradición, serán temas que se abordarán a la luz de la JEP. Especialmente, este artículo ayuda a comprender las interacciones entre la JEP y los foros extranjeros respecto de la cosa juzgada y reconocimiento de sentencias. El principal objetivo de este artículo es establecer los posibles conflictos internacionales de jurisdicción de la Jurisdicción Especial para la Paz. Para ello, metodológicamente, esta investigación utiliza tanto un método teórico como un método analítico. En primer lugar, recurre a la legislación y jurisprudencia nacional y extranjera con el fin de determinar el régimen aplicable a la JEP. Asimismo, analiza los escenarios en los cuales los conflictos de jurisdicción podrían surgir y cómo éstos podrían afectar la efectividad de la JEP. En concreto, este artículo concluye que la jurisdicción de la JEP se solapa con la CPI. De igual modo, se refiere a la idea que los gobiernos extranjeros podrían iniciar procedimientos paralelos en caso que consideraran que la amnistía y el perdón otorgados en Colombia no son razones suficientes para descartar la persecución penal o reparaciones civiles en sus propias jurisdicciones.

**PALABRAS CLAVE:** Jurisdicción Especial para la Paz, conflictos de jurisdicción, amnistía y perdón.

## Introduction

The Special Jurisdiction for Peace in Colombia (hereinafter, SJP) will be addressed in this paper. The fact that, as a type of transitional justice, the SJP will have to face many challenges in at least three different scenarios will be argued. Firstly, since it will investigate and prosecute international crimes falling within the scope of the International Criminal Court (ICC), which could exercise jurisdiction over the worst offenders in the application of the complementary principle. Secondly, many jurisdictions around the globe might not be fond of recognizing *res judicata* over crimes committed to their nationals or in their own soil, which had been previously prosecuted in Colombia by the SJP<sup>1</sup>. Finally, many countries would be willing to exercise universal jurisdiction over international crimes committed in Colombia.

This paper will also argue that each of the mentioned issues arises from the judicial and non-judicial measures that will be applied by the SJP. As a matter of fact, according to Act 1820 of 2016 and Act and 1957 of 2019, the Special Jurisdiction for Peace shall not only prosecute crimes but also shall grant amnesty and pardon to many crimes committed during the armed conflict in Colombia. Amnesty and pardon will end any form of criminal prosecution and civil liability<sup>2</sup>. Furthermore, even the worst criminals will have the right to receive reduced penalties if they cooperate with authorities. However, outside Colombian borders, the idea that every country would avoid exercising their own jurisdiction could not be taken for granted. Therefore, if a crime committed during the armed conflict in Colombia falls within the scope of another country's jurisdiction, chances are that it will not matter whether it has been previously prosecuted or not; countries will probably carry out an autonomous prosecution if their best interest is served.

Issues regarding substantial law and national courts' scope of jurisdiction to enforce their own domestic law will not be discussed, though. This paper shall pursue to identify the possible international conflicts of jurisdiction and overlapping scope of jurisdiction regarding the SJP. In order to achieve this goal, this paper follows a qualitative methodology that ascertains the scope and legal boundaries of the SJP found in the Legislative Act 01 of 2017 and other special regulations. Then it analyzes the potential international forums where SJP's proceedings could encounter further judicial challenges.

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<sup>1</sup> A good example of such interactions could be found within the Justice and Peace Act of 2005 in Colombia. It has been argued that such law undermined the actual opportunities to prosecute major crimes committed by paramilitaries in Colombia. For the Colombia Government, extradition of criminals to the US under drug-trafficking charges proved to be more compelling than prosecuting crimes that would have fallen within the subject-matter jurisdiction of the ICC. (Urueña, 2017, p. 115).

<sup>2</sup> Nonetheless, it is worth noting that pursuant to Article 150 subparagraph 17 of the Constitution establishes that whenever a person has been amnestied for politically motivated crimes as well as relieved from its civil liability, the Colombian State would be obliged to pay for the compensations owed to the victims. Arguably, this would mean that the Colombian State might have to face multiple lawsuits over the next few years. The foregoing raises a number of issues concerning financial stability and whether the actual resources available to cover such compensations would be enough to comply with international standards regarding victims' rights.

Although the Special Jurisdiction for Peace is a new judicial system and a relevant case-law has not been issued yet, there is a great amount of literature and several scholars have addressed the jurisdictional conflict<sup>3</sup>. Regarding transitional justice, there has been great interest around the globe in understanding the role of the ICC or foreign forums in jurisdictional conflicts as well<sup>4</sup>. Previous examples such as the former Yugoslavia, Rwanda, Sierra Leona, Chile, Argentina, and South Africa, set the path of how the ICC and other major countries would overlook the proceedings before the SJP.

This paper is developed in three parts: a) a general understanding of the SJP from its origins in the Peace Agreement to its final implementation in domestic law regarding subject matter jurisdiction, personal jurisdiction, and applicable law; b) an analysis of subject matter jurisdiction of the ICC and the application of the complementary principle; c) an assessment of major issues of the SPJ about amnesty and pardon, universal jurisdiction, and extradition.

## **I. Understanding the Special Jurisdiction for Peace**

The SJP is a form of transitional justice that sets several judicial and non-judicial measures in order to address the implementation of peace in Colombia after the agreement signed between the Government and the Revolutionary Forces of Colombia (FARC-EP). This judicial system was created in November of 2016 amid the Final Agreement as a part of a comprehensive system for investigating and prosecuting the different participants involved in the armed conflict. It was executed by Legislative Act 01 of 2017. It was established for prosecuting crimes committed before December 1<sup>st</sup> of 2016 during the armed conflict in Colombia (Article 5).

However, the SJP had its origins before, in 2012, when the Legislative Act 01 of 2012 fixed the general legal framework for guiding peace negotiations and the design of a device of transitional justice. As stated in article 1 of the mentioned Legislative Act:

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<sup>3</sup> See Hartley, T.C. (2015) *International commercial litigation*. Cambridge: Cambridge University Press. Goldschmidt, W. (1952). Jurisdicción Internacional. *Revista Española de Derecho Internacional*, 5(1), 163. Buxbaum, H.L. (2009). Territory, Territoriality, and the Resolution of Jurisdictional Conflict. *American Journal of Comparative Law*, 57(2), 631. Posch, W. (2004). "Resolving business disputes through litigation or other alternatives: the effects of jurisdictional rules and recognition practice. *Houston journal of international law*, 26(2), 363-383. Burbank, S. B. (2004). Jurisdictional Conflict and Jurisdictional Equilibration: Paths to a Via Media. *Houston journal of international law*, 26(2), 385. Cuniberti, G. (2005). Forum Non Conveniens and the Brussels Convention. *International and Comparative Law Quarterly*, 54(4), 973.

<sup>4</sup> See Arsanjani, M. H. (1999). International Criminal Court and National Amnesty Laws. *American Society of International Law*, 93, 65. Drumbl, M. A. (2001). Juridical and Jurisdictional Disconnects. *Finnish YearBook of International Law*, XII, 119. Williams, M. S.; Nagy, R. and Elster, J. (2012). *Transitional Justice*. New York: University Press. De Greiff, P. and Angermaier, C. (2004). Theorizing transitional justice, The ICC and Amnesty: Can the Court Accommodate a Model of Restorative Justice?. *Eyes on the ICC*, 1, 131.

The transitional justice measures shall be exceptional and shall have as its final goal to allow the end of the internal armed conflict and to achieve a permanent and stable peace, with a warrant of non-repetition and safety for Colombian people; and it will guarantee to the highest possible level the victims' rights to truth, justice, and restitution. Statutory law can authorize that —within a peace treaty framework— participants in the armed conflict will receive differential treatment, as well as state agents regarding their involvement.

Through a statutory law, judicial and non-judicial measures of transitional justice could be established, in order to guarantee the State duties of investigation and prosecution. Nevertheless, non-judicial measures for clarification of truth and victims' restitution will be applied<sup>5</sup>.

Subsequently, this provision was challenged for being allegedly contrary to the Constitution. To the claimants, it was obvious that the legal framework for peace suffered from a limited scope of action. It was asserted that Colombia had already signed several international humanitarian instruments, which obliged the country to investigate, prosecute, and try every human rights violation.<sup>6</sup> Thus, a law could not modify this obligation by simply stating that the State shall 'guarantee to the highest possible level the victims' human rights' (Constitutional Court of Colombia, Ruling C-579, 2013).

A number of key issues were consequently addressed by the Constitutional Court in a very important judgment. The ruling C-579-2013 confirmed that Legislative Act 01 of 2012 had to be held as a matter of constitutional law and draw the course of action for the State's compliance to its duty to investigate, prosecute and try human rights violations and serious crimes against international humanitarian law.

Therefore, according to the Constitutional Court, none of the charges argued by the claimants were reasonable. The court ruled that the legal framework for peace did not limit the State's accountability regarding human rights violation:

The State did not resign its obligations due to the following facts: 1) concentrating the accountability for crimes committed against humanitarian law or human rights violations solely on the most liable individuals does not imply to cease the investigation of every crime against humanity, genocide or war crime, but actually meaning the possibility to prosecute those who have had an essential role in their commission; 2) additionally, macro-criminal structures designed to massively violate human rights will be suppressed. (Constitutional Court of Colombia, Ruling C-579, 2013)

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<sup>5</sup> From now on, any Colombian law provision or judgment will be authors' translation.

<sup>6</sup> Such as Convention for the Protection of All Persons from Enforced Disappearance, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Statute of the Inter-American Court of Human Rights, etc.

Undoubtedly, this ruling should not be considered as groundbreaking or unusual. As a matter of fact, 'it is now commonly understood that the term transitional justice refers to the set of measures implemented in various countries to deal with the legacies of massive human rights abuses. These measures usually include criminal prosecutions, truth-telling, reparations, and different forms of institutional reform. (Williams, Nagy and Elster, 2012, p. 34).

Hence, the next step to introduce a mechanism of transitional justice was given once the Constitutional Court had held the legality of the measures provided in the Legislative Act 01 of 2012. The path for the implementation of the SJP was officially set.

One of the most striking features of the SJP is the jurisdictional scope of this measure of transitional justice due to the complexity of crimes that would be solved, and the number of participants involved in a more than 50-year conflict. The Constitutional Court in a ruling of 2017 determined, *inter alia*, that whilst some sections of the act were declared unconstitutional, the final peace agreement and the SJP did not violate the constitutional order nor breached the check and balances in Colombia for having a differential criminal treatment. In other words:

In transition scenarios, the scope of the hierarchical superiority principle as also been clarified, emphasizing that the need to materialize peace as a value, principle and constitutional right can justify even a relaxation of the mechanisms that ensure the supremacy of peace (Constitutional Court of Colombia, Ruling C-674, 2017).

Hence the Constitutional Court held a less extreme pro-prosecution view, following what many scholars have ascertained regarding the limits on prosecuting crimes (Han, 2006, p. 104):

Despite the call for justice in the abstract, transitional practices over the last half-century reveal the recurring problems of justice as a result of the norm shift characterizing transition. These compromised conditions of justice mean that there are real limits on the exercise of punishment power in periods of political transition. These real rule of law dilemmas help explain why, despite the dramatic expansion in criminal liability in the abstract, enforcement lags far behind. (Teitel, 2014, p. 151)

The Constitutional Court clearly defined the SJP following three criteria:

(i) the universality of the system, so the persecutory function extends to all the actors of the armed conflict; (ii) the selectivity in the persecutory function; therefore, the duty to investigate, prosecute and punish concentrates on those most responsible for the most serious and representative crimes; (iii) the creation of a scheme of conditioned incentives.

### **I.1. Subject-matter jurisdiction**

The SJP subject-matter jurisdiction is defined in the Final Peace Agreement as a general clause. This clause indicates that this instrument of transitional justice will hear the cases directly or indirectly related to the armed conflict in Colombia and the cases whose internal conflict was the cause for committing the felony or has played a fundamental role in the ability of the perpetrator to commit it (Colombia, Final Peace Agreement, 2016, para. 5.1.2.9).

The subject matter scope was regulated in article 5 of the Legislative Act 01 of 2017, and later addressed by the Administration of Justice Statute – Act 1957 of 2019, articles 8 and 62-. The former establishes that “it shall have preferential jurisdiction over any other jurisdiction vis-à-vis crimes committed prior to December 1, 2016, with a direct or indirect relationship with the armed conflict”. It is noteworthy to point out that those articles set a time limit pertaining to crimes committed during the armed conflict. In fact, it is stated that the Special Jurisdiction for Peace shall hear cases exclusively ‘if committed before December 1<sup>st</sup> of 2016’. After this deadline, any crime committed will only fall within the SJP’s scope if it is related to the abandonment of weapons.

In this regard, as delimited by article 5 of the Legislative Act 01 of 2017 and article 62 of the Act 1957 of 2019, any crime committed after December 1<sup>st</sup> of 2016 —and not related to the abandonment of weapons- shall fall within the scope of ordinary jurisdiction, which means that ordinary criminal courts will hear the cases and that criminal law penalties will be applied instead of those foreseen by the SJP.

As expected, the general clause of subject matter jurisdiction is not enough to embrace the whole issue. Many crimes committed during the conflict were crimes such as kidnapping or forced disappearance, meaning a continuous or permanent crime. According to Act 1957 of 2019, the latter shall not be deemed as crimes committed during the armed conflict. Thereby, it is unclear whether those crimes fall within the scope of the SJP. For those who participated in the abandonment of weapons, the SPJ will prosecute them. Unless they are not related to the conflict. In that case, such crimes shall be excluded from the SPJ. For that reason, regarding continuous or permanent crimes, if the SPJ determines that the conditions to be considered under the Peace Agreement were not met, then it shall waive its jurisdiction in favor of ordinary justice.

Regarding money laundering, Article 5 provides that the SJP will have jurisdiction over those crimes only if they were committed with goods or assets reported by the FARC-EP at the moment of signing the Final Peace Agreement. If a certain asset may be allegedly related to money laundering and had not been informed by the FARC-EP, then it will be immediately redirected to the ordinary jurisdiction.

Likewise, the SJP will have a prevalent jurisdiction over any other jurisdiction. Therefore, the reason why Article 6 of the Legislative Act 01 of 2017 and Article 32 of the Act 1957 of 2019 allocate in this jurisdiction the authority to override or waive any previously administrative ruling vis-à-vis disciplinary liability of any person is explained. The judicial review faculty even spreads out to any previous case-law issued by any other jurisdiction, except when the ruling had been issued by the Supreme Court. In that case, the Supreme Court itself will review the ruling.

## **1.2. Personal Jurisdiction**

The Special Jurisdiction for Peace has personal jurisdiction over those who have participated in the internal armed conflict in Colombia. However, this provision is not absolute. While any agent of the State such as military or public servants are eligible for being judged by the SJP, not everyone can be subpoenaed. When the person is not a member of a law enforcement agency or military, the SJP shall only have jurisdiction over those who voluntarily decided to submit themselves to this jurisdiction. Likewise, not every member of an illegal armed group can opt-in to appear before the SJP. Even though many people were directly involved in the internal armed conflict, not everyone will be judged by the SJP. Instead, only those who were FARC-EP members and were on the final list of members certified upon arrival at Transitory Normalization Places will be eligible for the SJP.

However, there is a special provision regarding the personal jurisdiction scope that must be assessed. The only persons that will not be subject to the SJP under any circumstances are the current president of the republic or any ex-president. That means that the presidential forum will not be affected by the new special jurisdiction.

In the case where before the SJP lies any evidence that compromises the liability of a person that has been president of the republic, such information shall be sent to the respective chamber of the House of Representatives (...)

It is not completely clear how these proceedings would be carried out. Whereas the SJP has no subpoena power over the president, there are no rules that specify what will happen if an ex-president is willing to submit his case to the SJP or voluntarily decides to resign his forum.

A number of key issues arise when third parties involved in the armed conflict are taken into account. What happens when a person without allegiance to neither an armed group nor the State itself had participated in the armed conflict? Article 16 of the Legislative Act 01 of 2017 provides a special rule for those cases. Any third party can voluntarily opt to attend the SJP, even if they had active participation in the commitment of crimes against humanity, genocide, war crimes, torture, and non-judicial executions, etc.

There are also several rules concerning State agents. First, there is a definition about who will be considered as a State agent:

State agent for the purposes of the Special Jurisdiction for Peace means any person who at the time of the commission of the alleged criminal conduct was exercising as a member of law enforcement agencies, as an employee or worker of the State or its decentralized entities, members of the Public Force regardless of their hierarchy, degree, condition or jurisdiction that has participated in the design or execution of criminal behaviors directly or indirectly related to the armed conflict. (Congress of Colombia, 2019, Act 1957, article 63)

For that reason, in order for these crimes to be considered within the scope of the SJP, Article 17 and Article 63, paragraph 2 of Act 1957 of 2019 declares that:

In order for such behaviors to be considered as susceptible of knowledge by the Special Jurisdiction for Peace, they had to be carried out through actions or omissions performed within the framework and on the occasion of the internal armed conflict and without the intention of illicit personal enrichment, or in case that it existed, without this being the determining cause of criminal conduct.

Finally, the issue of criminal responsibility of minors was regulated. The law indicates that the latter shall not be liable for crimes committed during the armed conflict as long as they had been committed before turning 18 years old. In such a case, the SPJ may waive the criminal prosecution.

### **I.3. Governing Law**

The SJP has a complex set of rules that would be applied to the cases known to the court. The Final Peace Agreement states that the current criminal law in Colombia is the applicable law in each one of the proceedings. However, it will be complemented with instruments of international law such as Humanitarian Law and International Criminal Law.

Notwithstanding, the Legislative Act 01 of 2017, the Acts 1820 of 2016, 1922 of 2018, 1957 of 2019, and the Constitutional Court provide many special rules that shall be applied in different scenarios. The SJP does not have to apply criminal law as a whole, but may use it as a guideline in order to identify offenses and responsible for crimes; criminal sanctions will not be applied, though. Act 1922 of 2018 provides the criteria for punishing criminals and declares in which cases the sanction will be alternative or ordinary:

Although the Colombian Criminal Code establishes the catalog of crimes and penalties, typifying, among others, crimes against life and personal integrity, such as genocide, homicide, and abortion (...) the Legislative Act 01 of 2017 provides the partial application of this

instrument in the context of the Special Jurisdiction for Peace. It must be used only for the qualification of the criminal behavior, but not to fix the sanctioning scheme, which obeys to a different logic which no longer is based on the seriousness of the behavior committed, but associated with other variables such as the victimizer's contribution to the truth and the reparation of the victims, when this contribution is produced. (Constitutional Court of Colombia, Ruling C-674, 2017)

The issue subsequently developed by the SPJ Statutory law of administration of justice. Section IX addresses the proper, alternative, and ordinary sanctions, clearly identifying the sanction for those who recognize the responsibility and comply with the requirements of exhaustive, detailed, and full truth. In those cases, the system imposes a restorative sanction that can go between 5 to 8 years, but with freedom of residence and movement (Congress of Colombia, 2019, Act 1957, article 126). The scenario is different from the alternative sanctions normally imposed on those who recognize truth and responsibility. The system imposes a retributive sanction. The person shall go to prison from 5 to 8 years; if the person did not have decisive participation in the most serious and representative conduct, the prison time will be from 2 to 5 years (Congress of Colombia, 2019, Act 1957, Articles 128 and 129). The ordinary sanction applies to those who appear before the SPJ and do not recognize truth or responsibility. The sanctions to be imposed would be an effective penalty of deprivation of liberty not less than 15 years and no greater than 20 (Congress of Colombia, 2019, Act 1957, Article 130). The foregoing does not apply to State agents that had been granted a specific prison jurisdiction as provided in Article 131 of regulation.

Finally, whereas many rules directly refer to instruments of international law, it does not mean that they will be fully applied. International Criminal Law shall be applied in order to identify criminal offenses but will not be the source of sanctions. As expected, this measure of transitional law does not attend to a model of retributive justice, rather it is structured around a restorative justice that awards different benefits in terms of the need to guarantee truth and reparation to the victims and to ensure certain conditions that prevent the replication of the violations originated in the armed conflict, as has been stated by some scholars regarding alternative sentencing within the SJP<sup>7</sup>.

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<sup>7</sup> The SJP was designed with the idea of warranting that none of the crimes falling within the scope of the ICC would be subject to pardon nor amnesty. In short, transitional justice cannot grant full amnesty on crimes that are sanctioned under the Rome Statute. Nevertheless, the SJP provides for alternatives sentences for war crimes or crimes against humanity. Therefore, albeit not amnestied, perpetrators would not be jailed or imprisoned. (Urueña, 2017, p. 121). Such trend of prohibiting full amnesty and pardon to war criminals or perpetrators of crimes against humanity under the Rome Statute has been progressively established by international tribunals. For further analysis on that subject see (Ambos, 2018, p. 119).

## 2. Overlapping scope of jurisdictions: SJP and ICC

Over the years of internal armed conflict, many international crimes have been committed in Colombia, such as massacres, arbitrary executions, forced disappearance, mass violations, and so forth. There are plenty of crimes against humanity and war crimes even after 2002 when the International Criminal Court was officially ratified in Colombia.

It is well known that the ICC shall exercise jurisdiction over the worst offenders responsible for the most serious crimes by virtue of the complementary principle. However, the SJP was created specifically to address those kinds of crimes and to hold accountable war criminals.

Since Colombia has already established a special jurisdiction for investigating and prosecuting crimes against humanity, there is little to no room for the ICC intervention. That is not the case, though. In fact, James Stewart Deputy Prosecutor of the ICC brought the issue on whether cases known to the SJP could be admissible before the ICC:

On the issue of admissibility, the judges of the ICC have held that the Prosecutor must determine whether the same persons who might be investigated and prosecuted before the Court are subject to genuine national proceedings for substantially the same conduct. The charges brought at the national level need not be labeled in the same way as Rome Statute crimes are, provided the underlying conduct is substantially the same. From the perspective of the ICC, investigations, and prosecutions, where warranted by the evidence, should usually occur against those most responsible for the most serious crimes. (Stewart, 2015, p. 10)

It is important to remark how the word “genuine” plays a vital role in his statement. In the words of Kelly:

While this concept is based at least in part on the notion of state sovereignty and the primacy of state jurisdiction, the ICC makes the ultimate determination of whether a country is “unwilling or unable” to “genuinely” prosecute the case. Therefore, a situation may arise in which a country claims that it will exercise jurisdiction over a case through the primacy of its jurisdiction but the ICC determines that the prosecutions are not “genuine,” and the OTP will prosecute the case. (Kelly, 2017, p. 809)

Provided an offender has been held accountable for crimes committed during the armed conflict, the worst-case scenario would imply that a person will be accused twice for the same crime in Colombia and before the ICC. Utterly this would mean that the exercise of jurisdiction by the SJP will not be considered sufficient, which might undermine the latter in Colombia (Kelly, 2017, p. 809).

Whereas the ICC has a complementary jurisdiction and shall exercise it as a court of last resort only when national courts have failed to fulfill their duty (Isau, 2015, p. 40), the final decision on whether national courts have complied lies upon the International Criminal Court itself. 'The principle of complementarity is one of the defining features of the ICC. According to this principle, countries have primary responsibility for prosecuting violations of international criminal law, and the ICC will only exercise jurisdiction over such crimes when a country that has jurisdiction is unwilling or unable to do so' (Kelly, 2017, p. 809).

Even though the Special Jurisdiction for Peace has subject matter jurisdiction over crimes covered by the Rome Statute, it is still uncertain whether its proceedings shall be considered genuine (Stewart, 2018).

Notwithstanding, there are some key elements that should be considered regarding the ICC's exercise of jurisdiction in Colombia. On one hand, the ICC has not a retrospective scope of jurisdiction. That means many crimes committed during the armed conflict shall fall outside the scope of the ICC. Indeed, one of the most important general limitations to the ICC's jurisdiction is that: 'The ICC will only have jurisdiction over crimes committed effectively from 1 July 2002, when the Statute came into force and with regards to States that became a party after the coming into force of the Statute, the ICC will exercise jurisdiction only after the date the Statute became applicable to such States' (Isau, 2015, p. 44). The foregoing is the case of many countries including Colombia, where the constitution requires that an international treaty must be first endorsed by a domestic law before entering into force (Yusuf, 2010, p. 102). On the other hand, Colombia might not be obliged to prosecute absolutely each one of the crimes committed during the armed conflict, since transitional governments are not required to investigate and punish all offenders (Radosavljevic, 2008, p. 243).

It could be asserted that on transitional regimes —such as Colombia- to prosecute and try offenders without any contemplation does not serve the best interest of justice. On the grounds of Article 53(1) (C) ICC Statute, the SJP's cases could potentially avoid proceedings before the ICC. The last one is a narrow path. As the Policy Paper on Preliminary Examinations of the ICC states:

In light of the mandate of the Office and the object and purpose of the Statute, there is a strong presumption that investigations and prosecutions will be in the interests of justice, and therefore a decision not to proceed on the grounds of the interests of justice would be highly exceptional. (ICC, 2013, para. 71)

Thus, everything depends upon whether or not the ICC finds that the proceedings before the SJP are genuine. One can identify at least two scenarios where the ICC might consider the State has failed to comply with its duty to prosecute the worst international crimes. One of the most important things about the SJP is the provisions regarding amnesty and pardon of certain crimes, as well as politically

motivated crimes. Whereas these rules do not specifically belong to the SJP, they do have a complementary role in pursuing peace. The SJP has established reduced and alternative penalties to offenders, notwithstanding how serious were the crimes committed pursuant to Article 13 of the Legislative Act 01 of 2017 and section IX of the Act 1957 of 2019. If an offender has complied with the SJP and has fulfilled some special conditions, it does not matter whether the crimes were very serious or not, he might not receive prison time at all. That does not mean, however, that there are no sanctions, rather it means that there is a focus on applying restorative justice. Those provisions were ruled-in by the Constitutional Court in holding C-80 of 2018 (Constitutional Court of Colombia, Ruling C-80, 2018, Para. 3.1.6).

On the other hand, in amnesty and pardon case-law, it would be quite hard to find room for an eventual ICC intervention, because nor does the Final Peace Agreement nor the SJP specify some kind of pardon to crimes against humanity, genocide or war crimes. Article 23 of the Act 1820 of 2016 provides that in no case shall the crimes that correspond to the following conducts be subject to amnesty or pardon: 'crimes against humanity, genocide, war crimes, taking or other serious deprivation of liberty, torture, extrajudicial executions, forced disappearance, violent carnal access and other forms of sexual violence, minor abduction, forced displacement, recruitment of minors, in accordance with the provisions of the Rome Statute'. This issue was somewhat addressed by article 42 of the Act 1957 of 2019, adding that they do not apply to crimes related to rebellion.

The issue does not arise from granting amnesty or pardon to the worst offenders, but whether or not there is an effective sanction to them. In other words, it could be argued that since the SJP embraces restorative justice rather than retributive justice, then the proceedings are not genuine (Colombia, 2017, Bill proposal Statutory Law for justice administration of SJP, article 127). Lack of imprisonment could mean that the State does not want nor is capable of prosecuting international crimes against humanity.

Some scholars have stated that in transitional regimes, penal objectives for each one of the jurisdictions involved must be taken into account (Angermaier, 2004, p. 131). While the objectives of transitional justice rely on restoration of rights, truth-telling, and peace (Williams, Nagy and Elster, 2012, p. 80 y ss), in international tribunals those considerations are not a priority since 'effectiveness will be dependent on the objectives of prosecutors since it is perceived, at local levels, that most senior perpetrators of the most heinous crimes known to humanity should not enjoy disproportionate and underserved leniency, be it through amnesties or charge discounts' (Radosavljevic, 2008, p. 255).

There are, in fact, a couple of examples where international tribunals have specifically asserted that the final objective of their mandate is to deter future violations of international criminal law through retribution (Radosavljevic, 2008, p. 237). In *Prosecutor v. Furundzija* the International Criminal Tribunal for the former Yugoslavia (ICTY) explained its sentencing policy:

It is the mandate and the duty of the International Tribunal, in contributing to reconciliation, to deter such crimes and to combat impunity. It is not only right that *punitur quia peccatur* (the individual must be punished because he broke the law) but also *punitur ne peccatur* (he must be punished so that he and others will no longer break the law). The Trial Chamber accepts that two important functions of the punishment are retribution and deterrence. (ICTY Trial Chamber, 1998, Judgment of 10 December 10)

It is remarkable that the Rome Statute does not establish the actual graduation of penalties. Article 77 provides imprisonment for a 30-year maximum or life imprisonment. However, it does not offer a minimum imprisonment time. This is a significant issue due to the fact that a sanction delivered by a national court for a crime prescribed in the Rome Statute, could be found not rigid enough and, thus, activate the complementary exercise of jurisdiction of the ICC (Radosavljevic, 2008, p. 239).

However, the prosecutor Stewart himself recognized that States have a wide range of discretion when it comes to sentencing (Stewart, 2015, p. 10). Moreover, he addressed the issue of reduced rulings and alternative sanctions in Colombia:

The Office of the Prosecutor has not found that the proceedings violated complementarity norms in the Rome Statute (...) In the end, the question will be whether alternative sentences, in the context of a transitional justice process, adequately serve appropriate sentencing objectives for the most serious crimes. The answer to that question will depend on the sort of sanctions that are contemplated when weighed against the gravity of the crimes and the role and responsibility of the convicted persons in their commission. (Stewart, 2015, p. 13-14)

As explained above, it is evident that legal grounds for an eventual ICC intervention in Colombia are very unclear. While the Office of the Prosecutor believes that the ICC shall assess jurisdiction over the crimes committed during the armed conflict in Colombia if holdings do not serve an adequate remedy for the most serious crimes, there is not a single provision in the Rome Statute that clearly describes such scenario.

Furthermore, Article 17(2) ICC Statute clarifies when a State is unwilling or unable to carry out the investigations and prosecutions. However, 'genuine proceedings' are not defined:

It is noteworthy, given the centrality of sentencing to holding individuals accountable for violations of criminal law, that sentencing is not mentioned in Article 17. This is particularly relevant in the context of the Colombian case. The language pertains to genuine investigations and prosecutions, and it is not clear that sentencing is included in this assessment of national proceedings. (Kelly, 2017, p. 813-815)

The overlapping scope of jurisdiction that both the ICC and the SJP have over violations of international criminal law, undermines the stability and the certainty of the proceedings that will be carried out in Colombia. Even if proceedings end with a judgment been delivered, one cannot ensure that the ICC will not intervene and assess jurisdiction. In conclusion, there is still a chance that some persons held accountable in Colombia by the SJP will be prosecuted later by the ICC due to finding sanctions inadequate.

### **3. Amnesty in foreign forums, universal jurisdiction, and extradition**

While the SJP could potentially avoid proceedings before the ICC (Hillebrecht, Huneus and Borda, 2018, p. 314), the stakes are not so high when it comes down to foreign forums. The Final Peace Agreement acknowledged that most armed groups in Colombia have had an ideological background. As a matter of fact, many of them arose when every form of communism was prohibited in Colombia (at least as a political party). Therefore, the internal armed conflict had its origins as a politically motivated war. Throughout the war, these illegal armed groups aimed to access political power and it is evident that many of the crimes committed had been politically motivated:

The conflict had its roots in partisan violence between members of what was then Colombia's two main political parties, the Liberals and Conservatives. La *Violencia*, as the fighting was known, began after the 1946 elections and reached its highest point following the assassination of Liberal candidate Jorge Eliécer Gaitán on April 9, 1948. A decade later, in 1958, the two parties forged a power-sharing agreement known as the Frente Nacional (National Front), which brought an end to the violence but with unanticipated consequences. The National Front's agreement closed the political system for other actors. In doing so, the National Front set the stage for Colombia's current civil conflict, which began in the mid-1960s when the Revolutionary Armed Forces of Colombia (FARC) first organized as an armed force. (Hillebrecht, Huneus and Borda, 2018, p. 288-289)

That may be the ground reason why in 2012 the Legislative Act 01 established in the legal framework for peace a provision that specified the need for statutory law to regulate amnesty and pardon of several politically motivated crimes:

A Statutory Law will regulate which will be considered politically motivated crimes for the purpose of the possibility of participating in politics. Crimes that acquire the connotation of crimes against humanity and genocide committed in a systematic manner may not be considered as a political offense, and therefore those who have been convicted and selected for these crimes may not participate in politics or be elected. (Congress of Colombia, 2012, Legislative Act 01)

While this provision does not affect *per se* the subject matter jurisdiction of the SJP, it does have a direct impact on the way the criminal proceedings will undergo. The Final Peace Agreement determined three criteria in order to identify which crimes shall be considered politically motivated and which will be eligible for amnesty and pardon. Firstly, any crime specifically related to the development of the rebellion committed during the armed conflict, such as the apprehension of combatants carried out in military operations. Secondly, the crimes in which the passive subject of the conduct is the State and its current constitutional regime. Finally, the conducts directed to facilitate, support, finance, or hide the development of the rebellion. It will be understood as behavior engaged to finance the rebellion all those illicit conducts in which no personal enrichment of the rebels has been derived nor be considered a crime against humanity, a serious war crime or genocide.

The statutory Act 1820 of 2016, following the specific rules in the Final Peace Agreement, provided clear guidelines to apply for amnesty and pardon. ‘While pardon is a post-conviction measure, granted to individuals on the basis of individualized considerations, amnesty is a pre-conviction measure, granted to groups of people based on public policy concerns. A pardon does not vitiate guilt for the underlying offense, whereas an amnesty erases the underlying offense itself’ (Han, 2006, p. 97). Moreover, following the Article 6(5) of Protocol II Additional to the Geneva Conventions, this law has a general clause of the best possible performance regarding extent and range of offenses that shall be subject of amnesty and pardon (Han, 2006, p. 102).

In order to obtain amnesty and pardon, offenders must comply with some requirements. The foregoing means that amnesty under the SJP is a “conditional amnesty”:

The laws of conditioned amnesty are those that condition the exemption from criminal liability to the performance of certain actions by those who wish to benefit from it. The nature of these actions can range from the demobilization and surrender of arms to the delivery of goods for the reparation of the victims, through active cooperation in the investigation of crimes committed by the armed forces or organized armed groups to which the beneficiary belongs, including the confession of own crimes (Olásolo, 2009, p. 269)

This brings up the question of whether amnesty should be granted immediately or should be ruled by the SJP. The statute and the following regulations (Congress of Colombia, 2016, Act 1820; 2018, Act 1922; 2019, Act 1957) established two venues for reaching amnesty in the post-conflict scenario. On one hand, it listed several offenses that would be automatically amnestied such as rebellion, sedition, riot, conspiracy and seduction, illegal usurpation, and the crimes that are related to them; Act 1820 of 2016 expressly listed the crimes considered as politically

motivated and related felonies. On the other hand, if the crimes do not belong to the previous list, then the SJP will have the final word on whether the crimes committed are susceptible to be amnestied. Be that as it may, according to article 83 of the Act 1853 of 2019, there shall not be amnesty concerning international crimes as described by the Rome Statute.

As explained above, amnesty and pardon have a vital role in the accomplishment and development of the SJP. Whereas many offenses were given amnesty, not everybody can benefit from it. State agents cannot be given amnesty. Despite this prohibition, they will be subject to differential criminal treatment (Congress of Colombia, 2016, Act 1820, Article 9). Besides the specific ban, amnesty shall be granted to any person without considering its nationality. This ultimately means that the design of the SJP took into account that many foreigners have had some kind of participation in the Colombian armed conflict (Congress of Colombia, 2016, Act 1820, Article 3).

The key issues regarding the cross-border effects of the armed conflict in Colombia might not even be within Colombian borders. In fact, for almost 30 years armed groups have financed themselves through drug trafficking, terrorism, extortion, and kidnapping. These crimes have had their effects in many countries and have affected many foreigners. They might be eligible for amnesty and pardon since none of them are considered to be serious violations of international criminal law<sup>8</sup>. Furthermore, those crimes will fall outside the scope of jurisdiction of the ICC (Isau, 2015, p. 42). The latter would finally mean that there is an open possibility that drug lords and other persons involved in drug-trafficking could receive reduced sanctions, escape extradition or be entitled to amnesty by the clause that allows granting amnesty for crimes committed with a political purpose (Williams, Nagy and Elster, 2012, p. 88). Likewise, not only amnesty will end any kind of criminal accountability, it will also put an end to every form of civil liability: 'In cases where amnesty, pardon or waiver of criminal prosecution is applied, no legal action will be taken against the beneficiaries of such measures for the compensation of the victims' (Congress of Colombia, 2016, Act 1820, Article 41). Such reasoning was followed by the Act 1957 of 2019 article 41. It indicates that the amnesty granted will extinguish the principal and accessory sanctions, as well as any civil liability derived thereof.

These kinds of provisions have been rather common in transitional scenarios around the globe. For example, the Truth and Reconciliation Commission for South Africa granted amnesties to many offenders on the sole basis of meeting a few requirements: 'These qualifications included that the act committed was associated with a political objective, occurred during the specified period, and, perhaps most importantly, the applicant admitted fault and made full disclosure

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<sup>8</sup> Further analysis on the kind of crimes that could be subject to amnesty and pardon under the SJP can be found in: (Zuluaga, 2018, pp. 213-219).

of all relevant facts' (Kelly, 2017, p. 827-828). Another example can be found in Chile, where the former head of State Augusto Pinochet was amnestied by law (O'Shea, 2000, p. 643).

Several very important questions arise regarding amnesty given by the SJP. Whereas the SJP does not grant amnesty to international crimes against humanity, it does grant amnesty to many crimes that have international and cross-border relevance such as drug trafficking and terrorism (Congress of Colombia, 2016, Act 1820). Other countries could still enforce their jurisdiction over those crimes, not only prosecuting the persons who have committed them but also seeking civil liability relief.

This is the case of universal jurisdiction (Bucher, 2015, p. 101). Raising universal jurisdiction as the legal ground for enforcing foreign courts' jurisdiction over crimes committed abroad has occurred in many countries. For example, Belgium, Germany, and the United Kingdom have had case-law regarding universal jurisdiction. In the case, *Butare Four*, crimes committed in Rwanda were prosecuted in Belgium (Kaleck, 2009, p. 933); in Germany, the U.S. militaries were investigated for torture crimes committed during the Iraq war (Gallagher, 2009, p. 1101); in the United Kingdom former Dictator, Augusto Pinochet was indicted for crimes against humanity (O'Shea, 2000, p. 643).

Whilst assessing jurisdiction and prosecuting international crimes against humanity or war crimes committed in a foreign State could be easily achieved through universal jurisdiction, the case is not so simple when it comes down to another set of crimes such as manslaughter, hijacking, drug trafficking, and terrorism since they are not listed as serious crimes.

Moreover, it could be argued that there are some scenarios where foreign courts shall assess jurisdiction over crimes known to the SJP. Civil liability cases could still be brought before foreign courts even though criminal prosecuting might be no longer available. For instance, the Alien Tort Statute provides an exceptional example of scenarios in which a civil liability lawsuit could be ruled in the United States notwithstanding the nationality or the place where the crimes were committed (Goldsmith and Goodman, 2002, p. 5). Likewise, the Torture Victim Protection Act and the Anti-Terrorism Act provide relief to US citizens who have suffered torture abroad by a foreign government official or have been affected by a terrorist attack (Bucher, 2015, p. 33). Even if the US court recognizes the amnesty for criminal proposes, it might be different for civil liability lawsuits.

Nonetheless, it is still a requirement to prove connecting factors between the crime and the United States' soil (US Court of Appeals 11th Circuit, No. 12-14898, 2014, Cardona, et al. V. Chiquita Brands International, Inc.). Otherwise, mere extraterritoriality may be held insufficient to assess US courts' jurisdiction:

Moreover, accepting petitioners' view would imply that other nations, also applying the law of nations, could have our citizens into their courts for alleged violations of the law of nations occurring in the United States, or anywhere else in the world. The presumption against extraterritoriality guards against our courts triggering such serious foreign policy consequences, and instead defers such decisions, quite appropriately, to the political branches. We, therefore, conclude that the presumption against extraterritoriality applies to claims under the ATS and that nothing in the statute rebuts that presumption. (Supreme Court of the United States, 2013, *Kiobel v Royal Dutch Petroleum Co.*, 569 U. S.)

Despite failing to obtain a favorable judgment from the US Courts, *Kiobel* did show that 'a good case can be made for the extraterritorial applicability of the ATS' (Cryer, 2014, p. 592). Furthermore, in Europe there is room for extraterritoriality cases based on criminal and civil law:

The liberalization of extraterritorial civil jurisdiction pursuant to Council of Europe Regulations has created the possibility that courts of European Union member states may assert jurisdiction over torts committed by corporations 'domiciled' in the European Union (EU) or by their foreign subsidiaries, even if the conduct took place outside the EU and against non-nationals. (Bhuta, 2014, p. 548)

Potentially, cases amnestied by the SJP could still be subject to lawsuits in foreign forums promoted by victims seeking civil compensation that cannot be achieved in Colombia. Europe and U.S support —at some level— the existence of universal civil jurisdiction (Cryer, 2014, p. 590). Cross-border civil litigation based on crimes committed in Colombia during the armed conflict will be more and more common once the SJP starts granting amnesty and waiver to criminal prosecution and civil lawsuits.

Whether amnesty will be recognized outside the legal system where it was granted is still unclear. Pinochet was beneficiary of an amnesty law in Chile. Notwithstanding, when he arrived in the United Kingdom such amnesty had little importance to English courts; he was either way prosecuted (O'Shea, 2000, p. 643). The relevant issues here are the effects that amnesty would have in foreign jurisdictions. 'A domestic amnesty law has no legal effect on the obligations of foreign states or the duties of their courts. Sometimes the principle of comity will lead a foreign jurisdiction to recognize the validity of a foreign domestic legal act' (O'Shea, 2000, p. 643). It is even more evident the fact that Pinochet's lawyers did not try to raise the amnesty granted in Chile as a bar to English courts (O'Shea, 2000, p. 644).

Even if the SJP grants amnesty, the legal effects of this benefit may perhaps only be applicable within Colombian borders. Foreign jurisdictions do not have to comply with a ruling on criminal matters rendered in Colombia.

One could assert that *res judicata* shall be raised as a bar to any kind of future prosecuting in a foreign State. Forum conflict might arise when crimes ruled by the SJP involve other countries or had their effects on foreign soil: ‘it is settled law ... that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders, which the state reprehends; and these liabilities other states will ordinarily recognize’ (Buxbaum, 2009, p. 638). Crimes committed by the former FARC members which had effects on foreign soil, such as drug trafficking and money laundering, could be entitled to be prosecuted by a court from abroad. This possibility highlights the issues of international law regarding cross-border crimes. For instance, if someone is being prosecuted in a foreign country and the SJP has subject matter and personal jurisdiction over that investigation, an extradition request may be deemed problematic, ‘since trials in absentia are in most States not allowed, States need to obtain the physical presence of the offender in their territory’ (Ryngaert, 2006, p. 55). In fact, an extradition request may be submitted when a foreign court has assessed jurisdiction (Kemp, 2009, p. 333). The SJP and an overseas court would have enforced their jurisdiction simultaneously<sup>9</sup>.

*Prima facie* no extradition request will be honored by Colombia if the person and the crimes fall within the subject matter jurisdiction scope of the SJP. In the case of an extradition request whether the crimes prosecuted abroad are international war crimes, terrorism, drug trafficking, manslaughter or any other, shall have no importance because the criminal has the legal guarantee that no extradition request will be enforceable whatsoever (Congress of Colombia, 2017, Legislative Act 01, Article 19).

The relevant problem does not rely on concurrent proceedings, but on the fact that an official request would need to have been made. Hardly anyone who has been amnestied could be prosecuted in a foreign country since the crimes would have been committed in Colombia, which has condoned them already (Ryngaert, 2006, p. 55). The only possibility relies upon asserting jurisdiction on the basis of cross-border crime. However, it would be really unlikely that a foreign court decides to assert jurisdiction over an ordinary felony with no international relevance. Even an extradition request based on terrorism —while possible— would be rare, since courts most likely would decline jurisdiction ‘on the basis of their rules of

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<sup>9</sup> For example, a renowned case concerning extradition was presented by Seuxis Paucias Hernández Solarte before the SJP in 2019. On the Ruling SRT-AE-030/2019, the SJP decided on the extradition request submitted by the US. According to the Tribunal, with regard to the non-extradition warranty, the foreign prosecutors must provide evidence of the timeframe in which the crime was committed. Whilst criminal responsibility would be judged in a foreign jurisdiction, the SJP ought to determine whether the indictment pertains to a crime committed within the armed conflict or after the Peace Agreement. Moreover, the tribunal asserted that extradition implies judicial cooperation between States, but, at the end, granting extradition depends solely upon the State for it is a sovereignty concern. That is the reason why the Peace Agreement specifically established such warranty. Finally, in this case, the SJP rejected the extradition request.

private international law' (O'Shea, 2000, p. 649) for not having a strong connecting factor to the foreign forum.

The issue might be a little different if the extradition request is based on an international crime falling within the scope of the ICC. 'Where there has been an extradition request from a state or a body representing the interests of the whole international community, an obligation to comply with that request is less easily avoided' (O'Shea, 2000, p. 657). There are not many rules in the SJP that address this issue. Article 19 of the Legislative Act 01 of 2017 has a special provision on extradition. This norm bans any kind of indictment or arrest for extradition purposes if the crimes charged fall within the subject matter jurisdiction scope of the SJP. In such cases, it does not matter whether the crimes are susceptible to being amnestied or not, nor will it matter the place where they were committed, in Colombia or somewhere else. The provision also states that any extradition request currently pending will be overridden by the SJP. Whenever an extradition request is based on crimes that might have been committed after the Final Peace Agreement, then the SJP will lose its jurisdiction over the case and will send the case to the ordinary criminal justice in Colombia<sup>10</sup>.

Likewise, Act 1957 of 2019, section XI addresses some features related to the aforementioned issue. It agrees with the Legislative Act and ascertains that the non-extradition warranty is only applicable to former FARC-EP members and persons accused to have been members of the latter. This is apparent to the extent that the crime had been committed before the date set in the Peace Agreement and, as long as the person has complied with the system, no extradition would take place.

The issue is nowhere near to be solved. What would happen if the ICC sent an extradition request asking for a former FARC member tried by the SJP? Would the outcome be different if another State makes the request based on serious international crimes? Would Colombia comply with its international duty? The answers to these questions might be beyond legal reasoning. Instead, political considerations and matter of international relations might have a lot more to say.

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<sup>10</sup> As of June 2020, the SJP has issued 5319 decisions which 1096 are holdings including concurrent and dissenting opinions. Therefore, the SJP has issued 890 holdings. When the tribunal has ruled the application of the non-extradition warranty, it has determined some criteria that must be met in order to accept extradition requests: extradition cannot be granted if the crimes had been committed during the armed conflict (Decision SRT-ST014/2018); to apply for the non-extradition warranty a special proceeding has been established, therefore, the action of protection is not the mechanism for such a request (Decision TP-SCRVR-ST-003/2018); it is a requirement that the applicant is currently listed as a FARC-EP member, if he or she was excluded such warranty is not applicable (personal criteria) (Decision TPSA-024/2018). Other relevant decisions on this subject are: STR-ST-018/2018, TP-SA-13/2018, SRT-AE-046/2019, TP-SA-120/2019, SRT-ST-095/2020.

## Conclusion

This article has argued that since the SJP in Colombia has jurisdiction over cross-border crimes and crimes falling within the ICC's scope of jurisdiction, then there are many possibilities to find an overlapping scope of jurisdiction between the SJP and other international and foreign forums.

For an ICC intervention in Colombia, the rules are not completely clear. The SJP will not benefit criminals with amnesty and pardon if the crimes committed are recognized in the Rome Statute. Moreover, the SJP was established to prosecute those crimes. That is the reason why the only possible legal argument on the ICC assessing jurisdiction over crimes committed during the armed conflict in Colombia, would rely on finding the inquiries, proceedings, and sanctions that are not genuine. Whether or not this could actually happen is yet to be seen.

Another possibility is found in prosecutions in foreign forums. While this scenario is more feasible, it is reasonable only if the foreign jurisdiction prosecutes cross-border crimes. Prosecution of regular crimes or crimes with no international relevance will lack proper justification. This picture is very unlikely and it would be hard to find an actual conflict of jurisdiction between the SJP and a foreign court.

Finally, it could be possible that a cross-border lawsuit for civil liability finds a way through numerous foreign courts. The SJP will amnesty and pardon not only criminal liability but also civil liability regardless of the crime. If the victims do not receive proper compensation for the crimes they have suffered, there is a real possibility that they would try to sue in other jurisdictions to obtain reparation. Whereas many of these lawsuits probably will not succeed, chances are many of them could trigger an international conflict of jurisdiction.

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