CHAPTER 10

Keys to Interpreting the International Cooperation of the EU for the Special Jurisdiction for Peace

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1 Introduction

The Peace Agreement reached between the Revolutionary Armed Forces of Colombia—People's Army (FARC-EP) and the Colombian Government in Havana, Cuba, was signed and ratified in Colombia in November–December 2016. It marked the end of over five decades of armed conflict between the two parties. Nonetheless, according to the International Committee of the Red Cross, there remain a further six ongoing armed conflicts that are not covered by the Peace Agreement (Oquendo, 2022). These include a conflict with the National Liberation Army (ELN), which, like FARC-EP, formed part of the first generation of guerrilla organisations in Colombia's armed conflict. The rest stem from paramilitary organisations that did not sign up to the negotiations between 2003 and 2005, as well as with new armed groups that have sought to fill the gaps in governability left by the demobilised armed actors.

Justice is a crucial part of the Peace Agreement. Chapter 5 of the agreement ("Agreement regarding the Victims of the Conflict") includes the creation of a Comprehensive System for Truth, Justice, Reparations and Non-Recurrence (*Sistema Integral de Verdad, Justicia, Reparación y no Repetición*), now known as the Comprehensive System for Peace (*Sistema Integral de Paz*).[1] The system comprises three institutions tasked with addressing the victims' demands for truth and justice and ensuring there is no impunity in its application, in line with the international obligations of the Colombian State. This has involved setting up a Commission for the Clarification of Truth, Coexistence and Non-recurrence (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición*), whose brief mandate expired on 28 August 2022[2]; the Unit for the Search of Disappeared Persons (*Unidad de Búsqueda de Personas dadas por Desaparecidas*), with a mandate of 20 years; and the Special Jurisdiction for Peace, with a mandate of 15 years, extendible to 20.

[1] This change is rooted in the communication strategy for the Special Jurisdiction as part of a broader mechanism to ensure awareness of the activities of the system's components as part of peacebuilding processes in Colombia.

[2] The Commission initially had a mandate of three years, starting in August 2018 (Gómez, 2022). However, the Constitutional Court extended this for an additional year due to the COVID-19 pandemic.

The Comprehensive System for Peace arose in a hostile environment. The defeat of the proposed agreement in the referendum on 2 October 2016 forced negotiators to return to the table and remove certain aspects of the Peace Agreement to satisfy the demands of far-right parties that had supported an armed solution to the conflict. Moreover, in August 2018, continued attacks on the peace process and dissatisfaction towards the end of the government of Juan Manuel Santos saw a return to *Uribismo* (that is, the policies of former president Álvaro Uribe), with Iván Duque's triumph in the presidential elections on a platform of tearing up the agreement (El País Cali, 2017). Various strategies were deployed to achieve this goal, seeking to paralyse the operation of the Special Jurisdiction. They include defunding the different programmes, ensnaring the certifications of the Office of the High Commissioner for Peace in bureaucracy (the certifications were the basis for determining the subjects covered by the Special Jurisdiction)[3]; and lodging objections to the Statutory Law of the Special Jurisdiction, making its work much harder. The political and technical support provided by international cooperation—particularly the EU—has been crucial in defending the system against attacks from the Government and has provided economic and technical support for the Special Jurisdiction's investigations.[4]

This chapter begins by examining the origins and nature of the work of the Special Jurisdiction. It then looks at the support received from international cooperation, particularly the EU. Finally, it examines the challenges and limitations of support from international cooperation for the legal apparatus in the cases submitted to the Special Jurisdiction.

[3] During the government of Álvaro Uribe's Justice and Peace process between 2005 and 2010, the demobilisation of paramilitary groups allowed false demobilisations to occur, including drug traffickers who passed themselves off as paramilitaries. Consequently, as part of the process with the FARC-EP, it was agreed that the organisation would produce membership lists to be certified by the government (through the Office of the High Commissioner for Peace). This made it possible to root out impostors. It was also agreed to allow validation by other means, such as criminal records, instead of this certification.

[4] For more information on political support, see El Espectador (2019), Rosales (2019) and Montaño (2020).

2 The Colombian Model of Transitional Justice

Transitional justice describes the process of confronting crimes and serious and systematic violations of human rights committed by an authoritarian government or as part of armed conflicts, both international and domestic. Despite being a relatively new field, its mechanisms pre-date its founding in the 1990s (Kritz, 1995; Teitel, 2000; Weiss, 2022). In the Colombian peace processes, calls for amnesty and pardon were common ways of confronting the past. Such processes pardoned the majority of crimes, provided they had been committed by political actors and for altruistic ends. This took place as part of "pardon and forgetting" strategies, overlooking the construction of historical memory or mechanisms for victims. This same model held that atrocity crimes could not be subject to legal pardon. Moreover, the victims' absence was striking: excluded from the peace processes, at best they were able to exercise the right to financial compensation by claiming as civil parties in criminal cases against the few individuals that had not received amnesty or pardon (Benavides & Ospina, 2013; Orozco Abad, 1992; Tarapués Sandino, 2019).

It was only as part of the Justice and Peace process, as a result of the demobilisation of the paramilitary groups (2003–2006), that victims were first included in talks and the constitutionality of measures became dependent on the rights of victims to truth, justice and reparations. Nonetheless, participation remained marginal: while the victims played a central role in the initial hearings, where they had the opportunity to confront the perpetrators, their role then became a secondary one. This had the effect of limiting their involvement in reparations, as if their interest in the process were limited to financial demands for compensation, overlooking their right to truth and justice.

The Justice and Peace process was also characterised by its punitive approach: it sought sentences that would deprive individuals identified by the Government as responsible for crimes committed by paramilitary groups as part of the non-international armed conflict of their liberty. Moreover, while the assets surrendered to the Government by demobilised paramilitaries were used for reparations, in general, compensation was paid by the Colombian State in solidarity with the victims (Peña Valderrama, 2013).[5]

[5] As part of their demobilisation, paramilitary groups had to surrender their arms, munitions and uniforms. They were also required to forfeit all assets—directly or via

One of the points discussed in the peace talks with FARC-EP under the government of Juan Manuel Santos Calderón (2010–2018) was an improved model for confronting a past characterised by large-scale violations of human rights and international humanitarian law. FARC-EP insisted that its members could not be tried by Colombia's criminal justice system, since it formed part of the State against which they had fought and was thus part of the judicial war and the establishment of enemy status for FARC-EP under criminal law. The general reference to the issue of victims and the creation of a system for truth, justice and reparations was one of the most contentious aspects of the Peace Agreement in the negotiations in Havana.[6] Despite progress on issues including drug trafficking and land, talks on the requirement to create a model of transitional justice were about to end, leaving the negotiation process open. The solution was provided by Álvaro Leyva's proposal for creating a sub-commission of representatives selected by the Colombian Government and FARC-EP. The group would ultimately be responsible for creating the transitional justice model set out in chapter 5 of the Peace Agreement, together with the corresponding legislation (Pizarro, 2017).

The precedent set by the Inter-American Court of Human Rights (Barrios Altos v. Peru, 2001), obliges states to sanction serious human rights violations. This makes the fight against impunity an inviolable obligation of signatories to the American Convention on Human Rights. However, FARC-EP insisted they would not sign the Peace Agreement if they were to be subject to sentences that would deprive them of their liberty. This meant a system had to be created that would satisfy the victims' demands for justice and the requirements of international law while respecting the demands of FARC-EP as a party to the Peace Agreement.

The sub-commission produced a hybrid model that sought to balance, on the one hand, the requirements for truth and reparations, and, on the other, renouncing the highest standards of justice. Under the

intermediaries—to compensate their victims. However, not only did they fail to hand over all their assets, the number of victims far outweighed the assets available. This meant the state had to create reparations mechanisms and make provisions for compensating the victims of paramilitary groups in the national budget, even though the state and its agents had not been convicted of specific crimes.

[6] The General Agreement (*Acuerdo general para la terminación del conflicto y la construcción de una paz estable y duradera*) was the document setting the foundations for the negotiations.

arrangement, all patterns of macro-criminality and the most representative incidents would be sanctioned but not all crimes would be included in the final ruling. At the same time, the system would focus on those with the greatest degree of responsibility. The perpetrators of crimes eligible for amnesty or individuals who had committed crimes not eligible for amnesty but who were deemed to have a lesser degree of responsibility by the Chamber for the Recognition of Truth, Responsibility and Determination of Facts and Conducts were not subject to criminal sanctions.[7] It was also agreed that amnesty could only be granted to individuals with a proven link to the guerrilla organisation and who had committed political crimes or related offences (according to a list formalised by Law 1820 of 2016) before 1 December 2016. This ruled out amnesty for members of other armed illegal, insurgent or paramilitary groups and members of the Armed Forces.[8]

This has meant that the Special Jurisdiction model has focused on protecting the rights of victims based on the application of restorative sanctions that seek reparations for the damage caused, as opposed to sentences that would merely deprive the perpetrators of their liberty. The model avoids the punitive aspect of international law and seeks to ensure the response to crimes committed during the armed conflict is based on prospective justice. In other words, the State responds to the damage caused in a forward-looking manner, seeking to mend broken ties in the community and move on from the past.[9]

[7] One of the chambers of justice of the Special Jurisdiction for Peace, as described below.

[8] This does not mean full "pardon and forgetting": there is a requirement to participate in any legal proceedings required under the Special Jurisdiction system, as well as to seek authorisation for all foreign travel.

[9] Examples include legal sub-rules arising in rulings like SENIT 1 (Special Jurisdiction for Peace, 2019b) and SENIT 2 (Special Jurisdiction for Peace, 2019c).

3 The Special Jurisdiction for Peace and the Investigation of System Crimes[10]

This section examines the Special Jurisdiction's investigation of the war crimes and serious human rights violations committed as part of Colombia's internal armed conflict. The jurisdiction has priority for hearing these cases, provided they meet the following requirements:

i. They were committed by members of FARC-EP, members of the Armed Forces,[11] civilian third parties[12] or State agents.[13] In the last two cases, submission to the jurisdiction is voluntary, while the first two are mandatory.[14]
ii. The crimes were committed before 1 December 2016, the date the Congress of Colombia ratified the Peace Agreement at Teatro Colón, after it was signed on 24 November 2016.

[10] The term system crimes refers to the presence of a system in crimes against humanity. That is, crimes that are committed systematically but also those that are committed as part of a system of criminality. On this point, see Judgement TP-SA 230 of 2020 and Reed-Hurtado (2008).

[11] In Colombia, the Armed Forces comprise the military forces (National Army, National Navy and the Colombian Air Force) and the National Police. The President of the Republic is the Commander in Chief of the Armed Forces.

[12] Civilian third parties are people who supported, promoted, financed or backed in any way any of the illegal armed groups, including guerrillas and paramilitaries. This status also applies to collaborators of the Armed Forces, provided they are not determined to have been de facto agents of the institutions they supported. The Appeals Section has analysed this issue in rulings TP-SA 1186 and 1187 of 2022.

[13] This can lead to a paradox of sorts: despite aspiring to a broad "stable and durable" peacebuilding model (as mentioned in the corresponding chapter of the Peace Agreement), the inclusion of other active illegal, insurgent or paramilitary armed actors is not considered. For this reason, consideration should be given to new rounds of negotiations. For example, the ELN has declared its intention to negotiate with the government of President Gustavo Petro Urrego (2022–2026) but only if the government was open to consider its conditions for new negotiations. This suggests the guerrilla organisation does not recognise the content of the Peace Agreement, including the Comprehensive System for Peace (Bolaños, 2022).

[14] The Appeals Section of the Court for Peace has established two classes of third-party collaborators of FARC-EP: subordinate collaborators (those subject to continuous control) and non-subordinate collaborators (individuals who served the group occasionally and discontinuously). See, for example, rulings TP-SA 350 of 2019; TP-SA 362 of 2019; TP-SA 424 of 2020; TP-SA 529 of 2020; and TP-SA 564 of 2020.

iii. The crimes committed were related to the non-international armed conflict to support the war effort of the armed actor.

The Special Jurisdiction is divided into chambers (*salas*) and sections (*secciones*), the latter of which are part of the Court for Peace (*Tribunal para la Paz*). During the first period of the jurisdiction (2018–2022), the chambers played a greater role due to their specific functions, including formulating accusations (Chamber for the Recognition of Truth, Responsibility and Determination of Facts and Conducts [*Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de Hechos y Conductas,* Recognition Chamber]), selecting the individuals to be tried, awarding amnesties and renunciations of criminal prosecution (Amnesty and Pardon Chamber [*Sala de Amnistía e Indulto*] and the Legal Situation Chamber [*Sala de Definición de Situaciones Jurídicas*]).[15] During the second phase (2023–2028), which covers the trials, the Section for Recognition of Truth and Responsibility (*Sección de Reconocimiento de Verdad y de Responsabilidad*) and the Section for Cases without Recognition (*Sección de Ausencia de Reconocimiento*) will play a greater role.

The Recognition Chamber is responsible for investigating crimes not eligible for amnesty and that fall within the Special Jurisdiction. It also determines the individuals with the greatest degree of responsibility. If these individuals admit responsibility for the criminal behaviour attributed to them, adversarial proceedings are triggered with the First Instance Section for Cases of the Recognition of Truth and Responsibility (*Sección de Primera Instancia en Casos de Reconocimiento de Verdad y Responsabilidad*). If they do not, adversarial proceedings are triggered with the Investigation and Accusation Unit (*Unidad de Investigación y Acusación*) and subsequently the Section for the Absence of the Recognition of Truth and Responsibility of Facts and Conducts (*Sección de Ausencia de Reconocimiento de Verdad y de Responsabilidad de los Hechos y Conductas*).

[15] Renunciation of criminal prosecution is equivalent to amnesties and pardons but only covers members of the Armed Forces, third parties and State agents. There is a second-level renunciation of criminal prosecution, which can be awarded to individuals who have committed crimes that are not eligible for amnesty or renunciation and who are classed as having a lesser degree of responsibility (Calle & Ibarra, 2019).

In its investigations, the Recognition Chamber has grouped the various trials into macro-cases. As at 1 October 2022, it had opened ten macro-cases, which can be grouped into four categories:

i. Three macro-cases analysing the crimes committed by FARC-EP: macro-case 01 (Taking of hostages, serious deprivations of liberty and other associated crimes); macro-case 07 (Recruitment and use of children in armed conflict); and macro-case 10 (Crimes not eligible for amnesty committed by members of the former FARC-EP caused by, on the occasion of directly or indirectly related to the armed conflict in Colombia.
ii. Three macro-cases involving members of the Armed Forces and State agents: macro-case 03 (Murders and Forced Disappearances presented as combat losses by State agents); macro-case 06 (Victimisation of members of the Patriotic Union); macro-case 08 (Crimes committed as part of relations between paramilitaries and State agents, regardless of whether they formed part of the Armed Forces).
iii. Three macro-cases prioritising the criminality of the armed actors covered by the Special Jurisdiction in different territories: macro-case 02 (Ricaurte, Tumaco and Barbacoas); macro-case 04 (the region of Urabá); and macro-case 05 (Norte del Cauca and Sur del Valle del Cauca).
iv. One macro-case seeking to determine the damage caused to indigenous and Afro-descendant peoples: macro-case 09 (Crimes not eligible for amnesty committed against ethnic peoples and territories during the armed conflict by FARC-EP, the Armed Forces, other State agents and paramilitaries).

In addition to these ten macro-cases, an 11th is currently being opened (Sexual and gender-based violence). However, this macro-case depends on the availability of staff to proceed. In the meantime, the Recognition Chamber will continue to investigate acts of violence in the ten macro-cases.[16]

[16] There has been considerable debate regarding the decision to launch this macro-case: some suggest it is unnecessary, since the Special Jurisdiction is already investigating sexual and gender-based violence in the context of other crimes; others regard the delay in opening the case as a violation of the obligation to adopt a gender perspective that

As of October 2022, the Recognition Chamber had issued five rulings on facts and conducts (*autos de determinación de hechos y conductas*) and held three hearings for the recognition of responsibility. These rulings are decisions of the Recognition Chamber regarding the patterns of macro-criminality of the armed actors, the most representative events and the individuals with the greatest degree of responsibility. This legal decision is made available to the people found to bear the greatest degree of responsibility, who can then decide if they accept it. If they do so, they are summoned to a recognition hearing. Otherwise, the case is passed to the Investigation and Accusation Unit, triggering adversarial proceedings.

As an example, for macro-case 01, the Recognition Chamber found the members of the former secretariat of FARC-EP responsible for international crimes committed as part of the non-international armed conflict. They were also found to bear the greatest degree of responsibility for the patterns of attacks on the civil population and members of the Armed Forces, which resulted in kidnapping and hostage-taking. The ruling is the result of a process of investigation and the systematisation of information from the ordinary justice system, as well as the reports of the victims and their organisations.[17]

The Recognition Chamber proceedings usually begin with the reports of the victims and their organisations and of the Attorney General of Colombia and the Superior Council of the Judiciary. The reports of the victims and their organisations contain their claims and their versions of the crimes committed by the armed actors covered by the Special Jurisdiction. The judicial reports are the most important documents, since they provide a full account of investigations and rulings issued by the Colombian justice system against individuals covered by the Special Jurisdiction. The status of FARC-EP as an enemy of the Colombian State has made this process easier, since all its actions were investigated by the Colombian justice system. This means there is a considerable amount of information on the guerrilla group. The situation is different for the Armed Forces. Much less information is available, largely due to the strategy of impunity that characterised the criminal justice system's stance

acknowledges the differentiated damage suffered by women and the LGBTI+ population. What matters most, however, is that the investigation proceeds, the violence is made visible and this is done in line with the protocols established for cases of this nature. See Martín Parada (2020), Cinco Claves (2021) and Mosquera et al. (2022).

[17] Recognition Chamber Ruling 19 of 26 January 2021.

on crimes committed by State actors (notwithstanding the fact that, in some cases, the ordinary criminal justice system has investigated events in depth and various rulings have been issued) (Osorio Valencia, 2015). A good example is the extra-judicial executions falsely presented as losses in combat (known as false positives), which were investigated under macro-case 03 and resulted in over 1,300 sentences handed down to many former members of the Armed Forces.[18]

Once the reports have been systematised, the Information Analysis Group (*Grupo de Análisis de la Información*) produces a document known as the Provisional Universe of Facts (*Universo Provisional de Hechos*) containing all the facts attributed to the armed actor. This can be done by blocks, fronts and battalions, making it possible to clearly determine the crimes committed in a given period of time and in a specific geographic zone. Alongside this document, the Information Analysis Group also submits pattern hypotheses for consideration by the Recognition Chamber, which has the legal power to accept them and determine the individuals with the highest degree of responsibility. These are the individuals who controlled the pattern of macro-criminality on account of their position of leadership or in the group's chain of command, or on account of the particular relevance of the crimes committed. However, it is debatable if the latter point is in fact a criterion for determining the degree of responsibility or if it is really a legal strategy to avoid impunity for particularly shocking or widely publicised events (Michalowski et al., 2020).[19]

Based on this information, the Recognition Chamber then invites the individuals with the greatest degree of responsibility to voluntarily provide their versions of events, thus allowing them to exercise their right to defence. At these hearings, individuals are questioned about all their activities in the group and if they accept the responsibility attributed to them. These accounts are made available to the accredited victims for each case to allow them and their organisations to make comments. Individuals facing attributions of responsibility must be able to respond to these comments in order to satisfy the victims' rights to the truth, especially in cases in which family members remain disappeared. Once the

[18] For more information, see Solano González (2020); for another perspective, see Vestri (2015).

[19] This point is analysed by the Appeals Section in ruling TP-SA 230 of 10 February 2021, in the case of John Jairo Moreno Jaimes.

responses to the victims' comments have been received, the ruling on facts and conducts is issued and transmitted to the individuals to determine if they accept responsibility. Comments can be delivered in writing or at a public hearing. Based on the personal experience of one of the authors of this text, victims often do two things at the hearings: the first is tell of their pain, since this is their first chance to be properly heard by a State authority, without their account being dismissed or discredited as false or unlikely[20]; the second is make remarks regarding the action of the Chamber.

To undertake this work, the Recognition Chamber must employ staff responsible for analysing and systematising all the information from the ordinary justice system, alongside the required technical resources. The budget cuts to the transitional justice system by the government of Iván Duque has made international support even more important in this respect. Accordingly, the following section analyses the role of international cooperation, particularly the EU, in the development of transitional justice in Colombia.

4 International Cooperation, the EU and Transitional Justice

International development cooperation is a relatively new phenomenon. Its origins can be traced back to the US Marshall Plan, conceived as a means to boost the economies of certain European countries in the aftermath of the Second World War and to check the expansion of the communist model on the continent (Pellizzon, 2018). Colombia first received international development aid for the first time in the 1960s, notably as part of the US-led Alliance for Progress programme. The programme was the brainchild of President John F. Kennedy and sought

[20] Given the high numbers of victims of the crimes of the individuals covered by the Special Jurisdiction, the time available is very short (usually three to five minutes). Nonetheless, the victims appreciate having the chance to tell their story and share their pain. Some will have travelled more than 24 hours to give their testimony. It also allows the hearings to see their bravery and ability to overcome adversity. Unfortunately, these hearings are not broadcast on national television, despite considerable effort to ensure awareness of the work of the Special Jurisdiction. This exercise underpins the process for compensating victims, ensuring their need for recognition. From a psychological perspective, it also allows the expression of all the suffering caused by the activities derived from the armed conflict (Patiño Yees, 2010).

to promote the development of the region's national economies. At the same time, it sought to control the political development of the region in the context of the Cold War to ensure Latin American states aligned with the US and not countries with closer ties to the Soviet Union, notably Cuba, which declared its alignment with the USSR in 1962 (Tah Ayala, 2020). There have been few international cooperation programmes on legal matters. Notable exceptions include the Fulbright scholarships (Bettie, 2015) and assistance provided to develop the region's legal systems, whose scope and problems were analysed by Gardner (1981).

European cooperation began in the 1980s and was initially provided by individual states, not as part of what was then the European Economic Community. Development aid was largely focused on postgraduate scholarships for Colombian students, allowing them to study at universities in donor countries. As transitional justice did not exist, no aid was provided in this field. Nonetheless, it was common for European countries to provide aid to human rights organisations to defend people's rights against State bodies or for campaigns to raise awareness of their importance (Pontón, 2015; Restrepo Sylva, 2012). For example, various European States sought over a number of years to implement a system to promote the uptake of European "good practices" in the area of human rights and public administration under the assumption that this would strengthen the institutions of states in the region.[21]

The EU has a strong tradition of supporting international cooperation focused on protecting human rights and strengthening justice. This cooperation can be divided into three main periods. The first is from 2002 to 2009 and involved support for the creation of Peace Laboratories to promote the negotiations taking place between the government of Andrés Pastrana and the ELN (Gómez, 2007). The second ran until 2013 and began with the European Commission's *Country Strategy Paper* (2007). The paper was structured around three areas: (i) peace and stability; (ii) rule of law, justice and human rights; and (iii) competitiveness and trade. Lastly, the third period dates from the Peace Agreement with FARC-EP and has centred on the use of the European Instrument for Democracy and Human Rights, which provides a mechanism to strengthen and consolidate democracy and respect for human rights and fundamental

[21] In the specific case of Spain, the Spanish language has facilitated Colombian students studying in the country. However, these collaboration mechanisms have seen cuts following the financial crisis of 2008 (Hernández-Armenteros & Pérez-García, 2019).

freedoms in non-EU countries like Colombia (Moreno-Brieva et al., 2018). We shall now examine in detail the relationship between international cooperation and the development of transitional justice across the three phases.

The Peace Laboratories were a major EU-led initiative for development cooperation aimed at supporting public participation to help deliver peace in six regions of the country. Keen to distance themselves from the US model of cooperation, the laboratories sought to create the social conditions for durable coexistence, political participation and peaceful opposition, as well as protecting the civilian population by supporting existing civil peace initiatives. Throughout the decade, these activities were incentivised using peacebuilding strategies and by supporting vulnerable groups from pre-transitional contexts with a view to improving the conditions of their lives. At this point, European cooperation in Colombia was second to the US. However, it was never more than 5% of the EU international cooperation budget, since Latin America was not a priority for EU cooperation. In this sense, its value in Colombia is purely political, insofar as it serves to cultivate links with other developed countries with an interest in finding solutions to the armed conflict in Colombia (Castañeda, 2009; Moreno León, 2009).

The issue of transitional justice first arose in response to the demobilisation of paramilitary groups in 2004, not in a legal or judicial sense but as part of the need to develop an adequate process for the transition and for ensuring victims were recognised.[22] It would provide a language for framing the different strategies for confronting the past outside the ordinary mechanisms of justice. Cooperation aid was timid at first. However, once the institutions of the Justice and Peace process began to operate, the various cooperation agencies provided support for organisations of victims, to institutions that lobbied State entities and to some State agencies. This support sought to ensure the smooth operation of the process and guarantee victims' rights to truth, justice and reparations.

For example, in the case of the justice system, Law 975 of 2005 created a special chamber in the high courts of Bogota, Bucaramanga, Medellín and Barranquilla. As this was the first experience of investigating system crimes, support from cooperation initially focused on building

[22] Colombian academics had already begun to appropriate this concept. See, for example, Castellanos (2006).

knowledge among the judiciary of the techniques for investigating international crimes and on ensuring they had the required tools. However, for various reasons, the investigation mechanism remained based on an ordinary or conventional schema. The emphasis was on the range of punishments that could be received by people linked to the proceedings of the Justice and Peace system rather than ensuring a requirement for adequate compensation mechanisms for victims (Delgado, 2011).

The EU has also supported the consolidation of peace and economic development through the European Trust Fund for Colombia, created in 2016 "as a sign of solidarity and political support to the Government of Colombia" (European Trust Fund for Colombia, 2022). With a budget of €130 million, its mission is to support the implementation of the provisions in the Peace Agreement. It aims to assist rural development in the territories most affected by the conflict, promote the State's presence in these territories and support the economic and social reincorporation of ex-combatants. However, the creation of the Special Jurisdiction marked a new form of support, which had sought to ensure the progress of investigations for the first seven macro-cases opened by the Recognition Chamber.[23]

While certain aspects of European cooperation have taken place at the EU level, in the context of the Special Jurisdiction, others have come from individual Member States. Examples include Germany's role as an official international supporter for chapter 5 of the Peace Agreement and Swedish cooperation policies since 2018 for strengthening peacebuilding and transitional justice (Special Jurisdiction for Peace, 2019a).

The EU's formal role as a supporter of the implementation of the agreements is centred on the supervision of Chapter 1 (Comprehensive Rural Reform), chapter 2 (Political Participation) and chapter 3 (End of Conflict, particularly sections 3.2 on the reincorporation of the FARC-EP

[23] The EU has provided recurring support to Colombia through international cooperation. However, as noted by Agudelo and Riccardi (2019), from the Ralito Pact negotiations with paramilitary groups in 2001, consideration was given to a design focused on improving the conditions for the implementation of the agreements, with a view to establishing peacebuilding guidelines for a context that can be described more as post-agreement than post-conflict.

into civilian life and section 3.4 on the creation of the Special Investigation Unit) (Special Jurisdiction for Peace, 2019a).[24] Resources from the European Trust Fund for Colombia have been provided for this purpose.

One of the fund's characteristics is an emphasis on using as a model the experiences and "lessons learned" from the Peace Laboratories designed by the EU from 2002 to 2012. In terms of the role of the Special Jurisdiction, the work organised around the economic and social reincorporation process for ex-combatants was important (Special Jurisdiction for Peace, 2019a). For example, once ex-combatants were located in the reincorporation zones, they could request amnesty from the Amnesty and Pardon Chamber, while receiving economic and social support provided by the EU through this cooperation mechanism.[25]

However, as previously noted, the Special Jurisdiction began life in a hostile environment, with many obstacles placed in its way by the government of Iván Duque. Duque was elected on a platform of tearing up the peace settlement and did everything possible to terminate the Peace Agreement and its institutions. The operations of the Unit for the Search for Disappeared Persons initially went unfunded, preventing its work from being carried out. It was only under pressure from the international community that Duque's government finally agreed to allocate funds to the unit in the budget. Another example of the Special Jurisdiction being supported by international pressure was the decision of the Prosecutor of the International Criminal Court to close the preliminary examination of human rights violations in Colombia. The document, signed by Iván Duque, president at the time, and Karim Khan, the court's Prosecutor, required the country's institutions to implement all the outstanding points of the Peace Agreement. Notably, the document requires the Special Jurisdiction and the Office of the Attorney General of Colombia to show greater flexibility, the Government to allocate budget for the judicial branch and protection to be provided for judges, prosecutors and individuals appearing at hearings (El Tiempo, 2019; Semana, 2021).

[24] These are examples of State cooperation activities by EU Member States. However, non-Member States like Norway and Switzerland have also played a fundamental role in activities related to negotiations, transitional justice and peacebuilding in Colombia (Grasa, 2020).

[25] For details of the funds received between 2017 and 2018, see Special Jurisdiction for Peace (2018).

The Duque government's resistance was less pronounced in the case of the Special Jurisdiction and the Commission for the Clarification of Truth, Coexistence and Non-recurrence. However, efforts were still made to prevent the institutions carrying out their duties. Notably, the short mandate of the Commission and its need for a greater presence on the ground meant its work was significantly disrupted by measures put in place in response to the COVID-19 pandemic. In response to this situation, the commission and other actors submitted a petition to the Constitutional Court, arguing for the extension of the Commission's mandate for a further seven months on the grounds of unconstitutionality to compensate for the time lost during the pandemic. The Duque government opportunistically countered that if the term of the commission was to be extended, so too should the term of all elected bodies, including the presidency. The court rejected this unprecedented demand, countering that the Commission had a mandate of three years whereas the Government was permanent in nature. In this sense, the pandemic did not affect the existence and nature of the latter, since its functions included dealing with phenomena like pandemics.

In the context of the current cooperation mechanism, EU support has sought to ensure the Recognition Chamber issues as many resolutions of conclusions (*resoluciones de conclusiones*) as possible, thus activating the work of the Special Jurisdiction as a whole.[26] The EU has supported the work of the Recognition Chamber in different ways for the different macro-cases[27]:

– Macro-case 01: The EU financed four analysts who worked for 13 months to systematise the information and support the Chamber's work in profiling the individuals selected for hearings. This important work provides valuable information on the careers of individuals in the armed organisation. It allows attribution of the crimes

[26] The work of the Recognition Chamber is fundamental during the first phase, since the activation of the court's Recognition and Non-Recognition sections depends on the work of the Chamber. Recognition or non-recognition is what allows the sections to carry out their duties.

[27] Unfortunately, we do not have access to official public documents detailing the exact amounts of EU contributions to the Special Jurisdiction. However, the figure of €3.5 million is mentioned in press releases (Delegation of the European Union to Colombia, 2020; Special Jurisdiction for Peace, 2020).

committed by the corresponding structure based on the level of the individual and the causation used by the Chamber.
- Macro-case 02: The EU financed four analysts who prepared and systematised the accounts of the individuals selected for appearances, profiling and determining the careers of those with the greatest degree of responsibility, in addition to providing inputs for the rulings on facts and conducts. The experts also supported statistical and geospatial analysis of relevant acts by the Armed Forces.
- Macro-case 03: The EU supported eight analysts and a consultant on a methodology for comparing information for profiling the individuals selected for hearings, comparing the information in the voluntary versions with other sources. The team also produced analysis documents as inputs for the rulings on facts and conducts in Norte de Santander and carried out geographic and statistical analysis to identify patterns of macro-criminality.
- Macro-case 04: The EU funded four analysts for 13 months.
- Macro-cases 05 and 06: No EU support was received, although support was received from other international cooperation agencies.
- Macro-case 07: The EU provided support for the systematisation and analysis of information to determine the Provisional Universe of Facts for the case and to identify those presumed responsible and who would be called to provide their versions in a hearing.
- Case 10: The EU provided support via consultancy: first on the strategy for accrediting victims; and second on the methodological guide for the investigation and inputs for the case investigation plan.

5 The Challenges of European Cooperation in the Investigation of System Crimes

European cooperation for the investigation of system crimes has been an important part of ensuring the cohesion of the instruments created after the Peace Agreement with FARC-EP (Special Jurisdiction for Peace, 2019c). When considering this cooperation, we must remember that transitional justice itself and the Special Jurisdiction as an institution to implement it are relatively recent. This gives the intellectual freedom to analyse them from the perspective of anthropology of development, reflects politically and theoretically on the effects of social improvement projects promoted by experts and funds from the global North and

focused on the people and regions of the global South (Viola, 2000). Anthropology of development understands the promotion of progress and development plans by states as processes based on the interpretation of society under a specific concept that gives it order, be this progress, development or, in this case, justice (Escobar, 2011; Ferguson, 1994; Li, 2007; Scott, 2022). Its authors study the discourse of State planning and development in terms of their discursive constructions and their capacity to create realities. The discourse of development can thus be seen as describing a problem (the problem of underdevelopment) and rendering it understandable by the State, at the same time as providing technical tools to address it.

More than a critique of the notion of State-promoted development, Ferguson (1994) and Scott (2022) are interested in showing the permanent effect such intervention has on progress and development. Even in cases where planned objectives are not met (this appears to be the rule, rather than the exception), intervention nonetheless has significant and contradictory effects. These include the expansion and strengthening of the bureaucratic capacity of the State (its capacity to govern populations) and the depoliticisation of social and economic life in favour of technical knowledge. In the case of European cooperation to support the investigation of system crimes, the anthropology of development invites us to ask a series of questions: What are the long-term effects, even when technical intervention to improve the social and political conditions of a specific society "fails"? What are the effects of intervention in terms of the construction of a "problem" to be solved (in this case justice)? What effects do cooperation and its demands for results have on the interpretation of the experiences, populations and ways of understanding the conflict that arise from the Special Jurisdiction?

Like many interventionist projects from the perspective of development cooperation, we see that—even though the process is ongoing—the desired objectives of the intervention have not been met. This situation appears to be the norm if we compare the result of cooperation processes at the macro level. However, this does not necessarily indicate a "failure" in the process, according to the understanding of the word in Ferguson (1994) and Scott (2022). Furthermore, given the process is still under way, this diagnostic remains provisional. Nonetheless, there remains a gap between the cooperation objectives and results, raising questions about the very conception of cooperation.

One of the requirements of cooperation aid is that it delivers determined results.[28] The Special Jurisdiction had originally undertaken to issue resolutions of conclusions, which are contingent on the recognition of the individuals appearing in hearings. However, it realised that rulings on facts and conducts had to be issued before these resolutions. Consequently, the Recognition Chamber committed to issue at least one such ruling per sub-case. So far, however, it has failed to meet this commitment, calling into question the sustainability of cooperation aid.

In this instance, the cooperation agency has set a requirement for the justice system to issue judicial rulings within a given time frame, without understanding the complexity of the cases and without clearly knowing if it would be possible to take into account all the information within the time frame of the cooperation project. From the standpoint of the anthropology of development, this can be understood as an expectation (or demand) that simplifies social life and the multiple experiences of the conflict. Moreover, it does so based on technical expectations far removed from the processes themselves and closely related to the requirements of new public management models (Vargas-Hernández, 2016). Justice is thus understood as a technical product in the service of development. The dynamics and time scales of a unique process of justice are given less weight than achieving results in the context of the objectives of the intervention. As we have noted, aid was provided to the Recognition Chamber for just 13 months. However, experience shows that this is not sufficient and that a greater and faster flow of cooperation resources was needed. The result is that just five rulings have been issued by the Recognition Chamber. This frustrates the very purpose of cooperation: the lack of continuity of aid is an impediment to achieving results that are at the same time conditional on this very continuity. This shows how important it is for the design of cooperation projects to take into account the type of outputs required and the difficulty of transitional justice resolving in just months what has taken the ordinary justice system many years. Yet while the expectation of cooperation may overlook the complexity and slowness of implementing transitional justice, the effect at the political level has been different, resulting in the international defence of a national political process.

[28] The official term is not “cooperation aid” but “cooperation projects”. However, we have used the former to emphasise that we are talking about State aid, investment or intervention presented as cooperation.

6 Conclusions

In Colombia's recent history, the country has seen different forms of international cooperation. Some of the most prominent have been from the EU, especially in terms of the role it has played in promoting human rights within the context of the international system. The different approaches began with the experiences from the Ralito negotiations with paramilitary groups and the subsequent aid to establish the Justice and Peace system. The current cooperation mechanism is focused on activities of the Special Jurisdiction under section 5.2 of the Peace Agreement signed in 2016 and which aspires to create a broad model of restorative measures linked to international standards in transitional justice.

International cooperation has played a key role in the institutional consolidation of the Special Jurisdiction and in defending it against the Duque government's attacks on the institutions of the Comprehensive System for Peace. In the specific case of European cooperation, the various public interventions supporting the work of the Special Jurisdiction have gone hand in hand with the economic aid mentioned in this chapter. Yet it is also right to question the legitimacy of this kind of support, especially given that a key part of the work of an institution of Colombian justice is being supported by funds from another State.

Development and justice are concepts that organise economic, political and social thought. Yet their normative value is still not easily challenged in public debate. They have become lenses through which to understand social realities characterised by poverty and conflict, such as Colombia, albeit from the perspective of what they are missing, namely development and justice. And if cooperation projects make the implementation of standards of transitional justice and support for the institutions of the Special Jurisdiction conditional on technical expectations that are far removed from the realities of the process itself, we are not far away from the failed interventionist logic critiqued by the anthropology of development.

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