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Cover photo: Cuban President Raul Castro facilitates a hand shake between Colombian President Juan Manuel Santos and Timoleón Jiménez, leader of the Revolutionary Armed Forces of Colombia, People's Army in Havana, Cuba on September 23, 2015. The event marked a significant breakthrough in the three-year long peace talks. *Photo credit:* The Bogota Post.

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Introduction

On September 23, 2015, the Colombian government announced a breakthrough in the peace talks between government representatives and the largest insurgent group in the country. Over the previous three years, the government and representatives of the Revolutionary Armed Forces of Colombia, People's Army (commonly referred to as the FARC-EP by its abbreviation in Spanish) had met in Cuba dozens of times to try to resolve issues like land reform, the political participation of the FARC, and the cessation of drug trafficking. The two groups revealed that they had reached an agreement on these and other complex issues. March 23, 2016 was set for a target date to sign the final accord. The announcement raised hopes that the country could bring to a close a long, bloody conflict – the longest ongoing insurgency in the world – that had claimed the lives of tens of thousands of civilians and left the country in tatters economically and socially.

The government and FARC representatives agreed to conduct a lengthy investigation of the 50-year conflict. A truth commission would be established to investigate the numerous atrocities, massacres, forced disappearances, and other crimes. Human rights trials would be held for the gravest crimes. An amnesty program would pardon minor crimes committed during the conflict and alleviate pressure on the justice system, permitting it to focus on what promises to be a monumental investigative task.

In this article, I examine how the Colombia truth commission – formally called the Commission for Clarifying Truth, Harmony, and Non-Repetition¹ – should be conducted by providing a comparative analysis of other Latin American Truth Commissions, focusing on their charters, what they accomplished, and what they failed to achieve. Three transitional justice elements are critical to understanding Colombia's challenge: truth, justice, and reconciliation. I also analyze common truth commission objectives like accountability and justice. Last, I make recommendations for a Colombian truth commission to include its objectives, its constraints, and what to do about the

¹ In Spanish, the “*Comisión para el Esclarecimiento de la Verdad, la Convivencia, y la No Repetición*.”

delicate topics of amnesty, human rights trials, perpetrator justice, and victim compensation.

There are a number of research questions associated with amnesty and truth commissions. Is it necessary to forgive and forget? Or is it important for Colombia to address war crimes and other egregious human rights violations that occurred during the war? Will offers of amnesty provide a “cathartic” affect in Colombia, a form of restorative justice that will satisfy victims and their families? Do amnesty and human rights trials deter future human rights violations? Is it worth it to open up delicate wounds of the past? What are the best practices and pitfalls associated with Truth Commissions?

I hypothesize that a truth-seeking program—including investigative efforts and trials—is a necessary part of a conflict-resolution effort in any country that has experienced a long, violent internal conflict. The right combination of truth commissions, trials, and amnesty permits a country to publicly acknowledge what occurred during a conflict. This in itself may provide solace to victims and their families. It is essential that the investigative process be conducted transparently, thoroughly, and in accordance with the law. There should not be amnesty for the most egregious crimes such as rape, assassination of political figures, and genocide. These crimes are so heinous that they require the perpetrators to face justice as a form of dissuasion and to ensure such crimes are not repeated. Public human rights trials for the alleged perpetrators are necessary to dissuade those who may commit crimes in the future. Justice is also necessary to provide victims with closure, and to grant both legitimacy and stability on the new governing body.

History of the Colombian Conflict

Colombia suffers from the longest active insurgency in the world, a half-century long conflict that claimed the lives of hundreds of thousands of citizens. A shifting mosaic of armed groups—left-wing guerrillas, right-wing paramilitaries, drug traffickers, and criminal gangs—have haunted generations of Colombians, often in brutal, retaliatory attacks designed to terrorize and intimidate peasants from supporting the opposition. An estimated 81.5 percent of the 220,000 victims in the ongoing conflict were civilians caught in the crossfire between warring factions.²

Excluded from political and economic opportunity, leftist guerilla groups sprang up in the Colombian countryside in the 1960s and 1970s, intent on overthrowing what they perceived as a corrupt central government run by the nation’s oligarchy. The FARC, founded in 1964, was dedicated to rural insurgency. One year later, pro-Castro

² Centro Nacional de Memoria Histórica, “Basta Ya!: Memorias de Guerra y Dignidad,”
Link: <http://www.centrodehistoriahistorica.gov.co/micrositios/informeGeneral/descargas.html>.



The lead negotiators in the peace talks have been Iván Márquez from the FARC (second from left) and Humberto De La Calle, former Colombian Vice-President (fourth from left). Photo credit: El Tiempo, Colombia.

university students founded the Army of National Liberation (ELN). The Popular Liberation Army (EPL) appeared in July 1967 and the 19th of April Movement (M-19) in 1970. These groups formed the base of the insurgent organizations that would wreak havoc throughout Colombia for decades. Originally contained in remote regions where the central government had little or no state presence, guerilla activity quickly spread and expanded.

Initially, the Colombian armed forces were ill-prepared to fight the insurgents. According to a U.S. assessment in the 1990s, the Colombian military lacked a long-term strategy and effective leadership, suffered from poor morale, had inadequate equipment, logistics, and training, and was operationally hindered by a lack of airlift or fast reaction forces. A U.S. Department of Defense report assessed that the Colombian military was “inept, ill-trained and poorly equipped.”³ The U.S. Ambassador to Colombia described the Colombian Army as “basically a barracks military, not one that is organized to go after guerrillas. They have some brave and capable people, but they are strictly a reaction force, and not a very mobile one at that.”⁴ U.S. concerns with corruption in the government and human rights abuses by the Colombian security forces led to a complete cut off of aid in 1996 and 1997.

³ Doug Farah, “Colombian Rebels Seen Winning War,” *Washington Post*, 10 April 1998, A17.

⁴ Phone interview with Myles Frechette, the former U.S. ambassador to Colombia from 1994 to 1997, as reported in Larry Rohter, “Armed Forces in Colombia Hoping to get Fighting Fit,” *New York Times*, 05 Dec 1999. For a detailed assessment of Colombia by another former U.S. Ambassador, see David Passage, “The United States and Colombia: Untying the Gordian Knot,” Strategic Studies Institute, U.S. Army War College, March 2000.

Without the army or police to defend them, wealthy landowners, cattle ranchers, and agro-industrialists in the Colombian countryside were vulnerable to the guerrillas. To fund their illicit operations, the insurgents frequently kidnapped members of the landed elites, extorting hefty ransoms to return relatives. As a result, citizens began defending themselves from guerrilla groups by hiring private militias to guard their estates. Landowners, cattle ranchers, and regional politicians insisted that, if the state was incapable of protecting their lives and property, they had a right to defend themselves against guerrillas and criminals. This was how Colombian “self-defense forces,” or paramilitaries, got their start.

This dangerous chemistry of combatants – insurgents, drug lords, death squads, and abusive security forces – dragged the country through decades of conflict, taking the lives of an estimated 220,000 civilians. To concerned policymakers in Washington DC, the country appeared to be on the brink of collapse. In May 1997, the U.S. Defense Intelligence Agency (DIA) warned that the central government would fall within five years unless drastic action was taken.⁵

In 1999, President Andrés Pastrana (1998-2002) attempted to end the conflict through a peace accord with the FARC. In January of that year, the two sides began intermittent negotiations on a political settlement to the conflict. As a gesture of goodwill, Pastrana offered the FARC a demilitarized zone in the departments of Meta and Caquetá. Critics assert that the FARC used the negotiations as a delaying tactic while the guerrillas rearmed and cultivated coca. The peace effort made little progress. On January 9, 2002, a frustrated President Pastrana gave the FARC 48 hours to retire from the area. On February 21 of that year, after a series of attempts to salvage the peace talks, the Colombia Air Force began bombing FARC positions in the area.

Álvaro Uribe succeeded Pastrana as Colombian President in 2002. Following Pastrana’s failed peace effort, Uribe had campaigned on a vow to confront the FARC. In relatively short order, Uribe expanded the public security forces, improved the military’s troop mobility, established government presence throughout the country, dismantled the paramilitary death squads, reduced cocaine production, and put the FARC on the defensive. Backed by a sizable military assistance package from the United States, the Colombian offensive decimated the ranks of the FARC. Guerilla ranks went from approximately 20,000 at their peak in 1999 to about 8,000 in 2012.

⁵ In March 1988, U.S. Ambassador Charles Gillespie cabled Washington that the Colombian Armed Forces were unable to stem the downward spiral of violence gripping the country. Source: National Security Archive, “War in Colombia; Guerrillas, Drugs, and Human Rights in US-Colombia Policy, 1988-2002.” George Washington University, 03 May 2002. A U.S. Defense Intelligence Agency (DIA) report speculated that the central government could collapse within five years if the guerrilla’s rate of operations continued without effective opposition. Source: DOD News Briefing, Tuesday, April 14, 1998, Office of the Assistant Secretary of Defense for Public Affairs, Mr. Kenneth H. Bacon, ASD (PA).



Representatives of the FARC-EP and the Colombian government meet in Havana, Cuba in one of the more than 70 negotiation sessions that occurred during the 2012-2015 peace talks. The session depicted in the photograph also included several senior Colombian military officials invited to Havana to discuss a bilateral ceasefire between the two sides. Photo credit: El Tiempo, March 6, 2015.

History of the peace accords

In 2012, after years of peace talks and demobilization efforts (some successful, others not), the Colombia government announced that they had begun formal negotiations with the FARC. Colombian President Santos's announcement on August 27, 2012 gave hope that a peaceful settlement would end nearly 50 years of bloody conflict in the South American nation. A subsequent series of gestures – including the insurgents' declaration of a unilateral ceasefire and a promise to forgo kidnapping – raised expectations even higher.

Despite the collegial and cooperative tone adopted by both sides, the Colombian government and representatives of the FARC need to address deeply entrenched and divisive topics that previous peace accord attempts had been unable to resolve. The complex issues on the table include land reform, the political rights of insurgents, ending the seemingly intractable drug production and trafficking, reparations for victims, and transitional justice measures that could see perpetrators of war crimes put in jail or extradited out of the country.

A number of incidents threatened to derail the accords, however. In July 2013, a FARC patrol ambushed Colombian Army soldiers guarding an oil pipeline in Arauca in eastern Colombia. Fifteen soldiers were killed, the worst loss of life since the peace talks began. In November 2014, the FARC seized an Army general who was caught in an exposed area near Quibdó on the Pacific coast. In April 2015, the FARC attacked

an Army patrol, killing 11 soldiers and unleashing a wave of criticism by the Colombian public. But the FARC's declaration of a ceasefire three months later quieted some skeptics, many of whom likely realized that, even if the peace accord was ultimately a failure, the talks between the two groups were contributing to the important analysis of socio-economic problems that had been at the root of the problem for decades. Conflict-related violence in the country dropped to the lowest levels since 1975. In the eyes of many Colombians, any dialogue that even temporarily slowed the bloodshed was worth giving a chance.

After three years and dozens of negotiation sessions, the government and the FARC representatives announced on September 23, 2015 that they had reached agreement on four of the six main topics: land reform, political participation, cessation of drug trafficking, and accountability for crimes. The last item – accountability for crimes – was perhaps the one that threatened to derail the peace talks more than any other. The peace talk participants had wrangled over the issue for most of 2014 and 2015, longer than any other item on the agenda. The groups declared from Havana that they had set March 23, 2016 as the date that they would sign a formal, final accord. As of this writing, the full report with 75 issues agreed to by the two groups has not been released publicly. Only a two-page brief synopsis of the agreement was revealed. Many vital details of the tentative agreement between the two parties remain undisclosed to the public.

Why establish Truth Commissions? Reasons and Objectives

The Colombian truth commission is the latest in a series of investigative efforts of its kind in Latin America. In fact, nearly every country in South and Central America that has experienced an internal conflict has launched a truth commission to determine what occurred during the tensions.⁶ Most truth commissions occur soon after hostilities end. Other don't happen until years or decades later. On December 10, 2014, for example, Brazil released its Truth and Reconciliation Commission report that investigated incidents during the 21-year military dictatorship from 1964-1985.⁷ Despite the frequency of such events, truth commissions have had mixed results. Some have been so limited in their charter, authorities, and budgets that they only served as a political showpiece, designed to appease calls for investigation into atrocities. Others have achieved re-

⁶ Conflict resolution efforts like truth commissions, mediation, and negotiations are encouraged by international conventions. See United Nations Charter, chapter 6, "Pacific Settlement of Disputes."

⁷ See Comissão Nacional da Verdade, <http://www.cnv.gov.br>; See Adam Taylor, "Brazil's Torture Report Brings a President to Tears," *Washington Post*, 12 Dec 2014; Anthony Boadle and Brian Winter, "Brazil Dictatorship Probe Urges Prosecuting Military Companies," Reuters, December 11, 2014.

Table 1. Examples of Objectives from Truth Commissions in Latin America

- heighten human rights norms
- recommend ways to deter future violations and atrocities
- achieve accountability for criminal acts and human rights violations
- counter denial
- expand dialogue and open political space to previously marginalized or silenced people
- alleviate volatile emotions associated with trauma and the desire for revenge

markable results to identify what happened during the internal conflict, who committed human rights violations, and what reparations were due to victims and their families.

In general, truth commissions should be non-judicial, independent panels of inquiry set up to establish the facts and context of serious violations of human rights or of international humanitarian law in a country's past. The commission is normally empowered to conduct research, support victims, and propose policy recommendations to prevent recurrence of crimes. Most commissions focus on victims' needs as a path toward reconciliation and reducing residual tensions, becoming a form of transitional justice that, in theory, deters future atrocities.⁸ As one scholar framed it, truth commissions may "prevent violence and future human rights abuses, forge the basis for a democratic political order that respects and protects human rights, and recommend ways to deter future violations and atrocities."⁹

Citizens in war-torn nations have a right to know what occurred to victims during internal conflicts. According to international law, governments have the obligation "to clarify, punish, and make reparation for violations of human rights and international humanitarian law."¹⁰ Under this concept, governments are required to disclose to victims and society the facts and circumstances surrounding crimes committed during the conflict.¹¹ The Inter-American Commission on Human Rights defines this as "a collective right that ensures society's access to information that is essential for the workings of democratic systems, and it is also a private right for relatives of the victims, which affords a form of compensation, in particular, in cases where amnesty laws are adopted."¹²

⁸ Bronyn Leebaw, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30:1, 2008; 104.

⁹ Tricia Olsen, Leigh A. Payne, Andrew G. Reiter, and Eric Wiebelhaus-Brahm, "When Truth Commissions Improve Human Rights," *The International Journal of Transitional Justice*, vol 4, 2010, 459.

¹⁰ The 1948 Geneva Conventions and Additional Protocol I require states to prosecute those persons who have committed serious violations of the laws and customs of war. The International Covenant on Civil and Political Rights (ICCPR, article 2) and the American Convention on Human Rights (article 25) require a judicial investigation when an individual's rights have been violated. See also Juan E. Mendez, "National Reconciliation, Transitional Justice, and the International Criminal Court," *Ethics and International Affairs*, 15:1 (2001), 30; Juan E. Méndez, "Accountability for Past Abuses," *Human Rights Quarterly* 19 (May 1997), 271; Margaret Popkin and Nehal Bhuta, "Latin American Amnesties in Comparative Perspective: Can the Past Be Buried?" in *Ethics & International Affairs* 13 (1999), 99–122.

¹¹ Mendez, 2001, 34.

¹² Cited in Jo-Marie Burt, "Challenging Impunity in Domestic Courts: Human Rights Prosecutions in Latin America," In *The Transitional Justice Handbook for Latin America* (2011), International Center for Transitional Justice & The Brazilian Ministry of Justice), pp. 285-311.

In many cases, insurgents or militants may not have had the opportunity or incentive to cooperate with an official fact-finding group. Victims may be buried in unmarked graves or obscure locations. During the course of the commission's investigations, testimony from militants, rebels, and military officers may reveal the locations of the remains of these victims, permitting the families to recover the bodies and provide a formal funeral ceremony. Once the Commission becomes sanctioned by the central government and all parties agree to the terms of the cessation of hostilities, it normally prompts cooperation from insurgents and government branches like the police and military. Government records that have been sealed or classified during the hostilities may be opened. The unearthing of all of these secrets is critical to the truth commission process. In the words of one scholar, such commissions are often referred to as serving a "cathartic" affect in society, as fulfilling the important step of formally acknowledging a long-silenced past.¹³

Truth Commissions in Latin America

Recently, truth commissions have become a common feature in countries transitioning to post-conflict societies. Worldwide, nearly 40 truth commissions have been conducted since the 1980s to address mass crimes, consolidate the rule of law, and promote reconciliation. With its long history of military rule, internal conflicts, and tendencies of political exclusion, Latin America has been especially receptive to truth commissions. Ten Latin American nations have conducted truth and reconciliation commissions, more than any other region of the world. Perhaps as a result of its reconciliation efforts, Latin America has made the most complete democratic transition of any other region.¹⁴

At the theoretical center of truth commissions in Latin America are three important components: truth, justice, and reconciliation. Seeking the truth about the past includes a learning process that is intended to prevent such violations from occurring again. The most important aspects of the investigation are to reveal the fate of individuals or victims of the conflict, to disclose the truth about disappearances, and subsequently provide closure for victim's families who suffered "unrelenting anguish and unburied dead." This type of "individualized truth" is an especially urgent matter.¹⁵ As United Nations representative Juan Mendez stated, "The clamor for truth, acknowledgment, and justice concerning such grievous crimes cannot be overstated."¹⁶

¹³ Priscilla Hayner, "Fifteen Truth Commissions: a Comparative Study, 1974-1999." *Human Rights Quarterly*, 1994, 600.

¹⁴ In the 1970s and 1980s, about three-quarters of the Latin American countries were under military governments or autocracies. By 2000, only Cuba was considered "not free" on the Freedom House "Freedom in the World" index. Link: <https://freedomhouse.org/reports>. See also Kathryn Sikkink and Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America," *Journal of Peace Research*, vol 44, no 4, 2007, 432.

¹⁵ Mendez, 2001, p. 29.

¹⁶ Jose Zalaquett, "Truth, Justice, and Reconciliation: Lessons for the International Community," 353. In the edited book "Comparative Peace Processes in Latin America, editor Cynthia Arnson. Washington DC: Woodrow Wilson Press, 1999.

Table 2. Latin American Truth Commissions (in chronological order)

Country	Name of Truth Commission	Date of Work	Period Covered	Remarks
Bolivia	National Commission of Inquiry into Disappearances	1982-1984	1967-1982	Report never completed.
Argentina	National Commission on the Disappearances of Persons	1983-1984	1976-1983	<i>Nunca Mas (Never Again)</i> , 1985.
Uruguay	Investigative Commission on the Situation of Disappeared People and Its Causes	1985	1973-1982	Final Report of the Investigative Commission of the Situation of the Disappeared People and its Causes. Report never released to the public.
Chile	National Commission on Truth and Reconciliation (The Rettig Commission). In addition, in November 2003, the National Commission on Political Imprisonment and Torture (the Valech Commission) gathered information on human rights violations between 1973 and 1990.	1990-1991	1973-1990	<i>Report of the National Commission on Truth and Reconciliation, 1991.</i> Valech Commission report released on November 29, 2004.
El Salvador	Commission on the Truth for El Salvador	1992-1993	1980-1991	UN-moderated peace accord and Truth Commission report, <i>From Madness to Hope</i> , March 1993.
Honduras	The Preliminary Report on Disappearances of the National Commissioner for the Protection of Human Rights in Honduras	1993-1994	1980-1993	<i>"The Facts Speak for Themselves,"</i> released on December 29, 1993. Also referred to as the Valladares Report.
Guatemala	Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan People to Suffer	1997-1999	1962-1996	UN moderated peace accord, <i>Guatemala Memory of Silence</i> , 1999.
Peru	Truth and Reconciliation Committee	2001-2003	1980-2000	Report of the Truth and Reconciliation Commission. Released Aug 2003.
Ecuador	Truth Commission to Impede Impunity	2007-2009	1984-2008	Report released in June 2010. Initial truth commission (1996) disbanded before completing its mandate.
Brazil	National Truth Commission	2011-2013	1946-1988	Report of the Truth and Reconciliation Commission. Established in Nov 2011, report released on Dec 10, 2014.

Note: Material drawn from multiple sources including Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2001). Extensive databases and English translations of portions of Latin American truth commissions are available on the webpages of the International Center for Transitional Justice (ICTJ, www.ictj.org) and the U.S. Institute for Peace (USIP, www.usip.org).

The very existence of the fact-finding effort represents a national effort to acknowledge the truth by all institutions, individuals, and by society as a whole. Through the investigation, members of the warring factions can admit wrongdoing. In other words, truth commissions provide an opportunity for guilt-ridden perpetrators to “come clean.” The commission’s conclusions also may dispute denials previously made by insurgent groups or government forces. This, in turn, can provide some solace to victims, an end to impunity, and may reinforce the rule of law. The investigation, as one member of the South African Truth Commission stated, “is the facing of unwelcome truths in order to harmonize incommensurable world views so that inevitable and continuing conflicts and differences stand at least within a single universe of comprehensibility.”¹⁷

The second principle to truth commissions is justice. Often times, victims have been falsely accused of baseless charges. Justice represents an opportunity for vindication of the victims. As a result, the investigation may clear their name and reputation, an important opportunity to prove their innocence and restore personal dignity. Victims or their surviving relatives can finally have their moment of justice when their story emerges and their suffering is revealed. This is often accompanied by a form of compensation for the victims or their families or prosecution and punishment of perpetrators. This, in turn, might restore the dignity of the victim.

If conducted successfully, the third element, reconciliation, is a product of the first two. Reconciliation is the most important objective of truth commissions but, to achieve this lofty goal, a country must first pursue truth and justice. These are necessary first steps in the transitional justice sequence. As the head commissioner for the Honduran Truth Commission said, “Only after truth is known and justice is rendered are pardon and reconciliation possible.”¹⁸ Factions that have been warring against each other for years have to find a way to coexist peacefully. Tendencies for revenge run deep. Animosity persists and the cessation of hostilities may not be realistic in remote parts of the country where the structural sources of the conflict may persist. Without an effort toward national reconciliation, unresolved historical issues generate a feeling of bitterness, betrayal, or alienation from the government that may linger among survivors or family members of the victims. Reconciliation represents the chance to put these animosities behind and focus on constructing a future rather than dwelling on the past.

¹⁷ Priscilla Hayner, “Fifteen Truth Commissions: a Comparative Study, 1974-1999.” *Human Rights Quarterly*, 1994, 372.

¹⁸ Comisionado Nacional de Protección de los Derechos Humanos (CONADEH), “*Los Hechos Hablan por si Mismo*” (The Facts Speak for Themselves), 232.

Inherent Challenges and Obstacles for Truth Commission

When truth commissions first emerged in the 1980s, democracy scholars considered trials for past human-rights violations as politically untenable and likely to undermine new democracies. Political scientist Samuel Huntington, for example, warned that human-rights trials could be disruptive to nations transitioning to democracy and recommended that states not carry out human rights trials.¹⁹ However, in a globalized world where democracy and individual rights are widely accepted as international norms, truth commissions and accountability for crimes are now considered state obligations. The Geneva Conventions, signed and ratified by nearly all countries in the world, require countries to investigate atrocities committed during conflicts. Colombia itself has ratified the Geneva Conventions of 1949, both Additional Protocols of 1977, and all the major international human rights treaties. Hence, the Colombian government is compelled to abide by the requirements in these treaties.²⁰

There are inherent obstacles associated with truth commissions. The chaos associated with war and combat may hide the true accounts of what happened to victims. Groups of combatants – insurgents and government forces alike – often have a culture of silence and fraternity that discourage them from confessing their wrongdoing. Neither the guerrillas nor members of the security forces want to spend time in jail for actions that many of them may contend were legitimate during a conflict. Likewise, any admission of crimes may damage the public reputation of the groups. Subsequently, there is a certain level of uncooperativeness and resistance expected of all involved parties.

In Colombia, the deep-seated suspicions and animosities among the warring factions present a serious dilemma to conflict-resolution efforts in the country. According to the FARC guerrillas, they were fighting a legitimate military action against a corrupt government run by landed oligarchy. They were battling, they insist, for land reform, political rights, and economic opportunity. As an organized rebel army, the FARC believe that they deserve combatant privileges in accordance with the Geneva Conventions and international law.²¹ To their reasoning, civilians killed or harmed by their actions were the natural result of the chaos of war, and they believe government forces that “compelled” them to fight should share responsibility for these casualties.

¹⁹ Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century*. Norman and London: Cambridge University Press, 1991, p. 228.

²⁰ A list of major human rights treaties and the countries that have ratified them can be found at <http://indicators.ohchr.org>. Countries that have ratified the Geneva Conventions can be found at <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountry.xsp>

²¹ See, for example, Guillermo Otálora Lozano and Sebastián Machado, “The Objective Qualification of Non-International Armed Conflicts: A Colombian Case Study,” *Amsterdam Law Forum*, Vol 4:1, Winter 2012, 58-77.

They point to the fact that the paramilitary militias controlled by wealthy landowners and industrialists were responsible for more murders and massacres than the guerrillas. FARC representatives insist that these private armies were, in fact, an extension of the Colombian military and therefore the Colombian government should be held accountable for state terror.

On the other hand, many members of the Colombian government (in particular, the armed forces and police) believe the FARC are nothing more than drug traffickers and terrorists and therefore are not eligible for protection under international law.²² Instead, like common criminals, they should be subject to the national criminal code in Colombia. Additionally, these governmental groups oppose the peace process because they believe it offers the FARC a form of political legitimacy that they do not deserve. These opponents of the peace process point to the thousands of Colombian military and police who have been murdered by the FARC guerrillas. “We don’t want terrorists exercising positions of power while military officers having legally defended this nation under the constitution are convicted, humiliated, and imprisoned around the country,” said a representative for the Colombian Association of Retired Military Officers soon after peace talks began.²³

Some Colombian officials also are suspicious of Cuba’s role in the negotiations, in light of that nation’s long history of sponsoring communist rebellions throughout Latin America. Under the stated communist doctrine of the FARC, guerrillas will use all means to achieve their goals, including warfare and political leverage. Hence, many members of Colombian society believe the recent peace accords are nothing more than an attempt by the guerrillas to accomplish politically what they could not achieve militarily.

Another frequently cited problem of truth commissions is that they operate with double standards. According to critics, truth commissions in Latin America have been focused on governmental abuses while not adequately addressing the crimes of insurgents in each country. In the opinion of many government officials, the proceedings unfairly target accusations against government forces while ignoring the number of atrocities or attacks made by insurgent forces. In the cases of Argentina, Chile, El Salvador, and Guatemala, indiscriminate attacks by leftist insurgent forces took the lives of hundreds of security forces, government officials, and civilians, maiming thousands of others. Critics contend that little attention has been paid to these crimes by previous truth commissions in Latin America.

²² The FARC were declared a Foreign Terrorist Organization (FTO) by the U.S. Department of State in 1997. Link: <http://www.state.gov/j/ct/rls/other/des/123085.htm>

²³ The group, known by its Spanish title of *Asociación de Oficiales Retirados de las Fuerzas Militares* or ACORE, is a politically influential group of retired military officials who serve as the voice for many active duty officials. This quote cited from Alex Sierra R., “Armed Peace Does Not Equate with Civil Peace,” 12 Dec 2012. Link: <http://www.cipamericas.org/archives/8633>.



Public opinion of the FARC among Colombians is the lowest in the group's history, undoubtedly a result of the FARC's indiscriminate attacks against civilian populations, its extensive campaign of kidnapping, and its use of child soldiers. Photo credit: Latin Correspondent.

While there might be some truth to this claim, the perceived disproportionate focus of truth commissions on state agents is likely a result of the inherent legitimacy of such security forces. Security forces of a state operate under the authority of a legitimate central government. As Max Weber famously summarized, these military and police officials have the monopoly on the legitimate use of force.²⁴ Hence, whereas non-governmental actors—including terrorists, rebels, or criminals—operate outside of the law, any abuses conducted by state security forces are a double violation of the trust of the country's citizens. Crimes committed by government security forces are breaches of the confidence of the country's citizens as well as breaches of national law or international treaty the state has ratified. The state's legitimacy rides on the shoulders of the security forces and it rightly should be held to a higher standard. As President Juan Manuel Santos acknowledged, "Our role, as agents of the state, is to guarantee and protect the rights of all citizens. For that reason, our responsibility is that much greater."²⁵

Research has shown that investigative fact-finding bodies like truth commissions are, by themselves, inadequate to generate the stability and reconciliation necessary in

²⁴ Max Weber, *Politics as a Vocation*, New York: Isha Books, 2013.

²⁵ Fox News, "Colombia admits rights violations in battle with leftists," July 23, 2013.

Link: <http://www.foxnews.com/world/2013/07/25/colombia-admits-rights-violations-in-battle-with-leftists.html> reatiesany active duty officialacknowledged, f the confidence iches international human rights treatiesany active duty official

a post-conflict society. Rather, recent studies have shown that truth commissions are more powerful when accompanied by human rights trials and amnesty programs, becoming a potent combination, creating justice, and avoiding the trap of becoming so ambitious that they become unrealistic and unachievable. This combination of truth commission, human rights trials, and amnesty is what some scholars refer to as a “justice balance.”²⁶ Truth commissions provide a broad investigation into events to identify collective responsibilities. Human rights trials determine individual accountability. Amnesty alleviates the work load on the justice system and permits officials to focus on the most egregious crimes. With that in mind, Colombia has positioned itself in a good place to succeed: it has put into place all three conflict-resolution elements – truth commissions, human rights trials, and amnesty – as part of its reconciliation effort. In the next section of this essay, I will examine in detail each of these three elements.

Amnesty

The brief announcement from Havana in September 2015 by members of the Colombian government and the FARC indicated that there would be an offer of amnesty for crimes committed during the 50 years of the conflict. The announcement indicated that the two parties agreed to “grant the broadest possible amnesty for political crimes and their other related crimes.” However, persons who committed more serious crimes – crimes against humanity, genocide, war crimes, the taking of hostages, torture, forced displacement, forced disappearance, extrajudicial executions, and sexual violence – will not be eligible for amnesty. Individuals accused of these more serious crimes will go before a Special Judicial Process for Peace. If they admit their responsibility for the crimes and subsequently are found guilty, they will receive a sentence of five to eight years of confinement. If they do not admit guilt or do not cooperate with the investigation and are found guilty, they may be sentenced for as many as 20 years of confinement.²⁷

The offer of amnesty as an incentive to lay down arms is one of the most emotionally charged elements of transitional justice. Proponents of amnesty argue that it is required as a gesture toward national reconciliation, one that a conflict-torn society requires to build a new democracy based on tolerance and accommodation among warring groups that may have recently tried to destroy one other. According to Sikkink and Walling, clemency for the insurgents is viewed as a powerful incentive for rebels to

²⁶ Tricia Olsen, Leigh A. Payne, Andrew G. Reiter, and Eric Wiebelhaus-Brahm, “When Truth Commissions Improve Human Rights,” *The International Journal of Transitional Justice*, vol 4, 2010, 465.

²⁷ See Joint Communiqué 60 on the Accord for the Creation for a Special Judicial Process for Peace, September 23, 2015, Havana, Cuba. Link: https://vbouvier.files.wordpress.com/2015/09/2015_0923-comunicado-conjunto-60-23-septiembre-2015.pdf

renounce violence, lay down their arms, and join the peace effort.²⁸ Human rights violations frequently occur in the conflict by militants and government security forces alike. In this sense, advocates of amnesty believe it is prudent to heal social wounds within the country by forgiving and forgetting criminal acts.

Others believe that amnesty is an egregious affront to the victims who suffered at the hands of extrajudicial actions such as kidnapping, torture, rape, and murder. Perpetrators of violent criminal acts who receive amnesty avoid accountability for their actions because they are not subject to criminal or civil inquiries. To the victims and their families, the state's perceived exoneration of the perpetrators can sometimes be an even more painful punishment than the loss they have suffered. From their point of view, if "impunity is allowed to persist, the political system that is being built may be democratic in formal terms, but it will lack the essential governance ingredients of legitimacy and accountability."²⁹

Hence, offers of amnesty in Colombia require a delicate balance. Too much amnesty means perpetrators of horrific crimes go free and there is little dissuasion for future crimes. Too little amnesty means judicial authorities will be faced with a nearly insurmountable task to investigate thousands of atrocities that will require years of investigative effort and litigation.

The decision in Colombia to offer limited amnesty is in keeping with international law. Amnesty is considered an acceptable form of reconciliation following an armed conflict. Additional Protocol 2 of the Geneva Conventions states that:

At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.³⁰

In contrast, amnesty laws for *gross violations* of human rights are considered illegal according to international human rights law. In a heavily democratized world with high standards of transparency and accountability, it is a requirement that states address serious violations of human rights. As a result, blanket amnesties have been declared to be violations of international human rights and cannot be a part of a policy of national

²⁸ Kathryn Sikkink, and Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America." *Journal of Peace Research*, 2007, Vol 44(4), 440.

²⁹ Mendez, 2001, p. 32.

³⁰ See article 6(5) of the Additional Protocol III to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

reconciliation. Regional human-rights courts agree.³¹ On March 14, 2001, the Inter-American Court declared that amnesty laws for gross violations of human rights were incompatible with the American Convention on Human Rights and therefore lacked legal effect. According to the Court, amnesty laws contribute to the defenselessness of victims and perpetuate impunity.³² The United Nations Human Rights Committee echoed the same sentiment when it stated, “Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future.”³³

While blanket amnesty is considered contrary to international law, partial amnesty programs can alleviate pressure on an overloaded justice system. The Colombian justice system is considered by most scholars to be independent and effective—one of the most developed in Latin America.³⁴ Still, the investigation of tens of thousands of crimes that took place over the course of nearly 50 years is almost an impossible task, one that would take years to complete. As United Nations representative Juan Mendez stated, “The truth commissions are not a replacement for the justice system but rather a complement to a weak judicial system by helping with thousands of crime investigations.”³⁵ By focusing on the gravest crimes, the Colombian government hopes to demonstrate that perpetrators will be accountable and that Colombia abides by the rule of law.

Impunity

Regardless of the legal precedents for amnesty, the current Colombian agreement may not satisfy the tens of thousands of civilian victims that have suffered at the hands of the combatants. Prosecuting only those who committed the most serious crimes leaves thousands of others who participated in crimes unpunished. To the victims and their families, this represents an impunity that may encourage future illicit activities. Furthermore there is a lack of clarity of what type of confinement would be required of those convicted of serious crimes. The agreement between the FARC and government

³¹ In 2001, the Inter-American Court of Human Rights (IACtHR) declared the Peruvian amnesty law to be contrary to the American Convention of Human Rights and international human rights law. In its decision, the IACHR stated, “the amnesty laws entailed a violation of the right of all victims to obtain not only justice but also truth” (para 35) and that the amnesty laws are, “incompatible with the American Convention on Human Rights.” (para 42). See IACtHR “Case of Barrios Altos v. Peru, Judgment of March 14, 2001.” Consequently, in 2005, the Argentine Supreme Court declared its amnesty laws unconstitutional.

³² Sikkink and Walling, 2007, p. 435.

³³ United Nations. Link: <http://www.ohchr.org/EN/CCPR/Pages/CCPRIndex.aspx>

³⁴ Brett J. Kyle and Andrew G. Reiter, “Militarized Justice in New Democracies: Explaining the Process of Military Court Reform in Latin America,” *Law & Society Review*, vol 47/2, 2013, 396-397.

³⁵ Mendez, 2001, 46

representatives in Havana calls for “restriction of freedom” for those convicted of gross violations of human rights. The term has been subject to intense scrutiny since it was announced in September 23. “While the special jurisdiction would encourage confessions, it would also allow those most responsible for mass atrocities to completely avoid prison, denying their victims the right to justice in any meaningful sense of the word,” said Jose Miguel Vivanco, director of Human Rights Watch for the Americas.³⁶

Amnesty has often been used as a tool for impunity. Because it normally is initiated by the government, it has been frequently employed by military governments who want to shield their institutions and members from embarrassing charges for crimes or atrocities. Often, amnesty is the only way that an authoritarian regime will step down from power, allowing a democratic government to emerge. In Chile, for example, the military government passed an amnesty law in 1978, forgiving all political crimes committed since the 1973 coup including the “disappearances” (a common tactic during the Latin American conflicts) conducted by the Chilean secret police (DINA). An estimated three thousand Chileans were killed at the hands of security forces during the 17-year military government. Thousands more were tortured or exiled. President Aylwin, the Chilean President from 1990-1994, was criticized for not having tried to remove the amnesty law, but he faced a Congress dominated by supporters of the old regime, and amnesty had been a major bargaining tool in getting the dictator to relinquish power.³⁷ In fact, when challenged by civilian leaders on the accountability of his military forces, General Augusto Pinochet of Chile famously warned President Aylwin, the country’s newly elected president, “No one is going to touch my people. The day they do, the state of law will come to an end.”³⁸

In Guatemala in December 1996, the United Nations (UN) successfully brokered a historic peace agreement to end the country’s 36-year war. The amnesty law was the last item to be resolved before the final signing ceremony. In a UN truth commission that followed the war, the military was accused of causing the vast majority of the 200,000 deaths during the war, charges that included genocide against indigenous groups. However, the military in Guatemala was shielded by several amnesties passed by military and civilian regimes prior to 1996. There have been few government inves-

³⁶ See Anastasia Moloney. “Colombia War Victims Demand Justice, Truth as Peace Talks Advance.” Reuters, 02 October 2015.

³⁷ José Zalaquett, “Truth, Justice, and Reconciliation: Lessons for the International Community.” In Arnson, C. editor *Comparative Peace Processes in Latin America*, editor. Washington DC: Woodrow Wilson Press, 1999, 358.

³⁸ Elizabeth Salmon, “Reflections on international humanitarian law and transitional justice: lessons to be learnt from the Latin American experience.” *International Review of the Red Cross*, 2006, vol 88, 77; Loveman, B. (2001). “When You Wish upon the Stars: Why the Generals (and Admirals) Say ‘Yes’ to Latin American ‘Transitions’ to Civilian Government.” In Drake, P. & McCubbins, M. editors. *The Origins of Liberty*. Princeton: Princeton University Press, 2001, 40; Gregory Weeks, “Waiting for Cincinnatus: The Role of Pinochet in Post-Authoritarian Chile.” *Third World Quarterly*, 21(5). 729.

tigations into atrocities committed during the civil war which started in 1960.³⁹

Various forms of amnesty were used in nearly all Latin America countries that experienced internal conflicts in the 1970s and 1980s:

Table 3. Examples of Amnesty Laws in Latin American (in alphabetical order by country)		
Country	Year amnesty established	Amnesty still active?
Argentina	1987, The Full Stop Law (Dec 24, 1986) halted new prosecutions. The Due Obedience Law (April 1987) gave immunity to all but top officials. President Carlos Menem pardoned those officials in 1989 and 1990.	No, revoked after Argentinean Supreme Court ruled amnesty unconstitutional on June 14, 2005, citing the IACHR decision on the 2001 Barrios Altos case in Peru. In 2007, the Court also annulled pardons granted by President Menem in 1989 and 1990 to senior military officials.
Brazil	1979, passed by military government, covered period of military government from 1964-1985.	Yes, still active. In April 2010, the Brazilian Supreme Federal Court ruled crimes during military government were political acts, not crimes.
Chile	1978, the military dictatorship passed an amnesty law forgiving all political crimes committed since the 1973 coup including the “disappearances” conducted by the Chilean secret police.	Yes, still active but limited. In July 1999, the Supreme Court ruled that disappearances in Chile during the military dictatorship were ongoing crimes since bodies had not been found.
Colombia	2005, Justice and Peace Law provided partial amnesty for paramilitaries who demobilize, turn over assets belonging to victims and submit to prosecution.	Yes, though an estimated 2000 paramilitary members served jail time for major crimes. A number of senior paramilitary leaders were extradited to the United States in 2008.
El Salvador	March 20, 1993, the Salvadoran Congress passed a blanket amnesty for all crimes committed by security forces and guerrillas during the conflict.	Yes, still active. In 2003, the Supreme Court case held that cases that violated victims’ fundamental rights were not subject to amnesty. Few cases have reached trial though.
Guatemala	1996, covered crimes committed from March 1982 to January 1986.	Yes, still active. The Law of National Reconciliation of 1996 allows for amnesty in the case of crimes connected to the internal armed conflict, but specifically exempts genocide, torture, forced disappearance and other international crimes. Few cases have gone to court.
Nicaragua	1993, amnesty law passed during disarmament and peace negotiations with United Nations.	Yes, still in place.
Peru	Amnesty law approved by Peru Congress on June 14, 1995, that excused any human rights violations by the military or police since May 1980.	No, annulled on May 14, 2001 after IACHR found amnesty blocked right to justice for victims of Barrios Altos incident.
Uruguay	1986, covered crimes from 1973-1985.	No, annulled by Uruguayan Supreme Court in October 2011. Public referendums in 1989 and 2009 resulted in public support for maintaining the amnesty laws.

³⁹ Mendez, 2001, p. 43.

Many of the amnesty programs passed by military governments in Latin America did not hold up under continued legal scrutiny. In Chile, for example, the 1978 amnesty law was eventually amended because forced “disappearances” were considered to be ongoing crimes because the bodies of the victims were never recovered. In that sense, disappearances were treated more like kidnappings and were therefore ineligible for the country’s amnesty program that forgave crimes during the internal conflict. Cases were reopened against hundreds of Chilean military officials and, from 2000 to 2015, many were tried and jailed for their crimes. The governments of Peru and Argentina also revoked amnesty programs that had been later ruled to be unconstitutional or counter to the Inter-American Convention on Human Rights.

Colombia has its own controversial amnesty program from the conflict Colombia’s 2005 Justice and Peace Law (JPL) granted conditional amnesties to thousands of guerrillas and paramilitary fighters, an enticement the government hoped would convince them to demobilize and disarm. The law required the combatants to confess their crimes as part of a plea-bargain deal that would give them lighter prison sentences. If a paramilitary failed to admit to a crime, the plea bargain could be revoked and a full sentence for the crime could be imposed. The government hoped the quasi-amnesty program would help solve more than 38,000 crimes involving 50,000 victims that remain under investigation.⁴⁰

The legality of the JPL has been fiercely debated. Backers of the law believe it is an effective way to induce paramilitaries to demobilize and point to nearly 31,000 paramilitaries and an estimated 10,000–20,000 FARC and ELN insurgents who accepted the terms of the program. Critics contend that the program is the equivalent to a blanket amnesty program that has been outlawed by international legal institutions, resulting in impunity for human-rights violators. In a July 2005 editorial, the *New York Times* said the JPL should be called the “Impunity for Mass Murderers, Terrorists and Major Cocaine Traffickers Law.” Despite that, in July 2006, Colombia’s Constitutional Court upheld the constitutionality of the law. In the ruling, however, the Constitutional Court limited the leniency of the sentence the paramilitaries could receive through the plea-bargain deal. According to the court, paramilitaries who commit crimes or fail to fully comply with the law will have to serve full sentences.

⁴⁰ While the majority were pardoned, more than 2,000 paramilitaries were implicated in major crimes. Critics of the program contend that only about 30 ever spent time in prison. In May 2008, 14 leaders were extradited to the United States to face charges of drug trafficking and murder. The amnesty program had other benefits; cooperation from paramilitaries led to the exhumation of 2,800 remains in 2,300 common graves. In addition, the information provided by the paramilitaries assisted the Colombian Supreme Court and the prosecutor general’s investigations of links between politicians and paramilitary groups. By 2010, 87 members of Congress, 15 governors, and 35 mayors were implicated for ties to illegal paramilitary groups. Source: U.S. Department of State, 2010; U.S. Government Accountability Office, 2008, p. 54.

Accountability

The Colombian government's effort to investigate the countless events that occurred during the 50-year conflict will be a massive task. More than 220,000 Colombians died during the conflict, the vast majority of them civilians. The Center for Historical Memory estimates that 45,000 Colombians are still missing or unaccounted for as a result of the conflict.⁴¹ Millions more have been displaced from their homes. More than 7.6 Colombians have registered as victims of the conflict.

The press release from Havana in September 2015 indicated that the two groups have agreed to establish a Special Judicial Process for Peace consisting of Justice Courts and a Peace Tribunal. The purpose of the courts and tribunal is to “obtain truth, contribute to the reparation of victims, and judge and impose sanctions on those responsible for serious crimes committed during the armed conflict, guaranteeing their non-repetition.”⁴²

Crime	Total # of victims	Insurgents	Paramilitaries	Security Forces	Unknown assailants
Kidnapping	27,023	90.6%	9.5%	N/A	N/A
Massacres	11,751	17.3%	58.6%	8.0%	14.9%
Homicides	23,161	6.9%	38.4%	10.1%	27.7%

Acknowledgement and, in some cases, punishment for crimes serve as deterrents for future violence. Punishment, even if it comes years after the incident, serves to dissuade those who may be contemplating a return to a criminal lifestyle. In theory, trials and convictions of those responsible for crimes should weigh in the minds of those tempted to commit new violations in the future. According to the U.S. Institute of Peace (USIP), even if perpetrators are not convicted, the government effort to find and prosecute perpetrators who committed the most egregious acts of violence reinforces a culture of lawfulness.⁴⁴ This is critical in a society like Colombia that aspires to adhere to a rule of law.

⁴¹ Centro de Memoria Histórica. Link: <http://www.centrodehistoriamemoria.gov.co/areas-trabajo>

⁴² See Joint Communiqué 60 on the Accord for the Creation for a Special Judicial Process for Peace, September 23, 2015, Havana, Cuba. <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/> An English translation is available here: https://vbouvier.files.wordpress.com/2015/09/2015_0923-comunicado-conjunto-60-23-septiembre-2015.pdf

⁴³ Centro de Memoria Histórica. “Basta Ya!: Colombia: Memorias de Guerra y Dignidad,” 2013. Link: <http://www.centrodehistoriamemoria.gov.co/micrositios/informeGeneral/estadisticas.html>

⁴⁴ Jonathan Morgenstein, “Consolidating Disarmament: Lessons from Colombia’s Reintegration Program for Demobilized Paramilitaries.” U.S. Institute of Peace, November 2008, p. 4. Retrieved from <http://www.usip.org/publications/consolidating-disarmament-lessons-colombia-s-reintegration-program-demobilized>.



The FARC are accused of kidnapping thousands of Colombians, many of them civilians, and holding them in jungle hideouts under austere conditions for years. In this photo, Colombian Police Superintendent Jhon Frank Pinchao Blanco was held captive almost nine years before he escaped from the FARC. Photo credit: UOL Brasil.

The issue of accountability for crimes was a divisive one in the early stages of the Colombian peace talks. In a press conference in Bogotá in November 2012, the Colombian Defense Minister, Juan Carlos Pinzón, said that Colombia's military has the "constitutional duty to pursue all criminals who have violated the Constitution" and that FARC insurgents should be held accountable "for all the crimes they have committed over so many years."⁴⁵ Until recently in the process, the FARC vowed that they would never spend one day in jail. FARC negotiator Luis Alberto Alban said, "We know there have been civilian victims, but our goal was never to cause damage to that person. We do not understand that person as our victim. He is a victim of the war."⁴⁶

The FARC are accused of a number of war crimes and crimes against humanity including terrorism, kidnapping of civilians, murder of hostages, indiscriminate bombing of civilian targets, forced displacement, and child soldiering. The FARC policy of kidnapping generated thousands of hostages and millions of dollars of ransom money each year. Some hostages were kept chained to trees for years in FARC jungle hideouts. Many victims were killed by their FARC captors or died from disease while being held.

The FARC also committed a number of indiscriminate attacks and executions of civilians. Perhaps the deadliest of these incidents was the gas cylinder attack against a church in Bojayá on May 2, 2002. Hundreds of residents, mostly women and children,

⁴⁵ Associated Press (19 November 2012). "Colombian Defense Minister Rejects Cease-fire."
Link: http://www.democraticunderground.com/?com=view_post&forum=1014&pid=311171

⁴⁶ Isaac Risco, "FARC Ready to Overcome 'Major Hurdles' in Colombian Talks. Deutsche Presse-Agentur (DPA), 15 Sept 2012.

took refuge in a church near the center of town to escape fighting between guerillas and paramilitaries. The paramilitaries took up defensive positions around the church. At approximately 10:45 in the morning, the guerillas launched gas cylinder mortars (propane tanks filled with explosives) toward the church. The bomb pierced the roof and exploded on the altar killing 119 people and injuring 98 others. Many of the victims were children.⁴⁷

The Colombian armed forces will also have to answer allegations of human rights violations. Up until the 1990's, the Colombian Army was widely perceived to use indiscriminate and excessive force in operations against insurgents. One U.S. report referred to the Colombian Army as an "army of terror."⁴⁸ Declassified U.S. embassy cables and U.S. State Department Human Rights reports reported frequent tacit collusion with paramilitary forces in joint operations against the FARC and other guerrilla groups.⁴⁹ Non-government organizations like Human Rights Watch and Amnesty International published detailed reports alleging that elements within the Colombian military and police collaborated with illegal paramilitary groups.

Around the year 2000, the Colombian military began a wide campaign to professionalize its forces, adhere to international standards of the use of force, and to avoid operations that would cause civilian casualties. The Colombian military implemented a force-wide training and education program on human rights that linked protection of civilians to legitimacy of the government. Human-rights violations were investigated and tried in the military justice system. Perpetrators were forced out of the armed forces. Civilian casualties decreased significantly and public support and confidence of the Colombian armed forces increased to historical levels. The Colombian military today is widely perceived to have some of the most professional and human rights abiding forces in the entire hemisphere.⁵⁰

Scrutiny of the armed forces' records will be difficult to accept for many proud Colombian officers and soldiers who have dedicated their lives to fighting against the guerrillas. Thousands of Colombian soldiers and police officers died in the conflict.

⁴⁷ United Nations High Commissioner for Human Rights, "Informe de la Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre su Misión de Observación en el Medio Atrato." May 20, 2002.
Link: <http://www.hchr.org.co/documentoseinformes/informes/tematicos/bojaya.pdf>

⁴⁸ Peter Santana, "Army of Terror," *Harvard International Review*, Winter 98/99, Vol 21(1). For more on U.S. concerns for Colombian human rights records, see Robert D. Ramsey III, "From El Billar to Operations Fenix and Jaque: The Colombian Security Force Experience, 1998-2008." Combat Studies Institute Press, Fort Leavenworth, Kansas, 2009.

⁴⁹ See, among numerous declassified U.S. Embassy Colombia cables, "Military Assistance to Colombian Army's 7th and 12th Brigades, and 2nd 'Brim,'" August 26, 1998. Declassified in accordance with Freedom of Information Act (FOIA) by National Security Archives. Link: <http://nsarchive.gwu.edu/NSAEBB/NSAEBB69/part3.html>

⁵⁰ The impetus for reform in the human rights program came from a number of sources including progressive-minded senior Colombian officers, a robust assistance program from the U.S. Southern Command human rights office, pressure from domestic and international human rights NGOs, and U.S. legislation like the Leahy Law that tied security assistance to human rights improvements.

Today, the armed forces enjoy some of the highest public approval ratings of any military institution in the world. But even President Juan Manuel Santos admitted that the military has made mistakes. On July 23, 2013 at the Constitutional Court, Santos said the government “has been responsible . . . for serious human rights violations and breeches of international humanitarian law.”⁵¹ The Center for Historical Memory, in its 2013 report on the conflict, reported that the military is responsible for approximately 10% of the homicides and massacres in the conflict.⁵²

Despite the extensive reform effort, human rights improvements in the military didn’t occur overnight and some problems persisted for years after the reforms started. The Colombian military frequently considered civilians who were suspected supporters of the guerillas as legitimate military targets. In other cases, they were encouraged to produce combat kills to show positive results of the military strategy. In an incident that garnered international attention and became known as the “false positives” case, Colombian security forces allegedly executed 17 young men from Soacha, a poor neighborhood near the Bogotá capital, in 2008. The young victims were lured to a rural area with promises of paid employment and were subsequently killed. The victims were dressed in the garb of guerillas and weapons placed next to their bodies. The killings were falsely presented by the military as “guerrillas killed in combat” and were reported as carried out by paramilitary groups or criminal gangs. In many of these cases, soldiers received money, extra days of holiday, or a congratulatory letter from their superiors as a reward for having killed a “guerrilla member.” The national and international outrage over the scandal led to the firing of 27 army officers in October 2008, including three generals. In November of that year, the head of the army, General Mario Montoya, was forced to resign. In 2009, dozens of other members of the security forces were arrested in connection with these types of killings.⁵³ At the time this report was published, 22 Colombian generals were reportedly under investigation for extrajudicial executions.⁵⁴

In 2011, President Juan Manuel Santos took office, and, under his direction, the Colombian Office of the Attorney General is investigating more than 3,700 extrajudicial executions allegedly carried out by security forces from 2002-2008. Overall, such

⁵¹ Fox News, “Colombia admits rights violations in battle with leftists,” July 23, 2013.

Link: <http://www.foxnews.com/world/2013/07/25/colombia-admits-rights-violations-in-battle-with-leftists.html>

⁵² Centro de Memoria Histórica. “Basta Ya!: Colombia: Memorias de Guerra y Dignidad,” 2013.

Link: <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/estadisticas.html>

⁵³ By June 2012, some 1,800 members of the security forces had been investigated in connection with 2,984 murders. By the middle of 2015, 800 soldiers had been convicted in the killings. However, no officer who commanded a brigade or higher at the time of the killings has been convicted. Many of the suspicions on military collaboration with paramilitaries come from not only human rights organizations and the free press but from reports by the U.S. embassy and the United Nations office in Colombia. Human Rights Watch, 2001, p. 31.

⁵⁴ Agence France-Presse (AFP), “Colombia issues arrest warrants against 22 Army officers,” 03 Sept 2015.

killings have diminished since 2007, following the introduction of a comprehensive Ministry of Defense policy under which security forces are guided by a detailed operational manual and legal advisers. Military inspectors are said to support both the planning of operations and rules enforcement.

The Colombian Truth Commission

According to the reported agreement in Havana, the Commission for Clarifying Truth, Harmony, and Non-Repetition will be established within six months of the peace accord signing.⁵⁵ Once established, it will have three years to conduct its investigation and publish its final report. The principal directors of the truth commission (the “Commissioners”) will be chosen by a committee of nine representatives of the FARC and government. There will be a total of 11 Commissioners of which three may be foreigners. The Commission president must be Colombian. Two-thirds of the selection committee must agree on the commissioner for him or her to be selected.⁵⁶

A truth commission in Colombia would be a logical continuation to the conflict-resolution efforts conducted during the last ten years. The effort at reconciliation began under President Alvaro Uribe who oversaw the passage of the Justice and Peace Law in 2005. As part of that effort, Colombia established a National Commission on Reparation and Reconciliation (CNRR) and a Historical Memory Group. Later, the National Center for Historical Memory (CNMH) was created. In 2013, it produced its “Basta Ya!: Memories of War and Dignity” report, a massive compendium of the Colombian conflict from 1958-2013. Establishment of a full-fledged truth and reconciliation commission would be a natural addition to these initial efforts. However, such an effort is fraught with pitfalls of politically and socially explosive topics, ones that have bedeviled previous truth commissions in Latin America.

The Colombian Truth Commission should be independent and impartial. It must provide security guarantees for victims and witnesses who are interviewed or who testify to the members of the commission. It must take care to preserve the evidence and

⁵⁵ Approving the peace accord once it has been finalized has been a controversial issue. Originally, the Colombian government indicated approval for the peace accord would be put to a vote by a plebiscite by the Colombian people. The government also considered forming a special Constituent Assembly that would implement the necessary changes to the Constitution. However, after dragging on for more than three years, public skepticism grew that the accord would either never be signed or would be impossible to implement. In May 2015, nearly 70% of Colombians doubted the negotiations would succeed. Consequently, President Juan Manuel Santos sent a proposed constitutional amendment to the Congress that would create a special legislative assembly to implement the peace deal. As of the publication of this report and in light of the preliminary nature of the accords, no official policy has been announced or approved as to how or if the peace accords will be approved.

⁵⁶ The establishment of the Colombian Truth Commission was actually announced in June 2015 via a joint communique from the peace talks in Havana. The announcement was one of about 70 public releases during the peace talks to inform the Colombian people of the peace talk developments. An English version of the June 4, 2015 public release about the truth commission can be found here: <https://www.mesadeconversaciones.com.co/comunicados/informe-conjunto-de-la-mesa-de-conversaciones-entre-el-gobierno-nacional-y-las-fuerzas?ver=in>.

eyewitness testimony it collects. As the Colombian government has done throughout the peace talks, the commission should periodically inform the public of developments and its findings. Most importantly, the Colombian Truth Commission should focus its efforts on illuminating the truth, encouraging co-existence, tolerance, and reconciliation, and ensuring crimes committed during the conflict are never repeated.

Since it will work in tandem but separately from the human rights trials, the commission should make it clear that it is an extra-judicial organization. Evidence it collects may not be admissible in criminal trials, part of an effort to encourage witnesses and victims to share their stories without fear of retribution by the perpetrators of the crimes. In that light, it will not name suspects, recommend punishments, nor share evidence with the judicial system. While it is not entitled to reveal individual truths or to specifically identify perpetrators, it can assess the collective responsibilities of the conflict's participants to include the guerrillas, the paramilitaries, the public security forces, and the government as a whole.

Most truth commissions do not name individual perpetrators of alleged crimes. To do so without a thorough legal investigation would potentially incriminate a person who would not have the opportunity to dispute the charges through due process legal proceedings. As one truth commissioner in Chile wrote, "to name culprits who had not defended themselves and were not obliged to do so would be the moral equivalent to convicting someone without due process. That would have been in contradiction with the spirit, if not the letter, of the rule of law and human rights principles."⁵⁷ In Argentina, for example, the commission was prohibited from naming the suspects of human rights violations. However, victims and their families feared that rebels from the Montoneros, an urban guerrilla group, and the national security forces that had contributed to an estimated 10,000 to 30,000 deaths during the internal conflict in the country, would escape justice. On the eve of the publication of the Argentine truth commission report in 1985, the names of alleged perpetrators of crimes were leaked to and then published by the press, causing a significant public clamor about the truth commission report and how its findings might be used.

Since then, a number of other truth commissions in Latin America – Chile and El Salvador, for example – have named those accused of crimes. As in Colombia, the Chilean Truth Commission was prohibited from naming individuals accused of human rights violations. However, the commission passed the names of suspects it had discovered during its investigation to the Chilean courts for further investigation and possible use in subsequent criminal trials.

⁵⁷ Report of the Chilean Commission on Truth and Reconciliation, page xxxii.

In El Salvador, a United Nations Truth Commission was established to investigate the most serious human rights violations. The Commission recommended the removal or transfer of 103 officers including the Minister and Vice-Minister of Defense, most of the generals, and many of the colonels. Salvadoran President Alfredo Cristiani retired all the officers recommended by the Commission including most of military's high command.⁵⁸ According to scholars of the Salvadoran conflict, this was "the most thorough purge of any Latin American army not defeated in war."⁵⁹

Not all Latin American truth commissions end as they originally intended. Truth commissions in Bolivia, Uruguay, Ecuador, Guatemala, and Brazil failed to live up to their expectations. In other cases – Chile, Argentina, and Peru, in particular – the truth commissions made a significant contribution to reconciliation in the country, made important recommendations to ensure non-repetition, and helped identify victims and perpetrators of crimes. Truth commissions that failed to accomplish their objectives were usually constrained by a lack of cooperation from state forces or insurgents, an inadequate budget or manpower, insufficient time to complete their investigations or written summaries, or a lack of political support from senior officials.

Conclusion

President Santos has declared that Colombia has "been a country in conflict for so many years, so many decades, centuries even, that it's time for us to heal our wounds."⁶⁰ His efforts to investigate the long conflict in his country have already included compensation for victims, investigations into illegal government activities, and restoration of land to displaced persons. Colombian authorities have begun the grisly task of identifying the remains of thousands of people buried in unmarked graves across the country so that they can be returned to their families for proper burial.

⁵⁸ The autonomy and obstinacy of the military would have likely resulted in the armed forces ignoring the recommendations but the Clinton Administration threatened to withhold \$11 million in aid if the military did not comply with the Commission's recommendations. Even after the report was published, the Salvadoran military vehemently contested the veracity of the report. On 23 March 1993, Minister of Defense General Ponce accused the Truth Commission's report of trying to "defile the honor and dignity of the armed forces and convince the public that the military had systematically violated human rights." Two years later, the new Salvadoran Defense Minister, General Humberto Corado, continued to deny that the armed forces had done anything wrong. "The armed forces have nothing to apologize for, since their conduct was consistent with the principles of a war in which a clandestine enemy attacks regular military patrols," said Corado. Reported in Mike Kaye, "The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratisation: The Salvadorean and Honduran Cases," *Journal of Latin American Studies*, Vol. 29, No. 3 (Oct., 1997), 705-706. See also David H. Ucko (2013) Counterinsurgency in El Salvador: the lessons and limits of the indirect approach, *Small Wars & Insurgencies*, 24:4, 682; Call, 835-836.

⁵⁹ According to the UN Truth Commission in El Salvador, 85 percent of the human rights violations during the war that it investigated (a total of 22,000 cases) were committed by the military, paramilitary groups, or right-wing death squads. The FMLN guerrillas were responsible for five percent of the cases. Source: United Nations Truth Commission in El Salvador, "De La Locura a la Esperanza," (San Salvador, 1993); See also Charles Call, "Democratization, War, and State-Building: Constructing the Rule of Law in El Salvador," *Journal of Latin American Studies*, 2003, vol 35, 835.

⁶⁰ Darcy Crowe, "Colombia Tries to Heal Wounds of Long War," Wall Street Journal, 07 July 2011.

Clearly, Santos' efforts are in keeping with the best intentions of previous transitional justice programs in Latin America. While there is not one best model, other examples in the region provide important lessons for Colombia. Colombia should ensure that impunity no longer protects those responsible, by action or tolerance, for human rights and international humanitarian law violations. Rather, the accused should be tried in a court of law, demonstrating the government's resolve and impartiality.

Colombia stands to gain much from its amnesty program and truth commission. Certainly, dredging up old, bad memories is not a pleasant experience, but some degree of accountability is necessary for the victims—and for the legitimacy of the current government. As one former Chilean defense official suggested about controversial human rights trials in his country, “You deal with it or it will never go away. You have to confront it.”⁶¹ As President Santos has demonstrated, he is capable of launching reconciliation programs that require what one observer called a “gigantic administrative and judicial task.”⁶² In his opinion, Colombia can emerge as a truly representative democracy, embracing human rights, leaving its checkered past behind, and “healing the wounds that the country has accumulated for decades.”⁶³

If the peace accords are signed in March 2016, Colombia faces difficult years ahead as the country tries to reconcile 50 years of violence. Many questions remain about how Colombia will implement the post-conflict demobilization of the armed groups. Few details have been revealed from the talks in Havana including how “restriction of freedom” is defined. The ceremony for the signing of the accord will be, without a doubt, one of the most important historical events in the country's history. What comes next will be very difficult. The two sides have to implement the very challenging agreements they have made on the political participation of the FARC, the land reform and distribution initiatives, the illicit drug trafficking, accountability and punishment for crimes, and reparations for victims. Vengeance and retaliation tendencies will have to be voluntarily suppressed. Both groups will have to accept the legitimacy of the others to share political and social space in Colombian society. As one transitional justice scholar observed, a “collective amnesia” would be convenient.⁶⁴ With luck, the country will move from negative peace to a long-sought positive peace.⁶⁵ It will likely take decades to do so.

⁶¹ Lutz and Sikkink, 2001, p. 16.

⁶² Richard McColl, “Colombia's Military Faces Challenges over Peace Talks.” BBC, 24 Oct 2012; BBC, “Land Theft Put at 7M Hectares,” 29 May 2011.

⁶³ McColl, 2012.

⁶⁴ Andrew Rigby, *Justice and Reconciliation: After the Violence*. Boulder, CO: Lynne Rienner, 2001. Priscilla Hayner, “Fifteen Truth Commissions: a Comparative Study, 1974-1999.” *Human Rights Quarterly*, 1994, 372.

⁶⁵ John Galtung, considered the father of peace studies, introduced the concept of positive and negative peace in his 1969 article, “Violence, Peace, and Peace Research.” Negative peace is the absence of hostilities, either by prevention, intervention, or by cessation of hostilities. Positive peace refers to the restoration of relationships, the constructive resolution of conflict, and the creation of peace mechanisms that benefit the entire population and society.



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