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Bridging Human Rights and Conflict Resolution: Experiences from Latin America

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1. Introduction

This paper focuses on the relationship between human rights and conflict resolution¹, examining the ways in which Latin American states and societies during the democratization process positively complemented two fields that have traditionally been viewed as at odds with one another. Indeed, these two fields are often perceived as being in competition as if the imperatives of “justice and peace” were inherently and necessarily in conflict between each other. Joining a fairly recent and still limited academic and practitioners’ efforts to better understand the complementary between human rights advocacy and conflict prevention and management, this brief explores this complex relationship in light of the return of democracy since late 1980s in South America and the end of the internal conflicts in Central America in late 1990s.² It argues that the Latin American experience shows important synergies between these two fields, a complementarity that has been fundamental for laying the foundations for more peaceful, just, and reconciled societies.

2. Tension between the fields

Different Approaches and Methods

A variety of factors explain the lack of integration between human rights and conflict resolution. As Lutz, Babbitt & Hannum point out, “These two groups make different assumptions, apply different methodologies, and have different goals, values, and institutional constraints (173)”. As a result, human rights activist and conflict managers occasionally adopt different and sometimes even contradictory approaches to target the same problem. The former executive director of the Minnesota Advocates for Human Rights describes these differences:

“In general, human rights people and conflict resolution people don’t speak the same language. They come from different backgrounds and there is a lot of

¹ This brief uses the term “conflict resolution” as a catchall for the broader field that also includes conflict prevention efforts, peace-building, and conflict management.

² Recent initiatives to integrate these two fields include: (Mertus & Helsing 2006; International Council on Human Rights Policy 2006; Lutz, Babbitt & Hannum 2003; Parlevliet 2002). Think tanks have also participated in this debate. See Carnegie Council for Ethics and International Affairs:

http://www.carnegiecouncil.org/publications/articles_papers_reports/161.html

suspicion between them. Human rights people are judgmental and tend to come from a legal background, whereas conflict resolution people are more interested in stopping hot conflict and are willing to rub hands with bad actors (Barbara Frey in Lutz, Babbitt & Hannum 2006: 174)".

The International Council on Human Rights Policy (2006) summarized the different approaches (table 1) as a clash between "conflict managers" and "democratizers/human rights activists." The report suggests that human rights actors have been perceived as using adversarial approaches, while conflict resolution actors use cooperative approaches; the former prioritizing justice while the latter prioritizing reconciliation. This perceived dichotomy when comes to different methods, goals and approaches used by these two actors goes even further. "Conflict managers, it is argued, tend to concentrate on short-term solutions that address the precipitous events that sparked the conflict; they primarily seek a swift and expedient end to the violence. Democratizers tend to concentrate on the longer-term solutions that address the root causes of the conflict; they emphasize for the need for enduring democratic stability. The former see peace as a precondition for democracy, the latter see democracy as a precondition for peace" (International Human Rights Council 2006: 10).

Table 1

Conflict Managers	Democratizers/Human Rights Actors
Inclusive approach	Exclusive approach
Goal is reconciliation	Goal is justice
Pragmatic focus	Principle focus
Emphasis on the process	Emphasis on the outcome
Particular norms and cultures of the societies in conflict	Universal norms endorsed by the international community
Assume moral equivalence	Insist on moral accountability
Conflict resolution is negotiable	Justice is not negotiable
Outside actors should be politically Neutral	Outside actors cannot be morally neutral

Source: The International Council on Human Rights Policy (2006: 10)

Tensions and perceived contradictions tend to be especially acute during peace negotiations to end conflicts. An anonymous UN official referring to the role of advocacy groups very explicitly indicates that "to end the war is the primary responsibility of the peace negotiator...the human rights fact-finding is relevant, but should not become disruptive of, the process of negotiating peace" (Mertus & Helsing 2006). Indeed, human rights reports can have unintended effects during peace process and negatively affect ongoing efforts to bring parties to the negotiation table. Human rights reports, for example, may be used by one side of the conflict or the other to promote support for their particular position. Conversely, accusations of abuses are likely to provoke anger or hostility in those against whom they are directed (Lutz, Babbitt & Hannum 2006:188-189).

Conflict resolvers often keep their distance from human rights practitioners during peace

negotiations. They are concerned that, if they associate with human rights advocates, their neutrality will be compromised. To be sure, this does not mean that international conflict managers are not concerned about human rights. As Lutz, Babbitt & Hannum indicate, “while most (*conflict managers*) take the view that reaching an agreement that stops violence is the first priority, many also question whether it is acceptable to focus only on achieving a settlement when massive human rights abuses are occurring” (190).

Peace, Justice & Reconciliation

The greatest tension in the two fields lies between human rights advocates’ post-conflict focus on justice for past crimes and conflict resolvers’ desire to promote reconciliation, or at least peaceful coexistence, among previously warring parties. Peace versus justice opens a wide array of question in this context: Are there some issues that should never be open to negotiation? Are there circumstances under which attention to accountability can be momentarily suspended to allow peace efforts to proceed? What should be the role of conflict resolution in circumstances where one party to a conflict is responsible for genocide? (Lutz, Babbitt & Hannum 2006:191-192).

Conflict managers and human rights activists tend to have different answers to the questions presented above. As Michelle Parlevliet describes,

“conflict management practitioners generally prioritize peace as a basis for justice, arguing that the cessation of violence and resolution of intra-state conflict is a precondition for the establishment of a viable and enduring system of justice...Human rights actors, however, focus more directly on justice as the foundation for a lasting peace. Their primary concerns are with holding perpetrators accountable, restoring the rule of law, and building democratic institutions. While many conflict resolution practitioners share these concerns, the two fields often differ on the relative priority and importance attached to the various imperatives” (11).

The peace versus justice question is often referred to as ‘transitional justice’ dilemmas – the dilemmas of how to confront the legacy of gross human rights violations committed during conflict situations (International Council on Human Rights Policy 2006: 71). These dilemmas were at the center of the debate after the genocide in Rwanda and in the context of Bosnia-Herzegovina. However, this debate has taken place beyond the realm of conflicts that ended in genocide to include countries experiencing democratic transitions after a period of authoritarian rule as experienced in Southern Europe (Spain and Portugal in 1970s), Latin America (1980s and 1990s), and Eastern Europe (1990s). More recently, the International Criminal Court features prominently in this debate³ most notably through the cases of Uganda and Congo and most recently due to the Security Council referral of the situations in Darfur, Sudan and Libya.

³ For background on the justice and Peace debate in the context of the ICC see: Canadian International Council <http://opencanada.org/indepth/peace-v-justice-2/>

The International Council on Human Rights Policy in a recent report indicates two reasons why dealing with past human rights abuses causes tension among human rights advocacy groups and conflict managers. Firstly, there are clear international standards that set down normative demands aimed at ensuring accountability. International human rights and humanitarian law standards state clearly that some types of serious abuse, at least, must be subject to processes of accountability such as investigations, prosecution, trial and punishment. Secondly, peace agreements almost by definition involve compromise, as they attempt to find negotiated ends to conflict rather than military ones. This involves trying to find an accommodation with all the parties waging war militarily, many of whom by virtue of being at the heart of the conflict will have been responsible for abuses. Parties are unlikely to sign agreements that they view as handing, in essence, a military victory to the other side by requiring their own accountability leading to their eventual punishment. Tensions exist because international legal requirements of accountability appear to sit uneasily with the need to bring political and military élites to some form of compromise to end fighting (International Council on Human Rights Policy 2006: 71- 72).

International relations scholars have also joined this debate expressing concerns regarding the impact of transitional justice mechanisms such as domestic and international trials on a state's democratic stability and their potential role in exacerbating conflicts. Goldsmith & Krasner contends that a "universal jurisdiction prosecution may cause more harm than the original crime it purports to address" (2003:51). Snyder and Vinjamuri argue that human rights trials have the potential to undermine transitions to democracy. According to these scholars, "the proponents of legalistic justice who underrate the centrality of these political considerations cause more abuses than they prevent" (Vinjamuri & Snyder 2004: 353). Responding to this criticism, a group of scholars created a database of international and domestic prosecutions of human rights violations and truth commissions with the objective of evaluating the impact of these mechanisms (Sikkink & Walling 2007; Kim & Sikkink 2010/2013; Sikkink 2011). These authors' data covers the last three decades of transitional justice mechanisms in transitional countries and their results suggests that the pessimistic claims of skeptics that human rights trials threatens democracy and exacerbate conflict are not supported by empirical evidence. Furthermore, more recent evidence shows that such prosecutions are affecting the behavior of political leaders worldwide and have the potential to diminish human rights violations in the future (Sikkink & Kim 2013). As we will see in the next section, the evidence from Latin America is particularly compelling.

3. Overcoming differences: The experience from Latin America

There are several factors that contributed to a more productive relationship between human rights and conflict resolution in the Latin American context. These factors have been especially noticeable during the Peace Process in Central America and the transitional justice debate especially in the Southern Cone. As this section analyses, the experience of these sub-regions underscores the many complementarities between these two fields.

The first significant aspect to highlight is how the Peace process in Central America and the democratic transition in the Southern Cone differentiate in terms of the source of human rights abuses and its relationship to the specificities of each conflict. Scholars rightly point that violent and destructive conflict can lead to gross human rights violations, but can also result from a sustained denial of rights over a period of time. “Human rights abuses can be a cause as well as a consequence, or symptom, of violent conflict” (Parlevliet 2002:11). This distinction is crucial for the Latin American context. The massive human rights abuses that took place in Central American countries were a consequence of high levels of inequality and poverty combined with a systematic political and economic marginalization of indigenous communities, a situation that escalated into internal conflicts ravaging the sub-region from 1970s to 1990s. In other words, the conflict in Guatemala and El Salvador had claims for equality at the center of its genesis and they were largely an expression of deeper structural problems. As we will see in the next section, the Peace Processes⁴ in Central America added important provisions to include political, social, and economic problems that were at the core of the conflict. The fact that broad array of issues were part of the peace negotiations prompted a more cooperative work among conflict solvers and human rights advocates.

In the case of South America, human rights abuses are better understood as a product or a symptom of a conflict between the authoritarian regimes and what the military juntas used to call the “internal enemies”, a process that resulted in the systematic oppression of the civil and political rights by the state against its own citizens. Unlike Central America, structural causes were not at the center of the conflict. At the time of the coup d'état (1976) Argentina, for example, was the most developed country in the region. The primary objective of democratization in countries in the Southern Cone was to put an end to the repressive practices develop by the military regimes while securing stable political transitions without the potential threats of political reversals. The objective of generating governability and securing political stability for the new democracies collided in many occasions with the goals of holding the responsible for the human rights violations accountable. In this situation, especially in Chile and Argentina, transitional justice dilemmas ranked quite high as an issue of concern. Despite the difficulties and tensions that are and inevitable part of the ongoing transitional processes, the dual objectives of justice and peace have moved slowly but steadily together towards the same direction.

Peace Process⁵ and Human Rights in Central America

Human rights concerns were critical components to ending the civil wars in El Salvador

⁴ In the case of Guatemala's Peace Accords (1996) these agreements mapped steps for ending the military confrontation and set forth guarantees of reforms to address some of the underlying social and structural issues, grouped into accords on: human rights; a truth commission; the resettlement of refugees and displaced people; the identity and rights of indigenous peoples; the socio-economic and the agrarian situation; strengthening civilian power and the role of the armed forces; and reform of the Constitution and electoral system. See more at: <http://www.c-r.org/accord-article/guatemala's-peace-process-context-analysis-and-evaluation#sthash.kInp4RIR.dpuf>

⁵ For a comparative work on Peace Processes in Latin America see (Arnson, 1999)

and Guatemala. Moreover, there is a general agreement among scholars and policymakers that the inclusion of human rights requirements in the peace agreements were key for strengthening the process and isolate spoilers. Jean Arnault of the UN Mission in Guatemala declared that “human rights was central not only to the peace process, but to the very legitimacy that made the peace process possible” (Arnault in Mertus and Helsing 2006).

In the case of El Salvador, human rights played a crucial facilitative role during the peace process. Human rights provisions were seen as “confidence-building measures as the parties inch towards substantive negotiations.” The human rights agreement gave both parties a way to break a negotiating deadlock: “neither party wanted to be seen to torpedo negotiations even though they were finding it difficult to move forward on substance” (International Council on Human Rights Policy 2006: 23-24). The Peace Accords also provided a blue print for a more democratic El Salvador and the institutional reconstruction aimed at providing longer-term mechanisms to avoid human rights abuses (See more in box 1).

The Guatemalan peace accords put an end to more than three decades of internal armed conflict between the Guatemalan government and insurgent groups (joined as the Guatemalan National Revolutionary Union, URNG). The first breakthrough achievement was most notably named the “Human Rights Accord” signed in March 1994. This agreement was path breaking. After the massacres in Xaman against Mayan communities in 1995, the human rights provisions in the Guatemalan peace accord enabled the civilian leadership to assert greater control over the military, helping to sustain peace and democracy (Mertus & Helsing 2006). Also, URNG’s insistence in including human rights as part of the accords was crucial to reach a comprehensive agreement. As a result, the 1994 agreement and the ones that came thereafter addressed important manifestations of the conflict including human rights provisions. They specifically dealt with human rights issues and some of the structural causes of the conflict including: historical clarification with respect to human rights; the identity and rights of indigenous peoples; socio-economic issues; strengthening of the civilian power and the rule of the armed forces in a democratic society; and the electoral regime.

In sum, the Guatemalan and El Salvadorian experience highlights how human rights protections can begin to address deep-rooted causes of conflicts such as equality, social inclusiveness, and state capacity building. These cases also illustrate how parties of a conflict can be critical drivers for the inclusion of human rights into peace agreements. As the International Council on Human Rights Policy indicates, “the cases of El Salvador and Guatemala provide examples of human rights agreements designed to address both state and non-state violations and abuses. While in both instances the state was the main perpetrator of human rights violations, by also addressing abuses committed by non-state actors it was possible to secure the agreement of state forces who had resented the international community’s focus on their own human rights compliance. As a practical matter the agreement then enabled both sides to be monitored (41).”

Transitional Justice in the Southern Cone: Argentina and Chile

Latin America as a region has played a pathbreaking role when comes to transitional justice. It is, along with Africa, the region of the world with the highest concentration of truth commissions (each comprising 37% of the total). It is also the region where the most domestic human rights trials have occurred, comprising 54% of the total transitional trials worldwide⁶ (Sikkink & Walling 2007). Most notably, “every country in the Americas region that established a truth commission also held domestic trials” (Sikkink & Walling 2007: 430). Argentina’s case is particularly remarkable when comes to prosecuting human rights violators. The South American country charged nine commanders in chief who had been members of the military juntas that ruled Argentina during the dictatorship. No previous trials of the leaders of authoritarian regimes for human rights violations during their governments had ever been held in the region. Argentina’s “Nunca Mas” in 1984 was the first published truth commission report worldwide and the one that launched the global trend towards such reports (Sikkink 2008). As for the case of Chile, General Pinochet’s arrest in London in 1998 put into practice the concept of universal jurisdiction. That is, anyone can be held accountable in any country for human rights crimes committed anywhere. For the first time, a former head of state was subject to prosecution for human rights crimes committed while in office.

Due to all these significant developments, transitional justice scholarly work on Latin America is vast and includes different domestic and international factors, actors, and perspectives. When specifically searching for how democratic transitions in the region have dealt with both human rights and conflict resolution, several features point out to the fact that the experience of Latin American countries defies the “peace and justice dilemma” that has critically divided these two fields.

First, after more than two decades addressing past human rights violations using multiple transitional justice instruments, the region appears to be less conflict ridden and more stable democratically than what skeptics scholars and policymakers predicted at the beginning of the transition processes. Sikkink and Booth (2007) provided empirical evidence supporting the fact that human rights trials have not undermined the prospects for peace and democratic consolidation in the Latin American states in which some of these mechanisms have been implemented since 1980s. The study found that Latin America, which has made the most extensive use of human rights trials of any region, has made the most complete democratic transition of any transitional region. “Since 1978, when the first trials were initiated in the region, there have been only three examples of coups in Latin America, and none was provoked by human rights trials” (Sikkink and Booth 2007: 434). These scholars found no evidence indicating that trials lead to more human rights abuses or conflict. “Of the 14 countries that held human rights trials for at

⁶ While human rights trials have been common through the region, Argentina, Chile, Guatemala, Honduras, Panama, and Peru have made more use of them.

least two years, 11 improved their human rights situation after trials, and in 3 countries (Haiti, Mexico, and Venezuela) the human rights situation worsened” (Sikkink and Walling 2007: 437). Most notably, after extensive internal conflicts for decades, the region is now largely free of international or domestic wars and conflicts.⁷ “There is not a single transitional trial case in Latin America where it can be reasonably argued that the decision to undertake trials extended or exacerbated conflict” (Sikkink and Walling 2007: 440).

A second factor that was critical to make these two fields come together in the region is a less clear-cut distinction between human rights advocates versus conflict resolution managers. The experience, especially in Chile and Argentina, shows important communalities between these two actors in terms of goals, methods, and shared values. In the case of these two countries, democracy brought into power a group of people that had experienced first hand the brutalities of state terror. Many of the key new authorities in the executive branch as well as in congress had worked extensively with transnational human rights networks either when they were in exile and upon their return to form the political opposition against the regimes. An important number of local human rights NGO were also designated to occupy bureaucratic positions at different levels of the state apparatus. The new democratic leadership in both countries had something in common: they shared a set of values emphasizing democracy and human rights due largely to their personal histories of struggles against the military juntas. For instance, state officials played an important role in Argentina for moving transitional process forward. The creation of the truth commission or the trial against the junta leaders was a decision by the Executive. The nullification of the Due Obedience and Full Stop Laws was a decision by the Congress, which was then backed by the Supreme Court.

Third factor, the methods and instruments of transitional process were both targeting the objective of truth as well as justice. Both truth and justice as complementary not in opposition. In the majority of the countries in the region all this mechanism were in place in some cases almost simultaneously (trials and truth commissions). Furthermore, Argentina developed the innovative idea of truth trials. These "truth trials" (*juicios por la verdad*), as they became known, were an innovation in Argentine justice, and possibly in the rest of the Americas. They were unlike ordinary criminal trials in that judicial action was expressly limited to investigation and documentation, without there being a possibility either of prosecution or punishment. They were based on the right (both of the relatives and of society as a whole) to know the truth, and the right of the relatives to bury and mourn their dead (*derecho a duelo*). **MORE HERE**

Another consequence of the links between these two fields has been the diffusion of national commitment with transitional justice into the international arena. Chile and Argentina are internationally recognized as active participants in the creation of international institutions such as the International Criminal Court (ICC), the UN Human Rights Council, and the UN Peace-building commission. Both countries have also been significant supporters of the Responsibility to Protect norm and sponsors of a significant number of international human rights norms such as the Convention on forced

⁷ The Colombian conflict continues until today. Yet, this is a non-transitional country.

disappearances of persons (Sikkink 2008). An important motivation behind this diplomatic endeavors have been to share their own experience with transitional justice issues and a leading role of political leaders that are particularly sensitive about the need to promote human rights at a national and international level. President Michelle Bachelet is one of the clearest examples of the latter. During her time in office she was particularly sensitive to the topic, as she herself was a victim of the Pinochet regime's ruthless methods of torture and imprisonment. Explaining the Chilean commitment to the UN Security Council, Bachelet indicated:

“You will be aware of my own personal experience with the abuse of human rights. Those were painful times for me, for my family, and for my country. They were certainly the darkest chapter in Chile's history (...). But we are striving to create a world in which such abuses are no longer possible. *Nunca Más*, never again, as we said in Chile after our experience in the 1970s and 1980s. And that is what we must also say in the United Nations, and act accordingly. Chile subscribes fully to a broad concept of freedom and emancipation under which respect for human rights—along with economic and social development, peace and security—is one of the pillars of the mission of the United Nations in this new century.”⁸

4. Conclusions

The Latin American experience shows that even though tensions between human rights advocates and conflict resolvers have been present in the every day politics of transitional countries, they are not as deep, contradictory and mutually exclusive as some scholars and policymakers claim they are. Indeed, human rights groups and conflict managers in the region have operated in a complementary fashion showing that dialogue is possible and that both fields can develop capacities to work together and strengthen each other. Still, interdisciplinary research on this subject is incipient and there is a great need to understand, systematize, and compare past experiences that can shed some light into how to respond to new forms of conflicts and human rights violations. One way of doing that is by opening new forums, in which practitioners and scholars from both perspectives can interact, share experiences, and explore new ideas as to how they can contribute to their shared goal of building peaceful and just societies.

⁸ Notes for the speech of H.E. President Michelle Bachelet at the meeting with Human Rights Watch, New York, September 2007. See <http://www.hrw.org/en/news/2007/09/25/chilean-president-visits-human-rights-watch>

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