

TRANSITIONAL JUSTICE FROM A POLITICAL BARGAINING PERSPECTIVE

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This article focuses on the relationship between peace processes that include commitments to provide transitional justice mechanisms and the kind of accord that finalizes the process. Using a large original dataset covering over 200 peace process years, we develop and empirically test a set of theoretical conjectures on the significance of commitments agreed to during the peace process to provide transitional justice. The analysis indicates that commitments to provisions on truth and reconciliation are positively associated with peace processes that end with a full peace accord. Results contribute to the debate surrounding the tension between peace and justice by suggesting that truth and reconciliation framed by a political bargaining perspective can act as a middle way to bridging peace and justice.

Keywords: transitional justice; peace process; dataset;

JEL codes: C12, C31

I. Introduction

This paper argues that peace processes that include specific commitments to provide transitional justice (TJ) mechanisms, such as truth and reconciliation, are positively associated with processes ending with a full peace accord. The other side of the coin is that peace processes that include commitments to provide other TJ mechanisms, such as rehabilitation of refugees, are positively associated with processes ending with only a partial accord. A full peace accord is defined as “an agreement where the parties agree to settle the whole incompatibility regarding government, territory or both”, i.e. a complete formal termination of the conflict, while partial accords mostly deal with one aspect of the conflict and do not symbolize an end to the conflict (Högbladh 2012). TJ mechanisms are elements designed to deal with past injustices. TJ includes a *symbolic* aspect of truth and reconciliation; a *material* aspect of reparation for victims and restitution of refugees; and a *legal* aspect of amnesty for war crimes and release of political prisoners. The legal aspect of TJ in this paper does not include prosecution because they are mostly found

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in conflicts ending in decisive victory (Kim and Hong 2019), and because that in peace processes, TJ has especially restorative characters that may facilitate compromise on deep-rooted controversies and, thus, functions as a necessary condition for the parties to reach a full accord (Ishiyama and Laoye 2014). By focusing on the role of TJ as a way to reach compromise on deep-rooted controversies, the study contributes to the ancient dilemma of peace-versus-justice, which is still central in the political bargaining process to terminate armed conflicts worldwide (Seul 2019). Reaching a full peace accord is a formal and symbolic act that represents a termination of the conflict, which is the ultimate goal sought in many armed-conflicts because conflicts ending with a full peace accord, opposed to a partial one, tend to be more stable and long-lasting. Moreover, full accords are implemented at a much higher rate than partial accords (Joshi, Quinn, and Regan 2015).

To assess whether commitments to provide TJ mechanisms correlate to peace processes ending with full peace accords, we created an original database of peace processes. Its unit of analysis is a peace process year (PPY) and includes 226 observations of PPYs that belong to 72 separate processes (for a list of all peace processes, see: Appendix I and Background Narratives Document). We focus on PPY as a unit of analysis rather than the whole peace process in order to separate the commitment to provide TJ from the time in the process in which this commitment is achieved. Therefore, we emphasize that a commitment to provide TJ, regardless of *when* it achieves in the process, relates to the conclusion of the peace process by a full or partial accord.

Therefore, for each year of each process we examined whether the parties achieved a commitment to provide mechanisms of TJ and whether the whole peace process to which a PPY belongs ended with a partial or full peace accord.

All peace processes in our dataset took place from the end of the Cold War to 2014. We chose to focus on this period because since 1989, formal peace processes involving negotiation became a key strategy for terminating armed conflicts, which resulted in a proliferation of peace accords (Bell 2017, 86; Kreutz 2010, 246). Findings indicate that 1) commitments to provide both truth and reconciliation, symbolic aspects of TJ, are significantly associated with peace processes ending with full accords; 2) commitments to provide reparations for victims or rehabilitation of refugees, material aspects, are significantly associated with processes ending with partial accords; and 3) commitments to provide amnesty or release of prisoners, legal aspects, are associated (however not significantly) with processes ending with full accords.

The following section reviews relevant literature on conflict resolution and TJ. The third section develops the theoretical framework and presents the study's hypotheses. In the fourth section, we present the dataset and TJ variables and fifth section reports the findings from the empirical analysis followed by discussion and conclusions.

II. Review of the Literature

Since the end of the Cold War, military victories have become less common and negotiated settlements and peace accords have increased, especially in intrastate conflict (Kreutz, 2010, 246). According to the literature there are several conditions under which peace settlement

is more likely: 1. ideological conflicts (i.e. government conflicts) are easier to resolve than identity conflicts (i.e. territorial conflicts); 2. settlement increases if negotiations include all major groups involved in the conflict; 3. third party mediation can play an essential role bridging the groups toward peace settlements; and 4. agreements on the distribution of political power, such as power-sharing or regional autonomy, are found to be essential in negotiation toward peace (Badran 2014; Doyle and Sambanis 2000; Hampson 1996; Hartzell and Hoddie 2010; Licklider 2001; Wallensteen 2015).

Most of this literature examines strategies to reach cease-fires and peace deals; however, less attention is given to the differences between types of settlements. This is especially true for differences between partial accords signed along the way, such as the Oslo Accords between Israel and the Palestinians, and full (comprehensive) accords that reflect the end of formal negotiations, such as the *Agreement on a Firm and Lasting Peace* signed in Guatemala. A few exceptions to this trend include Höglbladh (2012) and Bell et al. (2017), who do differentiate between types of accords, and Joshi, Quinn, & Regan (2015), who examine comprehensive accords.

However, why is it important to differentiate between full and partial peace accords? Full accords are found to be more stable than partial accords and according to several studies full accords also reduce the chances of resumed armed conflict more than a partial accord (Fortna 2003). Moreover, the ratio of implementation of provisions is higher with full accords than partial accords, a fact that may lead to durable peace (e.g. Joshi, Quinn, & Regan, 2015). A full accord, as stated in the introduction, is defined as an agreement where the parties agree to settle the whole incompatibility regarding government, territory or both. A ‘full accord’ symbolizes the end of the armed-conflict, an event with historical significance. This contrasts with partial accords which are interim settlements that typically focus on solving a specific problem and also have high reversibility rate, like the failure of the 2000’s Camp David talks on a permanent settlement between Israel and the Palestinians, which led to an escalation in the conflict (Carey 2001).

Therefore, there is a need for a new theoretical approach that focuses on the differentiation between peace processes that end with full accords in comparison to partial accords. In this paper we present one important differentiation related to the ancient dilemma of peace versus justice. More specifically we focus on the puzzle about how to deal with atrocities and the degree of justice that ought to be brought into a formal peace process. This debate influences the field of human rights and conflict resolution: human rights advocates push for prosecution and retribution while conflict resolution advocates contend that the threat of prosecution might prevent conflict parties, who are crucial for ending the conflict from joining the negotiation table (Babbitt, 2011, para.4; Langer, 2015; Seul, 2019). Here, we examine quantitatively the importance of *transitional justice* (TJ) in peace processes and suggest it can serve as a middle way for bridging justice and peace.

TJ is defined as the full range of mechanisms associated with a society’s attempts to address large-scale past abuses (UN, 2010, 4; (IJTJ 2007). Prominent contributions in the field of conflict resolution view TJ as an instrument of peacebuilding. In this understanding, past injustices are *not* discussed during the peacemaking stage, since members of the

societies in conflict are not yet prepared for evoking the proverbial ghosts of the past (Bar-Siman-Tov, 2013, 231–32; Bazerman, Tenbrunsel, and Wade-Benzoni 2008, 114–16; Bland, Powell, and Ross 2012, 271–72). However, as happened in the recent Colombian peace process, the issue of TJ for victims was key for reaching the comprehensive accord. It was only after the ‘agreements on victims’ was signed did peace look inevitable.¹ As in the Colombian negotiation, provisions for TJ have an affinity to principles of restorative justice, which have served as an “alternative model for facing crime, which is based on the social importance of reconciliation between victim and perpetrator” (Uprimny and Saffon 2006, 3; see also: Kapshuk 2019).

TJ that has restorative rather than retributive justice characters has supposed to reveal past injustices, lend credence to victims’ stories, and improve the chances for reconciliation. Empirical studies show that TJ is not always as effective for reaching reconciliation as the literature claims (Gibson 2004; Olsen et al. 2010; Thoms, Ron, and Paris 2010). However, in our study we do not focus on the effectiveness of TJ for reaching reconciliation but on the association of the **commitment** to provide TJ with peace processes ending with full accords. Moreover, our focus on the commitment to provide TJ is different from other quantitative studies that have focused on the actual implementation of TJ during- and post-armed conflicts (Binningsbø et al. 2012; Loyle and Binningsbø 2016), as well as on the relationships between TJ provisions in peace accords and the durability of peace (Wallensteen, Melander, and Högbladh 2013). Since these studies have not focused on TJ in the peace process itself, what remains to be examined is the importance of TJ during a peace process from a political bargaining perspective.

III. Theoretical Approach

The question that guides the theoretical framework is why peace processes that contain commitments to provide specific TJ mechanisms are associated with peace processes ending with full accords, while peace processes that contain commitments to provide other TJ mechanisms are associated with peace processes ending with partial accords. This question is examined alongside peace processes conducted since the end of the cold war because in the post-cold war period, most armed-conflicts have been intra-state (all parties are part of the same national society) and military victories are less common (Kreutz, 2010, 246). In this conflict context, political processes of negotiation and bargaining have been mostly conducted to end armed conflicts.

The theoretical logic underlying the argument that peace processes that contain commitments to provide TJ mechanisms are associated with peace processes ending with full accords is, firstly, related to the legal aspect of TJ: amnesty provisions and release of prisoners. In the negotiation process, members of the combatant groups have no interest in agreeing to sign a full accord, which means the complete termination of the conflict, if their future in times of peace includes prolonged periods in jail, or if member of the combatant

¹The Economist, 2015, September 26. <https://www.economist.com/news/americas/21666233-ultimatum-unblocks-ground-breaking-agreement-justice-big-leap-towards-peace-colombia>

groups remain in jail. As (Williams, Dicker, and Paterson 2018, 425) rhetorically ask: “[w]ho, after all, would sign an agreement that might bring an end to a conflict, only to find that he will be tried for war crimes, delegitimized in the eyes of his community, and incarcerated, preventing him from enjoying the fruits (legitimate or otherwise) of his armed actions?” (p. 425). Such a scenario happened, for example, in the 1990’s Guatemalan government’s negotiations with the URNG, in which the representatives of the military insisted on amnesty as a condition to sign a full peace accord (Mersky 2005). Another example is the recent Colombian peace process, in which “[t]he commitment of the government of former Colombian President Juan Manuel Santos to a democratically approved amnesty program for FARC members...was one key element of the deal that ended the conflict with that group” (Seul 2018). Therefore:

H1: Peace processes that contain commitments to provide amnesty and/or prisoners release are associated with peace processes ending with full peace accords.

However, the international community and other mediators, like the United Nations, as well as the general public, will not support amnesty if it aligns with impunity and forgetfulness (ICTJ 2009, 1). This is what happened in Colombia when the citizens rejected the referendum to approve the full peace accord between the government and the FARC guerillas (Cobb and Casey 2016). That said, the FARC combatants would not agree to the full accord if they were sent to prison for long periods, thus, it was necessary to find another mechanism for accountability. However, accountability may be fulfilled by other acceptable forms of justice (besides retribution), such as restorative justice, as reflected in Article 17(1)(b) of the *Rome Statute*,² which focuses on the ability and willingness of states to investigate and to let the facts becoming known. In practice, according to this article “amnesty did not aim to shield individuals from prosecution, but rather to assist with effective truth recovery” (Mallinder 2007, 212). It means that in order to provide amnesty, the party(ies) during the negotiation will need “to give” (or to reach an agreement on) other aspects of justice, especially restorative justice, meaning “anything other than Western-style prosecutions before a trial court” (Seul 2018).

In the recent Colombian peace process, the restorative justice of truth-and-reconciliation was selected, such that combatants who acknowledged wrongdoings committed during the war (in cooperation with ‘[t]he comprehensive system for truth reparation justice and non-repetition’) would receive reduced punishments and avoid long prison sentences (Agreement on Victims of Conflict, 2015). Thus, truth-and-reconciliation served as an alternative form of accountability that prevented both prosecution and forgetfulness (Kapshuk and Jamal 2020). A commitment to create truth and reconciliation mechanisms are often agreed to as part of the conditions for a complete termination of conflicts, which are brokered in tandem with commitments to avoid long prison sentences.³ Therefore:

² Rome Statute of the International Criminal Court, Article 17(1)(b), 1998. P.13. https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

³ The commitment to both truth and reconciliation is related to full accords more than a commitment to one or the other separately. Truth without reconciliation (re)opens wounds from the conflicts but without a process for restoring relationships, while a commitment to the process of reconciliation without revealing the truth is an agreement void of historical substance.

H2: Peace processes that contain commitments to provide truth-and-reconciliation are associated with peace processes ending with full peace accords.

Besides these two aspects of TJ: legal (amnesty and prisoner release) and symbolic (truth and reconciliation), the material aspect, which includes victim reparations and refugee rehabilitation, can also be perceived as a recognition of the suffering endured by individuals and a way to acknowledge perpetrator responsibility, particularly when retribution is not included in the process. In this way, material aspects of TJ may also meet the requirements of the international law for accountability for past wrongs and non-impunity (e.g. De Greiff 2006). In the cases that the symbolic meaning of granting reparations or restitutions by the perpetrators is to take responsibility for past wrongs, these elements can also serve as an alternative form of accountability that prevented both prosecution and forgetfulness (Barkan 2005). However, there are cases in which compensations or rehabilitation programs are not provided by the perpetrators, but by a third party, such as the Israeli proposal to the Palestinians during the Oslo peace process in which compensations for the Palestinian refugees would be provided by international funds (Moratinos 2001). Therefore, material aspects of TJ do not always serve as an alternative form of accountability for retributive justice, thus, we cannot argue that commitments to provide material aspects of TJ mechanisms are associated with peace processes ending with full accords. Moreover, compensations and or rehabilitations may be an easy issue to agree to during negotiations, especially when a third party provides the budget, so they might be associated with partial accords. Therefore:

H3: Peace processes that contain commitments to provide reparation or rehabilitation are associated with peace processes ending with partial peace accords.

One can assume endogeneity in the relationship between commitments to provide TJ (X's) mechanisms and reaching a full accord (Y), because they are part of the same process. However, these are two distinct variables. A peace process concluding in a partial or full accord is related to the question of whether the parties agree to settle the entire incompatibility of government, territory or both,⁴ without any relation to the amount or kind of TJ issues. In other words, commitments to provide TJ mechanisms have no connection with the way we define partial or full accords, so an accord might be defined as 'full' even when it does not contain TJ issues.

IV. Methodology

1. Creating the Database

Our Transitional Justice in Peace Processes (TJPP) dataset catalogues justice provisions from 226 PPYs collected from 72 peace total processes between 1989 and 2014. We use the *UCDP Peace Agreement Dataset, v.2, 2011* (Högbladh, 2012) as our basis for defining the framework variables for each peace process year. The TJPP dataset includes **original** information on negotiations regarding six forms of addressing wrongdoing: truth,

⁴ This is based on the definition of *Full peace agreements* (accords) by the *UCDP peace agreement dataset, v.2, 2011* (Högbladh, 2012), p.10.

reconciliation, reparations for victims, rehabilitation of refugees, amnesties, and release of political prisoners.

First Phase - Unit of analysis: a whole peace negotiation process (N = 72)

The dataset contains only armed conflicts that took place between 1989 and 2014 and are almost exclusively between a government and a non-state actor. In addition, only armed conflicts for which at least a partial accord was signed are included in the data, as an indication the parties were serious about ending the conflict (Zartman 1989). Relying on the *UCDP Peace Agreement Dataset, v.2, 2011* (Högbladh, 2012), which includes 216 peace accords from 1975-2011 (and other sources for adding accords signed in 2012-2014, as well as subtracting accords signed before 1989), the TJPP dataset includes 200 accords. We assigned each accord to the peace process it belongs to, and in many cases, several accords were signed in the same peace process. For example, the four peace accords that were signed between the Nepal government and the Maoist Communist Party (CPN-M) in 2006, were assigned to Nepal's government peace process (For more information on each peace process, see the Background Narrative document).

Our decision to define each peace process through peace accords that were signed during the process, might seem surprising since a signed accord often indicates the end of a peace process. Moreover, it might threaten the research's validity by not including informal contact and negotiations that did not mature into a formal accord. These could include discussions on TJ and their effects on the peace process's success or failure. However, considering peace talks as peace processes may cause a different validity problem, since many talks are confidential or semi-confidential and, therefore, difficult to gather reliable information about. Moreover, according to our hypothesis, TJ is more important in processes where the parties were ready for serious negotiations. A signed accord is a signal for such readiness. In many cases, the first signed accord is an outline accord, which we coded as a partial accord. For example, the 1990 *Geneva Agreement* outlined the peace process between El-Salvador government and the FMLN (The Farabundo Martí National Liberation Front). The indicators for the end of a process were either a full peace accord, or a partial peace accord that was subsequently revoked or had not reached a full accord by 2014, the end of the research period. In the El-Salvador peace process, the indicator for the end of the process was the 1992 *Chapultepec Peace Agreement*, which is defined as a full peace accord (for more information on each peace process and its TJ provisions, see: Background Narratives document).

In the coding process, each of the 72 peace processes can have multiple TJ provisions because more than one TJ provision can be agreed to throughout the whole process. The point at which the TJ was agreed to in the peace process was not relevant. The data for coding TJ provisions in each peace process was derived from textual analysis of peace accords signed within each process. In other words, although each peace accord was coded separately, the study's reference to each peace process will not be affected by the number of accords included in it, because in some processes all issues were consolidated in a single accord, while in others each issue was agreed upon separately. For example, in the peace process in El Salvador, we coded the TJ provisions from the nine accords that were signed

between 1990 and 1992. We found that all TJ provisions besides amnesty were agreed to in the El Salvadorian case. However, in other cases such as in the Democratic Republic of Congo between the government and the CNDP, we coded the TJ provision from 2009 when the only accord was signed (according to the UCDP Peace Agreement Dataset).

In our coding of all peace accords we performed a human coding (and not automated coding) given the language variations and the textual nuances with many of the TJ provisions. The codebook of the TJ in peace processes dataset contains indicators and examples for each TJ component. For example, indicators for clarify the truth include, among others, the phrases “truth seeking”, “truth telling”, “truth about the past”, “clarify the past”, “investigation /analysis of (human right) violations or crimes”, “shedding light on what happened”. Several examples for the existing of these indicators were also given, for example from the Guatemalan peace process: “...[t]he Guatemalan people are entitled to know the full truth about the human rights violations and acts of violence that occurred in the context of the internal armed conflict”.⁵ The codebook was given to three PhD candidates at Tel-Aviv University’s International Relation Department, which coded 10% from the dataset. After two rounds of coding we finalized the codebook, according to which we encoded the whole dataset (For the TJ codebook please see: Appendix III).

Second Phase - Unit of analysis: Peace Process Years (PPYs) (N = 226)

In the second phase of the project, we converted each peace process into peace process years (PPYs). The Guatemala governments’ peace process with the Guatemalan National Revolutionary Unity (UNRG), for instance, was converted to 7 PPYs, between 1990 and 1996. Each PPYs can have from one to six TJ provisions - amnesty and prisoners release (legal aspects), truth and reconciliation (symbolic aspects) and victims’ reparations and refugee rehabilitations (material aspects) - because in each year the negotiating parties can create agreements on one or more of the six TJ issues. For example, in 1994 the Guatemalan negotiations included commitments to provide truth and reconciliation, reparations for victims and restitutions for refugees.

We counted a total of 226 PPYs which include years when one or more accords were signed and years in which no accord was signed. Again, our decision to examine PPYs rather than the whole peace process as the unit of analysis, allows us to separate the fact that a commitment to provide TJ was achieved from the time in the process when this commitment was achieved. In the data coding process, any TJ provision coded as 1 for the PPY in which the parties reached a commitment on that particular TJ issue continued to be coded as 1 in later PPYs up until the end of the peace process. This is because TJ issues are contentious, so once an issue is agreed upon, it maintains a presence in the process until its end. For example, in 1994 the Guatemalan government and the UNRG reached an agreement on the issue of truth and reconciliation: senior negotiators claimed the agreement “remove[d] a major hurdle to ending a conflict that has killed at least 100,000 people,” making the peace process “irreversible” (NYTimes 1994). In this case, as is seen in Table 1, the 1994 PPY is coded as containing truth and reconciliation and continues

⁵ The Agreement for the Establishment of the Commission to Clarify Past Human Rights Violations (1994), article 4.

to be coded as 1 in subsequent years until the process ended with a full accord in 1996. This coding format represents sequences in the peace process which contain TJ issues. A sequence begins in the PPY when a commitment to provide TJ was agreed upon and a sequence concludes in the year the negotiating process comes to an end, either by reaching a full accord or by the collapse of previous accords.

Table 1. Example of Coding the Guatemalan PPYs

PPYs	Truth and Reconciliation	How peace process ended (full or partial accors)
1990	0	1
1991	0	1
1992	0	1
1993	0	1
1994	1	1
1995	1	1
1996	1	1

The first column includes the 7 PPYs (peace process years) of the Guatemalan peace process between the government and the UNRG, the second column includes the commitments to provide truth and reconciliation, and the third column includes the way the whole peace process ended: partial ('0') or full ('1') accord. For details on all peace-processes and their coding, see: **Background Narratives document**.

2. Model Variable Operationalization⁶

A full accord is defined as “an agreement where one or more dyads agrees to settle the whole incompatibility” regarding government, territory or both,⁷ where incompatibility refers to “what the parties are (or claim to be) fighting over”.⁸ This is a dichotomous variable (0/1) examined for each peace process year (PPY).⁹ This definition of a full accord is not related to TJ issues, thus, as mentioned, no endogeneity is expected.

The coding of this variable in each PPY is based on the status in which the whole peace process ended: a partial or a full accord. PPYs in a peace process that ended with partial accords were coded as ‘0’, while PPYs in a peace process that ended with full accords were coded as ‘1’. For example, as can be seen in **Table I**, since the Guatemalan peace process ended with a full accord, all PPYs that belong to the Guatemalan process were coded as ‘1’ in the column “How peace process ended...”. In other words, in PPYs for which a full accord was signed at the end the peace process (such as in the Guatemalan example) - the outcome variable in all PPYs is coded as a full accord, as is seen in Table I.

⁶ For more operationalization details, see the codebook in **Appendix III**.

⁷ This is based on the definition of *Full peace agreements* (accords) by the *UCDP peace agreement dataset, v.2, 2011* (Högbladh, 2012), p.10.

⁸ This definition is based on the *UCDP/PRIO armed conflict dataset codebook, v.4, 2014* (Pettersson & Wallensteen, 2015), p.8.

⁹ For the coding I used the Uppsala Conflict Data Program (2017) Peace agreement dataset codebook, p. 10: <http://ucdp.uu.se/downloads/peace/ucdp-codebook-peace-agreements.pdf>.

This form of coding allows us to examine the argument that a commitment to provide TJ, both at the beginning and at the middle of a peace process (i.e., not only at the end of the process), is positively related to the type of accord that the parties will achieve at the end of the process. In other words, in this way we can isolate the commitment to provide TJ from the stage in the process in which this commitment was achieved. Moreover, this way of coding allows us to relate to each PPY separately from the peace process it belongs to, thus neutralizing the influence of the unique characteristics of each peace process. To emphasize this, in one of our statistical examinations we analyse only PPYs that did not include a full accord. From 178 PPYs with partial accords, 109 belong to peace processes ending with only partial accords, while 69 belong to peace processes ending with full accords.

The commitments to provide TJ include three aspects. Symbolic Aspect: The variable representing this aspect is the combined Truth **and** Reconciliation. The strength of truth and reconciliation is in their combination, since only letting the truth to be known without any framework for reconciliation, might bring anger and resentment from the victims, as well as steps toward reconciliation without revealing the past wrongs, which for the victims it is worth to a fake reconciliation (Rouhana, 2011). For example, the mentioned El-Salvadorian peace process included the *Mexico Agreements*, which contain a commitment to create a truth and reconciliation commission:

Commission on the **Truth**: Agreement has been reached to establish a Commission on the **truth**...The Commission shall be entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth. The Commission shall take into account...[t]he need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national **reconciliation**. (My emphasizes) (Mexico Agreements, Article IV, 1991).

Material Aspect: This aspect includes the variable Victim Reparation **or** Refugee Rehabilitation. In contrast to the symbolic aspect, in the material aspect the components often overlap each other. Provision for reparation might include the granting of compensation for refugees, while refugees' rehabilitation might be part of a reparation program, even if it is not mentioned explicitly. For example, the peace process in Sudan included the *Doha Agreement*, which contain a commitment to provide victim reparation and refugee rehabilitation:

The government of the Sudan shall be committed to **compensate** the **internally displaced persons** and the **refugees** and **all the persons affected because of the conflict in Darfur**, in an equitable manner, and the government shall be committed to ensure the right for voluntary return of all the internally displaced persons, and the refugees to their original home areas and shall be committed to establish the services institutions and the infrastructures that would secure a decent life for them. (My emphasizes) (Doha Agreement, Article 8, 2010).

Legal Aspect: This aspect included the variable Amnesty **or** Prisoner Release. Similar with the material aspect, the components in the legal aspect often overlap each other, since providing amnesty is not only relevant to warriors that responsible to atrocities and that agree to lay down their weapons only with a promise for not being in jail, like the FARC in Colombia, but also for political prisoners like pro-British Loyalist and pro-Irish Republican prisoners, which were released after the signing of the 1998 Good Friday Agreement for Northern Ireland. For example, in the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM), provisions for amnesty and release of prisoners were under the title ‘Amnesty’:

“GoI will, in accordance with constitutional procedures, grant **amnesty** to all persons who have participated in GAM activities as soon as possible and not later than within 15 days of the signature of this MoU. 3.1.2 Political **prisoners** and detainees held due to the conflict will be **released** unconditionally as soon as possible and not later than within 15 days of the signature of this MoU”. (My emphasizes) (Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, articles 3.1.1., 3.1.2, 2005).

The statistical model also includes control variables (see Appendix II). The purpose of the regression models is **not** to prove **causality** but to suggest an empirical connection between the TJ components and peace processes ending with full accords, which remains significant when adding control variables.

V. Analysis and Discussion

This section includes analyses to explain why some commitments to provide TJ are significant while others are not and contain descriptive statistics, including models of binary regressions. We start in the examination of TJ from all peace processes in the data and continue with peace processes of armed-conflicts that have more problems related to justice issues, such as conflicts with mass killings. We proceed with robustness checks and methodological difficulties.

To examine the relationship between commitments to provide TJ elements and signing of full accords, we used a logistic regression model. The rationale for logistic regression is that the outcome variable is dichotomous and therefore linear regression is inappropriate. One could argue that survival analysis is more appropriate for this case. However, this argument is only correct if the coding were done according to the temporality of the outcome variable, i.e., all PPYs in each peace process are coded as 0 until the year in which a full accord was signed.¹⁰ This would be the case if the purpose of the study was to examine *when* during a peace process are there more commitments to TJ (at the beginning when partial accords are signed or at the end when full accords might be signed). However, this study examines whether a commitment to provide TJ, regardless of *when* in a peace

¹⁰ In survival analysis, an ongoing peace process with only partial accords, i.e., without reaching a full accord, might be perceived as ‘survival’, while reaching a full accord can be understood as ‘failure’ or ‘not surviving’.

process, is positively correlated to the type of accord that the parties achieve at the end of the process. Thus, in PPYs that include a partial accord, but which a full accord was signed at the end of the process, the outcome variable is coded as a full accord.

We first ran all TJ variables together without control variables.¹¹ As can be seen in model 1, Table 2, the variable *Truth and Reconciliation* was significant and positively associated with peace processes ending with full accords; the variable *Re paration-or-Rehabilitation* was significant and negatively associated with peace processes ending with full accords; and the variables *Amnesty-or-Prisoner release* was non-significant but positively associated with peace processes ending with full accords. The next step was to run all TJ variables with all the control variables, as is seen in model 2, Table 2. The findings were similar to those of model 1. In order to rule out the possibility of multicollinearity, we ran a **VIF** (Variance Inflation Factor) analysis in which the VIF of all TJ variables were found below 2.0, to ensure no multicollinearity.

The relationship between Truth-and-Reconciliation and peace processes ending with full accords is also reflected in Figure 1. The presence of *Truth and Reconciliation* (symbolic aspect) is **five times** more in PPYs in peace processes that ended with full accords (21%), than those in peace processes that ended with partial accords (4%). We used Z-test for comparing the two proportions ($Z=3.42, P<.000$).¹² The data also shows that the variable *Amnesty/Prisoners* (legal aspect) is found in 61% of PPYs in processes that ended with full accords and in 54% that ended with partial accords. These data illustrate the findings in model 1 and 2, in which *Amnesty/Prisoners* is insignificant but positively associated with

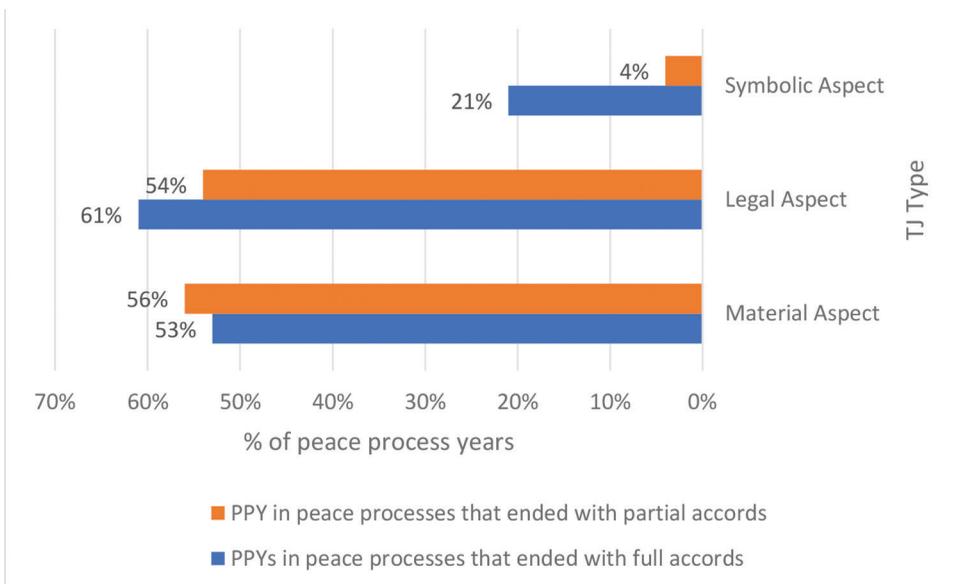


Figure 1. Percentage of TJ aspects from PPYs in peace processes ending with partial accords (N = 109) vis-à-vis PPYs in peace processes ending with full accords (N = 117).

11. All results were generated using the Stata statistical package.

12. The Z-score calculation was taken from *Social Science Statistics*.

peace processes ending with full accords. The data in Figure 1 also shows that the variable *Reparation/ Rehabilitation* (material aspect) is found in 53% of PPYs in peace processes that ended with full accords and in 56% that ended with partial accords. This data only partially illustrates the findings in model 1 and 2 in which *Reparation/ Rehabilitation* is *negatively associated with* peace processes ending with full accords. It is worth mentioning, as is seen in Figure 1, that if we examine only peace processes ending with full accord, we find that the rates of the legal and material aspects are much higher than the symbolic aspect. This difference is similar if we examine only peace processes ending with partial accord. These figures emphasize the importance of the symbolic aspect, because they show that while the material and legal aspects exist in high rates at all kinds of peace processes, the symbolic aspect exists almost exclusively in peace processes ending with full accord.

The Nature of Armed-Conflicts

Until now we ran the analyses on all the 226 PPYs of the dataset. However, there is a need to examine the importance of commitments to provide TJ in specific types of armed conflict and peace processes, especially armed-conflicts that have more problems related to justice issues, such as mass killings. Data for this measure was taken from the PITF database (Political Instability Task Force, Geno-Politicide 2014 dataset), which contains data on mass killing in armed-conflicts. From 226 PPYs in our dataset, 84 PPYs are related to armed-conflicts with mass-killings.¹³ The need to deal with the nature of armed conflict stems from the possibility of a **selection effect**, for example, as armed-conflicts have more problems related to justice issues (e.g., mass killings), the PPYs are more likely to include discussion of TJ issues and provisions. This assumption was proven correct when we found that a commitment to provide *Truth and Reconciliation* is found in 21% of all 84 PPYs that had conflict with mass-killings vs. 7% of the 132 PPYs that had conflict without mass-killings; *Reparation/ Rehabilitation* is found in 70% of the 84 PPYs from conflicts with mass-killings vs. 45% of the 132 PPYs from conflicts without mass-killings. However, *Amnesty/Prisoners* is found in 40% of the 84 PPYs that have mass-killings vs. 70% of the 132 PPYs without mass-killings.

According to these results, we cannot refer to all peace processes as similar units when such differences are found because it would have created a selection effect. However, in this study we do not examine the rate of implementing TJ, but rather the rate of commitments to provide TJ in PPYs in peace processes that ended with full or partial accords. In such an examination we do not expect to find that the type of armed conflict or peace process has an effect on the rates of the commitments to provide TJ. In other words, **no** selection effect is expected. When we examine this expectation by the 84 PPYs of armed-conflict **with mass-killings**, as presented in Figure 2, the variable *Truth and Reconciliation* (symbolic aspect) is found in 27% in the 53 PPYs of armed-conflicts with mass-killing ending in full accords vs. only 13% of the 31 PPYs ending in partial accords; *Amnesty/Prisoners* (legal aspect) is found in 45% in PPYs of armed-conflicts with mass-killing ending in full accords vs.

13. For coding mass killing of civilians I use the scaled annual number of deaths (range 0-5.0) according to the database (for more details see the codebook at appendix III).

only 29% ending in partial accords; while *Reparation/ Rehabilitation* (material aspect) is found in 62% in PPYs of armed-conflicts with mass-killing ending in full accords vs. 87% ending in partial accords.

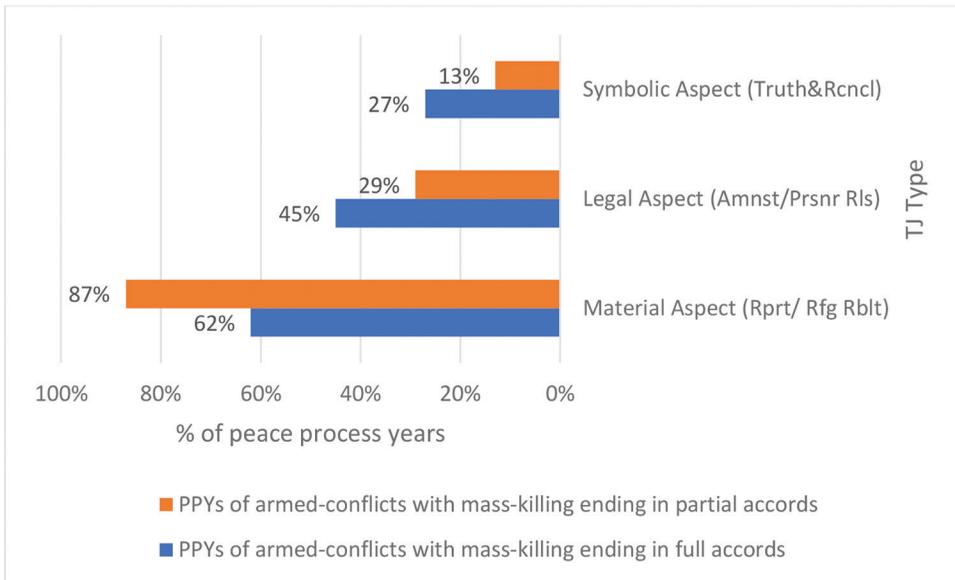


Figure 2. Percentage of TJ elements from PPYs of armed-conflicts with mass-killing ending with partial accords (N = 31) vis-à-vis full accords (N = 53).

When comparing these findings to those shown in Figure 1, the symbolic aspect is found in both figures in a much higher rate in PPYs ending with full accords. However, while in figure 1 the legal aspect is found in a little higher rate in PPYs ending with full accords, in figure 2 it is in a much higher rates in PPYs ending with full accords. Moreover, while in figure 1 the material aspect is found in a little higher rate in PPYs ending with partial accords, in figure 2 it is in a much higher rates in PPYs ending with partial accords. This comparison teaches us that the character of the armed conflict has no effect on the direction of the correlation between each aspect of TJ and full or partial accords, however figure 2 sharpens the findings regard the legal and material aspect. Therefore, the focus on armed-conflict with mass-killing strengthens our findings that show symbolic and legal aspects of TJ are associated with full accords, while the material aspect is associated with partial accords.

Robustness Checks and Methodological Difficulties

For a robustness check, we omitted from the 226 PPYs of the dataset, the 48 PPYs during which a full accord was signed. We stayed with 178 PPYs during which only a partial accord was signed. 69 of the 178 PPYs with partial accords are related to peace processes ending with full accords, such as the peace process in Guatemala: the 6 PPYs between 1990-1995 contain partial accords, and the status the Guatemalan process ended in is a full accord, signed in 1996. The other 109 from the 178 PPYs with partial accords are related to peace processes ending with partial accords, such as the peace process in Somalia: the 5 PPYs between 1993-1997 contain partial accord, and the status the Somalian process ended

in is a partial accord. The reason for these checks stems from the importance of comparing TJ provisions at the same stage of a peace process (when a partial accord is signed) to examine if there is any correlation between some TJ provisions and peace processes ending with full accords. As seen in models 3, Table II, there is such correlation, as results are similar to the previous models: the symbolic aspect is significant and associated with full accords, the material aspect is significant and associated with partial accords, while the legal aspect is not significant and slightly associated with partial accords

Another robustness check stems from our methodological decision to treat peace processes still ongoing by the last year of the study (2014) as ‘failed’, although it might be that a full accord was reached at some point in the future. That is what happened in the peace process between the Colombian government and the FARC, which in the dataset is coded as failure, since in 2014 the parties had not yet achieved the full accord, which occurred in 2016. We deal with this issue by the assumption that since a full accord is our indicator, as long as this is not achieved, the meaning is a failure, so a different coding will harm the validity of the study. Nevertheless, to overcome this problem, we ran the model after we omitted these instances from the dataset (instead of 226 PPYs there were 195 PPYs). We found similar results: the symbolic aspect is significant and associated with full accords, the material aspect is significant and associated with partial accords, while the legal aspect is not significant but associated with full accords (see model 4, Table II).

Another methodological issue might be our decision to include in the dataset peace processes that lasted only one year and that ended with a full accord. In these cases, it is not possible to check the gap between partial and full accords. However, we included them to stick as closely as possible to the real situation on the ground. We included, for example, the only PPY of the peace process in Nepal between the government and the CPN-M, which took place during 2006 and ended with a “[c]omprehensive [full] peace agreement”.¹⁴ Nevertheless, for overcoming this problem, we ran a robustness check on the data when the whole peace process served as the **unit of analysis** (instead of the PPY). From 72 peace processes, 45 ended with full accords and 27 with partial accords. The findings, as presented in model 5, Table II, show that the symbolic aspect is still significant and associated with full accords, and the legal is still not significance but associated with full accords. However, the material aspect is found not significant, as in previous models, but still associated with partial accords.

Another methodological issue is that the study ignores all negotiations that occur before the first partial settlement is reached, so valuable information which might cause a selection effect is missing. Our selection into the case universe is non-random, in that we ignore potentially important information about cases where negotiations over justice provisions occur but fail to produce even a partial accord. However, the aim of the study is not to focus on the negotiations themselves, but rather on the outcome of the negotiations regarding TJ, which are reflected in the presence or absence of TJ provisions in peace accords. According to this aim of study, we indeed select **all** the statistical population and

¹⁴ See the Background Narrative document, Nepal: government 4_72_2006.

not a sample, since we analysed all peace processes with partial and full accords, based on the UCDP peace agreements dataset. Moreover, our aim is to focus on processes in which the parties were ready for serious negotiations. A signed accord is a signal for such readiness.

Hypotheses Testing and Discussion

The findings from all models reveal that the variable *Amnesty/Prisoner Release* (legal aspect) is not significant, but it is mostly associated with peace processes ending with full accords. Because the data is not a sample but all PPYs from peace processes between 1989 and 2014, it means that H1 is moderately supported. A reason it was not significant may be that parties to peace negotiations have sometimes refrained from declaring their commitments to provide amnesty openly in the peace accord, since actors such as the international community and the general public are strongly opposed to it (ICTJ 2009, 1). That is why in some peace processes the phrase ‘amnesty’ or ‘pardon’ were not included in the accords, which is then codified as no amnesty having been agreed upon. In the Guatemalan case, for example, providing amnesty for the military and police combatants was concealed within the “Agreement on the Basis for the Legal Integration of the URNG” (1996), which stated that a National Reconciliation Law (LRN) would be promulgated to remove the criminal responsibility of UNRG members. The actual purpose of the LRN was to provide amnesty for representatives of the regime, which was approved by the Guatemalan congress in December of that year (Mersky 2005; Ross 2006).

The findings from all models reveal that the variable *Truth and Reconciliation* (symbolic aspect) is significant and correlated to full accords, so H2 is supported. The demand for providing alternative ways of accountability for past injustices that do not require long periods in jail explain why the variable *Truth and Reconciliation* is significant in all models. For example, the negotiator Conmany Wesseh, who took part in the Liberian peace process in 2003, said that the combatants agreed to the *Truth and Reconciliation* concept because they wanted to avoid a tribunal and because Truth and Reconciliation Commission meant amnesty for them (Hayner 2007; Pajibo 2007, 280–89). That is also why the previous Colombian president defined the agreement to create a comprehensive system of truth justice reparation and non-repetition as “the maximum amount of justice for victims that allow us to have peace” (Board 2015). The same understanding was also part of the 1990’s Guatemalan negotiations, in which according to senior negotiators, as mentioned before, the agreement to create a Truth and Reconciliation Commission “... remove[d] a major hurdle to ending a conflict that has killed at least 100,000 people,” making the Guatemalan peace process “irreversible” (NY Times, 1994).

The findings from all models reveal that the variable *Reparation or Rehabilitation* (material aspect) is mostly significant and correlates to partial accords, thus H3 is supported. A commitment to provide *Reparation/Rehabilitation* is associated with peace processes ending with partial peace accords, since in most armed-conflicts such commitment does not threaten the parties, thus they have no difficulty agreeing to them in the initial stages of the peace process. It seems that the rehabilitation of refugees might be central only in negotiations of armed-conflicts in which the issue of refugees plays a central role in the

continuation of the conflict itself, such as in the conflict in Bosnia-Herzegovina (Adelman 2002). However, in most conflicts, such as the civil war in Liberia (Hayner 2007), the parties didn't have incompatibility that the refugees would repatriate and rehabilitate after the end of the armed conflict. Reparations is even less incompatible if the payment of reparations does not serve as accountability. Therefore, this issue is not a precondition for signing a full accord and it is included in many peace processes ending with partial accords.

Table 2: Binary Regressions

Variables/models	Model1	Model2	Model3	Model4	Model5
Truth & reconciliation	2.10 (.57) .00	2.40 (.66) .00	1.61 (.94) .04	2.29 (.67) .00	2.33 (1.0) .02
Reparation/Rehabilitation	-41 (.29) .00	-1.23 (.41) .00	-2.03 (.55) .00	-1.52 (.46) .00	-.17 (.71) .81
Amnesty/Prisoners	.06 (.28) .82	.31 (.46) .47	-.11 (.57) .85	.43 (.48) .36	1.0 (.72) .15
Peace process years (PPYs)		-.02 (.08) .76	.15 (.12) .22	-.01 (.09) .86	
Power sharing		-.04 (.51) .93	-1.2 (.78) .14	.06 (.54) .91	.91 (.84) .28
Third party mediation		-.64 (.61) .28	-.31 (.87) .72	-.19 (.61) .75	-.81 (.90) .36
Mass killing		.22 (.16) .17	.43 (.22) .05 .17	.22 (.16) .24	.04 (.24) .84
Conflict length		-.01 (.03) .50	-.03 (.03) .27	-.00 (.03) .93	-.04 (.03) .18
Incompatibility (government or territory)		.56 (.54) .29	.93 (.66) .16	1.2 (.60) .03	.29 (.86) .73
Democracy level (the year before the PPY)		-0.05 (.05) .33	-0.05 (.05) .80	-0.05 (.02) .90	0.03 (.09) .77
GDP (the year before the PPY)		-.00 (.00) .22	-.00 (.00) .03	.00 (.00) .29	.00 (.00) .29
Region1: Europe		-1.20 (.75) .11	-3.24 (1.28) .01	-2.42 (.86) .00	-.31 (1.0) .76
Region2: Middle East and North Africa		-.47 (.73) .51	.33 (.98) .69	-.69 (.82) .40	-.02 (1.2) .98

Variables/models	Model1	Model2	Model3	Model4	Model5
Region3: Asia		2.44 (.71) .00	2.24 (.76) .00	1.68 (.67) .01	1.23 (1.0) .23
Region 4: Sub-Saharan Africa (the reference region)					
Region 5: Americas		-.09 (.64) .88	.27 (.82) .73	-.51 (.64) .45	-.44 (.98) .65
Cons	.04 (.27) .89	.95 (.77) .21	.48 (1.05) .65	.39 (.82) .63	.71 (1.2) .52
PR2	0.06	0.31	0.42	0.28	0.21
N	226	226	178	195	72

*The first numbers presented in each box are coefficients. The numbers in parenthesis are standard errors. The third numbers are P values (statistically significance as $P < 0.05$).

VI. Conclusions

The findings of the research contribute to the debate surrounding the tension between peace and justice. More specifically, the findings contribute by puzzling out the type and degree of justice that ought to be brought into a formal peace process. This is an important point that has not yet received enough focus, since the peace-versus-justice debate has mostly focused on the period after a peace accord has been reached: “human rights advocates push for accountability for crimes committed and punishment to deter further abuses, [while] conflict resolution advocates worry that punishing the perpetrators might further splinter the society, making the healing process more difficult” (Babbitt 2011, para 4).

When considering the peace-and-justice-puzzle in formal peace processes, human right advocates demand justice in the form of prosecution and retribution, while conflict resolution advocates demand tempering justice so as not to harm the chances for achieving a peace settlement (Langer 2015; Seul 2019; Williams, Dicker, and Paterson 2018, 419). Our finding that commitments to provide truth and reconciliation mechanisms are associated with peace processes ending with full peace accords may contribute to the argument that “the most effective method for solving the [peace-and-justice] puzzle is to strike a delicate blend of justice with peace” (Williams et al., 2018, 419). In this way, truth and reconciliation can be understood “from a political bargaining perspective,” as a middle way to bridging justice and peace (Bell 2017). Commitments to provide truth and reconciliation allowed parties to argue that they have provided for a modified accountability mechanism, thereby avoiding the thorny issue of criminal justice for war criminals (Sterio 2018, 348).

This correlation between commitments to provide *truth and reconciliation* and peace processes that end with full accords indicates that it is desirable for mediators and negotiators in future peace processes to consider using the symbolic aspect of TJ as a middle way to bridge justice and peace, thus, overcoming one of the most difficult issues preventing the conclusion of peace processes with full accords. However, mediators and

negotiators should be aware that commitments to provide *truth and reconciliation* are not necessarily the **cause** for concluding peace processes with full accords. This is because it might be that factors that lead to commitments to provide *truth and reconciliation* in peace processes can be also the factors that lead to reaching full accords. Moreover, negotiators should also be aware that this correlation does not guarantee implementation, which might not be executed as planned. Having said that, great efforts are being made and will be made to achieve a full accord in armed-conflicts worldwide, so it is therefore necessary to keep putting a spotlight on issues in negotiations that are associated with reaching a full accord, a central one is the peace-versus-justice puzzle.

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