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Political Crime, Amnesties, and Pardons

Scope and Challenges

Introduction

For more than 50 years, Colombia has suffered through an internal armed conflict that created millions of victims, incalculable material losses, and a profound deterioration of civic trust in state institutions. While there have been periods when the conflict's existence has been denied (called, instead, acts of violence caused by terrorism or drug trafficking), the state has now recognized the existence of the internal armed conflict in multiple laws and public policies and numerous High Court decisions.

This recognition has important political and legal implications. It entails, ultimately, the consideration of the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) not as a common criminal organization, but as a political actor that has taken up arms against the state. Therefore, the FARC-E's criminal conduct would be included, in principle, within the class of offenses called "political crimes," which are defined under domestic law in Title XVIII of the Colombian Penal Code as "crimes against the constitutional and legal regime."¹

The negotiation process between the Colombian government and the FARC rests precisely on this premise. Moreover, this recognition provides the fundamental basis for considering the future participation of the FARC-EP in Colombian democratic political life, in both its collective dimension, that is, as a group that is transitioning from armed struggle to engaging in the democratic process, and from the individual perspective of those of its members who wish to participate in it.

One of the crucial points of the negotiations has been, and continues to be, the proper criminal treatment of different crimes committed in the framework of the armed conflict. This debate, not yet concluded, has revolved around the possibility of resorting to exceptional measures, such as pardons or an amnesty; the limits established for international crimes; and the possibilities and legal consequences of the use of the concept of a political crime, and the definition and scope of the crimes that could be considered "connected crimes" (that is, crimes associated to political crimes).

The Agreement on the Special Jurisdiction for Peace (JEP, by its Spanish acronym) creates a complex system with the objective of establishing criminal liability for crimes committed *during*

TABLE OF CONTENTS

Introduction	1
International Humanitarian Law and War Crimes	2
Political Crime and Its Connected Acts in Light of Domestic Law	5
Criteria for Defining Connectedness with a Political Crime	11
Other Crimes in Relation to the Armed Conflict	15
Conclusion	16

¹ The following conduct is included in Title XVIII of the Colombian Penal Code: Rebellion (Art. 467); Sedition (Art. 468); Rioting (Art. 469); Conspiracy (Art. 471); and Seduction, usurpation and illegal retention of command (Art. 472).

Political Crime, Amnesties, and Pardons: Scope and Challenges

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*and in the framework of the conflict,*² satisfying the rights of victims to justice and, at the same time, providing legal certainty to those who participated in the armed conflict.

The text of the agreement, in general, refers to the application of international humanitarian law (IHL) to conduct during the conflict, expressly mentioning the possibility that IHL offers states of granting “the broadest possible amnesty” at the end of hostilities. For that purpose, the Agreement on the Special Jurisdiction for Peace provides for an Amnesty and Pardon Chamber (Principle 49), states the need to clearly determine which crimes are subject to amnesty or pardon and which are not (p. 26), and emphasizes the importance of precisely defining the criteria for connection with a political crime (p. 38). Although the text of the agreement points to some criteria for defining this connection (p. 39) and provides other elements for the application of the system, numerous elements are still pending elucidation or precision. The agreement refers to a future amnesty law the purpose of which will be to determine and specify all such details.

Amnesties and pardons are valid instruments under international law and, therefore, are appropriate and acceptable remedies for the legal resolution of criminal conduct in the context of an armed conflict. ICTJ believes that amnesty can be a key tool for the Colombian process, provided that it is applied with transparency and clarity in terms of its material scope, criteria, and minimum guarantees, with firm respect for the limits established by international law.

In the spirit of contributing to this debate, ICTJ offers in this analysis some approaches that can contribute to the conceptualization and development of Colombia's future amnesty law and, therefore, the future implementation of the Special Jurisdiction for Peace.

First, this paper stresses the importance of applying the rules of IHL as a suitable framework for analyzing the legal issues in the context of an armed conflict. It does so taking into account, on the one hand, the acts that constitute international crimes and, therefore, the insurmountable limits for the granting of amnesties and pardons; and on the other, the possibility of granting these special measures to those responsible for other violent acts that are considered legitimate under IHL. Second, it presents an approach to political crimes and the normative, jurisprudential, and constitutional issues that arise with regard to its application in the current context as well as its impact on the viability of the implementation of the Special Jurisdiction for Peace. Third and finally, it analyzes the challenges presented by the definition of connected crimes and how different international experiences can contribute to the design of relevant criteria.

International Humanitarian Law and War Crimes

The granting of amnesties and pardons in Colombia can be addressed from at least two legal perspectives: the first, based on international instruments ratified by Colombia that form part of the “block of constitutionality,”³ like Additional Protocol II to the Geneva Conventions; and the second, in accordance with domestic legal provisions.

² Agreement on the Special Jurisdiction for Peace, Principle 2, states:

The objectives of the justice component of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (hereinafter SIVJRNR, for its initials in Spanish) are to satisfy the right of victims to justice, offer truth to Colombian society, protect the rights of victims, contribute to the achievement of a stable and lasting peace, and adopt decisions that grant full legal certainty to those who directly or indirectly participated in the internal armed conflict, with respect to acts committed within the framework of and during the same, which constitute grave breaches of international humanitarian law and serious human rights violations.

³ Political Constitution, Article 93, states: “The international treaties and conventions ratified by the Congress that recognize human rights and prohibit their limitation in cases of emergency prevail in the domestic order. The rights and duties enshrined in this Constitution shall be interpreted in accordance with international human rights treaties ratified by Colombia.”

With respect to the first path, Article 6.5 of Protocol II establishes 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 liberty, whether interned or detained, for reasons related to the armed conflict.”

The phrase “the broadest possible amnesty” has been the subject of numerous analyses and debates. However, its limits are clearly defined today in preponderant and accredited interpretations, including Rule 159 of the “Customary International Humanitarian Law” drawn up by the International Committee of the Red Cross (ICRC),⁴ which establishes that: “At the end of hostilities, the authorities in power must endeavor to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes.”

Establishing the limit of amnesty for war crimes is also reflected in the jurisprudence of the Inter-American Court of Human Rights (IACHR), in its decision against El Salvador for the massacres of *El Mozote and nearby places*. The court reiterated this interpretation, establishing that the possibility of granting amnesties

is not an absolute rule, as international humanitarian law also obligates States to investigate and prosecute war crimes . . . Consequently, Article 6.5 of Additional Protocol II can be understood to refer to broad amnesties for those who have participated in a non-international armed conflict or who are deprived of their liberty for reasons related to the armed conflict, as long as there are no facts that, as in the present case, would fit within the category of war crimes, and even crimes against humanity.⁵

Although it is widely known, it is worth recalling on this point that Common Article 3 of the Geneva Conventions condenses the fundamental rules applicable to a non-international armed conflict and requires the application to the warring parties of the minimum humanitarian standards contained therein.⁶ This article establishes the protection that the warring parties are obligated to guarantee to those who do not actively participate in the hostilities, that is, fundamentally the civilian population. However, this protection is also extended to members of the armed forces in a *non-combat* situation, whether because of surrender, detention, being wounded, or any other reason. Consequently, the commission of one or more of the following acts is considered a war crime under this article:

- Attacks against life and bodily integrity, especially murder in all of its forms, mutilation, cruel and degrading treatment, and torture
- Taking of hostages
- Passing of sentences and the carrying out of executions without a previous trial before a legitimately constituted court, with judicial guarantees recognized as indispensable

⁴ Although such rules are not set forth in any international treaty, they form part of international custom (a principal source of law) on the subject (international humanitarian law). See ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law. Volume I: Rules*, 2007, 691–694.

⁵ See ICHR, *Massacres of El Mozote and Nearby Places v. El Salvador (merits, reparations and costs)*, Decision of October 25, 2012, Series No. 252, Para. 286.

⁶ Geneva Conventions, Common Article 3:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. The wounded and sick shall be collected and cared for . . .

As in any legal system, the wording of legal texts is complemented by custom and jurisprudence. Thus, using the customary rules of IHL, one can more precisely determine other acts that are considered to be serious violations of Additional Protocol II and which, complementing Article 3, are also considered war crimes:

- Making the civilian population into a direct target of military attack
- Looting
- Sexual violence⁷
- Ethnic cleansing
- Enforced disappearance
- Forced displacement of the civilian population for reasons other than military imperatives and/or to enhance its safety
- Ordering “war without quarter”⁸
- Conducting medical experiments on prisoners
- Deliberate attacks on medical or religious personnel or facilities
- The forced recruitment or use for hostilities of children under the age of 15
- Attacks against cultural property that does not constitute a military target
- Appropriation of the opposing party’s property when it does not constitute a military necessity
- Deliberate attacks against persons, objects, or facilities involved in humanitarian assistance operations, peacekeeping missions, or missions deserving of protection in accordance with IHL
- Killing or wounding an opponent using perfidy
- The use of prohibited weapons
- Indiscriminate attacks or attacks carried out with knowledge that they will cause excessive losses or damages in the civilian population
- The use of human shields
- Slavery
- Collective punishment
- The use of famines as a method of warfare, as well as the hindering of medical aid for survival

All of the acts mentioned thus far⁹ violate the protection that is deserved by, and must be guaranteed to, the civilian population or members of the warring parties outside of combat. They are therefore considered war crimes and can sometimes be classified as crimes against humanity or genocide, for which reason **they would in no case be susceptible of being amnestied.**

Applying this limit with clarity will enable us to define the other universe of acts which, on the contrary, might indeed be the subject of special treatment, and to approach with more certainty the application of special measures, such as amnesty and pardon, in strict compliance with IHL rules. Thus, special measures could be granted that are favorable to conduct that complies with essential IHL standards and principles:¹⁰ distinction, proportionality, greater protection of and respect for protective emblems, and limits and prohibitions on the selection of military targets and weapons. These principles are not only applicable during the conduct of hostilities, but must also be observed during the planning of, as well as prior and subsequent to, military actions.

7 Understood as alluding not only to rape, but also to sexual slavery, prostitution, forced sterilization, or forced pregnancy.

8 Understood as ordering a military operation without “leaving survivors.”

9 Some of the acts on this list, such as slavery and the use of human shields, are classified by custom and jurisprudence under the category of “cruel and degrading treatment.”

10 Even when they are classified in Colombian law as serious offenses against persons and property protected by IHL, as discussed below.

Therefore, all acts of war and conduct in the midst of hostilities, including death in combat, injuries, detention of the adversary's members and appropriation of its property, and incidental damages that are proportional to the military advantage, would be susceptible to amnesty and pardon as long as they were carried out with due respect for IHL.

Nevertheless, the universe of conducts resulting from a conflict is always more complex and, in fact, the agreement that gives form to the JEP includes different categories of crimes that are relevant to this discussion, the definition of which is neither simple nor automatic: political crime; crimes that can be considered connected to political crime; crimes that can be considered committed in the framework of and in relation to the armed conflict; and, finally, common crimes.

Although these categories may sometimes appear to resemble each other and even overlap, the success, transparency and clarity of the application of amnesty will depend, to a great extent, on the ability to differentiate one from the other, either through the establishment of some clear parameters that can be applied more generally in some cases, or through an individual and detailed analysis for those cases that require it, or through the application of some previously defined criteria.

These categories are defined below.

Political Crime and Its Connected Acts in Light of Domestic Law

Political crime does not have a categorical or unequivocal definition in the Colombian legal system. The Penal Code does not include a definition of this type of crime. Rather, Title XVIII, "on crimes against the constitutional and legal regime," directly classifies some specific acts, as follows:

- Rebellion (Art. 467. *Rebellion*. Those who, through the use of weapons, seek to overthrow the National Government, or abolish or modify the current constitutional or legal regime, shall be subject to a prison term of six (6) to nine (9) years and a fine of one hundred (100) to two hundred (200) times the current minimum monthly legal wage.)
- Sedition (Art. 468. *Sedition*. Those who, through the use of weapons, seek to temporarily impede the free functioning of the current constitutional or legal regime, shall be subject to a prison term of two (2) to eight (8) years and a fine of fifty (50) to one hundred (100) times the current minimum monthly legal wage.)
- Rioting (Art. 469. *Rioting*. Those who, in a tumultuous manner, violently demand that the authorities execute or omit any act that is part of their functions, shall be subject to a prison term of one (1) to (2) years.)
- Conspiracy (Art. 471. *Conspiracy*. Those who make an agreement to commit the crime of rebellion or sedition shall, by that act alone, be subject to a prison term of one (1) to two (2) years.)
- Seduction, usurpation, and illegal retention of command (Art. 472. *Seduction, usurpation and illegal retention of command*. One who, for the purpose of committing the crime of rebellion or sedition, seduces personnel of the armed forces, usurps a military or police command, or illegally retains a political, military or police command, shall be subject to a prison term of one (1) to two (2) years.)

Despite the absence of a definition of political crime, however, broad national and international doctrine and jurisprudence delimits and specifies its nature. For example, without detouring

from or going beyond the issue at hand, the Colombian Constitutional Court's decision on the constitutionality of the "Legal Framework for Peace"¹¹ referred to the conceptualization of political crime, affirming in its analysis that

[i]n jurisprudential terms, the Supreme Court of Justice established in its 1950 and 1990 decisions, in broad outline, that political crimes were those aimed at improving the management of the public interest, in contrast to ordinary crimes, which are defined as those with selfish ends, entirely removed from the motives that define that class of organizations by their spiritual or ideological aspect, referring to insurgent groups.

In the same decision, the Constitutional Court also cited its own jurisprudence, in which it held that

political crimes are susceptible to amnesty or pardon precisely because the commission of the crime is wrapped in an allegedly altruistic motivation, in which the perpetrator seeks to change society for the better. There is a basic difference with respect to the motive for ordinary crime, in which the perpetrator is always guided by selfish, and often perverse, ends.¹²

"In conclusion, the concept of political crime lacks a univocal definition of constitutional rank, since until now the focus has been on the opposition to common or ordinary crimes and on its conceptualization by means of exclusion. In legal terms, it includes the crimes of rebellion, rioting and sedition, lacking, however, a more defined scope."¹³

Although, as we can see, the perpetrator's altruistic motive or motivation appears to be a primary criterion for the definition of acts that are considered political crimes, there is more clarity and ease in the expeditious application of amnesties and pardons to the acts classified as such in the Penal Code, that is, rebellion, rioting, sedition, conspiracy, and seduction, usurpation and illegal retention of command. Furthermore, given that in practice these acts are generally associated with other crimes that are classified outside the epigraph of political crime, those other crimes can also enjoy a direct or "absolute" connection with political crime. We are referring to acts such as the manufacture, trafficking, and carrying of firearms or ammunition (Art. 365); the manufacture, trafficking, and carrying of weapons and ammunition used exclusively by the armed forces (Art. 366); espionage (Art. 436); and panic (Art. 355).

Establishing the connectedness of these acts traditionally associated with political crime should not create major difficulties or complex legal debates. Therefore, this first list of crimes directly connected to the political crime would have to be a relatively easy step toward being able to analyze the connection with political crime in other cases which, as will be seen later, are much more complex and require greater analysis and discussion—a discussion, moreover, whose framework is not clearly limited by the law or the jurisprudence.

Indeed, as Colombia's Constitutional Court has also stated, "There is no defining/axial/essential content from which one can deduce a restriction on the freedom of the drafters to determine the acts that have a connection to political crime for the precise purpose of facilitating the reintegration in the political community of those who, as a result of a peace process, are selected and convicted."¹⁴

¹¹ Legislative Act 1 of 2012.

¹² Constitutional Court, Dissenting opinion of Ciro Angarita Barón and Alejandro Martínez Caballero, on Decision C-052 of 1993, opinion by Magistrate Jaime Sanín Greiffenstein.

¹³ Constitutional Court Decision C-577 of 2014, opinion by Magistrate Martha Victoria SÁCHICA Méndez.

¹⁴ Ibid. Emphasis added.

The Agreement on the Special Jurisdiction for Peace already provides some clues about the intention of the parties when developing this discussion, because Principle No. 26 calls for the application of the “principle of favorability for the recipient of the amnesty or pardon.” In fact, according to the text of the agreement, this principle should be applied in all cases for which “there is no prohibition under international law against amnesty or pardon with respect to the acts of the accused.”

The limit that is established is indeed very broad. As a first conclusion, one might think that, in practice, the legislative discussion on the connectedness with the political crime could be resolved by simply returning to the strict limit of international crimes. As noted above, the legislature enjoys a wide margin of discretion, which can be expanded through the application of this principle of favorability. In fact, this margin of discretion is even considered by the Constitutional Court as an advantage:

The absence of parameters in the matter studied, far from being counterproductive, is considered positive, as it creates a margin of discretion for the State that enables it to adapt its regulation to the specific needs that might arise in processes which, in pursuit of a goal such as peace, require the adoption of transitional justice frameworks, in which reconciliation will always play a leading role.¹⁵

While there is a clear constitutional basis and a broad doctrinal and jurisprudential consensus for enabling those responsible for political crimes, including those that we have called crimes of direct connection, to receive more benevolent treatment than the common criminal and, therefore, to benefit from amnesty and pardons (which may also include advantageous exceptions to the application of rules that disqualify them from performing any public function, or even occupying elective office, which accompany many criminal convictions),¹⁶ the consensus may be losing force, and may even be wavering, as progress is made in defining other crimes where connectedness is less obvious. Moreover, it is possible that the debate will run into issues related to the constitutional and national jurisprudential limits that this document attempts to anticipate, and to the extent possible resolve, before analyzing the different criteria that can be used to define connectedness with political crime.

Some Jurisprudential Limits

The jurisprudence of the Constitutional Court, in addition to reiterating the prohibition against applying amnesties and pardons to international crimes, has also repeatedly indicated other limits on the granting of benefits and for establishing connectedness with political crimes. These cases are known domestically as crimes of *“ferocity and barbarity,”* which are used in legislation and national jurisprudence to refer, using other terms, to war crimes, crimes against humanity, and serious human rights violations.

¹⁵ Ibid.

¹⁶ The following are some of the constitutional references on political crime:

Political Constitution of Colombia, Article 35, Par. 3, on extradition: “*extradition shall not be applicable to political crimes*”; Article 179, Section 1, on the disqualification from being a member of Congress: “Those who have been judicially convicted and sentenced at any time to deprivation of liberty, *except for political crimes* or crimes of negligence . . . may not be a member of Congress;” Article 232, Section 3, states that the qualifications “[t]o be a magistrate of the Constitutional Court, the Supreme Court of Justice and the Council of State, require: . . . Not having been judicially convicted and sentenced to the deprivation of liberty, *except for political crimes* or crimes of negligence;” Article 299, Par. 3, on the composition and election of the Departmental Assemblies and their deputies: “To be elected deputy requires being a citizen, not having been convicted and sentenced to deprivation of liberty, *with the exception of political crimes* or crimes of negligence, and residing in the respective electoral district during the year immediately preceding the election date;” Transitory Article No. 18 relating to the election of governors: “As the law establishes a disqualification regime for governors in the elections of October 27, 1991, . . . those who at any time have been judicially convicted and sentenced to deprivation of liberty, *with the exception of those who have been for political crimes* or crimes of negligence, may not be elected as such.”

However, other interpretive and jurisprudential lines have also applied these qualifications to the crimes of terrorism, kidnapping, and drug trafficking, which have been defined as crimes by means of ordinary laws. Future laws that develop and establish the framework for the implementation of the Special Jurisdiction for Peace must resolve these differences and contradictions through the issuance of clarifying normative frameworks.

As appears to be anticipated in the second paragraph of Principle No. 40 of the JEP, the amnesty law will need to undertake the technical-legal harmonization of certain Colombian crimes in order to group and clarify them in accordance with IHL. Such would be the case with the categories of “*ferocity and barbarity*,” which the new law could narrow down in order to link them exclusively to international crimes, thus excluding their application, as currently occurs, to other types of ordinary crimes that must be analyzed in all of their nuances.

For example, the description and interpretation of **kidnapping** could also be revised in accordance with IHL provisions, under which the detention of members of the public forces would not be considered kidnapping, as it is lawful to take captives from the opposing party under the law of war. This, however, does not provide an exemption from the obligation to respect other IHL standards related to the treatment and conditions of the detention. Furthermore, it is important to note that IHL also specifically excludes the detention of civilians, given that, in accordance with Common Article 3 of the Geneva Conventions, it is considered to be a serious violation of, among other things, the basic principle of distinction, which would make it the equivalent of a war crime and would classify it criminally as kidnapping.

Another important debate revolves around the crime of **drug trafficking** and the possibility that it might be susceptible to some special or beneficial treatment. The main problem that must be resolved in order to address this discussion lies in the fact that in Colombia, unlike other countries, the crime of drug trafficking encompasses *all types of related activities*: the planting, cultivation, production, marketing, and consumption of narcotics. In the same line of reasoning, statutory provisions on the granting of amnesties and pardons and the development of the JEP should delimit and recognize the differences between these acts. However, the challenges related to the crime of drug trafficking would not be completely resolved with this (more than necessary) normative distinction.

Indeed, in a case in which drug trafficking is demonstrated to have been committed “in relation to the conflict” and, therefore, can be considered “connected with the political crime” (the criteria for which, as noted, will be analyzed below) and meets the requirements for granting amnesty or a pardon to the perpetrator, there are other jurisprudential and normative pitfalls that must be analyzed and resolved beforehand.

For instance, Colombia signed and ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), which establishes in Article 3, Section 10 as follows:

For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under Articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental principles of domestic law of the Parties.

Although it is important to clarify that this international instrument does not form part of the “block of constitutionality,” its signing and ratification by Colombia in 1994 produced a set of international obligations. While Colombia posed reservations and interpretative declarations with

regard to several of the treaty's clauses, none of these specifically or directly addressed Article 3, Section 10 of the Convention (as mentioned above).

Possible signs of a solution can be glimpsed in the first interpretative declaration on the treaty, in which Colombia stated: "No part of the Convention may be interpreted as obligating Colombia to adopt legislative, judicial, administrative or other types of measures that violate or restrict its constitutional and legal system or that go beyond the treaties to which the Colombian State is a contracting party."¹⁷

In its decision upholding the constitutionality of the law that approved the convention, the Constitutional Court, citing one of its most important rulings,¹⁸ established that

the position of supremacy of the Constitution over the other provisions that make up the legal system is based on the fact that it determines the basic structure of the State, establishes the agencies through which public authority is exercised, confers powers for issuing rules, enforcing them, and deciding on their basis the disputes and litigation that arise in society, and in doing all this establishes the legal order of the State. The Constitution is the supreme and ultimate framework for determining the applicability of the legal order as well as the validity of any standard, rule or decision that is formulated or proffered by the agencies established by it.

In other words, if there is a conflict between an internationally binding obligation and a domestic constitutional provision, the application of the jurisprudence expressed in the preceding paragraph would resolve it in favor of the domestic provision.

The case of **terrorism** also deserves special mention, as its definition is usually subject to diverse interpretations by the courts, due in a certain extent to the fact that there are currently a large number of international treaties that conceptualize terrorism differently.¹⁹ This diversity in the definition of terrorism is also reflected in the Colombian Penal Code, which uses such disparate expressions as "indiscriminate or excessive attacks" (Art. 144) or "using means capable of wreaking havoc" (Art. 343), and which includes an ambiguous spectrum of targets, such as "buildings or media, transportation, fluid processing or handling, or motor forces" (Art. 343).

The variety of criteria and, therefore, the confusion in interpretations, could be resolved simply by adopting the recommendation of the International Committee of the Red Cross (ICRC). According to the ICRC, acts of terrorism are essentially acts committed in peacetime²⁰ and, generally, are crimes that have been progressively expanding as "the result of political doctrines or decisions aimed at discrediting non-state adversaries by calling them 'terrorists,' [which] possibly constitutes an obstacle to future peace negotiations or national reconciliation."²¹ Thus,

17 See Law 67 of 1993, by means of which the "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," signed in Vienna on December 20, 1988, is approved, in the section titled "Declarations."

18 Decision T-006 of 1992.

19 Terrorism in the international sphere has been treated in different international instruments, such as: the Convention on Offences and Certain Other Acts Committed On Board Aircraft (Tokyo, 1963); Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971); Convention on the Prevention and Punishment of Crimes against Heads of State, Diplomats and Representatives of International Organizations (1973); International Convention against the Taking of Hostages (1979); Convention on the Physical Protection of Nuclear Material (1980); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988, 2005); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988); and International Convention for the Suppression of Terrorist Bombings (1998); etc.

20 Antonio Cassese, *International Criminal Law*, Second Edition (Oxford University Press: 2008).

21 ICRC, "International Humanitarian Law and the Challenges of Contemporaneous Armed Conflicts," N. Rattle (Office of the President), Thirty-First International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 2011, 57, www.icrc.org/spa/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-es.pdf

acts against civilians or civilian property in the context of an armed conflict, which often tend to be characterized as terrorism, should be treated as serious violations of IHL or war crimes. Opting for a definition of terrorism in parallel with the application of IHL does not result in a greater margin of protection for the civilian population, because it is absolutely clear that IHL expressly prohibits direct and deliberate attacks on the civilian population, as well as, in general, indiscriminate and/or disproportionate attacks. Moreover, it may create contradictions, because the term *terrorism* implies that such acts are “always unlawful” and, consequently, must be subject to prosecution, while in wartime there are lawful acts of violence, provided that they are carried out in accordance with the principles, and within the limits, of IHL.

Therefore, clinging exclusively to definitions of terrorism under domestic law, like those mentioned above, could become a significant obstacle. It could further the simplistic tendency of characterizing as “terrorist” all actions committed in the framework of the conflict, impeding the application of the criteria and principles of IHL in determining which acts of violence are lawful and which are not.

In addition to the jurisprudential constraints discussed here, the future amnesty law and the complementary legislation that must be developed for the implementation of the Special Jurisdiction for Peace should also confront and resolve other issues related to connectedness, especially those having to do with the political disqualifications of those who are ultimately convicted of such crimes. Some of these issues, as discussed below, have constitutional implications.

Other Issues of a Constitutional Nature

In 2004, Article 122 of the Constitution was amended to provide that

without prejudice to the other sanctions established by the law, those who have been convicted, at any time, of the commission of crimes that affect the property of the State, or those who have been convicted of crimes related to membership in or the promotion or financing of illegal armed groups, crimes against humanity, or drug trafficking in Colombia or abroad may not be registered as candidates for public office, or elected or appointed as public servants, nor may they enter into contracts with the State, either personally or through an intermediary.

This amendment establishes a strict limit on the exercise of public functions and political participation. However, its scope was subsequently reviewed by the Constitutional Court, which held in Decision C-986 of 2010 that

the legislature did not intend by said provision to disqualify from the exercise of public functions persons convicted of political crimes. Rather, the intention of the framers of the amendment was to apply the disqualification to those responsible for belonging to, creating or financing illegal armed groups, as punishment for common crimes, especially those related to war crimes, crimes against humanity, and serious violations of international humanitarian law or human rights.

While the Constitutional Court’s opinion on the application of Article 122 clarifies that the restrictions contained therein do not apply to those found responsible for the commission of political crimes, it must be remembered, as discussed above, that the Colombian legal system does not contain an exact definition of political crime, that the specification of connected conduct is a challenge that must still be confronted by the future amnesty law, and that the criteria applicable to the determination of connectedness will have to be defined.

These overlapping ambiguities, and the multiplicity of interpretations that arise, can result in a high level of uncertainty regarding the political participation of future ex-combatants who may be convicted of international crimes. Although the constitutional reform known as the Legal Framework for Peace, and its corresponding decision on review, allowed for the successful construction of a differentiated interpretation of the effects of connectedness with political crime, in order to thereby facilitate the political participation of ex-combatants without their necessarily being beneficiaries of amnesties and pardons for all of the crimes for which they are responsible, this convoluted outcome could be risky in terms of certainty and sustainability.

One sound legal resolution of this limitation would be to substantially amend Article 122 of the Constitution to permit, in accordance with the rest of the system that the JEP seeks to establish, political qualification and participation in relation to all crimes that are prosecuted and punished.

Criteria for Defining Connectedness with Political Crime

Having discussed the preliminary legal debates on the conceptualization of, and need to harmonize, certain types of criminal offenses, which must be resolved in order to be able to develop a clear and transparent law and legal framework of amnesty, for the victims and Colombian society as well as those who would benefit from these special measures, it remains to be determined how the acts connected to political crime are to be established.

As repeatedly noted above, there is no exact definition of political crime at a national level, nor is there a widely recognized instrument of international law that has strictly, expressly, and clearly defined the concept of political crime. Nevertheless, as we have seen, some acts considered to have a direct or absolute connection do not pose significant problems. However, there are many other cases in which the connection is relative, that is, the acts are ordinary crimes that do not have a direct, or often clear, relationship with a political crime, but rather have been committed in support of, or to foster and promote, the objective of political crime. These crimes fall in a gray area that is necessary to clarify.

Different international experiences have had to confront this very problem: to define when, and what type of, acts that would be considered common crimes could be considered connected crimes if committed as a means of achieving the goal of political crimes.

Most of the considerations in this regard in the international arena have been formulated in the field of international judicial cooperation, more specifically with respect to extradition. In this context, the commission of political crimes is usually considered an exception for purposes of extradition and, in fact, it has been promulgated as such in a large number of bilateral extradition treaties and even in domestic legislation throughout the world.²² However, this apparently generalized uniformity of criteria does not resolve the issues posed herein, because uncertainty about the definition remains in all of these texts. Indeed, “extradition laws and treaties almost never define the term political offence, and consequently, the definition is invariably a matter of judicial interpretation and administrative discretion. Secondly, the decision as to whether or not a given offence qualifies as political is taken unilaterally by the requested state.”²³

22 Christine Van den Wijngaert, *The Political Offence Exception to Extradition: The Delicate Problem of Balancing the Rights of the Individual and the International Public Order* (Kluwer Academic: 1980).

23 Christine Van den Wijngaert, “The Political Offence Exception to Extradition: Defining the Issues and Searching for a Feasible Alternative.” Report presented at the International Seminar on Extradition, International Institute of Higher Studies in Criminal Sciences. Noto, June 1983, 744.
<http://rbdi.bruiant.be/public/modele/rbdi/content/files/RBDI%201983/RBDI%201983-2/Etudes/RBDI%201983.2%20-%20opp.%20741%20%C3%A0%20754%20-%20Christine%20van%20den%20Wijngaert.pdf>

Therefore, given that “[n]one of the political offense provisions in treaties even includes a definition of the word ‘political’ . . . , the term ‘political offense’ has received various interpretations by courts since the mid-nineteenth century”²⁴ in order to determine its content and the “relative” political crimes, that is, those common crimes that can be considered connected to political crimes.

To that end, “courts have developed various tests for ascertaining whether ‘the nexus between the crime and the political act is sufficiently close . . . [for the crime to be deemed] not extraditable.’”²⁵—that is, in order to verify whether there is a sufficiently close relationship between the common crime and the political crime for them to be considered connected.

By way of example, the following are the best known international experiences:

- **The French “objectivity” test:** Developed by the Court of Appeals of Grenoble in the “Giovanni Gatti” case of 1947,²⁶ under this test, a common crime would be connected to a political crime “only if the former directly injures the rights of the State.”²⁷ In other words, under this test only crimes of which the state or the current constitutional order is the victim would end up being considered political crimes. The advantage of this test is that, because of its limitations, it does not allow for abuses or interpretative questions, and those responsible for common crimes would not be protected by alleged political motivations.²⁸
- **The Swiss “proportionality” test:** “In contrast to the traditional French test, Swiss courts apply a test . . . that examines the political motivation of the offender . . . but also requires either: a) a consideration of the circumstances surrounding the commission of the crime; . . . and b) either a proportionality between the means and the political ends, . . . or a predominance of the political elements over the common crime elements.”²⁹ As can be easily seen, this test involves a high degree of subjectivity, by leaving to the court’s assessment and judgment the predominance or “proportionality” of the means and ends in each case.
- **The American “incidence” test:** This consists of determining whether the allegedly political action or conduct was “complementary” and formed part of a broader political movement. “For example, in the 1980 *Mackin* case an attempted murder of a British soldier in Northern Ireland by a member of the IRA was deemed political because of its being connected with the overall conflict situation in Northern Ireland.”³⁰ Another example is the *Sindona* case, related to a fraudulent bankruptcy that was considered to be a common, non-political, crime because it had no relationship with the Italian political conflict.³¹

As can be seen with these three tests, the complex debate on the definition of political crimes and their connected crimes must consider the contexts in which the events unfolded. In the case of

24 US Court of Appeals for the Ninth Circuit, *William Joseph Quinn v. Glen Robinson*, N° 83-2455, February 18, 1986, Para. 52, <http://openjurist.org/783/f2d/776/quinn-v-robinson>

25 Ibid., Para. 54.

26 Op. cit., Christine Van den Wijngaert, “The Political Offence Exception to Extradition: Defining the Issues and Searching for a Feasible Alternative,” 745.

27 Op. cit., US Court of Appeals for the Ninth Circuit, *William Joseph Quinn v. Glen Robinson*, Para. 55.

28 Manuel R. García-Mora, “The Nature of Political Offenses: A Knotty Problem of Extradition Law,” *Virginia Law Review*, 48:7, November 1962, 1226–1257.

29 Op. cit., US Court of Appeals for the Ninth Circuit, *William Joseph Quinn v. Glen Robinson*, Para. 56.

30 Op. cit., Christine Van den Wijngaert, “The Political Offence Exception to Extradition: Defining the Issues and Searching for a Feasible Alternative.”

31 US Court of Appeals for the Second Circuit, *Sindona v. Grant*, March 21, 1980, <http://uniset.ca/other/cs4/619F2d167.html>

Colombia, in addition to the existence of a long conflict that has been degraded and overlaid by many other elements of criminality, it must be taken into account that the concept of political crime and the application of its legal consequences have been the subject of constant interpretive variations throughout the years, which on occasion have come into tension with IHL rules.

Principle 39 of the Justice Component Agreement signed in Havana establishes two types of criteria for establishing connectedness with political crime—an inclusive type and a restrictive type. The intention of the signatory parties or the words of the agreement that seek to develop each of these criteria will not be interpreted or deciphered here. Rather, taking into account the reasoning set forth in this document, we present below a set of criteria, used internationally, for determining whether or not a common crime can be considered connected to a political crime.³²

- The *motivation* of the offender is to challenge or oppose the state in some way.

Despite the lack of a definition, national and international doctrine are unanimous that the primordial nature of political crime (despite its apparent obviousness) is the desire to oppose and/or challenge the state. Thus, for example, the United States Court of Appeals for the Ninth Circuit has held that one of the criteria for determining the political nature of a crime is the “*uprising component*,” which the court described as “an effort to alter or abolish the government that controls their lives” and “when a certain level of violence exists and when those engaged in that violence are seeking to accomplish a particular objective.”³³

- *The target of the offender’s actions is the state, rather than private interests.*

With regard to this criterion, it can be said that “[p]ure political crimes lack the essential elements of a common crime, such as malice, since the offender acts merely as an agent of a political movement or party, without damaging any private right, but only public rights of the State.”³⁴

- The crime occurs in the *context* of political instability.

In one of the historic works on Anglo-Saxon criminal law (“History of the Criminal Law of England”), Sir James Fitzjames Stephens explains – as cited in the *In Re Castioni* decision – that the meaning of the words “political nature” in the framework of most of the extradition treaties that include an exception for political crimes is that such crimes must be committed in the context of political instability, disturbances or disorder.³⁵

- The actions of the offender are *close* to his or her objective (in other words, there is a clear link between the crime and the political purpose).

This criterion is the basis of the “French objectivity test” and, partly, of the “Swiss proportionality test,” for which political motives, aims, and objectives are fundamental. That is, the offender engages in the conduct as a means for achieving an end that he or she considers to be legitimately superior. As M. Cherif Bassiouni argues:³⁶

32 Jeanne Ann Donald, “Prosecution or Persecution?: Political Offenders and the 1951 Convention Refugee Definition,” UMI Dissertation Services, Thesis (LL.M), York University, 1996, www.refugee.org.nz/ChapterTwo.htm

33 *William Joseph QUINN, Petitioner-Appellee, v. Glen ROBINSON, United States Marshal For the Northern District of California, Respondent-Appellant*. Nº 83-2455. Argued and Submitted July 11, 1984. Decision of February 18, 1986, www.uniset.ca/other/cs4/783F2d776.html

34 M. R. García-Mora, “The Present Status of Political Offenses in the Law of Extradition and Asylum,” *University of Pittsburg Law Review*, Vol. 14. 1953. 371.

35 *In Re Castioni*, Divisional Court. 1 Q.B. 149. 1891, <http://www.uniset.ca/other/cs4/18911QB149.html>

36 Bassiouni was president of the Drafting Committee of the Diplomatic Conference for the Establishment of an International Criminal Court, and President of the International Human Rights Law Institute of DePaul University in Chicago.

To secure their institutions, societies have devised laws designed to punish those who in some proscribed manner seek to affect their existence or functions. Those laws may be designed to prevent change altogether or to prevent change by certain means. The mere fact that these laws were enacted to protect a given social interest presupposes that a value judgment was made as to the social significance of what is sought to be preserved and protected. Paradoxically, the violators of these laws are committed to changing the protected *status quo* and thereby do not consider their conduct blameworthy . . . In fact, the ideologically motivated offender is one who denies the legitimacy of the law he violates and claims adherence to a superior legitimating principle.³⁷

- The actions of an offender are *proportional* to their purpose.

That is, the actions have some degree of effectiveness in supporting the political crime, while damaging private interests as little as possible.

[T]he act should be part of/linked with a political conflict situation; there should be a commensurateness between the act and the political objective of the act (extremely serious offences usually do not satisfy this criterion; for murder the courts even require that the crime should be the *ultima ratio*, *i.e.* the only possible means to reach the political goal aimed at); there should be a certain degree of effectiveness to the act in that it should be instrumental towards attaining its political objective.³⁸

Indeed, this provides a legal basis and justification for relative political crimes in accordance with the above-mentioned “Swiss proportionality test,” which “examines the political motivation of the offender and the circumstances surrounding the commission of the crime and applies one of two standards: the proportionality between the means and the political ends or the predominance of the political elements over the common crime elements.”³⁹

The criteria mentioned thus far do not comprise an exhaustive list. In order to discern the connectedness of an ordinary crime with a political crime, other cases have also analyzed issues such as whether peaceful methods exist to effectuate political changes in the state in which the crime has been committed and whether the perpetrator would receive a fair trial and proportional punishment (recall that these issues arise in extradition matters), etc.

It is essential to clearly establish the criteria that can be used to determine which ordinary crimes can be considered connected with a political crime and which cannot. This is especially so if attention is paid to the fact that the existence and actions of guerilla groups have not been limited to combat and confrontations with the public forces or security agencies of the state. For their existence, organization, and maintenance, as well as for the planning, preparation, and execution of the military actions aimed at achieving their objectives or ends, the members of guerilla groups carry out a multitude of actions, many of which could be considered ordinary crimes if analyzed independently and outside of the context. These include, for example, the attainment of economic and logistical resources, the procurement and use of weapons and means of transport,

37 Mahmoud Cherif Bassiouni, “Ideologically Motivated Offenses and the Political Offenses Exception in Extradition - A Proposed Juridical Standard for an Unruly Problem,” *DePaul Law Review*, 19: 2, Winter 1969, Article 2, 228, <http://via.library.depaul.edu/cgi/viewcontent.cgi?article=3002&context=law-review>

38 Christine Van den Wijngaert, “The Political Offence Exception to Extradition: Defining the Issues and Searching for a Feasible Alternative,” report presented at the International Seminar on Extradition, International Institute of Higher Studies in Criminal Sciences, Noto, June 1983, 748, <http://rbdi.bruylant.be/public/modele/rbdi/content/files/RBDI%201983/RBDI%201983-2/Etudes/RBDI%201983.2%20-%20pp.%20741%20-%20C3%AO%20754%20-%20Christine%20van%20den%20Wijngaert.pdf>

39 Talk! Blog of the European Journal of International Law, Mark Dell Kielsingard, “The Political Offense Exception: Punishing Whistleblowers Abroad,” November 14, 2013, www.ejiltalk.org/the-political-offense-exception-punishing-whistleblowers-abroad/

and smuggling, etc. The analysis and application of these criteria will determine whether these acts can be considered connected to political crimes and, if so, whether they should be subject to amnesties and pardons, even though they constitute common crimes *per se*.

Therefore, the amnesty law to be designed should opt for a set of criteria for the analysis. While purely objective criteria would *a priori* be simpler to apply, it would seem that a simple *objectivity test* would not be able to satisfactorily address all of the cases that will have to be faced in practice, due to the longevity and complexity of the Colombian conflict. Consequently, a more complete interpretive analysis that combines criteria related to motivation, proportionality, and proximity, etc., may be more appropriate for the multiplicity of cases that will have to be resolved.

The extreme importance of correctly defining and applying these criteria is also due to the need to keep the concept of political crime true to its objectives—that is, preventing crimes committed for personal benefit or advantage from being subject to exceptional beneficial measures, such as pardon or amnesty, through the use of some lax or vague connection criteria. What is sought, ultimately, is to prevent any common criminal or criminal organization from being able to claim the status of political criminal in order to obtain criminal justice benefits for conduct that should be investigated, prosecuted, and punished by the ordinary courts. It is necessary to prevent the amnesty process from affording the practical possibility of impunity for ordinary crimes or organized common crime, whether national or international.

Other Crimes in Relation to the Armed Conflict

So far, it has been reasoned that the application of IHL establishes a clear limit on the granting of amnesties and pardons (for international crimes); we have analyzed constitutional and jurisprudential issues that should be considered and resolved by the future laws that will govern the justice component of the Havana Agreements; and we have presented the fundamental principles of political crime and the elements that can be considered to establish its absolute or relative connectedness with other criminal conduct.

However, the text of the agreement that creates the Special Jurisdiction for Peace frequently mentions expressions such as “acts committed in the framework of the conflict” (p. 2), “crimes related to and committed on occasion of the armed conflict” (p. 32), “acts committed on occasion of, because of, and in direct or indirect relation to the armed conflict” (p. 33), etc. It is necessary to pause and provide some reflections on these.

These expressions characterize acts that do not directly form part of the conduct of hostilities (and as such would not fall within the direct interpretive sphere of IHL), nor could they be considered political or connected crimes, although they could be subject to special legal treatment for having been committed in relation to the conflict.

The idea of granting special legal treatment, and if applicable and appropriate criminal justice benefits, to “acts related to or committed on occasion of the armed conflict” is consistent with the “broadest possible amnesty” of Geneva Protocol II, because, in reality, IHL *never* refers to political crimes, but only to “acts related to the conflict.”

However, the analysis of whether a criminal act, as an ordinary crime, “is related to or committed on occasion of the conflict” is, again, a subjective analysis involving an interpretive issue. This broad concept is not clearly defined in IHL, nor is it the subject of the provisions of the

Commentary on Additional Protocol II to the Geneva Conventions of 1949.⁴⁰ Nevertheless, there are some sources of international law that can contribute ideas and criteria which, properly extrapolated, may be useful for the Colombian case.

Inter-American Court of Human Rights

The IACHR has not clearly defined the scope of material application (i.e., the precise conduct) of IHL and international criminal law with respect to acts motivated by or related to the armed conflict. Although the concurring opinion of Magistrate García-Sayán⁴¹ echoed the complexity and difficulty of harmonizing criminal justice with a negotiated peace (as would be the case in making decisions related to facts in that “gray area” between the armed conflict and other crimes that are not related to it), the court has not provided a broader explanation of what is understood by acts motivated by or related to the conflict.

However, in subsequent decisions, the IACHR has shown developments in the incipient conceptualization of the acts that should be understood in the framework and context of the armed conflict. One of these is apparent in the court’s decision in the case of the *Santo Domingo Massacre v. Colombia*, which abstractly held that “international humanitarian law must be applied by the parties in the framework of non-international armed conflicts, provided that the facts correspond to situations that are produced on occasion of and in the development of the conflict.”⁴²

International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) followed the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and arrived at similar conclusions on this matter. In its decision against Jean-Paul Akayesu (the mayor of Taba, Rwanda, from 1993 to 1994)⁴³, it held “[t]here must be a nexus between the violations and the armed conflict.”⁴⁴ Adding to the line constructed by international criminal law in such cases, the ICTR specified that the term *nexus* “should not be understood as something vague or undefined,”⁴⁵ and that “a direct connection between the alleged crimes . . . and the armed conflict must be factually established.”⁴⁶

Conclusion

The implementation of the justice component of the Havana Agreements reached by the Colombian Government and the FARC-EP will require considerable legislative development, mainly in order to offer victims and Colombian society a clear and transparent system as well as an equitable procedure lacking in uncertainty for those held responsible for crimes the JEP will have jurisdiction over.

40 ICRC, “Commentary on Additional Protocol II to the Geneva Conventions of 1949,” Revised and coordinated by Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, www.icrc.org/applic/i/ihl/nf/Treaty.xsp?documentId=AAoC5BCBAB5C4A85C12563CD002D6Dog&action=openDocument

41 IACHR, Concurring opinion of Magistrate Diego García-Sayán, *Massacres of El Mozote and Nearby Places v. El Salvador*, October 25, 2012, Para. 26: “An armed conflict and the negotiated resolution thereof raise several questions and pose enormous legal and ethical demands on the search for harmonization between criminal justice and a negotiated peace.”

42 IACHR, *Santo Domingo Massacre v. Colombia*, November 30, 2012, footnote 254.

43 US Holocaust Memorial Museum. “Rwanda: The First Conviction for Genocide, www.ushmm.org/wlc/en/article.php?ModuleId=10007157

44 ICTR. *The Prosecutor v. Jean-Paul Akayesu*, Appeals Chamber, June 1, 2001, Para. 438; Confirmation of *Kayishema @ Ruzindana*, Trial Chamber; May 21, 1999, Para. 169.

45 ICTR, *The Prosecutor v. Clément Kayishema @ Obed Ruzindana*, Trial Chamber, May 21, 1999, Paras. 185–190.

46 *Ibid.*

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Without analyzing other components of the JEP, this document has focused on analyzing some of the initial challenges for the conceptualization and regulation of exceptional measures of amnesty and pardon.

Based always on the clear, imperative, and unanimous conclusion that international crimes cannot be subject to these measures, the analysis of other crimes committed by multiple actors in “the context of the Colombian armed conflict” over more than 50 years requires a certain legal and normative characterization for such actors to be able to receive beneficial measures such as amnesties and pardons.

Based on the reasoning set forth above, ICTJ proposes a set of approaches that can facilitate the normative development of the amnesty law and the work of the future chamber that will have jurisdiction to analyze and decide cases.

- First, those cases that strictly comply with IHL rules, which do not require a broad development of the notion of political crime, but in which, based on the presumed prohibition against granting amnesties and pardons to those who commit international crimes, these special measures could be applied to actions of lawful violence taken in accordance with IHL standards and principles, as argued in the first section of this paper.
- Second, regarding political crimes classified as such in the Colombian Penal Code, which can be the subject of a general *de jure* amnesty.
- Third, regarding crimes connected to political crime considered to be pure or absolute, which can also be part of an amnesty, as mentioned above.
- Fourth, regarding crimes connected to political crimes considered to be relative, which should be the subject of analysis in the application of some defined criteria, such as those discussed above.
- Fifth, regarding conduct which, without being considered part of the direct development of hostilities, committed in the theater of military operations, or possibly being connected with a political crime, can be considered “in the framework of and in relation to the armed conflict,” which will require an interpretive analysis involving the application of some available sources of international law or, by analogy, the criteria mentioned for establishing connectedness with political crime (proportionality, immediacy, context, etc.) and which can be the subject of special legal treatment.

All of this, of course, on clarification of the jurisprudential contradictions, harmonization of criminal classifications, and clarification of the normative conflicts that the amnesty law, or complementary legislation of sufficient rank, should be addressed as a priority in order to overcome the current obstacles that this system would confront.