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**United Nations Office on Drugs and Crime**

**VESMUN XI**

**TOPIC A: Measures to prevent corruption and other irregularities  
in the extradition process.**

**TOPIC B: Restorative justice as a method to arrange the  
consequences caused by non-international armed conflicts.**

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**Vermont School**

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## 1. WELCOMING LETTER

“Right is right, even if everyone is against it, and wrong is wrong, even if everyone is for it”

-William Penn

Dear delegates,

We are convinced that Models of United Nations bring opportunities that allow each one of the participants to be aware of the situations that we normally omit that are happening worldwide. These spaces also allow us to be more conscious about what we can do in order to act in a way that our actions impact society.

That’s why, we, Jeronimo Calle Serna and Daniel Esteban Pacheco Cabezas, in the 11th version of VESMUN have designed, through the United Nations Office on Drugs Crime (UNODC), an agenda in which we expect from you as delegates to be fully committed, objective, and more importantly, to determine which actions must be taken in order to assure a bright future to the international community.

If you have any questions, or have any inquiry about the commission as a whole, please feel welcome to contact us; we will be at your disposal in order to ensure that VESMUN XI will be an experience that will last in your memory for years to come.

Finally, we encourage you to look at VESMUN as an opportunity, much more than an academic event, and as an experience to plan the way you want to change the present from the past, and remember that the future begins here and now.

sincerely ,

Jerónimo Calle Serna.

Daniel Esteban Pacheco Cabezas.

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Chair of UNODC.

## **2. INTRODUCTION TO THE COMMITTEE**

### **2.1. Committee's History**

The United Nations Office against Drugs and Crime (UNODC) is a global figurehead in the struggle against transnational crime, terrorism, corruption, and illicit drugs, being the guardian of the following conventions:

- The United Nations Convention against Transnational Organized Crime and its three protocols (against trafficking in persons, smuggling of migrants and trafficking in firearms)
- The international drug control conventions
- The United Nations Convention against corruption

UNODC was established in the year 1997 as a result of the United Nations center for International Crime Prevention and the United Nations International Drug Control Programme. It was established by the United Nations Secretary-General Kofi Annan to allow the organization to focus its efforts and strengthen its capabilities to respond to any reciprocal issues regarding drug control, international crime, and terrorism in all its configurations.

### **2.2. Committee's Objectives**

Since its foundation, the United Nations Office against Drugs and Crime has thoroughly committed to achieving justice and security for all peoples worldwide by making the world safer

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from narcotics and its variates, crime and terrorism. At its core, UNODC'S labor is based around five normative areas of activity, which are:

- Strengthening member states capacities to confront menaces from transnational organized crime by helping and accompanying member states to sign, ratify and implement the UN convention against Transnational Organized Crime and its Protocols, as well as addressing the latest and emerging forms of crime;
- Tackling corruption and its cataclysmic impact on societies, by helping member states criminalize 11 different types of corruption offenses, also by enhancing international cooperation on extradition and mutual legal assistance;
- Strengthening crime prevention and building effective criminal justice systems by boosting the rule of law and reinforcing human rights through the implementation of the United Nations Standards and Norms in Crime Prevention and Criminal Justice;
- Supporting member states in implementing a balanced, comprehensive and evidence based approach to the world drug problematic that addresses both supply and demand;
- Countering terrorism by helping member states cooperate with one another in implementing terrorism prevention measures

### **2.3 Committee's Functions**

UNODC carries out its fight against drugs and in favor of crime prevention by working hand in hand with Member States, encouraging cooperation among them and reaching out to civil society (About UNODC, 2021). To this end, the Office has the capacity to:

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- Collaborate with States that request it in the implementation of the 19 international legal instruments against terrorism<sup>1</sup>.
- Assist States in the ratification and implementation of the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime and the three main drug control treaties.
- Promote dialogue among States for the development of measures against terrorism and illicit drug trafficking, as well as practices such as extradition.
- Work closely with States and other organizations in the fight against illegal trafficking in drugs, arms, counterfeit goods, human beings, cultural heritage, wildlife and other natural resources by establishing projects and programs in the corresponding territories.
- Cooperate with States in improving the capacity of criminal justice systems, developing anti-corruption competencies through technical cooperation projects and implementing alternative development campaigns that favor the prevention of drug cultivation and encourage them to achieve the goals of sustainable development.
- Carry out campaigns that favor the rehabilitation of drug victims and provide support to victims of terrorism and violence.
- To be present in the states that request it to facilitate the monitoring of drug crops, social reintegration and prison management.

The Commission on Narcotic Drugs (CND) functions as the governing body of the UNODC, so that it is no longer only responsible for its normative functions, but also has on its

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<sup>1</sup> 19 international legal instruments against terrorism:  
<https://www.un.org/counterterrorism/international-legal-instruments>

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agenda the guidance of the rest of the UNODC. The Office is composed of other bodies categorized into 4 groups according to their function, which are:

- Division of Operations;
- Division for Treaty Affairs;
- The Division of Policy Analysis and Public Affairs;
- Management Divisions.

### **3. TOPIC A: Measures to prevent corruption in extradition process.**

#### **3.1. Introduction to the Topic**

According to the Council on Foreign Relations, the extradition is the formal process of one State asking for an individual to another State for prosecution or punishment for crimes committed in the requesting country's jurisdiction. Extradition procedures are typically determined by bilateral or multilateral treaties (Masters, 2020).

In the recent treaties, all crimes that are punishable in both countries are classified as extraditable under the "dual criminality" approach that has been popular in the last decades. In contrast, more ancient extradition treaties frequently list the crimes they include.

Treaties specify other circumstances in which extradition must be refused. For instance, with the exception of terrorism and other serious crimes, authorities generally are unable to extradite anyone for military or political crimes. Unless the asking government promises not to inflict the death penalty or life in prison, certain States won't extradite somebody to a country that practices these penalties.

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It is a difficult and serious process for one State to ask for someone's extradition from another State so that they can face criminal charges. A complex set of laws and regulations designed to safeguard the rights of the person sought as well as the sovereignty of the relevant States are involved in the submission and execution of an extradition request. Therefore, it is crucial to pay close attention to procedural guidelines and standards to make sure that both States are treating the accused appropriately under their respective legal systems.

Depending upon its domestic legislation, a variety of factors are considered by a requested State receiving an extradition request. With the exception of the EAW<sup>2</sup> procedure, most extradition decisions are the product of a two-tier system that involves the judiciary at the outset of the process and the executive branch at the moment of decision-making (if the judiciary has ruled positively on the granting of the extradition request). The presence of an extradition treaty, dual criminality, identification, the strength of the supporting evidence, and other criteria may all be taken into account by the courts when determining whether to extradite or not, depending on the internal jurisdiction. The decisions of the judiciary or executive branch may be appealed or subject to review in some jurisdictions. There are strict deadlines for filing paperwork, making appeals, appearing in court, and surrendering the suspect if required during the extradition procedure.

### **3.2. Key Concepts**

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<sup>2</sup> European Arrest Warrant: applied throughout the European Union, replaced lengthy extradition procedures within the EU's territorial jurisdiction. It improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or spell in detention. Simplifying and improving the surrendering procedure between EU countries was made possible by a high level of mutual trust and cooperation between countries

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All of the following concepts are some of the general principles of extradition under international law. It's important to highlight that each extradition agreement can adopt other principles (UNODC, 2018).

1. **Principle of legality:** In accordance with the aphorism "*nullum crimen sine lege, nullum poena sine lege*", the subject of extradition will be the one who has committed an act that is considered punishable among the signatory states of a convention.
2. **Double or dual criminality:** Not to grant extradition unless the act committed is also considered a crime under the law of the requested State.
3. **Existence of the punitive pretension:** This means that at the time the extradition request reaches the requested state, such action has not been extinguished by statute of limitations, amnesty, pardon, and furthermore that there is no *res judicata*<sup>3</sup> on the matter.
4. **The crime must be of a common nature:** also known as the political offense exception, means that extradition for political and military crimes is not applicable.
5. **Non Bis In Idem:** It prohibits the extradition of persons who have already been prosecuted, absolved or condemned in the requested State for the same facts that may motivate the extradition request.
6. **Principle of speciality:** This principle makes the States cure any possible injustice by prohibiting the requesting State from submitting the extradited person

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<sup>3</sup> Res judicata: a matter that has been adjudicated by a competent court and therefore may not be pursued further by the same parties.

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to trial for an offense other than the one for which the extradition was requested or making him pay a sentence other than the one already imposed.

### **3.3. Historical Background**

States have long since built and forged extradition treaties with other member states so they can pursue fugitives or wanted criminals transcending a nation's jurisdiction. At its core, extradition comes from the necessity of nations to carry out justice for criminals when they are beyond their grasp, using this process as a practical tool to avoid letting the criminal go unpunished.

Scholars have achieved the consensus that the phenomenon of extradition has existed since antiquity, although the process has not always been executed by use of a treaty agreement. Diving into the development of the so-called “modern extradition”, it is clear that the practice evolved into embroiled geopolitical clashes between nations but still conserving some sense of cohesion thanks to its core characteristics. Thanks to the inherent test of time, extradition has presented throughout its development, issues like (1) the role of reciprocity in the law of extradition; (2) the position of political, fiscal and military offenses; (3) the character of the evidence required to support a request from extradition; and (4) the principle of *non bis in idem*.

Nowadays, scholars and governments alike have set upon the idea that the particular rules regarding these matters were settled according to their tendency to promote objectives for extradition processes, for as Justice Chief Oliver Wendell Holmes said “a body of law is more rational and more civilized when every rule it contains is referred articulately and definitely to an

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end which it subserves, and when the grounds for desiring that end are stated or are ready to be stated in words”

### **3.4. Current Situation**

Currently, there are many cases around the globe where the extradition process has not been carried out as it is established in the national law and international agreements, and that's one of the major challenges of the United Nations Office on Drugs Crime. At the same time, the UNODC uses and recognizes the importance of extradition as a method to fight against different types of crime, including organized crime (UNODC, 2018).

There are two main problems regarding extradition, that principally affects Latin American, African and Southern Asian countries. First, we have that the institutions that are in charge of carrying out this type of process are not strong enough to enforce the law. And despite the interest and request of other countries to start an extradition process against a criminal, the institution lacks resources and power to start this procedure, leading to impunity and reiteration of crimes. This situation leads to the next problem which is that due to the absence of effectiveness in their processes, some institutions in order to obtain some monetary resources to function, receive bribes from criminals in exchange of slowing down or file their cases, so they are never extradited.

Moreover, there is another situation that in some cases is preventing the correct extradition procedures and is that according to the international law, any wanted person enjoys certain rights. And these people are entitled to exercise them in their extradition

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processes. Furthermore, the wanted person is protected *ex officio*<sup>4</sup> by the judicial authorities of the country, requested for their extradition. Which leads that no extradition shall be expected if the person might be exposed to any danger in the requesting country, or that this country is unable to fulfill and respect their rights (Girginov, 2019).

Consequently, this situation derives not only that some countries are not able to ask for extradition, allowing a certain level of impunity. But also, the extradition procedures can be slowed down in some cases under allegations of the defense of the wanted person that their rights are not going to be protected and their life is going to be in danger.

### 3.5. Cases and Response <sup>5</sup>

#### Extradition in the Odebrecht scandal

During a period of 9 years, the so called “Odebrecht” conglomerate found itself giving bribes to top state functionaries, corporate members and ex functionaries in the Latin American region in order to obtain several benefits in public contracts. After the operation were uncovered by the United States Department of Justice. The United States and several other governments have requested the effective extradition of various involved figures, most notably, peruvian ex president Alejandro Toledo or renowned businessman Gustavo Salazar, that although a considerable amount of figures involved have been detained, others have shielded themselves under offshore accounts and corrupt lawyer corporatives like Baker Mckenzie, which have helped figures like Salazar evade justice and stay off radar.

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<sup>4</sup> *ex officio*: because of a person's position in a group or situation.

<sup>5</sup> It is important to highlight that nowadays there exist thousands of cases where corruption and other irregularities are presented in extradition procedures, but here it is presented some of them.

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### **The Gupta family in South Africa**

Controversy spread like wildfire throughout international media when the Gupta brothers fled to Dubai in 2018 as investigations doubled down on their implications in siphoning off state assets under the administration of President Jacob Zuma. After the events South Africa formally filed a request with the United Arab Emirates (UAE) to extradite the brothers accused of orchestrating industrial-scale corruption in Africa's most advanced economy. Currently the extradition request for the two tycoons has stalled due to an apparent confusion in nomenclature between the two nations, the UAE functionaries assigned to the case arguing that the request was not signed off on proper authority. To this day, the South African government is still waiting for the UAE for further directives on how to bring back the infamous Gupta brothers into the country.

### **The Fishrot scandal in Namibia**

The fishrot revelations, uncovered by whistleblower Johannes Steffansson, showed how the Icelandic fishing company Samherji paid millions of dollars worth of bribes, through tax havens such as The Marshall Islands and Cyprus, to high namibian government officials in exchange for trawling rights. According to Johannes Stefansson, the possible benefits for the Samherji enterprise of this agreement in Namibia were openly discussed at the company's annual executive board meeting in March 2012. Millions of dollars in bribes are alleged to have been paid by Samherji for at least four years. After the proper investigations were conducted, the Namibian Anti-corruption Commission accused six people of corruption, money laundering and

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fraud, amongst them minister of fisheries Bernhard Esau and the Minister of Justice Sacky Shanghala. Even though the allegations have been proven the state has proven ineffective in processing the subjects, since it has failed to submit extradition requests to Iceland, and now, the Ministry of Justice faces accusations by the Anti-Corruption Commission for failing to do its job and refusing to provide clarity.

### **Qatargate and Silvia Panzeri**

On December 9, the Belgian police force carried out a series of raids throughout Brussels and detained six suspects, including prominent politicians, and the so-called “Qatargate” scandal came to light. The money laundering and corruption scandal involved Greek politician Kaili and former European Parliamentarian Pier Antonio Panzeri. Qatar is said to have paid Kaili and Panzeri to influence EU policymakers and secure policies in the Arab countries’ favor and block criticism. In the mix of the investigations, it was later revealed that Panzeri’s wife and daughter were direct collaborators of Panzeri’s wrongdoings. The Italian court has taken action and has approved an extradition request of former deputy Panzeri’s wife to Belgium, however the extradition process has reached somewhat of a standstill, and the outcome of this process still looks uncertain, since the court has decided to postpone the decision in order to assess Belgian jails before proceeding. In addition, Panzeri’s wife's defense team decided to appeal to Italy’s Supreme Court, raising more doubts about a successful outcome.

### **3.6. Recommendations from the Chair**

Sadly, nowadays an enormous amount of political processes have been affected by corruption, or have presented irregularities in their functioning; and extradition is not exempt.

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That's why we suggest you to understand how is carried out in your countries the extradition process, and analyze which are the steps or phases of that process that are more susceptible to present irregularities or corruption. And based on the results of this analysis, you can start designing measures that can prevent those irregularities in the processes that not only can be taken in your country, but worldwide. Finally, we want to remind you that the extradition is an international process created in order to prevent impunity, and that objective must always be taken into account when designing measures to prevent corruption in extradition.

### **3.7. Guideline Questions**

1. Which are the main difficulties or challenges that your country currently has in terms of extradition?
2. What actions are your government taking in order to reinforce the extradition process in your country?
3. Is your country part of any international extradition agreements? If the answer is positive, with which countries and what is established in those documents?
4. Through which organization or institution are carried out the extradition process in your country?
5. Does your delegation's country have strong institutions capable of conducting an effective judicial process?
6. Does the country of your delegation have the logistical capabilities to extradite a requested person?

### **3.8. Useful Links**

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- UNODC Model Law on Extradition (2004)  
[https://www.unodc.org/pdf/model\\_law\\_extradition.pdf](https://www.unodc.org/pdf/model_law_extradition.pdf)
- UNODC Manual on Legal Assistance and Extradition  
[https://www.unodc.org/documents/organized-crime/Publications/Mutual\\_Legal\\_Assistance\\_Ebook\\_E.pdf](https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf)  
[https://www.unodc.org/documents/legal-tools/lap\\_report\\_ewg\\_extradition\\_casework.pdf](https://www.unodc.org/documents/legal-tools/lap_report_ewg_extradition_casework.pdf)
- Inter-American Convention on Extradition  
<https://www.oas.org/juridico/english/treaties/b-47.html>
- Southern African Protocol on Extradition  
[https://www.sadc.int/sites/default/files/2021-12/Protocol\\_on\\_Extradition.pdf](https://www.sadc.int/sites/default/files/2021-12/Protocol_on_Extradition.pdf)
- European Convention on Extradition  
<https://rm.coe.int/1680064587>

#### **4. TOPIC B: Restorative justice as a method to arrange the consequences caused by non-international armed conflicts.**

##### **4.1. Introduction to the Topic**

When one does take a grasp to the ordinary retributive justice that has ruled justice systems since recorded history, it's imperative to look beyond the common spectrum and have a

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thorough understanding of what the so called “restorative justice” is and its purposes. Restorative justice, just as its name suggests, is a set of ideals and practices that generate a different approach to the assessments of wrongdoings an individual or set of individuals has made on a community. Rather than viewing a criminal just merely as a violation of a rule, law or statute, restorative justice states that the harmful action is a direct violation of the people affected and their relationships. Instead of examining what do the criminals deserve, restorative justice focuses on investigating the harm that was done and what can be done to repair this while holding the person who did the wrongdoing accountable for its actions. This accountability means that the offender actively strives to fix the harm it's done and accepts full responsibility. Additionally, the indicator for its successful application is measured on how effectively the damage was repaired.

Furthermore, restorative justice actively seeks for the inclusion and active participation of all parties involved in the problem, rather than just focusing on punishing the offender. Restorative justice anchors itself on substantial questions, like what have the victims experienced? What are their necessities? Whose obligations are these? As well as the involvement of stakeholders, the community plays a vital role in holding people accountable, setting standards of conduct, helping to repair the damage and providing active support for those who have been involved. The opportunity to express the harm a victim has experienced, full participation in decision making, and support from the community all aid in the healing in the aftermath of a serious crime.

In the exercise of exploring the purposes of Restorative Justice, we see that the need of the practice to be put into good use originates from the essentiality of each party involved to be understood and heard in order to the collective creation of a just outcome. The holistic and

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humanizing view of the wrongdoing is central for the peoples recognizing that it is a viable system to assess crimes present in their communities.

When the use of Restorative Justice in Non international armed conflicts is brought to the table, it is of vital importance to know that it is used as the “method to follow” in order to make all parties involved reach common ground and set once and for all their issues because of their conflict.

According to the International Committee of the Red Cross (ICRC) “A non-international (or "internal") armed conflict refers to a situation of violence involving protracted armed confrontations between government forces and one or more organized armed groups, or between such groups themselves, arising on the territory of a State”.

Two requirements are necessary for such situations to be classified as non-international armed conflicts:

- The hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character, or when the government is obliged to use military force against the insurgents, instead of mere police forces.

- Non-governmental groups involved in the conflict must be considered as "parties to the conflict", meaning that they possess organized armed forces. This implies, for instance, that these forces have to be under a certain command structure and have the capacity to sustain military operations.

#### 4.2. Key Concepts

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1. **Restorative justice:** According to Heath-Thornton, restorative justice is a “response to criminal behavior that focuses on lawbreaker restitution and the resolution of the issues arising from a crime in which victims, offenders, and the community are brought together to restore the harmony between the parties. It includes direct mediation and conflict resolution between the offender, the victims, their families, and the community.”  
(Heath-Thornton, 2018)
2. **Non-international armed conflict:** In the common article 3 of the Geneva Conventions of 12 August 1949, non-international armed conflicts are armed conflicts in which one or more non-State armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-State armed groups or between such groups only (ICRC, 1949).
3. **International armed conflict:** Is an armed conflict between two or more states.  
Common Article 2 to the Geneva Conventions provides that they “apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”  
(ICRC, 1949)
4. **International Humanitarian Law (IHL):**<sup>6</sup> “is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice” (ICRC, 2003).

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<sup>6</sup> The IHL main treaty sources applicable in international armed conflicts are the four Geneva Conventions of 1949, and their Additional Protocol I of 1977. Additionally, part of International Humanitarian Law is set out in the United Nations Charter.

### 4.3. Historical Background

Since the creation of the United Nations, there have been multiple non-international armed conflicts, which had had different resolution processes that had turned out different after some years. Some of them were effective and improved the status quo in the country, and others were not effective enough to improve the situation, and after some time the conflict was reborn. That's why below it is going to explain some of the recent non-international armed conflicts.

- **Yugoslavia**

This conflict is known as the Bosnian Genocide. It started in April 1992, when the government of the Yugoslav republic of Bosnia-Herzegovina declared its independence from Yugoslavia. During the following years, Bosnian Serb forces, with the backing of the Serb-dominated Yugoslav army, perpetrated atrocious crimes against the Bosnian Muslims, commonly known as Bosniak, and Croatian civilians, resulting in the deaths of some 100,000 people (80 percent of them Bosniak) by 1995. In August 1995, after the Serbs refused to comply with the UN, the North Atlantic Treaty Organization (NATO) joined efforts with Bosnian and Croatian forces for three weeks of bombing Bosnian Serb positions and a ground offensive. (History.com Editors, 2009).

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in The Hague, Netherlands, by the United Nations Security Council in May 1993. At the end, 161 people would be charged by the ICTY with crimes committed during hostilities in the former Yugoslavia.

- **Rwanda**

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One of the most well-known modern genocides was the Rwandan Genocide, which began in 1994 and lasted just 100 days. Nearly a million moderate Hutus and ethnic Tutsis were massacred during this 100-day span between April and July 1994, all while the international community and UN forces looked on (University of Minnesota, 2014).

After the genocide was over, the nation had to spend years in healing and reconciliation. The International Criminal Tribunal for Rwanda (ICTR), Rwandan national courts, or local gacaca courts were the main venues for the trials of those accused of taking part in the genocide. Some defendants who had emigrated from Rwanda were put on trial in the nations where they were discovered. Unlike the ICTR, Rwandan courts were initially able to sentence those found guilty to death penalty. As it took a long time for cases to pass through the ICTR and national courts because there were so many suspects facing trial in connection with the genocide. The Rwandan government announced plans to set up gacaca (grass) courts in accordance with the traditional judicial system in 2001 in an effort to reduce the backlog of over 115,000 genocide cases still awaiting trial. The gacaca courts were expected to resolve the backlog of cases as well as shed light on some of the unrevealed facts surrounding the genocide, offer a feeling of closure, and promote peace among Rwandans (Editors of Encyclopaedia Britannica, 2022).

The government regularly offered mass amnesty to convicts accused of less serious crimes in order to relieve prison overcrowding while the ICTR, national courts, and gacaca courts worked to bring the most serious genocide suspects to justice (Editors of Encyclopaedia Britannica, 2022).

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The Rwandan government was still occupied by Hutu insurgencies, although reconciliation efforts were still in progress. In order to stop additional ethnic conflict in the nation, a new constitution was adopted in 2003(Editors of Encyclopaedia Britannica, 2022).

- **Syria**

The Syrian Civil War is a non-international armed conflict started in march 2011, with what began as protests against president Assad's regime, this escalated quickly into war between pro-democratic insurgents backed by the United States, Saudi Arabia, Turkey, and others in the region; and Syrian President Bashar al-Assad's dynastic regime backed by Russia and Iran. Armed clashes started to become increasingly common, and by September 2011 organized rebel militias, mostly the Free Syrian Army, were regularly engaging in combat with government troops in cities around Syria.

In early November 2011 Syrian officials agreed to an Arab League initiative calling for the Syrian government to stop violence against protesters, the Arab League ended the mission in January 28 of 2012; After this the UN started to intervene, passed resolutions, sponsored cease fire, submitted peace plans and the Geneva Communiqué was created, which provided a road map for negotiations to establish a transitional governing body for Syria, nevertheless the UN ended its monitoring mission in Syria.

In 2014 An international conference, Geneva II, was held in Switzerland, no progress was made, and the sessions were suspended in February.

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Finally, there have taken place in the recent years other non-international armed conflicts<sup>7</sup> such as the conflicts in Iraq and Afghanistan. Which had multiple repercussions in their societies, surroundings and economy. Moreover they have received international intervention, which in some cases has been counterproductive; and both have had an enormous amount of deaths.

#### 4.4. Current Situation

It's vital that oneself bring into question the real effectiveness of Restorative Justice, since it's well known that several non governmental and governmental bodies have used Restorative Justice to some extent or the other, but have they really solved the conflict? It is imperative to know that the ongoing situations with the most known non international armed conflicts is that the majority of them are either on plain apogee or have reached a state of uncertainty that dreads all those caught in the crossfire.

On one side we have the ongoing South Sudan conflict raging on between the Kitgwang factions, government forces, SPLA/IO and the White Army militia, which have caused “mass displacement, abuses including targeting of civilians based on ethnicity and abductions, killings and destruction of civilian property” (Human Rights Watch, 2022). On the latter we have the Yemeni limbo-like peace process, which has left a great part of the International Community intrigued and uncertain of these peace talks.

In the process of analyzing the conflict and checking if they are suitable for the implementation of Restorative Justice it is of utmost importance to have the key principles and

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<sup>7</sup> If you want to read more about these conflicts, you can find some additional information in the Useful Links.

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concepts of Restorative Justice in mind in order to determine whether or not they are suitable. The belief of the clash between modern international law and traditional practices comes from Sally Engel Merry. According to Engel Merry, the conceptualization and drafting of international human rights instruments is an intensely contentious process in which policy makers and international lawyers conceive culture not only as static and an obstacle to resolution, but also as unaffiliated to modernity. (2003, p.59)

Taking the South Sudan quagmire as a case study, it's important to take into account that the conflict is one fought because of ethnic violence, something that is encrusted in Southern Sudan culture and its members for centuries, developing their relations in almost tangible tension. The paradox for the appliance of restorative justice in the Southern Sudan case is that its advocates claim indigenous local justice practices as a major source of restorative justice principles and practice.

By the way, the Democratic Republic of Congo has been host to one of the most bloody and prolonged conflicts in the African Continent. The vast central african state has been characterized by its mineral rich easter, which has been the main battleground for 112 armed groups fighting for the control of the territory or using it as a base to launch attacks on adjacent nations. Among the most notable armed groups are the Rwanda backed M23 militia, the Mai Mai rebels, ADF fighters and the CODECO militia. The restorative justice potential for dealing with the wrongdoings present in the conflict have yet to be fully utilized. In the east, impunity has become practice rather than an exception, and in eastern DRC, criminal prosecutors have little to

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no cultural plagency among the rural populations, who still use their traditional justice system and friendly agreements arranged at the level of customary chief.

In addition to the previously mentioned situations, there are other conflicts that still haven't reached the global spotlight they require, such as the conflict in Cameroon, civil war in Ethiopia and the Somalian situation, which are seemingly overlooked by the international community, that's why on "Useful links" (See point 4.8) there is included a list of situations that are as equally as important as the conflicts discussed above, whose appliance for restorative justice is brought into question.

#### **4.5. Cases and Response**

It is going to present 3 cases where restorative justice and restorative practices took place in the Irish criminal justice system.

##### **Criminal damage; trespassing with a weapon – reparation programme; victim-offender mediation**

This case involved two nearby homes and was assigned by the District Court. The residents of both were couples who had been neighbors for more than a year. One couple had two dogs that one person in the other household blamed for making a lot of noise in the night. The dog owners were also working on their house at the time, which made their neighbor's noise complaints worse.

The neighbors who owned dogs felt threatened after a few contentious conversations, but nothing worsened until the day of the offense. The dog-owning couple had just arrived home that day when there was a verbal fight. The neighbor walked to his car and pulled a hammer out of

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the boot as they were about to enter their home. He then went into the neighboring driveway, approached their front door, and began smashing their porch windows.

At trial, it became clear that the offender had a lot of medical problems, including a recent case of cancer. He immediately entered a guilty plea, and the judge forwarded the matter to an NGO that practices restorative justice before deciding on a sentence.

In order to learn the details of the case, the evidence presented to the court, and the identities of the victims, the caseworker first got in touch with the NGO member who made the arrest. The accountable party was thereafter provided a meeting time to begin the reparations program. He was ready to start working right away to undo the damage his actions had caused. He participated actively in every meeting and demonstrated a sincere desire to accept responsibility for his conduct.

The responsible party then had to appear before a reparation panel, which was presided over by a volunteer and included a member of the NGO and a probation officer. In this meeting, the offense was examined, and restorative questions were employed to promote introspection and aid him in understanding the reasons behind and repercussions of his misconduct. At the conclusion of the meeting, a list of reparative measures was created, including:

- looking into a mediation procedure with the victims,
- a letter of apology,
- an anger management course (at the victims' request),
- a €100 donation to a medical charity,
- and paying the victims compensation for the harm done to their property.

The recommendation had been made by the Court, and the victims had been notified via letter. The restorative justice procedure, the NGO, and potential advantages of participation were

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all described. The victims were also made well aware of the voluntary aspect. The victims' caseworker was then scheduled for a meeting.

The perpetrator and victim met separately so that the victim would have the opportunity to suggest the discussion's agenda. Nevertheless, the parties decided to have a face-to-face meeting after separate preparation meetings. The victim arrived first as planned and emphasized his want to hear an apology but not speak. When the offender arrived, he or she gave the caseworker the compensation. He was then granted entry to the space where the purpose of the meeting and its rules were explained. The offender apologized and vowed not to approach the victim again before presenting his letter of apology when the victim declined to speak first. Before leaving the room, the offender apologized once more. In the meeting, the agreement reached with the reparation panel was also confirmed, and the offender pledged to follow its conditions moving forward. The victim who took part afterwards expressed gratitude to the NGO for the opportunity to participate and for getting an apology and compensation. The perpetrator also expressed his gratitude for being given the chance to express his regrets and make up for the hurt he had caused. (Restorative Justice.ie, 2021)

### **Criminal damage –victim-offender mediation**

Michael showed up in District Court and entered a guilty plea to the charge of criminal property damage. He purposefully damaged seven parked cars while visiting his mother in a senior housing complex. The sitting Judge sent the case to an NGO that practices restorative justice before deciding on the appropriate sanction to use.

Michael admitted to consuming alcohol for a long time in his appointments with the NGO Caseworker. He drank a substantial amount of alcohol on the day of the offense before starting

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the visit to his mother. He vandalized many cars as he left the complex and verbally abused some of the neighbors who tried to step in. Michael checked himself into a treatment facility not long after the event. Around 16 months had passed by the time the case was brought before the court and referred to the NGO.

The potential of a facilitated meeting between Michael and some of the offense's victims was considered by Michael and the NGO Caseworker. Michael reaffirmed that he would be delighted to meet with any resident who has been personally impacted or a representative number of them. The NGO thereafter made independent contact with each of the victims who had been named, advising them about the proceedings in court as well as the variety of restorative justice choices they may choose from if they so desired.

All of the victims reacted favorably to the strategy. The victims talked at this meeting about how Michael's actions affected them personally and the larger residential neighborhood. It was suggested that: each victim should receive a letter of apology; each victim would accept a nominal sum as a contribution toward repair of the damage; two of the group (Tom and Ben) would represent the victims and the wider residential community in a facilitated meeting with Michael.

Michael was given the chance to speak first as it had been planned for. He was aware that his actions that day were improper and that he had caused financial loss, discomfort, and fear for several of the complex's occupants. He expressed his regret to Tom and Ben and gave them copies of his letters of apology to give to the victims who weren't there.

The loss of their sense of security and peace of mind, as well as the financial loss, were among the effects of the crime that Tom and Ben discussed with Michael. The group as a whole

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expressed its forgiveness to Michael and joy at his participation in and completion of the program. As long as he promised to remain sober and desist from doing any more harm, they continued, he was welcome back to the compound.

He apologized once more and promised to act properly in the future. The group acknowledges the financial agreement that was made prior to the mediation at the conclusion of the meeting. The meeting was then over.

When the case was brought back before the District Court, the judge made the decision to dismiss Michael in accordance with Section 1.1 of the Probation of Officers Act. He was so exonerated of any criminal wrongdoing. (Restorative Justice.ie, 2021)

### **Animal cruelty and neglect – restorative conference**

D had owned several animals that he had lovingly cared for over a number of years, but he had since neglected to give them even the most basic attention. The animals had to be put to death by the time the authorities got involved because they were in such bad shape.

When D encountered a probation officer, he acknowledged that he had injured the animals.

Although he acknowledged that he had never really verified it, he had initially thought that the animals were being cared for. After discussion, they decided that D was a good candidate for restorative justice since he had admitted guilt and that a conference would enable him to fully comprehend the harm done and take steps to make amends. D consented to participate in a restorative procedure that was planned using the scripted conference approach recommended by the International Institute of Restorative Practices. D chose a relative after being asked to suggest a support person to go to the conference. A staff member from an organization that promotes animal welfare was also contacted by the probation officer and agreed to attend and discuss the harm done to the animals.

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The facilitator opened the meeting by outlining how the procedure required to follow restorative values, such as justice, involvement, respect, safety, and honesty. The incident that prompted the meeting was then described in detail. After that, D was the first to speak and said that he had spent his entire life caring for animals. He said that he ceased caring for the animals due to personal reasons and that he believed the plans he had put in place for their care to be viable.

The animal welfare officer described her position inside her company. She talked about the suffering the animals would have gone through as a result of their neglect, including their final malnutrition and the state in which they would have been in for the veterinarian to decide to put them to death.

D has always taken good care of animals, according to his supporters. She also provided a picture of the animals from before the neglect began, which was viewed by each person in turn. She explained what she believed had occurred as well as the reasons why D had ignored the animals.

The group decided that D would go view the work of the animal welfare organization and volunteered to donate to a charity that supports animals. D wrote the reflective essay, gave to the cause, and finished the rest of the agreement with the help of his probation officer. The judge at the hearing sentenced the offense to a fine. (Restorative Justice.ie, 2021)

#### **4.6. Recommendations from the Chair**

Restorative justice has become more and more popular over the last years, and multiple theories and papers studying and proposing this method of justice have been published. The

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implementation of restorative justice as a way to respond to criminal behavior is currently in discussion, multiple cases of study and examples have been created, but only in some real criminal cases has been applied. One characteristic of this real cases is that they are applied in crimes that involved a low number of people and to crimes such as murder, rape, assault, and theft. But the idea is to debate if restorative justice can be applied on a large scale, arranging the consequences of non-international armed conflicts. You can determine if the application of this method could be effective or not, but always bearing in mind the social impact that a non international conflict has, and how it can be arranged in a way that it does not cause more pain and division inside a country's society.

#### **4.7. Guideline Questions**

1. Does your country currently have any process been solved applying restorative justice?
2. Has your country shown the interest to start implementing restorative justice as a way to respond to criminal behavior?
3. Will your country be able to contribute in the implementation of restorative justice as a method to arrange the consequences of non international armed conflict overseas?
4. Does your country's national laws allow a future application of restorative justice as a method to respond to criminal behavior? Or major changes in the legislation must be done to achieve the application?
5. Does your country is currently facing or has faced a non international armed conflict? If the answer is yes, which are the main social consequences that it has brought to society? and restorative justice can be an option to arrange those consequences?
6. In your country is there an NGO in charge of carrying out restorative justice practices? If the answer is yes, Can your country's courts refer cases to this organization?

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#### 4.8. Useful Links

- <https://restorativejustice.ie/case-studies/>
- <https://globalpeacecareers.com/magazine/examples-of-restorative-justice/>
- **Raging Violence in Somalia:**  
 -<https://www.hrw.org/world-report/2022/country-chapters/somalia>  
 -<https://www.icrc.org/en/where-we-work/africa/somalia/somalia-conflict>
- **Conflict in Cameroon:** <https://www.crisisgroup.org/africa/central-africa/cameroon>
- **Civil War in Ethiopia:**  
<https://www.cfr.org/global-conflict-tracker/conflict/conflict-ethiopia>

#### 5. LIST OF COUNTRIES

1. United States of America
2. Russian Federation
3. People's Republic of China
4. French Republic
5. United Kingdom of Great Britain and Northern Ireland
6. United States of Mexico
7. Republic of Colombia
8. Kingdom of Spain
9. Federal Republic of Germany
10. Republic of South Africa

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11. Commonwealth of Australia
12. Federative Republic of Brazil
13. State of Israel
14. Republic of Guatemala
15. Republic of Mali
16. Syrian Arab Republic
17. Republic of Cameroon
18. Republic of Iraq
19. Federal Democratic Republic of Ethiopia
20. Republic of Botswana
21. Democratic Republic of the Congo
22. Republic of Somalia
23. Republic of Rwanda
24. Republic of Yemen
25. Republic of South Sudan

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