

A Genealogy of the United Nations Understanding of Truth Commissions

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DECLARATION

I, Silvia Barbarino, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature.....

Date.....

DEDICATION

To Anna Fiorella, my daily source of inspiration

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ABSTRACT

The United Nations “Rule of Law Tools for Post-Conflict States: Truth Commissions” is one of the official policy documents within the transitional justice area to be recommended to post-conflict countries interested in establishing a mechanism which can provide some form of accountability for massive human rights violations. Through a victim-centred approach based on the truth-telling exercises and the uncovering of factual evidence a collective historical narrative is produced, some form of accountability is achieved, and reconciliation and personal healing can be advanced. This thesis argues that such claims are based on intuitive and/or taken for granted truths and that they are part of a discourse that has been articulated in specific ways to legitimate some understandings and exclude others. Through a genealogical analysis based in the work of M. Foucault, an exploration of the productive power of discourse and of the United Nations as a system of formation of certain truth-claims is presented.

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INTRODUCTION

In 2006 the Office of the United Nations High Commissioner for Human Rights published a series of documents under the heading *Rule of Law Tools for Post-Conflict States*. This series includes a document on Truth Commissions as one of the mechanisms of the so-called transitional justice approach, which is recommended for countries emerging from violent conflict and regime change, and their usual corollary of massive and/or systematic crimes.

These UN tools are the expression of a normative wave that in the last three decades has resulted in an explosion of initiatives in the area of transitional justice. According to numbers provided by Amnesty International, only in the last 10 years, at least 17 countries have established truth commissions¹. National and international NGO's², governments and major international organizations such as the United Nations, have all been eager sponsors of these mechanisms. Most research done in the area of truth commissions has been focused in analysing individual country results, checking whether the stated objectives have been achieved and how, or studying whether truth commissions in general live up to the expectations generated by their existence (Hayner, 1994, Kim, 2009). Yet, for all their popularity, many a critical research has also voiced unease for what appears to be unbounded enthusiasm for these processes (Kent, 2011, Mendeloff, 2004, Miller, 2008, Paige, 2009, Paris et al., 2010, Subotic, 2012). Trying to limit the expectations with regard to the capabilities of truth commissions and presenting a more sober view of the whole subject has been a key concern. More limited, though, has been research studying how the present understanding of truth commission has emerged and/or how it interacts with other discourses. This point becomes significant when an important sponsor of these processes is such a relevant international player (such as the United Nations). Whether we might doubt or not the present abilities of the UN to lead international politics and diplomacy, it remains an important source of legitimacy. By sanctioning specific mechanisms to deal with post-conflict states, and providing strategic,

¹ <http://www.amnesty.org/en/international-justice/issues/truth-commissions>

² Such as: International Center for Transitional Justice, US Institute of Peace (RoL Initiative) and NGO's dealing with human rights such as Amnesty International, Human Rights Watch, and many others.

economic and logistic assistance in these processes, the UN endorses them and becomes an important agent in the general articulation of this discourse.

Yet, truth or rather its operational instrument, truth commissions, is a notably difficult endeavour. Within the UN, the discourse on truth commissions is articulated with a vocabulary of human rights. Specifically, the right to truth/know and the right to justice have grown alongside the understanding of truth commissions. In a post-conflict situation, which is the defined field of a truth's commission quest, searching for truth and/or achieving criminal accountability are understood to be essential for re-establishing the administration of justice and building a peaceful democratic state. Yet, would these objectives be more relevant than the search for socio-economic reform, which usually lies at the base of most conflicts? Why would these "tools" be the most appropriate ones? How has been the process from which these understandings have emerged?

Based on the present UN understanding of truth commissions as expressed in its official *document-tool* on the subject³ this thesis aspires to answer:

- What is the discourse that underpins the United Nation understanding of truth and its operational instrument, truth commissions?
- How did this particular articulation of the discourse came about and, what are the consequences of this choice?

Answering these questions becomes relevant in order to illuminate the process by which the UN articulates specific understandings on subjects and grants legitimacy to certain practices.

A post-structuralist approach based on discourse will serve as an anchor for the research. Specifically, a genealogical analysis inspired by the work of M. Foucault will be conducted. Post-structuralism focus on language does not equal the adoption of an ontological position divorced from materiality, *"the point is not to disregard material facts but to study how these are produced and prioritized"* (Hansen 2006: 22). Rather, it attempts to highlight their interaction and how our understanding of phenomena is

³ Rule of Law Tools for Post-Conflict States: Truth Commissions / UN 2006

necessarily mediated by language. Post-structuralism also rejects a *rigid* causal epistemology (which it sees as a *particular* discourse of knowledge) because it understands knowledge as historically and politically situated.

Genealogies do not profess to render an historical account of the past, but to describe how the present has been informed by contingent understandings and turn of events, in other words, *how the present becomes logically possible* (Bartelson 1995: 8). These contingencies far from demonstrating a straightforward evolution of discourses, ideas or practices, illustrate a more intricate path, one more likely to be speckled by power interactions than to be the result of an inevitable refinement of rationality. This interpretation of a genealogy is inspired by M. Foucault's works and by succeeding waves of scholars that have also applied this approach (Bartelson, 1995, Carabine, 2001, Graham, 2005, Hansen, 2006, Neumann, 2001, Tamboukou, 1999, Vucetic, 2011). Based on these premises, truth commissions will be studied as a discourse and a practice.

In order to achieve its aims, this thesis is organized in five chapters. The first chapter presents a literature review of the subject of transitional justice and briefly summarizes research done in the area of truth commissions. Chapter two discusses the theoretical framework of the thesis and it also includes the concepts to be utilised in the analysis. The third chapter deals with the methodology used to conduct the genealogical analysis. The analytical part is further divided in two chapters: chapter four explaining the context from which the discourse on truth commissions has crystallized, and chapter five which is the analysis of the discourse itself. Finally the sixth chapter states the conclusions of the paper.

1. LITERATURE REVIEW

This review of the literature in transitional justice in general and truth commissions in particular has as its objective to provide a summary of the field and to locate this thesis within a research corpus. Given that this thesis aspires to provide a genealogical account of the UN understanding of truth commissions, the literature review will be organized around the following items: genealogical accounts, contemporary research and main conceptual paradigms.

Genealogical accounts are important because they provide a background for the arguments presented and bring to light the foundational myths of the field. A review of contemporary scholarship creates the space for this thesis while an assessment of the conceptual paradigms that animate the field of truth commissions is relevant because in the last years and given the mixed results achieved by numerous commissions, many authors have also written extensively on the conceptual basis of the field in a kind of soul-searching coming of age. Articles against and for the healing or reconciliatory power of truth telling at an individual and societal level abound, accompanied by cautionary tales about the need to restrict the reliance in immeasurable benefits. The explanation of these conceptual arguments will further help to ground the analytical work that is conducted later on.

A last point to clarify is that for the purposes of this review and although the terms transitional justice/truth commission do not refer to the same subject (as truth commissions are but *one* of the mechanisms contemplated within the transitional justice field), the genealogical account collapses both because for historical reasons truth commissions are understood to conceptually herald the birth of the field since trials⁴ as such (which is the other key transitional justice mechanism) have been around for quite a while before.

⁴ Reparations, lustration, vetting and institutional reforms are the other mechanisms that presently encompass transitional justice. However this thesis does not dwell on their conceptual histories as they are not relevant for this particular analysis.

1. 1. *Genealogical Accounts*

Once upon a time in a Europe galvanized by the savagery of war an unprecedented event was to take place. A series of tribunals was to be organized to re-instate justice as understood by civilized men by determining accountability and punishing those responsible for the crimes committed. The Nuremberg trials were to be conducted from November 1945 – October 1946, inaugurating a new era, subsequently delayed by the advent of the cold war, in the historical development of justice. Although the Nuremberg trials are to be described as representative of the so-called “victor’s justice”, these trials represent (in some genealogical accounts) the **historical antecedents** of the transitional justice field (Hazan, 2006, Teitel, 2003). According to these accounts, the nature of the crimes committed by the Nazi regime⁵ were so horrific (Holocaust) that a new type of judiciary proceedings were needed thus giving rise to what was later to develop into international law with its focus on “*national rights and duties within the new international community*” (p. 32) (Teitel, 2000). Other authors like G. Bass (cited in Eisikovits 2011⁶) explain the Nuremberg trials by highlighting them as the success of American legalist tradition which had “*fought the war in defence of political freedom (...) This freedom depends on upholding the ideals of the rule of law (...) which require the individualization of guilt and giving the defendants a fair chance to answer the charges against them*” (Eisikovits, 2011). Thus we found both the rule of law and the development of international law at the core of these interpretations.

Other accounts⁷ situate the emergence of this new justice paradigm at the beginning of the 80’s with the end of the cold-war and the *democratization* wave that sweep through both Latin America and some of the previous republics of the ex- Soviet Union (Kritz, 1995, Lutz and Sikkink, 2001, Paris et al., 2010, Wilson, 2001). Accordingly Kritz states: “*When the communist world began its collapse in the late 1980’s and the post-Cold War period opened, newly democratic nations (...) looked to democracies, specially the United States, for help in creating democratic institutions and the complex foundation of a citizenry of democrats so necessary to transverse the inevitable rough*

⁵ Here we must include the Nazi and the Japanese governments as these “victor’s trials” were conducted both in Nuremberg and in Tokyo.

⁶ Accessed Nov. 22, 2012 <http://plato.stanford.edu/entries/justice-transitional/>

⁷ While some of these accounts may mention the Nuremberg antecedent, they instead prefer to focus in worldwide political developments of the 80’s

waters ahead" (p.xv) (Kritz, 1995). According to these accounts transitions to democracy and away from both authoritarian and communist regimes explain the nascence of a field. Yet authors like A. Paige (2009) have argued that this understanding of the challenges facing new regimes has been explained within a very specific framework, one that situates political dilemmas as legal-institutional challenges of a temporary nature. Transitions are to be understood as "*deeply enmeshed with political problems that were legal-institutional and, relatively, short term in nature (...) So short term, in fact, that they could be dealt with specifically during a transitional period*" (p.333) (Paige, 2009).

While acknowledging the general geopolitical climate of the 80's, some authors have singled out the Latin American democratization wave (Bell, 2009, Garcia-Godos, 2008, Grandin and Miller Klubock, 2007, Orentlicher, 2007, Paige, 2009) as the genesis of the truth commissions surge (and the transitional justice field). Others (Grandin and Miller Klubock, 2007, Paige, 2009) specifically argue that the Argentinian inquiry commission⁸ into the fate of the "desaparecidos" (1983) was to be not only the pioneering standard⁹, but also argue that its main theorists sat up the conceptual foundations of the field (even if the phenomenon of truth commissions as such really takes off after the much-publicized South African Truth & Reconciliation Commission in 1995). As Grandin & Lubock state: "*Heavily influenced by Emile Durkheim's arguments about the role of the rule of law in the formalization of social solidarity, these legal theorists (Carlos Nino, Jaime Malamud-Goti and Jose Zalaquett¹⁰) laid the philosophical foundation of subsequent truth commissions*" (p.2) (parentheses added) (Grandin and Miller Klubock, 2007).

⁸ Formed after democracy was restored in Argentina in 1983, the National Commission on the Disappearance of Persons (CONADEP) was chartered to investigate the fates of the thousands who disappeared during the military rule. The commission was to receive depositions and evidence concerning these events, and pass the information to the courts, in those cases where crimes had been committed. The commission's report would not extend, however, to determine responsibility, only to deliver an unbiased chronicle of the events.

⁹ In Bolivia was established the *National Inquiry on Dissapeared People* in 1982, that is before the Argentinian commission, but due to its limited scope and consequences is not commonly highlighted in the literature

¹⁰ Jose Zalaquett was the theoretical architect behind the Chilean Truth and Reconciliation Commission of 1990, yet he was part of the group that in 1989 was reflecting on the issue of democratic transitions at the *seminal* Aspen Institute Conference (see PAIGE, A. 2009. How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly*, 31, 321- 367.)

Yet, still other historical accounts claim that this phenomenon is not modern at all and that the processes of transitional justice can be seen “*in the wake of restorations of the Athenian democracy in 411 and then again in 403 BC*” (Elster, 2004). In an explanation geared to show the variety of transitional justice cases¹¹ and the possibility of nations learning by experience, Elster identifies the genesis of *democratic* transitional justice in Athens in a way that many conceptual historians find controversial since it conflates present understanding of the terms with imputed meanings to long gone actors. As A. Paige explains, “*Whatever meanings these various practices may have held for the historical actors involved (none of whom had ever heard the phrase “transitional justice”) get swept into a universal, homogeneous conception of transitional justice, whose only meaning is identical to our conventional, twenty-first century understanding of it*” (p. 328) (Paige, 2009)

Nonetheless, whether representative of the purportedly age-old democratic flair demonstrated in Athens or an evidence of the post-Cold War *pax-neoliberal* (Grandin and Miller Klubock, 2007), this sample of historical accounts of the transitional justice field offers a varied understanding that probably reflects more the intellectual range of the explanations provided than any *truer* essence to be exposed. As such, the genealogical account attempted here is not concerned with the *truest* historical account, but faithful to the Foucauldian logic that animates it, it looks to the historical contingencies that nest such interpretations. This is not the path commonly taken when studying truth commissions.

1.2. Contemporary Research: Impact studies, Ethnographical Research and Conceptual Debates

As previously mentioned, the lion’s share of empirical research has been concentrated around the *impact* of transitional justice/truth commission processes in either a single-case manner or have been cross-comparisons among commissions or regions (Hayner, 1994, Hayner, 2011, James, 2012, Kent, 2011, Kim, 2009, Kritz, 1995, Mazzei, 2011, Wilson, 2001).

¹¹ Elster approach singles out memory and retribution as the essential drivers of transitional justice

These studies generally evaluate whether the stated objectives of the truth commission have been achieved and how, yet methodological challenges abound as it's enormously difficult to operationalize or quantify the concepts used: *"For better or worse, our assessment of the impacts of truth commissions will have to continue to include qualitative, case-specific comparisons, in order to fully understand the dynamics"*(Hayner2011).

Those authors who believe in the positive impact of truth commissions tend to highlight the specific results of some commissions in achieving some institutional reforms, reparations, vetting or apologies (Hayner, 2011). But since it is difficult to disaggregate these results from other general societal dynamics, how do you demonstrate that they are the explicit impact of the commission? As P. Hazan (2006) writes *"the specific effect of such institutions (truth commissions) must be isolated from other factors in which they play a part, such as the political evolution of a country"* (p.28) (parentheses added). Maybe this is why other authors (Dimitrijević, 2006, Godwin Phelps, 2001, Urban Walker, 2007) tend to stress more the *moral* implications and effects of truth-searching/telling for societies. Moral philosopher M. Urban Walker (2007) writing about truth commissions argues: *"When individuals or institutions are **not** allowed to silence the less powerful or the violated, and are compelled to listen to and to account to those once dominated or violated, then all parties find themselves within a moral field"* (p. 233) (highlighted in original text)

Apart from impact studies, the **ethnographic trend** in empirical research has been much more concerned with the subtle nuances of local truth commission processes and the desire to go more deeply into people's interpretations of events. In a bottom-up approach, these types of studies tend to be more critical to the universalizing claims of transitional justice/truth commissions and are more inclined to focus on social and cultural variations (Eastmond and Selimovic, 2012, Ekern, 2010, Kent, 2011, Millar, 2010). In an article about his experiences from El Salvador and Guatemala's truth commissions, S. Ekern (2010) states *"the need for using more social and historical contextualization when analyzing violence in non-Western settings as well as for increased social and political sensitivity in designing policies that legalize human rights"* (p. 220)

Nevertheless, more than 30 years after the first so-called truth commission¹² has been conducted (Argentina, 1983) **conceptual debates** around core transitional justice/truth commission notions abound. N. Kritz (1995) in his pioneering compendium on transitional justice dedicates the first volume of the series (General Considerations) to “*political, historical, legal, psychological and moral perspectives (of transitional justice)*” (parentheses added).

In another review of more than “a 100 TJ (transitional justice) related studies consulted” Paris et al. come to the conclusion that “*reliable, empirical knowledge on the state-level impact of TJ is still limited*” (p.331). Yet, they think that this does not disqualify the “*moral and legal rationales for pursuing these policies*” (p.353) (Paris et al., 2010). While N. Dimitrijevič discards the “*familiar arguments of condemnation, ascription of guilt, distribution of blame, healing, reconciliation, or even the restoration of equality between victims’ and perpetrators groups*” to propose a single moral justification for the need of truth commissions: “*rebuilding the lost sense of justice in the community of perpetrators*” (p. 369) (Dimitrijevič, 2006)

On the other hand, more critical type of reviews questioning the alleged universal claims of transitional justice/truth commissions have been carried out by Daly (2008), Hazan (2006), Mendeloff (2004), Parlevliet (1998), Waldorf (2012) and Wenstein (2011). The much-cited article of D. Mendeloff (2004) “*Truth-seeking, Truth-telling, and Post-conflict Peacebuilding: Curb the enthusiasm?*” concludes that the value of truth-telling is likely limited, while P. Hazan (2006) summarizes these limitations by highlighting both the methodological obstacles in studying transitional justice mechanisms, and the “*ideological nature of the debates around it*”.

After 5 years as Co-editor-in-chief of the *International Journal of Transitional Justice*, H. Wenstein (2011) summarizing the state of the field concludes in his last editorial¹³:

¹² The Argentinian commission alongside the ones established in Bolivia (1982) and Uganda (1974) were originally called inquiries into forced disappearances and although the truth of the facts was the objective of the investigation, they were not then called or identified as truth commissions as presently understood.

¹³ This last editorial was tellingly titled: “The Myth of Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief” WEINSTEIN, H. M. 2011. Editorial Note: The Myth of

“The international community needs to temper its goals and recognize that these processes unfold over a long period of time and are marked by very small steps. I suggest that we need to look more realistically at what trials, truth commissions and memorials actually accomplish and value them for the very specific and limited goals they may achieve”.

With regard to the work conducted here, and apart from the articles written by A. Paige (2009) *How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice*, and R. Teitel (2003) *“Transitional Justice Genealogy”*, the author of this thesis is not aware of any other genealogical studies been conducted neither on truth commissions, nor on the UN work around it. Paige’s article investigates the conceptual origins and boundaries of the field *“The field of “transitional justice”—an international web of individuals and institutions whose internal coherence is held together by common concepts, practical aims, and distinctive claims for legitimacy—began to emerge as a response to new practical dilemmas (human rights dilemmas) and as an attempt to systematize knowledge deemed useful to resolving them”* (p. 324) (parentheses added).

On the other hand, Teitel’s article specifically identifies it as a genealogy of the field and locates it within an intellectual tradition *“The notion of genealogy presented in this Article is structured along the lines of and situated within an intellectual history (M. Foucault)”* (p.69) (parentheses added), yet her practice of genealogy can be questioned on various grounds. Although she recognizes that her use of temporal phases is just for heuristic purposes¹⁴ *“to help understand the periodization of the various political and legal periods (...) there are overlaps between the three phases proposed here”* (p. 69), since this practice goes against Foucault’s understanding of history, her teleological explanations are more problematic both from a conceptual history point of view and a *Foucauldian* approach: *“Phase I of the genealogy, the postwar phase, began in 1945. Through its most recognized symbol, the Allied-run*

Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief. *International Journal of Transitional Justice*, 5, 1-10.

¹⁴ Temporal divisions in history are identified by Foucault’s as attempts to write a **total** history that is *“articulated into great units – stages or phases- which contain within themselves their own principle of cohesion”* (p. 11) and which he explicitly rejects FOUCAULT, M. 1972. *The Archeology of Knowledge*, London, United Kingdom, Routledge

Nuremberg Trials, this phase reflects the triumph of transitional justice within the scheme of international law" (p. 70) (highlight added). This ascription of intentionality reflects what Foucault (1972) would characterize as an attempt *"to discover, already at work in each beginning, a principle of coherence and the outline of a future unity, to master time through a perpetually reversible relation between an origin and a term that are never given, but are always at work"* (p. 24). This thesis understanding and practice of genealogy tries to avoid such *"teleologies and totalizations"* and fill in a perceived gap in transitional justice research.

1.3. Main Conceptual Paradigms

Truth Commissions are presently understood as one type of mechanisms within the broader area of transitional justice whose principal objective is to find out about the *facts* surrounding gross human rights violations and construct a *narrative* of what happened (Hayner, 2011). Both the process and the outcome of these inquiries are assumed to achieve several goals from reconciliation in divided societies to *some form* of accountability¹⁵ for massive crimes (Bronwyn, 2008, Daly, 2008, Dimitrijević, 2006, Eisikovits, 2011, Hayner, 2011, Hazan, 2006, Kritz, 1995).

The search to end impunity in situations of limited political maneuverability partially¹⁶ frames justice in terms of truth, *"The pursuit of justice may be negotiable depending on the political circumstances, but the truth is not. Truth has assumed the position of an absolute value, one that cannot be renounced under any circumstances"* (p.2)(Parlevliet, 1998). Nevertheless, other authors claim that this absoluteness of truth actually diverts the thirst for justice. In a study on the debates about truth and justice, J. Mendez asserts *"A second pernicious position in this debate postulates that, even in the context of trying to settle accounts, truth is always preferable to justice"* (p. 267) (Mendez, 1997).

Although some authors understand this **search for truth** as a key issue in the political transitions in Latin America during the 80's since the majority of the crimes committed

¹⁵ The UN Rules-of-Law Tools states that truth commissions *"offer some form of accounting for the past"* (Introduction) OHCHR 2006b. Rule of Law Tools for Post-Conflict States: Truth Commissions. HR/PUB/06/1. United Nations: Office High Commissioner Human Rights.

¹⁶ "Partially" because other type of transitional justice mechanisms also are designed to advance justice (such as trials, vetting, reparations, etc.)

by the state by their very nature imposed a veil of silence around society *“the emphasis on truth is connected with the nature of (certain) human rights violations. Many violations are, as it were, to remain in the dark: torture and disappearances are examples of abuses that exist by the grace of secrecy and denial”* (p.3) (Parlevliet, 1998). Other authors claim that justice claims articulated in terms of dealing with the past and solving legal-institutional problems obscure other type of claims based on distributive justice and socio-economic challenges that lie at the base of most conflicts *“on what grounds could one argue that such claims (reform of the socio-economic system) should not be considered transitional justice claims?”* (p.359) (Parentheses added) (Paige, 2009). Yet, this path has also been criticized as when author L. Waldorf concludes in an article about transitional justice’s struggles to fulfil its promises of truth, justice and reconciliation, *“Well-meaning efforts to have transitional justice tackle socio-economic wrongs will simply freight it with yet more unrealizable expectations”* (p. 179) (Waldorf, 2012)

Thus truth or rather the power of truth-telling is a contested claim, particularly when articulated as healing or reconciliatory (Daly, 2008, Hazan, 2006, Mendeloff, 2004, Weinstein, 2011), as concluded by Mendeloff (2004), *“In the absence of compelling evidence, we should be sceptical of claims that formal truth-telling mechanisms are the best way to help or that such **psychological healing** in general is somehow necessary to build and maintain peace in post-conflict societies”* (p. 365) (highlighted in original).

Yet, the force of the healing argument is based on models over agency or rather the ability to have a *voice* as the high road not only to empower discriminated groups or victims, but also to help the whole society move towards a more peaceful future by means of a shared master narrative (Godwin Phelps, 2001, Urban Walker, 2007). In this regard, the construction of this narrative is considered an important process to allow the victim/families official acknowledgement of their suffering (Neier, 1990). This acknowledgment is thought as important or more than a retributive justice scheme, *“What is the ultimate fulfillment of justice? Is it the punishment of perpetrators as we so quickly assume? Is it doing something and then putting the past behind? Or is it justice best understood as continually in the making?”* (p.128) (Godwin Phelps, 2001)

Narrative theory basically states that a narrative is a basic human strategy for coming to terms with fundamental elements of our experience, such as time, process, and change (Project Narrative)¹⁷. By joining psycho-medical literature on emotional catharsis and arguments about the redemptive power and ethical function of narrative (Hayner, 1995) a case is built for the moral imperative of giving victims a platform for their version of events, or as moral philosopher M. Urban Walker asserts, *“Rights to claim and tell the truth (...) aspire to a constitutive function in reengineering a moral and epistemic community and individual’s places and relations within it”* (p.218) (Urban Walker, 2007) .

Yet, for all the intuitive appeal of such arguments, in the field of literature studies and with regard to the influence of narratives in the development of empathy many a doubt has been voiced: *“the most ethical act for literature is not the bridging of gaps through the creation of empathy, but the articulation and keeping alive of **intractable ethical questions**”* (p.232) (*highlight added*) (Travis, 2010). Within this view, a master constructed narrative of painful events can, at best, be contented with keeping alive the memory of the past.

In fact, with regard to truth-telling claims and in an apparently counter-intuitive move, some researchers have advocated for the value of silence as another form of communication that is also relevant within the context of violent conflict. Eastmond & Selimovic propose that the current discourse on truth-telling and politics of remembrance might not be what is needed in all circumstances, *“The implicit assumption in the transitional justice discourse, therefore, is that silence is detrimental to social and individual healing in countries emerging from violent conflict, a view backed up by the psychomedical discourse on war trauma”* p. 503 (Eastmond and Selimovic, 2012). Based on an field study done in post-war Bosnia Herzegovina and centered on the view that silence or speech as forms of communication are culturally sensitive, the authors propose that an assumed universal link between truth telling and

¹⁷ Website of the Project Narrative from the Ohio State University (accessed Nov. 10,2012)
<http://projectnarrative.osu.edu/about/what-is-narrative-theory>

reconciliation and/or accountability might not only be inexistent but obscures the need to go beyond standardized formulas in the reconstruction of societies.

Truth, then, turns out to be a difficult concept not only because its healing power is not a given, but because establishing single, authoritative truth as to the “*why certain events were allowed to happen*” (OHCHR, 2006b), which is another cited claim, is itself controversial as well (Daly, 2008, Mendeloff, 2004). In conclusion we may say that many claims have been adjudicated to the truth-seeking function of truth commissions. However, the need to further elaborate on why or how justice and truth became *inevitable* demands for post-conflict states is still under-researched (Bell, 2009, Subotic, 2012). In an article responding to the opening editorial in the first issue of the *International Journal of Transitional Justice* (1997) and trying to assess the nature of the present “field” of transitional justice, C. Bell argues: “*The attempt to design transitional justice mechanisms to ‘implement’ essentially contested concepts either is futile or involves ignoring the contestation and viewing the concepts as reducible to a ‘toolkit’ approach involving a set of technical choices: what type of elections when, what type of justice sector reform when and what type of reconciliation mechanism when. This concedes an opportunity for academics and practitioners and for local and international actors to engage in a larger project of ongoing negotiation and compromise over what these concepts entail*” (p.27) (Bell, 2009).

This summary of the literature around the issues of transitional justice in general and truth commissions in particular, has attempted to contextualize the subject of inquiry of this thesis and to locate it within the current research corpus. A description of the most relevant genealogical accounts of the field was provided with the intention of (1) to provide a background for the understandings of truth commissions, and (2) to differentiate the nature of the genealogical account that this thesis proposes. This account of historical processes¹⁸ is appropriate when presenting the state of contemporary research in the area wherein apart from the mentioned articles by Paige (2009) and Teitel (2003), it seems like not many post-structuralist or foucauldian inspired studies have been conducted. This type of studies can provide different understandings of the field by questioning taken for granted “truths”. Exposing the

¹⁸ Genealogical accounts situated within a *Foucauldian* framework

process by which present insights have crystallized can help build up knowledge which may clarify the debated nature of many of the truth's commissions claims.

2. THEORETICAL FRAMEWORK

In order to explain how the present understanding of truth commissions became logically possible and assumed as a natural or normal condition¹⁹, this thesis theoretical framework will be based on a post-structuralist approach. This chapter will present first a clarification of what exactly counts here as a post-structuralist approach, its methodology, and how does this necessarily implies an emphasis on language. It will also explain how the process of articulation of a discourse has sometimes been likened to the process of framing as a way of constructing media discourses salient in the public agenda, hence a discussion of the differences and/or similarities between both concepts is presented as well.

Building up on the previous discussions and on the fact that the thesis is partially built around a discourse analysis of an official UN policy document, a definition of the term discourse will follow. According to M. Foucault, discourses define what is “truth” at a particular moment while at the same time truth is primarily explained by power/knowledge interactions, hence an explanation of the terms truth (truth regimes) and power are also tied in to the previously mentioned concepts. It is also important to clarify that even though power is an important element in Foucault’s analyses due to scope limitations this thesis will not elaborate on the power interactions that inform UN understanding of truth commissions.

To finalize, an examination of the concept of rights and specifically human rights will close the theoretical chapter. This last point is relevant since the UN understanding of truth commissions is articulated around a discourse on rights

2.1. Post-structuralism and Language

Although there are many disagreements as to what exactly counts as post-structuralism (and how it differs from post-modernism, for example), and whether it is a legitimate approach to research, post-structuralism basically emphasizes:

¹⁹ On his book about the genealogy of sovereignty, Bartelson explains his methodology as based on Foucault’s approach which “starts from an analysis of the present, and explains the formation of this present in terms of its past” BARTELSON, J. 1995. *A Genealogy of Sovereignty*, Cambridge, Cambridge University Press. (p.8)

- The rejection of **grand narratives** to explain phenomena. Reality is seen as in continuous flux and not explainable by a single, deterministic truth (Sarup, 1993)
- A critique of the Cartesian understanding of the **individual consciousness** as in complete control of itself and capable of penetrating all the mysteries of nature
- **Language** as the basis of consciousness and substantiating the power of discourse to shape perceptions of reality.

Just as the study of nature may seem²⁰ to facilitate a vantage point outside of ourselves for its comprehension, the study of social facts becomes artificial but from within them. While not proposing that language predates reality, it is language that helps us make sense of it. Our understanding of phenomena is mediated by it. If this is so with regard to so-called hard, natural facts, is this not even more accurate of human-made constructs (such as truth or the rule of law)? As expressed by the following post-structuralist authors:

“To post-structuralism, language is ontologically significant: it is only through the construction in language that “things” – objects, subjects, states, living beings, and material structures- are given meaning and endowed with a particular identity” (Hansen, 2006, p.18)

*“In the beginning was the word; discourse is autonomous and has primacy, **but is not itself foundational**; its autonomy and primacy does not reside in any magical or metaphysical ability to produce physical reality, but in its ability to organize knowledge systematically, so that some things become intelligible, and others not” (Emphasis added) (p.70)(Bartelson, 1995)*

Apart from being vital to our perception of the world -hence, critical to research about it- language is inherently **social** in that it necessarily implies a collective dimension. Even more, language is **political**. By this we mean that language is a site of conflict²¹: some discourses are promoted or preferred and gain ascendancy while others are excluded. It is important to emphasize this process of exclusion because those

²⁰ Here a careful wording is used because a more far-reaching view within post-structuralism claims that even the study of natural facts is situated within language.

²¹ This does not mean that the political is *only* conflict.

discourses that gain ascendancy end up positioning themselves as the logical or natural ones, so deeply embedded in social reality as to appear as incontestable truths (e.g. gender discourse). Dissenting discourses that are either silenced or ignored, can provide us with clues as to what were the discursive paths not taken in the understanding of an object, concept or event.

Powerfully loaded concepts like liberty or state, not only have a wide-ranging history back them, but have gone through subtle (and sometimes not so subtle) changes, and have come to mean different things in different ages, to different peoples. For example, reflecting on the re-appearance in the political arena under a positive light of the concepts of “empire” and “imperialism”, Neumann & Jordheim (2011) state *“concepts come with specific historical and social baggage. They are defined by their meanings and uses and become powerful in battle with other concepts”* (p.153). Politics is generated in language, therefore the analysis of a discourse could well be the appropriate starting point for the study of particular political arrangements, as well as for the disclosing of those alternatives that were/are excluded, purposefully or not, from the arena.

Hence, a post-structuralist approach does not imply a focus on language *per se*, but rather a focus on the nature of the relationship between discourse and its practices regardless of whether they are truth commissions, development or failed states. Within the International Relations field, post-structuralist research has mostly been focused on: (1) power and knowledge interactions, (2) identity and sovereignty (3) use of textual strategies (Devetak, 2009, Hansen, 2006) . Yet, it is important to stress that although the analysis of discourse has been widely used to unveil power/knowledge interactions and a lot of focus has been given to this dynamic, this does not mean that knowledge is reducible to power or vice versa.

2.2. Post-structuralism and Methodology

Post-structuralist inquiry has been criticized for not being methodologically robust, for lacking a scientific basis and for an “anything goes” type of attitude. This censure points more towards a lack of understanding of it than towards a real limitation in the approach. According to Hansen (2006), *“for post-structuralism what constitutes proper knowledge is not a theory’s ability to uncover causal truths (...) Causal*

epistemology cannot establish its privilege with reference to any objective truth, as its own criterion for truth is enshrined within a historically situated discourse of knowledge and not in a trans-historical, trans-discursive universal objectivity” (p.10) (Emphasis added)

This dismissal of a *rigid* causal epistemology and its scientism²² leads to the charge of methodological anarchy and even relativism. While it’s true that there are not clear-cut recipes as to how to accomplish post-structuralist research and some authors can appear on the surface as inscrutable as a Sumerian text (e.g. Derrida) no one can reproach M. Foucault, for example, of not doing extensive, meticulous and profoundly creative investigations. A focus on language does not disqualify the need for methods or imply that the results are relative due to their contingency. It basically proposes a different kind of research agenda wherein the ideational aspects are not seen as opposed, independent or predating the material ones, but as *“mutually constitutive and discursively linked”* (p. 28) (Hansen, 2006). This interaction between ideational and material aspects can be studied through the analysis of the institutional *practices*, because discourse influences how ideas are put into practice.

On the other hand, the absence of *precise* methodological principles for conducting research is not a shortcoming, but rather a strength, Foucault himself expressed it: *“What I must do is to take caution to be **explicit** about what I’m doing without trying to dictate what is to be done”* (Foucault 1980²³) (Emphasis mine). By leaving the methodological door open, the challenge is to find creative ways to systematically conduct careful analytical work without being limited by rigid systems. Again, it is important to stress that this is not a proposal for anarchy but to see methodology as a *way to communicate choices and strategies* that all research must make (Hansen, 2006).

As for the charge of relativism and although some post-modern scholars may declare its belief in an extreme form of discursiveness wherein nothing exists outside of

²² The theory that investigational methods used in the natural sciences should be applied in all fields of inquiry (The American Heritage Dictionary of the English Language, 1980)

²³ Cited in GRAHAM, L. 2005. Discourse Analysis and the Critical Use of Foucault. *Australian Association for Research in Education - Annual Conference*. Sydney, Australia: Queensland University of Technology.

language, the analysis attempted in this thesis is more interested in questioning taken for granted truths not with the aim to relativize them – that is to make them meaningless - but in order to illustrate that an order of things may not need to be as it is presently understood. This, of course, can imply a call for *practice*²⁴, yet this practice is not to be seen as a proposal for a new and *truer* way of *doing* (since that would go against the original idea that there is not a Truth, but rather contingent, historically situated truths), but instead “*to listen to the oppressed rather than act as the standard-bearer of their liberation (...) offering specific historical analysis that are useful for their struggle*”(p.6) (May, 1993).

2.3. Alternative Ways of Articulating Discourses: Framing?

Apart from post-structuralists and Foucauldians other disciplines have also reflected on the way that a discourse is articulated. Within sociology and the communication fields, discourse is also a crucial element and the concept of “framing” has been developed to understand the way a discourse is built up.

The use of framing as a concept indicating how a particular discourse is constructed and made salient in the public agenda has been studied extensively from different angles. Within the sociology field, E. Goffman proposed in 1974 the term “frame” to “describe a schemata of interpretation used by individuals to attach meaning to events and occurrences” (Sandberg, 2006). This notion was taken up and further elaborated by Snow & Benford (2000) while studying collective social movements. In their work, they introduce the concept of “master frames” which is defined as “Cognitive structures limiting framing activity because they have a constructed language and repertoire of action that movements must relate to whether they want it or not”²⁵. This definition of master frames is to be linked with that of ideology²⁶, yet other scholars (Oliver & Johnston, Jasper, Steinberg) have criticized this approach on the grounds that ideology is not only conceptually different from framing, but that ideology carries

²⁴ This would be an answer to those critics of post-structuralism or of Foucault that claim that this type of approach leads to no political engagement or a kind of passivity in the face of power.

²⁵ SANDBERG, S. 2006. Fighting Neo-liberalism with Neo-liberal Discourse: ATTAC Norway, Foucault and Collective Action Framing1. *Social Movement Studies*, 5, 209-227.

²⁶ From a framing perspective “ideologies constitute cultural resources that can be tapped and exploited for the purpose of constructing collective action frames, and thus function simultaneously to facilitate and constrain framing processes” BENFORD, R. D. & SNOW, D. A. 2000. Framing Processes and Social Movements: An Overview and Assessment. *Annual Review of Sociology*, 26, 611-639.

an evaluative and political clout that is either left out of much of framing theorizing or watered down ²⁷: “*the concept of frame points to the cognitive process wherein people bring to bear background knowledge to interpret an event or circumstance and to locate it in a larger system of meaning (...) Applied to social movement studies, framing processes mostly refer to the intentional activity of movement entrepreneurs at the organizational level*” (Oliver and Johnston, 2000). In general terms, it can be said that most explanations of framing are very focused on agency and lack any reference to structural constraints in language, which is exactly what more critical approaches derived from Marxist studies or within the Foucauldian tradition propose.

Within the communications and public relations field, a slightly different angle of the framing issue was being studied. Originally based on studies of public opinion, political campaigns and mass media, the “agenda setting” theory came to the foreground in 1970’s. It was McCombs & Shaw, after studying the 1968 presidential campaign in USA, that proposed that “*while the mass media may have little influence on the direction or intensity of attitudes, it is hypothesized that the mass media set the agenda for each political campaign, influencing the salience of attitudes toward the political issues*” (McCombs and Shaw, 1972) (cursive in the original).

This agenda setting capability of the mass media meant that while unable to persuade the public (and contrary to common sense knowledge), the media was, though, quite successful at influencing people on what to think **about**. The agenda-setting theory opened up a fruitful and long line of research within the communications field that recently has also included framing. McCombs, Shaw & Weaver have proposed to include framing theory as a sort of second-level agenda setting suggesting that while the first level tell us “**what to think about**”, the second-level would tells us “**how to think about**”. While this shift was meant to further strengthen the agenda setting theory, the move has been criticized from different quarters for allegedly trying to conjoin two different theoretical constructs (Scheufele, 2000).

²⁷ N. Fairclough further states that there are two different definitions of ideology: “*The critical view of ideology, seeing it as modality of power, contrasts with various descriptive views of ideology as positions, attitudes, beliefs, perspectives, etc. without reference to relations of power of domination between such groups*” FAIRCLOUGH, N. 2003. *Analysing Discourse: Textual Analysis for Social Research*, London, Routledge.

As mentioned before, framing theory research has not focused either on the structural or the less rational constraints of language while discourse analysis (as practiced by Laclau/Mouffee or within the Foucauldian tradition) and to a certain extent Critical Discourse analysis (N.Fairclough) has extensively worked on those subjects. Therefore for the purposes of this thesis, while acknowledging the potentially interesting aspect of using framing theory in the analysis of UN discourse on truth commissions, we will be referring to the articulation of discourses as a process that constitutes them by first placing the issues on the agenda, and thus shaping the way we think about it. Furthermore it shapes not only thought but also action through practice (McNeill, 2007).

However this process does not mean that the articulation of a discourse has a beginning, middle and an end point. Although discourses are relatively stable over time, they are not static and counter-discourses will always try to compete in the public consciousness with more or less success, *“because a discourse maintains a degree of regularity in social relations, it produces preconditions for action (...) but discourse cannot determine action completely. There will always be more than one possible outcome. Discourse analysis aims at specifying the bandwidth of possible outcomes”* (p.62)(Neumann, 2009)

2.4. Main Concepts

Summarizing in a few paragraphs concepts that have taken authors' whole chapters or even books to explain seems a daunting, if not an unpractical, task. Yet, for the purposes of designing an analytical strategy for this thesis we need to strip them down to their essentials, so to speak. Out of these essentials, we also need to capture those elements that are most useful for *this* particular analysis and *this* particular subject (truth commissions). These decisions might not make justice to the complexity and fruitfulness of Foucault's vocabulary; the hope is that the spirit permeating the analysis does so.

2.4.1. Discourse

The analysis of discourse is one of methods used within the post-structuralist tradition to highlight the construction of social facts. Yet the understanding of discourse itself is

not a settled issue. Based on the work done by M. Foucault, **discourse**²⁸ is defined here as: “*Not purely a linguistic concept. It is about language and practice (...) It defines and produces the objects of our knowledge. It governs the way a topic can be meaningfully talked and reasoned about. It also influences how ideas are put into practice (...) Meaning and meaningful practice are thus constructed under discourse* (Hall, 2001) ”. Thus, for example, if we would like to question the discourse on punishment (as for example Foucault did), we would have to study not just the different *discursive practices* such as documents, policies, books, laws, and so on; but also the *non-discursive practices*, that is the specific practices that *also* constitute the penal system field such as prisons, reformatories, justice courts, cells, etc. In short, a discourse consists of both discursive and non-discursive practices.

However, the question still remains as to what exactly within language interacts with non-discursive practices to produce discourse? Foucault wrote that a discourse is a regular grouping of **statements**, and they are defined “*not as a unit of a linguistic type (...) but an enunciative function*” (p.119) (Foucault, 1972). He then goes on to explain that statements are neither grammatical sentences, nor logical propositions. The closest referent would be the English analysts²⁹ “speech act” which he explains as an act of formulation³⁰. Yet while speech acts theorists are mostly interested in how the hearer *understands* a formulation of everyday acts - as in the example “Please shut the door” - the keynote to Foucault’s statement is that they originate from *authoritative* sources which “*allow privileged speakers to speak with authority (...) and assert what it is a serious truth claim*” (p. 48) (Dreyfus and Rabinow, 1982) . Thus statements are enunciations that by nature of their source can constitute truth objects and herein rests the so-called *productive* nature of discourse. Nevertheless it must be remembered, that this productivity of discourse lies as much as in the *authoritativeness* of the source as in the interaction between discursive and non-discursive practices.

²⁸ Discourse is also referred to as *Discursive Practice* and both terms have been used interchangeably

²⁹ Here Foucault is referring to J.L. Austin (“How to do things with words”) and John Searle who developed the concept of speech acts based on the work of Austin and L. Wittgenstein

³⁰ “*Speech act is what occurred by the very fact that a statement was made – and precisely this statement (and no other) in specific circumstances*” (p.93)FOUCAULT, M. 1972. *The Archeology of Knowledge*, London, United Kingdom, Routledge

Discourses not only encompass a set of statements, since it includes non-discursive practices, but the result is also much more than the sum of its elements. A discourse becomes a sort of constellation that with the force of its pull constantly attracts to itself related ideas. Like Russian babushka dolls, one discourse is nested into the other until you reach the overarching discourse, so to speak, that which in Foucauldian terms is called **discursive formation**: “*Whenever these discursive events refer to the same object ... share the same style ... and support a strategy ... a common institutional, political or administrative drift or pattern ... then they are said by Foucault to belong to the same discursive formation*” (Hall, 2001). Understanding how these discursive formations develop, what are the rules of their existence becomes the task to be carried out by the “archaeologist”³¹. While this thesis is only focused on discourse and its genealogy, it is necessary to mention that Foucault’s “archaeologies” aimed at determining the rules of existence of these discursive formations “*their conditions of existence and institutionalization*” (p.55) (Kaarhus, 1999).

Setting aside Foucault’s complex terminology it can be argued that his main objective when analyzing discourse was to provide “*an alternative reading of history that yields new insights*”, the questioning of obvious truths (p.34)(Gutting, 2003).

2.4.3. Truth

Discursive formations lead us to the issue of **truth**, which has been broadly discussed by “foucauldians” and wherein truth is understood as historically situated and mostly defined by knowledge-power interactions³². Foucault states that: *Truth isn't outside power, or lacking in power (...) truth isn't the reward of free spirits, the child of protracted solitude, nor the privilege of those who have succeeded in liberating themselves. Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power” Each society has its régime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the*

³¹ Foucault’s reference to himself when doing this type of research

³² Here it is convenient to stress that Foucault didn’t discuss the “Truth of knowledge in the absolute sense – a Truth which remained so whatever the period, setting, context – but of a **discursive formation** sustaining a regime of truth” HALL, S. 2001. Foucault: Power, Knowledge and Discourse. *In*: WETHERELL, M., TAYLOR, S. & YATES, S. (eds.) *Discourse Theory and Practice: A Reader*. London: Sage Publications.

*techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true”*³³.

If we accept that truth is deeply conditioned, how would a search for the “truth” of a historical event look like? What circumstances call for the need to investigate the *overall causes and consequences* of contested events such as it is proposed in truth commissions? Foucault’s answer when describing traditional historical analysis would be that the underlying thought is the need to assert agency, “*the sovereignty of the subject*” (Foucault, 1972). Against this type of traditional historical analysis he would propose the methods of archaeology and genealogy “*to question teleology and totalizations*” (idem, p. 17).

2.4.4. Power

In the earlier paragraphs on post-structuralism and language, it was mentioned that although power and knowledge interactions have been important within post-structuralism research agenda, they are not reducible to each other. These two concepts are strongly associated, but both power and knowledge are also much more. Foucault’s interpretation of **power** is not the common reading that has it as the ability to make others do what they would normally not do if given the option (as in a powerful regime oppressing the masses). In fact he asserts at one point that power does exist, “*only individual relations of power and control*” (Foucault on Gutting 2003:35). Yet, power is understood as something positive in the sense of being productive, as Kendall & Wickham explain about Foucault’s power interpretation “*we should think of power not as an attribute (and ask what is it?), but as an exercise (and ask, how does it work?). In addition, forces have a capacity for resistance, such that power is only exercised in relation to resistance*” (p. 50) (Kendall and Wickham, 1999).

This conception of power has attracted a lot criticism since it seems to dilute its force and leaves open the question as to who is struggling against whom³⁴. Agency seems to disappear and we are only left with a diffuse understanding with no clear anchoring in materiality. However according to other reviewers, these criticisms of Foucault’s

³³ Foucault on “Truth and Power”, an interview by Alessandro Fontana and Pasquale Pasquino (1976)

³⁴ Which has led critics like J. Habermas to describe Foucault as a “neo-conservative” GUTTING, G. 2003. *The Cambridge Companion to Foucault*, Cambridge, UK, Cambridge University Press.

power concept are unjustified. Even if his conception of power is less straightforward than Marxists accounts, the notion of resistance gives a “*space for possibility and freedom in any context*”(Gutting, 2003). On the other hand, his understanding is based on a philosophical bent towards historical nominalism that essentially rejects universalisms: “*What Foucault calls his nominalism is a form of methodological individualism. It treats such abstractions as man and power as **reducible for the purposes of explanation** to the individuals that comprise them*”(idem, p. 40) (emphasis added). Indeed Foucault’s problematization of power underlines all of his genealogies. His approach to it is double-pronged: power interacting with knowledge to uphold truth and the normalization of power. Contrary to analyses focused on top-down power interactions, Foucault is interested in how power is institutionalized and normalized at the bottom level.

For scope reasons the analytical work undertaken here does not include power interactions, yet it is important to describe and keep his understanding of power in the background as it animates the articulation of discourse. Let’s bear in mind that we will be analysing a discourse coming from an *authoritative* source, the UN.

2.4.5. Rights

As mentioned earlier, the UN discourse on truth commissions is articulated around rights, specifically the right to know (also called the right to truth) and the right to justice. Yet, although it may seem that human rights are part of our natural inheritance as human beings, this is hardly the case.

Rights discussion surrounds us everywhere and most people seem to be aware of the rights they are entitled to particularly with regard to the most common ones, such as the right to life, to freedom of speech and to property. Yet, exploring the discourse on rights is no such an easy effort and peering into their constitution and history immediately shows that this is a deeply controversial area. Within the philosophy field a dissection of the concept of right reveals a complex internal structure compounded of form and function. While the form aims at clarifying the basic elements of a right

(privilege, claim, power and immunity) as first stated by W. Hohfeld³⁵, its functions seeks to question what rights do for those who hold them (Wenar, 2011). But what are the justifications for the existence of rights? In this regard it can be said that the main debates are essentially centred around two lines of thought: an instrumentalist approach which renders rights necessary “*for producing an optimal distribution of interest across some group*”, and status theories which, along Kantian lines, claim that “*human beings have inherent attributes that make it fitting to ascribe certain rights to them*” (Wenar, 2011). Of course both approaches have its strengths and weaknesses and the discussion on the need and function of rights will probably not be settled in the near future.

The purpose of this brief exposition is to indicate how concepts such as “rights” can easily be taken for granted in their daily usage, and thus obscure the fact that there are no clear-cut agreements as to what they are. Any approach to their understanding whether from a legalist, economic, political or anthropological point of view will necessarily colour its definition.

The understanding of truth commissions seems to be the result of a legalist approach to politics that is facilitated by a human rights discourse articulated around the notions of the right to know/truth and the right to justice. While these two purported rights are desirable ethical claims, it could be asserted that they are not yet legalized *entitlements* as such³⁶. Some legal authors (Naqvi, 2006) have claimed that their legality could be grounded in customary law since these rights have been discussed, advocated and applied since at least the 80’s, by the Inter-American Court of Human Rights, the European Court of Human Rights and the African Commission on Human’s and People’s Rights, among other institutions. Yet, she also adds that the repeated inference of a right to information (about the circumstances of serious human rights violations) as a way to vindicate *other* codified rights may not fulfill the requirements of customary law. Furthermore, we might be dealing with “*a narrative device used by*

³⁵ American Legal Theorist (1879-1918). More about his theory in: WENAR, L. 2011. Rights. In: ZALTA, E. N. (ed.) *The Stanford Encyclopedia of Philosophy*.

³⁶ See Amartya Sen for a discussion on legalized and not legalized but ethical claims SEN, A. 2004. Elements of a Theory of Human Rights. *Philosophy & Public Affairs*, 32, 315-356.

courts and human rights bodies to merely strengthen and give detail to those rights codified in the conventions? (idem p.258).

Within the UN system, a study dedicated exclusively to the right to truth was carried out in 2006 (OHCHR, 2006a). This study documented the extensive practice of the right to the truth as indicated by the existence of truth commissions, diverse international court rulings and in the jurisprudence of various intergovernmental bodies and courts at international, regional and national levels. It also concludes by saying that *“The Office of the High Commissioner for Human Rights recommends that they continue to examine the content and scope of the right to the truth. Further studies could explore in depth the societal and individual dimension of this right”* (OHCHR 2006:15 para.62). As of December 2012, another study on the right to truth was carried out but focused on programs and other measures for witness protection concerning trials for gross human rights violations (OHCHR, 2010).

The fact that the legal status of certain rights is discussed and/or challenged points to urgent need of further conceptual clarification. This was one of the worries expressed by A. Sen when discussing the whole notion of human rights and particularly the criticism directed towards the socio-economic rights: *“the conceptual doubts must also be satisfactorily addressed, if the idea of human rights is to command reasoned loyalty and to establish a secure intellectual standing”* (p.317)(Sen, 2004).

3. METHODOLOGY

“Rationalists can not claim to be the sole keepers of the methodological grail” (Hansen, 2006)

The decision to analyse the UN discourse on truth commissions through a genealogical approach takes us to the question of the methodology to be used to achieve this. As mentioned in the introduction, a genealogical approach to discourse is a way of conducting a *“history of the present”*. Inspired by Nietzsche’s work in *“Genealogy of Morals”* Foucault’s argues against traditional historical analyses *that “search for an original foundation that would make rationality the telos of mankind”* (p.14)(Foucault, 1972). Instead a proposal for the decentring of the subject - *“an analysis purged of all anthropologism”*- is proposed. This can be achieved by means of looking for discontinuities, difference, rupture and transformations *“(the discontinuous as a working concept) which is no longer the negative of a historical reading (its underside, its failure, the limit of its power) but the positive element that determines its object and validates its analysis”* (idem p.10).

Starting from a situation that is found difficult, taken for granted or *“intolerable”* an analysis of its history based on the above-mentioned criteria is conducted. In Foucault’s case this genealogical analysis was very useful not only to highlight the quite often contingent nature of the taken for granted issue, but to focus on its power interactions. For the purposes of this thesis and due to scope limitations, this power element of the analysis will not be undertaken. Yet, it must be mentioned and retained in the background, as it generally will cast a shadow in genealogical analyses.

A genealogy of the UN discourse on truth commissions will then imply an analysis of the diverse historical circumstances that coalesce in its present definition (by focusing in Foucault’s *“discontinuities, ruptures and transformations”*), and secondly will focus on the definition itself (Rule of Law Tool document) to highlight its underlying oppositions and themes. The analysis of document is relevant because of the constitutive nature of the interactions between discursive and non-discursive practices that was explained in the section on concepts. However, it is important to stress that the interaction between discursive and non-discursive practices does not suggest a *causal* link (document → truth commission practice), but in accordance with post-

structuralism' epistemological claim, the inseparability of their interactions (Hansen, 2006).

In our specific case, the UN policy on truth commission³⁷ is a discursive practice that illustrates its official stance on the issue *and* also a template that is embodied in specific truth commissions around the world (non-discursive practices), as the UN Secretary General explains to the General Assembly, "*The past year (2011) has seen the establishment or the functioning of truth-seeking processes in a number of countries, including Brazil, Cote d'Ívoire and Guinea. The truth, justice and reconciliation commissions in Solomon Islands and Togo both submitted final reports in 2012*" (Secretary General, 2012) (parentheses added).

In keeping with the above-presented research criteria, a methodological outline follows.

3.1. Research Design

Case Study: Case studies generally entail the intensive and detailed analysis of a single case (Bryman, 2008). This thesis proposes to use the case of the UN discourse on truth commissions to illuminate its historical situation. Thus, it will focus on the multiple premises under which truth commissions are understood and what are the consequences of this particular articulation. The chapter on the genealogical examination presents this *historical* context and it will be followed by the analysis of the official UN document that supports the truth commission practice.

3.2. Methods

3.2.1. Discourse analysis: There are no agreed upon methods for conducting discourse analysis within the post-structuralist tradition. Yet in this thesis, we will undertake an eclectic synthesis of the methodology outlined by J. Carabine and L. Hansen as discourse analysis/genealogy (Carabine, 2001, Hansen, 2006). This is because their explanations are systematic, easier to operationalize; and also because they deal with the subject of how discursive practices interact with policy, which is of

³⁷ This official policy is the Rule of Law Tools for Post-conflict States (OHCHR 2006b. Rule of Law Tools for Post-Conflict States: Truth Commissions. *HR/PUB/06/1*. United Nations: Office High Commissioner Human Rights.)

particular interest in this thesis. The analysis procedure will be discussed in more detail further on.

3.2.2. Sampling: Non-random purposive sample

Since the purpose of a genealogical analysis is not to generate a conclusion that can be generalized to a hypothetical population, the sampling issue loses part of its methodological centrality. In keeping with a “qualitative” type of research (as opposed to analyses based on quantitative data), in this thesis the collection of relevant data is non-random and purposively serves the analysis “*this type of sampling is essentially to do with the selection of units (which may be people, organizations, documents, departments, etc.), with direct reference to the research questions being asked*” (p. 375) (Bryman, 2008) However, we still have to decide which texts³⁸ to collect? How to define the criteria for the *sampling* method?

Discourses are never isolated or exist in a vacuum, they generally interact with each other in regular ways to create what Foucault has termed *discursive formation* (see theoretical chapter). In order to explore these formations, this thesis focuses on documents produced by two different, but highly interrelated agencies within the UN: the Office of the High Commissioner for Human Rights and the Rule of Law unit.

However, it is important to underline that, hypothetically, the context of a discourse could include texts from other sources. Researchers, lawyers, non-governmental organizations (NGO’s), and so on, also inform the documents produced by the UN. In many cases, some individual’s work is produced simultaneously for the UN and an NGO³⁹ and in a way, the picture is aptly described thus, “*Diverse discourses are intimately engaged with each other and together form the giant milling mass of overall societal discourse (...)CDA (critical discourse analysis) aims to disentangle the giant milling mass of discourse, to chart what is said and can be said in a given society at a given time*” (p.36) (Jager and Maier, 2009). It is beyond the reach of this thesis to

³⁸ Discourse analysis generally deals with text. Although you could potentially also include photos, works of art and/other artifacts in the study of discourse, this thesis is limited to textual sources.

³⁹ For example, we can mention Priscilla Hayner who has been Program Director (2002-) of the “International Center for Transitional Justice” – one of the most influential NGO’s in the field- and has also been the “consultant who had the primary responsibility for developing the tool (e.g. Rule of Law Tool)” OHCHR 2006b. Rule of Law Tools for Post-Conflict States: Truth Commissions. HR/PUB/06/1. United Nations: Office High Commissioner Human Rights.

“disentangle the mass of overall societal discourse” on truth commissions, thus the focus will be only on official UN documents.

Within the UN system, the *Office of the High Commissioner for Human Rights* was created in 1993 as part of the Secretariat (headed by the Secretary General and which services the other principal UN organs and administers the programs and policies laid down by them⁴⁰) and as the leading entity on human rights: “OHCHR’s work is focused on three broad areas: human rights standard-setting, human rights monitoring and supporting human rights implementation at the country level. More specifically, the Office provides support to the human rights treaty bodies and mechanisms, deploys staff to various country situations and promotes global and national level advocacy for adherence to human rights norms and standard” *OHCHR Management Plan 2012-2013*⁴¹.

This office (from now on OHCHR) also provides substantive and organizational support to other human rights mechanisms within the UN such as the *Human Rights Council*, an inter-governmental body within the UN system made up of 47 states, which are elected by the General Assembly. The Human Rights Council was created in 2006 and replaced the former UN Commission on Human Rights. Succinctly we can say that its work consists of the following procedures and mechanisms: Universal Periodic Review, Advisory Committee, Complain and Special Procedures⁴².

As for the Rule of Law, *The Rule of Law Coordination and Resource Group* is chaired by a Deputy Secretary-General and supported by the Rule of Law Unit of the Executive Office of the Secretary-General⁴³. This unit was created in 2006 with the “responsibility for the overall coordination, quality and coherence of the rule of law within the UN system” (p.17)(Secretary General, 2012). The group includes representatives from the leading UN entities including the OHCHR.⁴⁴ This, in principle,

⁴⁰ Accessed Nov. 2nd, 2012 <http://www.un.org/en/mainbodies/secretariat/>

⁴¹ Accessed Nov. 2nd, 2012

http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_mp_2012_2013_web_en/index.html#/home

⁴² For more on the work of the Human Rights Council: <http://www2.ohchr.org/english/>

⁴³ Accessed Nov. 3rd, 2012 http://www.unrol.org/article.aspx?article_id=47

⁴⁴ The other UN entities included in the group are: Dept. of Political Affairs, Dept. Peacekeeping Operations, Office of Legal Affairs, Unicef, UN-Women, UNDP and UNODC.

ensures quick and coherent efforts between the different agencies and “*support for the rule of law through the promotion of a common understanding of challenges and approaches among field-based staff, and between headquarters and the field*” (Idem p. 18). Because the UN discourse on truth commissions is highly articulated in legalist terms, it seems adequate to use documents from both the already named UN entities (OHCHR and Rule of Law) in the analysis.

3.3.3. Documents

The principal document to be analyzed is one of the official UN sanctioned tool for dealing with post-conflict states (*Rule of Law Tools for Post-Conflict States: Truth Commissions / UN – 2006*)⁴⁵. However, this text is build up on previous work, hence the following sources will also be included as they are part of the discursive context, and because they are also official UN documents⁴⁶:

- *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (E/CN4/2005/102 and Add.1) Report of the independent expert, Dianne Orentlicher
- *Independent Study on Best Practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity*- Dianne Orentlicher (E/CN4/2004/88)
- *Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political)*- Louis Joinet UN – 1997 (E/CN.4/Sub.2/1997/20/Rev.1)
- *The rule of law and transitional justice in conflict and post-conflict societies – Report of the Secretary General Kofi Annan* (S/2004/616)
- *Uniting our Strengths: Enhancing United Nations Support for the Rule of Law*- Report of the Secretary General Kofi Annan (A/61/636-S/2006/980)

3.4. Data Analysis Procedure

In order to conduct a *Foucauldian* discourse analysis it’s difficult to isolate a precise process because Foucault rejected being methodologically pigeonholed, “*the need to interpret Foucault sits ill with his desire to escape general interpretative categories*”(Gutting, 2003) . However, he did provide some clues as to his general

⁴⁵ (HR/PUB/06/1). The other tools refer to: Prosecution Initiatives, Vetting, Maximizing the Legacy of Hybrid Courts, Reparations Programs, Amnesties, National Consultations on Transitional Justice, Mapping the Justice Sector and Monitoring Legal Systems.

⁴⁶ This selection will ensure that we cover the criteria of representativeness and validity of the sampling.

orientation in “The Archeology of Knowledge” (1972) and they have become the foundation of much later work done by succeeding waves of Foucault-inspired authors who have followed and/or re-adapted these initial clarifications according to their objects of study or particular research agendas (Bartelson, 1995, Carabine, 2001, Dunn, 2009, Fairclough, 2003, Graham, 2005, Hall, 2001, Hansen, 2006, Kaarhus, 1999, Kendall and Wickham, 1999, May, 1993, Neumann, 2001, Neumann, 2009, Sandberg, 2006, Tamboukou, 1999, Vucetic, 2011, Wetherell et al., 2001)

The approach described in “The Archeology of Knowledge states: *“to describe statements, to describe the enunciative function of which they are the bearers, to analyze the conditions in which this function operates, to cover the different domains that this function presupposes and the ways in which these domains are articulated”* (Foucault, 1972). This is also the kernel of the analytical approach undertaken here. However, it is important to specify that Foucault used this approach in his early works and it was to be revised later on. In his studies on madness, the clinic or the penal system the analytical tools used are specifically conceived according to the discipline he is focusing on and not tied in to pre-determined theories or methodology (Gutting, 2003). In this way it can be said that the object of study informs and shapes the methods used by Foucault.

In this thesis and based on the above-mentioned description, the methods outlined by L. Hansen and J. Carabine (Carabine, 2001, Hansen, 2006) will be used. Based on these guidelines, we will conduct a historical review of the **context** from which the present understanding of truth commissions has crystallized (chapter 4) and we will analyze the **document tool** -discursive strategy (chapter 5).

The steps to be taken to unearth the discursive strategy are as follows:

Context

- Identify the context
- Way the problem is articulated
- How it is presented and discussed
- Solutions recommended

- Silences – absences: Are there any issues that should be discussed but are not? Were other discourses on the issue of truth commissions marginalized? Which?

Define the Truth Commission discourse

- **Choice and limitation of discourse**
 - How it is presented and discussed
 - Solutions recommended
 - **Silences – absences**
 - **Inter-relationships between discourses** (process of cross-referencing): For example: what ideas about democracy or liberalism inform the discourse?
 - **Counter-discourses:** Are there any?
 - **Discourse materiality:** Non-discursive practices (policies and truth commissions)
-

4. ANALYSIS I

The main object of analysis of this thesis is constituted by the UN truth commission discourse. This discourse is partially *materialized* in a policy document called *Rule of Law Tools for Post-Conflict States: Truth Commissions* (HR/PUB/06/1), which is meant to “*provide practical guidance to field missions and transitional administrations in critical transitional justice and rule of law-related areas*” (Foreword).

Through a genealogical analysis, the thesis seeks to identify the relations between the UN discourse on truth commissions and the specific constructions that articulate it, such as the right to know/truth and the right to justice. As we shall see, these discursive constructions inform both the discourse of truth commissions and the discourse of transitional justice in general.

The analysis will proceed first by describing some aspects of the contexts from which these discursive constructions (right to know/truth and right to justice) emerge. Secondly, it will analyse the UN discourse on truth commissions and it will close by defining what are the consequences of this specific articulation.

4.1. CONTEXT ANALYSIS

Within the United Nations, truth commissions are defined as “*official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years*” (Secretary General, 2004). Although this definition specifically mentions the *non-judicial* character of the mechanism, in the paragraphs above we pointed out that the discourse on truth commissions is also articulated around the discourse of human rights (right to know/truth and right to justice). These two rights have been understood as representing a justice versus peace dilemma because in highly charged situations of regime change, it’s assumed that political compromises are needed (which may defer the search for criminal accountability). This seeming paradox can be clarified by looking into the historical context from which the rights that sustain the UN definition of truth commissions arise.

4.1.1. The Right to Know

The UN published the policy document *Rule of Law Tools for Post-Conflict States: Truth Commissions* (HR/PUB/06/1) in 2006. This tool represents the “*increased need to work quickly and effectively to re-establish the rule of law and the administration of justice in post- conflict missions*” (*Preface*). It also reflects a “renewed” General Assembly’s interest in rule of law issues, which has been strengthened steadily since 1992 when the subject was introduced as a permanent agenda item in the sessions⁴⁷.

Now, having asserted that the rule of law is the backbone of a healthy-functioning democracy and of the international legal order that the UN advocates⁴⁸, how can it promote the need or desirability of truth commissions that are non-judiciary mechanisms to establish accountability? Which principles do you invoke? The organization’s answer has been to anchor the desirability of truth commissions in the so-called natural need of human beings of finding out about the fate of missing family members and their whereabouts. This need has been morally and legally translated as the Right to Know or the Right to Truth.

Different authors have asserted that the right to know has its origins in the Genève Convention, which is the body of international law that regulates the conduct of armed conflict and seeks to limit its effects (Mendez 1997, Orentlicher 2004). Yet, what these authors refer to is not properly the Geneva Convention as such, whose latest version dates from 1949, but to the *Additional Protocol I* which entered into force in 1977. This protocol was decreed in order to regulate conflicts related to “*colonial domination, alien occupation or racist regimes*”(art.1 Par.4) which were very salient during the 70’s (when the Protocol was established) and it states in the article 33, Paragraph 1st, that: “*As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches*” and Art 32 (Guiding Principle) “*The right of families to know the fate of their relatives*”. The responsibility to

⁴⁷ See <http://www.un.org/en/ruleoflaw/index.shtml>). Site accessed Nov. 12, 2012

⁴⁸ See Millenium Declaration (2000) “(We resolve) To strengthen respect for the rule of law in international as in national affairs and, in particular, to ensure compliance by Member States with the decisions of the International Court of Justice, in compliance with the Charter of the United Nations, in cases to which they are parties” (Paragraph 9) (A/RES/55/2)

provide information about the fate of missing persons was explained as a moral duty of the conflicting parties (presumably the State) and a natural right owed to the family members.

4.1.1.1. On Enforced Disappearances

In 1992, this natural right to know the fate of the relatives was further expanded in connection with the *Declaration on the Protection of all Persons from Enforced Disappearances*⁴⁹, which seeks to “*characterize all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission*”⁵⁰. This declaration came as a result of the deep concern over the widespread practice of “disappearing” people (alleged terrorists or political activists), that during the 70’s and 80`s had become standard practice within the authoritarian regimes then existing in several Latin American countries (and particularly in Argentina, Chile, Paraguay and Uruguay).

The practice of disappearing people had been documented and followed up by the *Working Group on Involuntary and Enforced Disappearances* since 1980 when the UN Commission on Human Rights established the group. The declaration basically reinforces the duty of the state to provide information on the whereabouts of the disappeared and to clarify the facts to their family members, see following articles: “**Accurate information** on the detention of such persons and their place or places of detention, including transfers, shall be made promptly **available to their family members**, their counsel or to any other persons having a legitimate interest in the information (...)” (Art. 10, Para. 2) (emphasis added)

“Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and **these facts remain unclarified**” (Art.17, Para.1) (emphasis added)

⁴⁹ This declaration was adopted by the General Assembly (Resolution 47/133) in Dec 1992 and 15 years later became the *International Convention for the Protection of All Persons from Enforced Disappearances* (adopted in 2006, entered into force in 2010).

⁵⁰ Document accessed on Nov. 9th, 2012 (<http://www.unrol.org/doc.aspx?d=2257>)

However, there is a difference between the duty to provide information as to the whereabouts of the disappeared and finding the facts surrounding the event, to the present day understanding of the right to know/truth. In the UN, parallel to the development of reports and resolutions regarding the issue of enforced disappearances with its roots in international humanitarian law⁵¹ (Genève Convention & Additional Protocols) another thread on the subject of impunity for these crimes was being developed at the same time.

4.1.1.2. On Impunity

Trials as accountability mechanisms for *perpetrators of massive crimes* had first been conducted at Nuremberg and Tokyo, after World War II, when a new vocabulary of “crimes against humanity” and “genocide” was to be asserted, as well as the possibility of holding individuals accountable, instead of the state, *“The tribunals also established important principles of international justice, such as the responsibility of heads of state, the rejection of the infamous “I was just following orders” excuse, the weakening of retroactivity as a defense against crimes of mass atrocity, and the right of war criminals to a fair trial “ (p.2) (Eisikovits, 2011).*

However the antecedent created at Nuremberg refers primarily to inter-state wars. As for the crimes against humanity committed by the state against its own citizens as part of internal conflicts, not much had been done after Nuremberg⁵² until the entry in force in 1998 of the Roma Statute (who gave rise to the International Criminal Court). Nevertheless before the Rome Statute was signed, a seminal report written by Louis Joinet (Special Rapporteur of the then Sub-Commission on Prevention and Discrimination and Protection of Minorities) on the question of impunity of perpetrators of human rights violations had been written and presented to the Commission of

⁵¹ “*International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.*” *International Committee of the Red Cross* (<http://www.icrc.org/eng/resources/documents/misc/6t7g86.htm>) Webpage accessed on Nov. 9th, 2012

⁵² Although not much had been done in terms of legislation, a lot had been discussed during all those decades until the conflicts that emerged in former Yugoslavia in 1992, put pressure on the drafting of a final law for the creation of the International Criminal Court. See Rome Statute website <http://untreaty.un.org/cod/icc/general/overview.htm> (accessed Nov. 9th, 2012)

Human Rights in 1997⁵³. This report will offer an original conception of the *right to know* which will comprise three principles:

Principle 1 - The inalienable right to the truth

Principle 2 - The duty to remember

Principle 3 - The victim's right to know.

L. Joinet further explains: "*This is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a **collective right**, drawing upon history to prevent violations from occurring in the future. It's corollary is a **duty to remember**, which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right*" (p.5) (emphasis added) (Joinet, 1997)

L. Joinet never mentions in his study the Genève Convention or the Additional Protocol I, which assumedly are the origins of the right to know; furthermore he differentiates the need to provide information concerning missing persons from the right to the know – duty to remember - that he claims is more of a collective right. This emphasis in the **collective dimension** of the right to know, was previously absent from UN documentation, and will be employed subsequently to substantiate one of the main objectives of a truth commission, that of explaining not only the what's, but the *why's* of a troubled past.

However, Joinet's report was prepared in the context of a study on impunity. In his explanation as to the background of the report, he states that its origin were the *amnesty laws* for political prisoners that in the early 80's were being proposed in different countries (Uruguay, Brazil and Paraguay) to "*safeguard the promotion of human rights*" and turned out to be an "*insurance on impunity*" when over the course of peace negotiations or regime change "*an unattainable balance between the former oppressors desire for everything to be forgotten and the victims quest for justice*" collapsed (E/CN.4/Sub.2/1997/20/Rev.1, page 3).

⁵³ L. Joinet explains that the genesis of the study dates back to 1985 when working as a UN Rapporteur on Amnesty he prepared a report on "*Amnesty Laws and their Role in the Safeguard and Promotion of Human Rights*". His 1997 study on impunity draws partially on that earlier report.

The need to avoid impunity with regard to human rights violations and to establish the truth of the facts surrounding these crimes lead to his recommendation of establishing **extrajudicial** commissions of inquiry⁵⁴. Yet, this recommendation immediately brings out two things to the forefront: the human rights violations to be punished are civil and political - as stated in the title of the study- and the extrajudicial character of the inquiry.

4.1.1.3. On Human Rights Violations: Civil and Political Rights vs. Economical, Social and Cultural Rights

The focus on violations of *civil/political* rights was due to the fact that the General Assembly in its 46th session (1994) decided to split the study of impunity in two⁵⁵: L. Joinet was left in charge of the civil/political rights area and El Hadji Guisse would assume the part of the human rights violations of economical, social and cultural rights.

The division of human rights into civilian/political rights, also called first generation rights, and social/economical/cultural rights, or second-generation rights has been cause to a great deal of friction in the history of human rights⁵⁶. In her article on the indivisible framework of human rights, Rhonda Copelon⁵⁷ asserts that all human rights are inseparable and interdependent “*These (rights) are inseparable and interdependent in that the opportunity to exercise liberty will influence the production and distribution of food, at the same time as hunger is antithetical to the enjoyment of liberty and full participation in society*” (p.216). Choosing to emphasize some rights above others, illustrates once more the intense discussions faced in 1949 by the commission behind the Universal Declaration of the Human Rights, which prompted Eleanor Roosevelt (Chair of the Commission) to assert “*You can’t talk civil rights to people who are hungry*” (Copelon, 1998).

⁵⁴ No mention of the words *Truth Commissions* in this 1997 report

⁵⁵ As explained by L. Joinet in his final report on impunity (p.4) JOINET, L. 1997. Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political). *In: UNITED NATIONS, O. H. C. H. R. (ed.) E/CN.4/Sub.2/1997/20/Rev.1.*

⁵⁶ For further information see theoretical chapter the part on human rights

⁵⁷ US lawyer specialized in international human rights and who played a major role in several groundbreaking cases in US courts.

These are exactly the points raised by El Hadji Guisse in his report of 1997 (which is parallel to Joinet's report) on the impunity of perpetrators of economic, social and cultural right violations. This reports describes as contemporary violations: *"Violations of economic, social and cultural rights are national or international. The following are examples of **international practices** that give rise to serious violations of economic, social and cultural rights: debt, structural adjustment programs, deterioration of terms of trade, corruption, laundering of drug money, the fraudulent activities of transnational corporations, etc. Violations committed on **national territory**, most of which are considered to be justiciable offences, include: misappropriation of public funds, misuse of company assets, corruption, tax and customs evasion, financial speculation, fraudulent or unlawful enrichment, exploitation of illegal labor and migrant workers, etc."* (Emphasis added)(Para.31, p.10)(Guisse, 1997)

However, violations of economical, social and cultural rights are not only difficult to be accounted for, but even less to be repaired for; specially when there are still discussions about the conceptual basis of such rights (Sen, 2004) or when the *"traditional legal remedies such as court actions are either inappropriate or at best impracticable for the vindication of ESR (economic and social rights)"* (parentheses added) (p. 313)(Steiner et al., 2008).

The point to be raised, though, is that for the purposes of our discussion on transitional justice/truth commissions the human rights offenses to be accounted for are of a civilian/political character. Joinet's study - which in many way delineates the UN standard- follows a normative trend that has crystallized around the notion that democracy is to be achieved by focusing in legal-institutional development, without much reference to socioeconomic conditions and structural changes in society (Paige, 2009). The absence of these rights from later discussions on transitional justice and truth commissions embody the foucauldian **silences**, that is those issues that for different reasons were marginalized from the official debate.

4.1.1.4. On the Non-Judiciary Nature of Inquiries

Joinet's influential report based on a *"comparative analysis of past and present commissions experiences"* comments on the proposed extrajudicial nature of the inquiry: *"unless they are handing down summary justice, which has too often been the*

case in history, the courts cannot mete out swift punishment to torturers and their masters” (E/CN.4/Sub.2/1997/20/Rev.1, page 5). It could be argued it to be an inconsistent assertion to recommend non-judicial inquiries in cases regarding impunity and claiming for accountability, yet at this point the objectives of such inquiries were believed to be (Joinet 1997:5):

- Dismantling of the machinery which has allowed criminal behaviour (...) in order to secure non-recurrence
- Preserve evidence for the courts
- Rehabilitate credibility of human rights advocates

The re/establishment of rule of law, which is to be one of the ultimate aims of present transitional justice mechanism, is mentioned with circumspection “*Restrictions may be applied to certain rules of law in order to support efforts to counter impunity. The aim is to prevent the rules concerned from being used to benefit impunity*”⁵⁸ (Joinet 1997:8)

Much has been discussed in this regard, arguments in favour of extra-judicial inquiries range from their practicality in cases of massive human rights violations involving thousands of offenders (a la Rwanda style), to their ability to facilitate more truthful accounts and investigations, to debates as to whether justice should be retributive vs. restorative (a la South Africa style). On the other hand, arguments presently run in the order that an integrated approach combining trials, truth commissions and/or the other mechanisms contemplated in the transitional justice repertoire is the best chance to achieve accountability and promote the rule of law (De Greiff, 2012).

Yet, back in 1997, Joinet explains that the purpose of the inquiry is basically to establish the facts and to advance the duty to remember (both part of the right to know) and this is separated from the right to justice. The three rights that are the basis of the Transitional Justice field (Truth, Justice and Reparation) although acknowledged to be interdependent are to be divided and prioritized according to the circumstances.

The rights and principles described by Joinet would serve as the basis for further work in the area of impunity when D. Orentlicher writes in 2004 an updated version of

⁵⁸ Joinet here is referring to amnesty laws, right to asylum, trial in absentia, due obedience, extradition, prescription, legislation on repentance and military courts (p. 9)

Joinet's principles: *"Independent study on best practices and recommendations to assist states in combating impunity"* (E/CN.4/2004/88). Orentlicher will emphasize again the **individual and collective dimensions** of the right to know thus providing more justification of the practice of truth commissions, which would represent a mechanism to allegedly ensure, among other things, the fulfilment of the collective dimension of the right. She builds up her case by referring to the way the right has developed by being affirmed and delineated by different human rights treaties and supervisory bodies such as the American Convention on Human Rights, European Court of Human Rights, Inter-American Court and so on. Furthermore, she announces that what was previously known as "commissions of inquiry" or "extrajudicial commissions of inquiry" would be revised, in her study, to "truth commissions", *"The revised text introduces the phrase truth commissions, a particular type of commission of inquiry, in view of their increasing importance as a mechanism for exercising the right to know"* (p.7, para.14) (emphasis added)(Orentlicher, 2004)

However, even though both Orentlicher and Joinet refer to the right to know as a right and a principle, there is a caveat to their conclusions *"these principles are not legal standards in the strict sense, but guiding principles"* (E/CN.4/Sub.2/1997/20/Rev.1, para. 49), and *"guidelines that are not legally binding in themselves should nonetheless reflect and comport with pertinent legal standards"* (E/CN.4/2005/102, para.11). Without more elaboration as to how this imprecise legal status may impact or not its enforcement, the right to know will continue to become the focus of further UN studies and reports.

4.1.1.5. On the Right to the Truth

By 2006 the *Study on the Right to the Truth* and the *Rule of Law Tools for Post-Conflict States: Truth Commissions* (both prepared by the Office of the High Commissioner for Human Rights⁵⁹), have not only advocated for the legal status of the rights integral to the practice of truth commissions (right to know, right to justice and right to reparations), but, interestingly enough, the expression "right to the truth" will come to substitute that of the "right to know".

⁵⁹ Document E/CN.4/2006/91

While Joinet's report from 1997 mentions the right to the truth as *one* of the principles of the *Right to Know*⁶⁰, the central idea both in his report and in further reports (Orentlicher) and resolutions within the UN system before 2006, is to refer to the Right to *Know*. Without going into deep semantical discussions as to the difference between a right to know versus a right to the truth, it was not possible to locate within the UN documentation any reference as to why this sudden change of wording. However, a brief discussion into this issue will be taken up in the analysis of the document *Rule of Law Tools for Post-Conflict States: Truth Commissions*.

Presently, the right to the truth or right to know has become a *de facto* right in the UN system and not just a moral priority. The right to know about the fate of relatives and circumstances surrounding their disappearance/death/torture can be convincingly argued to be an ethical demand. Nevertheless it is not completely clear that a collective dimension is ineludibly attached to it and that this is required for non-recurrence, peace or reconciliation, indeed some legal researchers question the conceptual standing of such right, *"It may be argued that the right to the truth stands somewhere on the threshold of a legal norm and a narrative device. Its clear link to human dignity means that nobody will deny its importance, but lingering doubts about its normative content and parameters leave it somewhere above a good argument and somewhere below a clear legal rule."* (p.273) (Naqvi, 2006)

4.1.2. The Right to Justice

The right to justice has been continuously invoked alongside the right to know and the right to reparations, whenever dealing with issues of transitional justice and truth commissions. Although the challenge of justice is probably as old as civilization itself and there are many ways to articulate justice, whether on individual terms, collective justice, justice as fairness and so on; within the already mentioned seminal report from Joinet (1997), justice is articulated in terms of criminal prosecution and victims redress (as you would probably expect from a report on *impunity*). Specifically the right to justice is understood as:

- The right of the victims to a fair and effective remedy (trials and reparations)
- The duty of a state to prosecute impunity

⁶⁰ In the previous description of the Right to Know are mentioned the other principles

Joinet further states “*there can be no effective and lasting reconciliation without an effective response to the need for justice*” (p.7, para. 26), Thus not only reaffirming a position within the debate as to the aims of justice in times of regime change - i.e. the justice versus peace dilemma- but also stating that reconciliation (which by 1997 had already been set up as an objective to be achieved in several truth commissions) as part of the understanding of peace.

In the context of *impunity* for human rights violations (civil/political), both Joinet’s report and Orentlicher’s follow-up, articulate a clear need for criminal prosecution. In fact, reflecting retrospectively on her work on the subject Orentlicher would comment on this paradigm of impunity, “*I am widely associated with a view that is supportive of a strong international duty to **prosecute past abuses** (though, as I will explain, many attributions of this position hardly correspond to my actual views) (...) I wish to make clear, however, that I do not consider this to be in principle the most urgent or important issue of transitional justice, although it may be just that in some societies*” (p.11)(*emphasis added*) (Orentlicher, 2007).

By 2004, the crimes committed by the state and other political actors in conflict and post-conflict societies were understood as a broader type of challenge. While previously the problem was explained by referring to the *amnesty laws* (prevalent particularly in Latin America) that gave exiting dictatorships *impunity* over the crimes committed, when the Secretary General (Kofi Anan) presents his report on “*The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*”, the main problem was partially defined as a “*rule of law vacuum evident in so many post-conflict societies*” which lead him to assert that “*the consolidation of **peace** in the immediate post-conflict period, as well as the maintenance of peace in the long term cannot be achieved unless the population is confident that **redress for grievances** can be obtained*” (p.3, para.3) (*emphasis added*) (Annan, 2004). In other words, securing some type of accountability (whether in trials, commissions, vetting and so on) for the crimes committed becomes the high road to peace and the need to establish a coherent approach including all transitional justice mechanisms as equally relevant is seen as crucial.

Although Kofi Anan in his 2004 report recognizes the relevance of addressing the common root causes of conflict (economic/social inequality, power abuse, denial of citizenship, etc.), these can only be properly addressed “*in a legitimate and fair manner*”, that is by establishing *first* a functioning, coherent and legitimate judiciary system, other more structural type of changes could be attempted. In other words, the rule of law - or rather its break down - becomes both the cause of the problem (explanatory cause) and the objective of the initiative. Therefore we have a situation when apparently common sets of problems in different countries (massive crimes – usually involving the state as the major actors- followed by regime change) are understood under the same discourse (human rights violations/break down of the rule of law) and the range of solutions is limited accordingly (re-establishment rule of law which leads to peace and democracy).

This specific understanding of justice becomes reinforced in further UN documents such as the Secretary General Report (A/61/636-S/2006/980) wherein is emphasized “*the importance and urgency of the restoration of justice and the rule of law in post-conflict societies, not only to come to terms with past abuses, **but also to promote national reconciliation and to help prevent a return to conflict***” (p3, para.1) (emphases added) (Annan, 2006).

Since 2008 the Secretary General has presented to the Security Council yearly reports on the UN **rule of law** engagement in the maintenance of peace and security including the different mechanisms of transitional justice. In fact, the rule of law discourse seems to gain more and more ascendancy, “*In the seven years since that report (Kofi Anan’s report of 2004), the United Nations has marshaled significant international attention to the importance of the rule of law at the national and international levels*” (p.3, para.3) (parentheses added) (Ki-moon, 2011)

Yet, while the general area of transitional justice is, within the UN system, headed towards a more integrated engagement with the rule of law framework, there has been not much discussion of the already mentioned El Hadji Guisse (1997) report on economic, social and cultural rights violations, even though those violations also represent a breakdown of the rule of law. Moreover, according to M. Martinez-Soliman (Deputy Director of UNDP's Bureau for Development Policy), “*Every year, corruption is*

*estimated to cost more than 5% of global GDP (US\$2.6 trillion) (...) Widespread rent-seeking and patronage have the power to undermine democracy and the rights of communities*⁶¹. Economic crimes such as corruption or financial speculation, as Guisse so eloquently expressed, are serious violations of human rights and interact with other factors (such as inequality or poverty, for example) to give rise to many violent conflicts.

While many UN initiatives to combat economic crimes have been created (see for example UN Convention against Corruption⁶² among others) and descriptions of these violations have been produced⁶³, violations of economic, social and cultural rights have not been directly included within the sphere of transitional justice. As of 2007, Louise Arbour, UN High Commissioner for Human Rights, asserted that: *“In spite of many achievements and occasional exceptions, transitional justice has, like mainstream justice, not yet dealt with economic, social, and cultural rights adequately or systematically. I suggest that transitional justice should take up the challenges to which mainstream justice is reluctant to rise: acknowledging that there is no hierarchy of rights and providing protection for all human rights, including economic, social, and cultural rights. As with all other human rights, economic, social, and cultural rights call for constitutional protection, legislative promotion, and judicial enforcement”*(Arbour, 2007).

However, this approach could be changing. Beginning in 2010, the Secretary General has included in his latest reports on transitional justice and the rule of law (Ban Kin Moon 2010, 2011) a new guiding principle that states the *“need to take into account of the root causes of conflicts and the related violations of all rights, including civil, political, economical, social and cultural rights”* (p.3)(Ki-moon, 2010a), see also *“festered grievances based on violations of economic and social rights are increasingly recognized for their potential to spark violent conflict”* (p.14, para.51) (Ki-moon, 2011). While one may wonder how novel is the insight about the conflict

⁶¹ UNDP website accessed Nov. 20th, 2012:

<http://www.undp.org/content/undp/en/home/ourperspective/ourperspectivearticles/2012/11/07/optimism-in-the-field-of-anti-corruption-magdy-mart-nez-soliman/#>

⁶² UN website accessed Nov 20th, 2012

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en

⁶³ See OHCHR Fact Sheet # 33 on “Frequently Asked Questions on Economic, Social and Cultural Rights”. Accessed Dec. 6th, 2012 <http://www.ohchr.org/EN/Issues/ESCR/Pages/ESCRIndex.aspx>

arousing potential of economic and social grievances, a new link between the realization of economic and social rights and transitional justice mechanism has been forged within the UN system, *“The United Nations must promote dialogue on the realization of economic and social rights, and provide concrete results through transitional justice mechanisms, legal reform, capacity-building, and land and identity registration efforts, among other initiatives” (idem p.15, para.52).*

4.1.3. Discursive Context

The historical account detailed here represents, inevitably, a partial interpretation of the complex reality that within the UN system conforms the discursive context of the transitional justice/truth commission field. As explained, the account is built around key documents that in the last two decades have articulated a discourse on human rights, particularly the right to know/truth and the right to justice. The progressive articulation of these two rights provides a *raison d’être* to the transitional justice/truth commission discourse. As we have seen, this articulation while constant has not been straightforward or has progressed along a unidirectional path. Other possible articulations of transitional justice/truth commissions, for example the one that raises accountability claims around distributive justice issues were marginalized until recently (year 2010) when the issue of the violation of economic, social and cultural rights has been mentioned again, albeit in very general terms.

On the other hand what was initially a crusade about impunity versus accountability, becomes a full-fledged transitional justice “field”. This field, articulated in a language of rights, is now embedded into a system wide effort to unify and strengthen a rule of law discourse that is expected to channel all efforts on peace and security supported by the UN. As expressed by the Secretary General in two of his last reports on the subject:

“Rule of law initiatives are indispensable to international peace and security. In conflict and post-conflict settings the United Nations assists countries in establishing the rule of law by ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality” (Summary) (Ki-moon, 2011)

“The rule of law is central to the vision of the Secretary- General for the coming five years, and must guide our collective response to a fast- changing world” (p.2 para.1)(Ki-moon, 2012)

“Respect for the rule of law at the international and national levels is central to ensuring the predictability and legitimacy of international relations, and for delivering just outcomes in the daily life of all individuals. While responsibility for strengthening the rule of law lies with Member States and their citizens, the United Nations is ideally placed to support Member States’ efforts and to provide integrated and effective assistance”(Summary)(Ki-moon, 2012)

Having presented this historical review, the next part will focus on the analysis of the UN official policy document *“Rule of Tools for Post-Conflict States: Truth Commissions”* (from now on RoL tool) and how it interacts with the discursive context just described.

5. ANALYSIS II

5.1. UN Truth Commissions Definition

5.1.1. *Who are the “subjects” of truth commissions*

As mentioned in the previous context discussion, the policy document on truth commissions was published in 2006 in a period when an “interest” in rule of law issues had been rekindled in the UN⁶⁴. This interest fits the legalist approach of the tools, which through a language of rights seeks to define a way to manage post-conflict countries. These countries are explained as often *suffering from “weak or non-existent rule of law, inadequate law enforcement and justice administration capacity, and increased instances of human rights violations”* (Foreword) (OHCHR, 2006b). Although this first assumption would fit many countries wherein truth commissions have been conducted, many others would not fit at all. In fact, both the Argentinian and Chilean or even the South African truth commissions were established when the countries had fully functioning law enforcement and justice administration capacities, albeit acquiescent to the political elites. Other commissions have been established during peace time as part of the countries desire to understand conflictive events of a more distant past, see for example the cases of: Germany 1995 (Commission on the Consequences of the SED Dictatorship in the Process of German Unity), Panama, 2001 (Panama’s Truth Commission), South Korea, 2005 (Presidential Truth Commission on Suspicious Deaths)⁶⁵, Canada, 2012 (Truth and Reconciliation Commission⁶⁶) or the independent-community led truth commission of Greensboro, USA (Truth & Reconciliation Commission) of 2006⁶⁷. In short, truth commissions are just as frequently established in peaceful, rule of law –functioning states as not. Yet this discourse tells us a *truth* wherein: *“It is increasingly common for countries emerging from civil war or authoritarian rule to create a truth commission to operate during the immediate post-transition period”* (Introduction)(OHCHR, 2006b)

⁶⁴ The documents were published in 2006, however according to Louise Arbour - High Commissioner of Human Rights at the time – who writes in the Foreword that the work to prepare the tools started in 2003 (OHCHR 2006b. Rule of Law Tools for Post-Conflict States: Truth Commissions. *HR/PUB/06/1*. United Nations: Office High Commissioner Human Rights.)

⁶⁵ For more information on these commissions see USIP online collection of materials: <http://www.usip.org/publications/truth-commission-digital-collection> (accessed Nov 2nd, 2012)

⁶⁶ <http://www.trc.ca/websites/trcinstitution/index.php?p=3> (accessed Nov 2nd, 2012)

⁶⁷ <http://www.greensborotrc.org/index.php> (accessed Nov 2nd, 2012)

5.1.2. The objectives of truth commissions: Collective Truth & Reconciliation

Collective truth

As described in chapter 4, the right to know was originally limited to information about the whereabouts of victims and circumstances surrounding the event and as such it formed part of the baggage of international humanitarian law. During the political transitions in Latin America throughout the 80's and 90's, a human rights discourse starts to gain ascendancy⁶⁸ and the right to know the truth (highly relevant in the particular Argentinian and Chilean cases), begins to coalesce.

One of the early claims adjudicated to truth commissions was its assumed ability to construct a narrative of the events (duty to remember) *“guarding against the development of revisionist and negationist arguments”* (p.17) (Joinet, 1997). This duty was further explained in the RoL tool as the right *“to understand the extent and pattern of past violations, as well as their causes and consequences. The questions of **why** certain events were allowed to happen can be as important as explaining precisely **what** happened”* (p.2)(OHCHR, 2006b). Based on the right to know the truth, and specifically its presumed **collective** dimension, truth commissions reports are expected to *“help a society understand and acknowledge a contested or denied history”* (idem, p.2), yet should they occupy themselves with a causal analysis which proposes to explain the historical sources of a conflict? Would they be the adequate arenas to do so? To begin with, a definition of truth must be provided, some truth commissions have tried to do so.

The Peruvian Truth and Reconciliation Commission defined it thus, *“Truth is an account that is trustworthy, ethically articulated, scientifically supported, inter-subjectively contrasted, presented as narrative interpretation, empathically concerned and subject to constant improvement”* (p. 73)(Garcia-Godos, 2008). Other commissions like the one from South Africa adopted a different approach and divided truth in different categories: factual or forensic truth, personal or narrative truth, social or dialogue truth, healing and restorative truth (Wilson, 2001). Yet another

⁶⁸ See A. Paige for a more detailed discussion of this issue PAIGE, A. 2009. How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly*, 31, 321- 367.

commission took a more lyrical approach *“The truth, the whole truth and nothing but the truth, as the oath goes. The overall truth and the specific truth, the radiant but quiet truth. The whole and its parts, in other words, the bright light shone onto a surface to illuminate it and the parts of this same surface lit up case by case, regardless of the identity of the perpetrators, always in the search for lessons that would contribute to reconciliation and to abolishing such patterns of behavior in the new society”* El Salvador Truth Commission⁶⁹.

Undoubtedly, determining what is the truth is a high call and it becomes an even harder task if this constructed narrative is supposed to be part of the official history of a country explaining the broader pattern of events, the *why’s* and the *what’s*, as Garcia-Godos explains in an article on the Peruvian Truth Commission, *“The conceptual framework and terminology employed to construct such official versions of the events have the potential to define real people as victims, perpetrators, heroes or villains (...) they determine who deserves praise and who deserves condemnation, who deserves reparation and who deserves prison, and who enters the history books and who remains forgotten”* (p.63) (Garcia-Godos, 2008).

Readied with variations of the motto “never again”, the discourse on truth commissions claims its own “truths”: that a historical narrative is the way to explain events, legitimize the suffering of the victims and avoid recurrence. While these might be desirable goals, the claim is not sustainable by itself if not accompanied by other complementary initiatives and even then, it is very difficult to achieve (as we read in the literature review).

Reconciliation

In the literature review was explained that within the research community there are no agreed upon conclusions as to the efficiency of truth-telling initiatives in achieving either reconciliation or healing in post-conflict societies, as to what exactly do we mean by reconciliation or whether that is a pre-condition for a peaceful future coexistence. The RoL tool is also careful to phrase this mechanism as advancing those aims, *“It should not be assumed that such an inquiry will directly result in*

⁶⁹ From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador (<http://www.usip.org/publications/truth-commission-el-salvador>) Accessed Nov, 2nd, 2012

reconciliation either in the community or in the national or political sphere. Reconciliation is understood differently in different contexts" (idem, p.2). Yet other UN official documents are less restrained in their approach. For example, in the last three years, the Secretary-General's reports to the UN General Assembly on rule of law activities (See p.9, para.39 (Ki-moon, 2009), p.7, para.21 (Ki-moon, 2011) and p. 14, para.41(Ki-moon, 2012), constantly refers that "*judicial and non-judicial processes and mechanisms, based on national consultations that ensure accountability, serve justice and **achieve reconciliation** in the context of past large-scale abuses*" (p.13, para.53)(Ki-moon, 2010b).

Definitely appeals to reconciliation have an intuitive appeal (particularly to those not directly affected by the events), yet it can be argued whether this is not a religiously based notion, a Christian priority, that was specifically advocated by Archbishop D. Tutu during the *South African Truth & Reconciliation Commission* (1995) with mixed results (Wilson, 2001). Before the South African experience, although reconciliation may have been mentioned, it was referred to as a political reconciliation in the sense of achieving a relatively peaceful coexistence and not a forgiveness narrative that trades criminal accountability for emotional catharsis in the name of an assumed collective good. As indicated above, it seems that within the UN discursive context reconciliation continues to be a standard reference. As to whether ready-made notions like reconciliation constantly repeated have a direct bearing on a definition of discourse as the one presented in the theoretical chapter, we can propose that although the RoL tool does not claim a direct relationship between truth-telling and reconciliation, the discursive context which envelopes the document does so. If we recall from the theoretical chapter that statements are *enunciative functions* and not just a linguistic formulation, we could propose that the articulation - by an authoritative source (UN)- of a discourse partially built on the reconciliatory capabilities of truth commissions can help bring them into existence as a *truth* claim.

5.1.3. Justice and the Rule of Law

According to the RoL tool, truth commissions are defined as "*officially-sanctioned, temporary, non-judicial investigative bodies (...) that offer some form of accounting for the past*" (idem, p.1). Within the context of a system-wide UN effort to promote the rule of law as the midwife of peace, advocating for a non-judiciary form of accounting for

gross human rights violations seems a paradox. Although this fact has been partially explained by pointing to the complementarity of the mechanisms within the transitional justice *package*, this can also be understood (and has been explained) from other perspectives. First, as written in the document itself (foreword) as a *practical* means to deal with situations where:

- The crimes are so massive that full criminal accountability is impossible or unlikely (Rwanda)
- There has been a de facto (Peru) or de jure amnesty (Argentina and Chile)
- There is lack of capacity in the judicial system

Secondly, this understanding can be weighed against a background shaped by the alleged justice vs. peace dilemma, wherein due to the fragility of many newly established regimes a sort of compromise is proposed which prioritizes political interests above accountability demands which could jeopardize stability (Orentlicher, 2007).

This assumed pondering of the pros and cons of prosecutorial action in times of political change cannot be described as an either/or debate since truth commissions *are* justice mechanisms, they render justice to the victims, although in a *different* form. Wherein criminal trials represent the prototypical form of retributive justice, truth commissions as *non-judiciary* bodies are geared towards a kind of victim-centered restorative justice wherein people who were denied a “voice” (Godwin Phelps, 2001, Urban Walker, 2007) are given the possibility of a social space in the new society, “*the work of a commission can help a society understand and acknowledge a contested or denied history, and in doing so, **bring the voices and stories of the victims, often hidden from public view, to the public at large***” (emphasis added) (idem, p.2). The non-judiciary form of accounting that truth commissions propose is assumedly not contradicting the desire to achieve justice since they not only *may* complement prosecutions, but also achieve themselves *some form* of justice.

The emphasis on achieving some form of justice is embedded in wider discourse that of re-establishing the **rule of law**. A focus on the rule of law is supposed to be characteristic of democracies, which is the normative ideal towards which UN transitional justice efforts are aimed at. Thus it could be said that the rights discourse that is articulated through the documents on truth commissions in specific and

transitional justice in general, is part of a discursive formation which also includes the rule of law, as quoted in the theoretical chapter *“Whenever these discursive events support a strategy (...) a common institutional or political pattern (...) they are said to belong to the same discursive formation”* (Hall, 2001).

The rule of law is assumed to conjure away any specter of authoritarianism and to invoke the spirit of a democratic polity. This discourse influences how ideas are put into practice and *defines and produces the objects of our knowledge*. The truth claim constituted is that the fair-minded universe of the rule of law is to be preferred to that of the rule of men who with their unreliable instincts, and if fed on power, may develop into dictatorial despots. However, this truth claim has been contested. While it is correct to state that the objective of the rule of law is to set limits to power, some legal philosophers have asserted that this does not mean that a democratic system is necessarily the only outcome of this approach: *“Among the many traits ascribed to the rule of law throughout its historical development, there did not seem to emerge a necessary relationship between the rule of law and a specific political and constitutional system: although there was a prevailing historical link between the rule of law and liberal constitutionalism, the twentieth-century development of the Rechtsstaat paved the way for different usages of the formula, for it has been referred also to the “Fascist state” or to the “welfare state” of the post–Second World War period”* (p 135.)(Costa, 2007).

The rule of law, as any discourse, cannot situate itself above or beyond historical or political circumstances. This does not disqualify its specific role in interacting with power, rather the critique is meant to demystify its boundless capabilities. This mystification is precisely what becomes problematic. When the discourse on the rule of law becomes the only legitimate understanding of **justice**, it marginalizes other possible local, national or religious understandings. Furthermore the rule of law discourse itself, by being historically situated, has meant different things at different points in time⁷⁰.

⁷⁰ For a conceptual history of the rule of law see COSTA, P. 2007. The Rule of Law: A Historical Introduction. In: COSTA, P. & ZOLO, D. (eds.) *The Rule of Law: History, Theory and Criticism*. The Netherlands: Springer.

This chapter presented an analysis of the UN definition of truth commission that, explained in the context chapter, is articulated around a discourse of rights (right to know/truth and right to justice). This is also a discourse articulated by an authoritative or “privileged speaker”, so to speak, as it comes from the UN. This authoritative position allows for the enunciation of certain truth claims, amongst them:

- Truth commissions can construct a collective truth and achieve reconciliation
- Truth commissions are an important tool for post-conflict countries
- Truth commissions are an expression of justice that helps re-establish the rule of law

A prominent absence, the violations of economic, social and cultural rights characterize this discourse. The marginalization of this counter-discourse has previously been mentioned in connection with the context discussion. Yet, while this absence it's referred to in the document too: *“In some countries, economic crimes have been as prominent – and in the public’s mind as egregious- as the civil and political rights violations by a prior regime”* (p.9)(OHCHR, 2006b), it is immediately explained by pointing to the complexities of engaging in such type of research: *“Those drafting the mandate should be conscious of the **dangers and difficulties** of including economic crimes within a truth commission’s scope”* (idem) (emphasis added). In short, this chapter aspires to argue how specific truths regarding the discursive and non-discursive practices of truth commissions are articulated, and how this articulation leaves out other possible understandings.

6. CONCLUSIONS

This thesis started by questioning what was the discourse underpinning the UN understanding of truth commissions, and how this specific articulation came about. However if I try to be a bit more accurate the thesis started before, it started by a personal curiosity in comprehending how knowing the truth about a crime could possibly be equated with justice. Although I later learned that truth commissions were *one* of the mechanisms of the transitional justice approach to achieve *justice*, I also learned that in many countries is the one and only mechanism established as a sort of compromise in between a change of political regimes. Of course, and as we have seen throughout the genealogical analysis hereby conducted, truth commissions are also spoken of as much more than a political compromise. Reconciliation, the re-establishment of the rule of law, collective truth and so on, have also become claims for the advocacy of truth commissions. Yet these are all claims that have evolved over time, over the *practice* of specific truth commissions.

According to analysis conducted, the UN understanding of truth commissions has also been articulated progressively. From the moral duty to provide information about the fate of missing persons at the end of an armed conflict, which was stated in the Additional Protocol I of the Geneva Convention in 1977, a right to know the truth and a right to justice have evolved in specific ways. The articulation has focused on certain aspects (violations of civil-political rights) and it has left outside others (socio-economic rights). Focusing only on civil-political rights violations, while assumedly more manageable in the context of a truth commission (and transitional justice in general) leaves out of the equation important root-causes of the armed conflict. In many of “post-conflict” countries where truth commissions are being recommended and/or carried out, the crimes were committed in order to suppress demands in the context of either socio-economic inequality and/or ethnic discrimination. While the final reports of some truth commissions have included recommendations to focus on socio-economic or ethnic challenges, or have addressed them in the report, the official policy document of the UN does not *encourage* the investigation of these types of violations – within the context of truth commissions- for reasons of timing, focus and methodological tools.

Further consequences of this articulation is that it represents a legalist approach to a potentially challenging political situation as a turbulent regime change or the end of an armed conflict, in what can be defined as the primacy of the law. A change of regime within these contexts can be contained and managed by upholding the rule of law, which itself is the result of the new order and the ideal to strive for. It is assumed that a democratic order automatically follows the re-establishment of the rule of law and not the other way around, which can also be perfectly argued. As mentioned in the analysis, there is a mystification of what the law is or what it can achieve without an acknowledgement that the law is also susceptible to power interactions and interventions of a political or economical order.

Another implication of the UN understanding of truth commissions is that truth itself is mystified. Representative experiences, since most of the times the whole universe of victims cannot be approached, carefully collated with factual evidence and research produce a collective true which can help historical understanding, provide societal reconciliation and personal healing (through official recognition of victimhood). As discussed in the literature review, it is difficult to substantiate these claims. Yet, within the context of the UN understanding of both truth commissions and transitional justice, the claims continue to be advanced sometimes carefully worded (as in the policy document itself) and other times as a part of the official rhetoric (as in the reports of the Secretary General to the Security Council discussed in the analysis).

This leads us to the last implication of the definition of UN truth commissions and which is the one that opened these conclusions: the search for truth *understood* as an act of justice. This understanding of justice can be argued to be a variation of the concept of restorative justice since it is victim-centered, in opposition to retributive justice that allegedly is focused on the offender and tends to be associated with punitive measures, or distributive justice that is concerned with the fair allocation of goods within a society. Yet regardless of the understanding of justice, the important point to keep is that understandings are *preferred* readings of often-incommensurable demands. If we follow Foucault's lead, the next step in the analysis would be to untangle the power interactions that help give rise and sustain these *preferred* readings. An empirical analysis of a specific truth commission to uncover what Foucault termed the "*micro-physics*" of power, or within the context of the UN, an

analysis of the interactions between truth and power, how power is exercised, how does it work, could help us attain a richer picture of the *discourse and practice* of truth commissions.

REFERENCES

- ANNAN, K. 2004. The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies. *In: UN (ed.) S/2004/616*. United Nations.
- ANNAN, K. 2006. Uniting our Strengths: Enhancing United Nations Support for the Rule of Law. *In: UN (ed.) A/61/636-S/2006/980*. United Nations.
- ARBOUR, L. 2007. Economic and Social Justice for Societies in Transition. *New York University Journal of International Law and Politics*, 40, 1-28.
- BARTELSON, J. 1995. *A Genealogy of Sovereignty*, Cambridge, Cambridge University Press.
- BELL, C. 2009. Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'. *International Journal of Transitional Justice*, 3, 5-27.
- BENFORD, R. D. & SNOW, D. A. 2000. Framing Processes and Social Movements: An Overview and Assessment. *Annual Review of Sociology*, 26, 611-639.
- BRONWYN, A. L. 2008. The Irreconcilable Goals of Transitional Justice. *Human Rights Quarterly*, 30, 95-118.
- BRYMAN, A. 2008. *Social Research Methods*, Oxford, Oxford University Press.
- CARABINE, J. 2001. A Genealogical Analysis of Unmarried Motherhood 1830-1990. *In: WETHERELL, M., TAYLOR, S. & YATES, S. (eds.) Discourse as Data: A Guide for Analysis*. London: The Open University & Sage Publications.
- COPELON, R. 1998. The Indivisible Framework of International Human Rights: Bringing it at Home. *In: KAIRYS, D. (ed.) The Politics of Law: A Progressive Critique*. Third ed. New York, USA: The Perseus Group Books.
- COSTA, P. 2007. The Rule of Law: A Historical Introduction. *In: COSTA, P. & ZOLO, D. (eds.) The Rule of Law: History, Theory and Criticism*. The Netherlands: Springer.
- DALY, E. 2008. Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition. *The International Journal of Transitional Justice*, 2, 23-41.
- DE GREIFF, P. 2012. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Recurrence. *In: COUNCIL, H. R. (ed.) A/HRC/21/46*. UN.
- DEVETAK, R. 2009. Post-structuralism. *In: BURCHILL, S., LINKLATER, A., DEVETAK, R., DONNELLY, J., NARDIN, T., PATERSON, M., REUS-SMIT, C. & TRUE, J. (eds.) Theories of International Relations*. Fourth ed. London: Palgrave Macmillan.
- DIMITRIJEVIĆ, N. 2006. Justice beyond Blame: Moral Justification of (The Idea of) A Truth Commission. *The Journal of Conflict Resolution*, 50, 368-382.
- DREYFUS, H. & RABINOW, P. 1982. *Michel Foucault: Beyond Structuralism and Hermeneutics*, New York, Harvester Wheatsheaf, Simon & Schuster International Group.
- DUNN, K. C. 2009. Historical Representations. *In: KLOTZ, A. & PRAKASH, D. (eds.) Qualitative Methods in International Relations: A Pluralist Guide*. London, Great Britain: Palgrave Mcmillan.
- EASTMOND, M. & SELIMOVIC, J. M. 2012. Silence as Possibility in Postwar Everyday Life. *International Journal of Transitional Justice*, 6, 502-524.
- EISIKOVITS, N. 2011. Transitional Justice. *Stanford Encyclopedia of Philosophy* [Online], Winter Available: URL = <http://plato.stanford.edu/archives/win2011/entries/justice-transitional/%3E>.

- EKERN, S. 2010. The modernizing bias of human rights: stories of mass killings and genocide in Central America. *Journal of Genocide Research*, 12, 219-241.
- ELSTER, J. 2004. *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge, UK, Cambridge University Press.
- FAIRCLOUGH, N. 2003. *Analysing Discourse: Textual Analysis for Social Research*, London, Routledge.
- FOUCAULT, M. 1972. *The Archeology of Knowledge*, London, United Kingdom, Routledge
- GARCIA-GODOS, J. 2008. Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation. *International Journal of Transitional Justice*, 2, 63-82.
- GODWIN PHELPS, T. 2001. *Shattered Voices: Language, Voice and the Work of Truth Commissions*, Philadelphia, USA, University Of Pennsylvania Press.
- GRAHAM, L. 2005. Discourse Analysis and the Critical Use of Foucault. *Australian Association for Research in Education - Annual Conference*. Sydney, Australia: Queensland University of Technology.
- GRANDIN, G. & MILLER KLUBOCK, T. 2007. *Truth Commissions: State Terror, History and Memory*, Durham, USA, Duke University Press.
- GUISSE, E. H. 1997. Final Report on the Impunity of Perpetrators of Human Rights Violations (Economic, Social and Cultural). In: COUNCIL, E. A. S. (ed.). United Nations.
- GUTTING, G. 2003. *The Cambridge Companion to Foucault*, Cambridge, UK, Cambridge University Press.
- HALL, S. 2001. Foucault: Power, Knowledge and Discourse. In: WETHERELL, M., TAYLOR, S. & YATES, S. (eds.) *Discourse Theory and Practice: A Reader*. London: Sage Publications.
- HANSEN, L. 2006. *Security as Practice: Discourse Analysis and the Bosnian War*, Canada, Routledge.
- HAYNER, P. 1994. Fifteen Truth Commissions: 1974-1994 A Comparative Study. *Human Rights Quarterly*, 16, 597-655.
- HAYNER, P. 1995. Fifteen Truth Commissions - 1974 to 1994: A Comparative Study. In: KRITZ, N. (ed.) *Transitional Justice*. Washington, USA: United States Institute of Peace.
- HAYNER, P. 2011. *Unspeakable Truths: Transitional Justice and the Challenge of truth Commissions*, New York.
- HAZAN, P. 2006. Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice. *International Review of the Red Cross*, 88, 19-47.
- JAGER, S. & MAIER, F. 2009. Theoretical and Methodological Aspects of Foucauldian Critical Discourse Analysis and Dispositive Analysis. In: WODAK, R. & MEYER, M. (eds.) *Methods of Critical Discourse Analysis*. Second ed. London: Sage Publications.
- JAMES, M. 2012. A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission. *International Journal of Transitional Justice*, 6, 182-204.
- JOINET, L. 1997. Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political). In: UNITED NATIONS, O. H. C. H. R. (ed.) *E/CN.4/Sub.2/1997/20/Rev.1*.
- KAARHUS, R. 1999. *Conceiving Environmental Problems: A comparative study of scientific knowledge constructions and policy discourses in Ecuador and Norway*, Oslo, Norway, Norwegian Institute for Urban and Regional Research (NIBR).

- KENDALL, G. & WICKHAM, G. 1999. *Using Foucault's Methods*, London, Great Britain, Sage Publications.
- KENT, L. 2011. Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives. *International Journal of Transitional Justice*, 5, 434-455.
- KI-MOON, B. 2009. Annual Report on Strengthening and Coordinating United Nations Rule of Law Activities. In: UN (ed.) *A/64/298*. United Nations.
- KI-MOON, B. 2010a. Guidance Note of the Secretary General: United Nations Approach to Transitional Justice. In: UN (ed.). United Nations.
- KI-MOON, B. 2010b. Strengthening and Coordinating United Nations Rule of Law Activities. In: UN (ed.) *A/65/318*. United Nations.
- KI-MOON, B. 2011. The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies. In: UN (ed.) *S/2011/634*. United Nations.
- KI-MOON, B. 2012. Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels. In: UN (ed.) *A/66/749*. United Nations.
- KIM, H. J. 2009. Seeking truth after 50 years: The National Committee for the Investigation of the Truth about the Jeju 4.3 events. *The International Journal of Transitional Justice*, 3, 406-423.
- KRITZ, N. 1995. *Transitional Justice: How emerging democracies reckon with former regimes*, Washington, USA, United States Institute of Peace Press.
- LUTZ, E. & SIKKINK, K. 2001. The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America. *Chicago Journal of International Law*, 2.
- MAY, T. 1993. *Between Genealogy and Epistemology: Psychology, Politics and Knowledge in the Thought of Michel Foucault*, Pennsylvania, USA, The Pennsylvania State University Press.
- MAZZEI, J. M. 2011. Finding Shame in Truth: The Importance of Public Engagement in Truth Commissions. *Human Rights Quarterly*, 33, 431-452.
- MCCOMBS, M. E. & SHAW, D. L. 1972. THE AGENDA-SETTING FUNCTION OF MASS MEDIA. *Public Opinion Quarterly*, 36, 176-187.
- MCNEILL, D. 2007. Human Development: The Power of the Idea. *Journal of Human Development*, 8, 5-22.
- MENDELOFF, D. 2004. Truth-seeking, Truth-telling, and Post-conflict Peacebuilding: Curb the enthusiasm? *International Studies Review*, 6, 355-380.
- MENDEZ, J. E. 1997. Accountability for Past Abuses. *Human Rights Quarterly*, 19, 255-282.
- MILLAR, G. 2010. Assessing Local Experiences of Truth-Telling in Sierra Leone: Getting to 'Why' through a Qualitative Case Study Analysis. *International Journal of Transitional Justice*, 4, 477-496.
- MILLER, Z. 2008. Effects of Invisibility: In Search of the "Economic" in Transitional Justice. *The International Journal of Transitional Justice*, 2, 266-291.
- NAQVI, Y. 2006. The right to the truth in international law: fact or fiction? *International Review of the Red Cross* [Online], 88.
- NEIER, A. 1990. What should be done about the guilty? In: KRITZ, N. (ed.) *Transitional Justice*. Washington, USA: United States Institute of Peace.
- NEUMANN, I. 2001. *Mening, Materialitet, Makt: En Innføring i Diskursanalyse*, Oslo, Fagbokforlaget.

- NEUMANN, I. 2009. Discourse Analysis. In: KLOTZ, A. & PRAKASH, D. (eds.) *Qualitative Methods In International Relations: A Pluralist Guide*. First ed. Great Britain: Palgrave Macmillan.
- OHCHR 2006a. Promotion and Protection of Human Rights: Study on the Right to the Truth. *E/CN.4/2006/91*. UN: United Nations.
- OHCHR 2006b. Rule of Law Tools for Post-Conflict States: Truth Commissions. *HR/PUB/06/1*. United Nations: Office High Commissioner Human Rights.
- OHCHR 2010. Right to the Truth. In: COUNCIL, H. R. (ed.) *A/HR/15/33*. UN.
- OLIVER, P. E. & JOHNSTON, H. 2000. What a Good Idea! Ideologies and Frames in Social Research. *Mobilization: An International Quarterly*, 5, 37-54.
- ORENTLICHER, D. F. 2004. Independent Study on Best Practices, Including Recommendations to Assist States in Strengthening their Domestic Capacity to Combat all Aspects of Impunity In: RIGHTS, C. H. (ed.) *E/CN.4/2004/88*. UN.
- ORENTLICHER, D. F. 2007. 'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency. *International Journal of Transitional Justice*, 1, 10-22.
- PAIGE, A. 2009. How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly*, 31, 321- 367.
- PARIS, R., RON, J. & THOMS, O. 2010. State-Level Effects of Transitional Justice: What Do We Know. *The International Journal of Transitional Justice*, 4, 329-354.
- PARLEVIET, M. 1998. Considering Truth: Dealing with a legacy of human rights violations. *Netherlands Quarterly of Human Rights*, 16, 141-174.
- SANDBERG, S. 2006. Fighting Neo-liberalism with Neo-liberal Discourse: ATTAC Norway, Foucault and Collective Action Framing1. *Social Movement Studies*, 5, 209-227.
- SARUP, M. 1993. *An Introductory Guide to Post-Structuralism and Post-Modernism*, England, Pearson Education Limited.
- SCHEUFELE, D. A. 2000. Agenda-Setting, Priming, and Framing Revisited: Another Look at Cognitive Effects of Political Communication. *Mass Communication and Society*, 3, 297-316.
- SECRETARY GENERAL, B. K. M. 2012. Strengthening and coordinating United Nations rule of law activities. New York: United Nations.
- SECRETARY GENERAL, K. A. 2004. The rule of law and transitional justice in conflict and post-conflict societies. In: COUNCIL, S. (ed.) *S/2004/616*. United Nations.
- SEN, A. 2004. Elements of a Theory of Human Rights. *Philosophy & Public Affairs*, 32, 315-356.
- STEINER, H. J., ALSTON, P. & GOODMAN, R. 2008. *International Human Rights in Context: Law, Politics and Morals*, Oxford, UK, Oxford University Press.
- SUBOTIC, J. 2012. The Transformation of International Transitional Justice Advocacy. *International Journal of Transitional Justice*, 6, 106-125.
- TAMBOUKOU, M. 1999. Writing Genealogies: an exploration of Foucault's strategies for doing research. *Discourse: Studies in the Cultural Politics of Education*, 20, 201-217.
- TEITEL, R. G. 2000. *Transitional Justice*, New York, Oxford University Press
- TEITEL, R. G. 2003. Transitional Justice Genealogy. *Harvard Human Rights Journal*, 16, 69-94.
- TRAVIS, M. A. 2010. Beyond Empathy: Narrative Distancing and Ethics in Toni Morrison's *Beloved* and J. M. Coetzee's *Disgrace*. *Journal of Narrative Theory*, 40, 231-250.

- URBAN WALKER, M. 2007. *Moral Understandings: A Feminist Study in Ethics*, Oxford University Press.
- VUCETIC, S. 2011. Genealogy as a research tool in International Relations. *Review of International Studies*, 37, 1295-1312.
- WALDORF, L. 2012. Anticipating the Past. *Social & Legal Studies*, 21, 171-186.
- WEINSTEIN, H. M. 2011. Editorial Note: The Myth of Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief. *International Journal of Transitional Justice*, 5, 1-10.
- WENAR, L. 2011. Rights. In: ZALTA, E. N. (ed.) *The Stanford Encyclopedia of Philosophy*.
- WETHERELL, M., TAYLOR, S. & YATES, S. 2001. *Discourse as Data: A Guide for Analysis*, London, Sage Publications - The Open University.
- WILSON, R. A. 2001. *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, Cambridge, UK, Cambridge University Press.

