Introduction

Under current international law, the transition to peace after a non-international armed conflict (NIAC) is no longer a matter of the exclusive discretion of the conflicting parties within a state. Several international legal standards are progressively shaping the ways in which internal peace negotiations are conducted as well as the content of peace agreements.¹ These standards are represented in legal obligations, principles, and practices mainly derived from International Human Rights Law (IHRL), International Humanitarian Law (IHL), International Criminal Law (ICL), and the United Nations (UN) and states practice in peacemaking and peacebuilding.

Colombia provides the most recent and notorious example of a peace process and a peace agreement ending a NIAC conducted under an international legal frame.² The 2012–2016 peace negotiations between the Colombian government and the guerrilla movement Fuerzas Armadas Revolucionarias de Colombia (FARC) and their final agreement are internationally considered a model for resolving other conflicts around the world.³ The Colombian Peace Agreement⁴ has been recognized both for its

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¹ Carsten Stahn, ‘Jus Post Bellum: Mapping the Discipline(s),’ in Jus Post Bellum. Towards a Law of Transition from Conflict to Peace, ed. Carsten Stahn and Jann Kleffner (The Hague: T.M.C. Asser Press, 2008), 104. For Stahn: “The substantive components of peace-making are no longer exclusively determined by the discretion and contractual liberty of the warring factions, but are governed by certain norms and standards of international law derived from different fields of law and legal practice.”

² Even though other peace agreements have been signed around the world after the 2016 Colombian deal was adopted, they do not have the comprehensive dimension of the Colombian one. They are mostly partial or ceasefire agreements, in which an international legal dimension is not as large and comprehensive as in the Colombian case. On this point, see Escola de Cultura de Pau, Peace Talks in Focus 2019. Report on Trends and Scenarios (Barcelona: Icaria, 2019), 27.


⁴ The expressions Colombian Peace Agreement, Peace Agreement, Final Agreement, and Agreement (with capitalization) will be used interchangeably to refer to the peace agreement signed by the Government of Colombia and the Fuerzas Armadas Revolucionarias de Colombia (FARC) on 24 November 2016 and called Final Agreement to End the Armed
comprehensive approach to ending armed violence and addressing structural causes of the conflict and for its compliance with international law. As noted by Huneeus and Urueña:

That agreement, and, indeed, the entire negotiation process, has been exceptional in the central role that international law plays. Colombia is an intensely legalistic society, with a legal system that has been traditionally open to international law. Moreover, the peace talks are conducted in a global legal context that imposes strict legal limits—in particular, international criminal law and Inter-American human rights law are of constant concern to the negotiators. [...] Many of the deal's particular choices seemed specifically designed to comply with Colombia's international legal obligations.⁵

The central role of international law in the Colombian transition is due and is expressed in at least two ways. First, several external actors participated in the negotiations or they sent messages that influenced the discussions. These actors included the UN, the Inter-American System of Human Rights, the Prosecutor of the International Criminal Court (ICC), and the guarantor countries. Second, the negotiation and the Agreement not only incorporated international legal standards of justice, truth, reparations, and inclusiveness, but also used international law and international enforcement mechanisms to ensure its compliance.

However, this case also evinces the complexity of the legal regulation of transitioning from armed conflict to peace. There is no specific legal regime governing such transitions, but a disparate set of applicable provisions enshrined by different branches of international law that are not specifically designated for that purpose. Thus, these provisions must be interpreted and adapted in their application to the specific transitional context. This process implies a dual role for the parties involved in the transition as both the subjects and creators of law: the apply general existing norms and define, through this practice, new ways to interpret and adapt them to the context. As Kreß and

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Grover wrote, “States in transition apply existing law and, in so doing, contribute to its refinement.”

The academic debate on this role of international law in transition has been framed under the concept of *jus post bellum*. This concept has been proposed as a normative framework to gather—under a common frame of reference—the myriad of international legal considerations applicable to the transition from armed conflict to sustainable peace. However, the relative novelty of the concept, which only entered the international legal scholarship in 2005, is marked by divergent conceptions around its content and scope, and few empirical studies have been conducted on it.

Considering the above-presented elements, this study analyzes the role of international law in transition from internal armed conflict to peace by using the Colombian transition as a case study. Based on this analysis, it discusses to what extent this case fits within the scholarly debate on *jus post bellum* by identifying what elements are applicable from theory to practice and what lessons can be drawn from the Colombian case toward further developing the concept.

This introduction first discusses how transition to peace became a matter of international law and how the concept of *jus post bellum* offers a framework for such a debate, examining the state of research on this topic. Then, the introduction discusses the relevance of the Colombian case in assessing the role of international law in the transition to peace and why this case is useful to attaining a better understanding of the concept of *jus post bellum*. According to these discussions, the introduction reflects on the empirical analysis from the perspective of NIACs and the use of a case study. Lastly, this introduction will delimitate the purpose, some methodological considerations, and the structure of the study.

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8 As it will be analyzed in Section 2 of this Introduction, the first academic work addressing *jus post bellum* from a legal point of view appeared in 2005, analyzing how the concept could frame the application of IHL in the post-occupation context in Iraq: Daniel Thürer and Malcom MacLaren, ‘“Jus Post Bellum” in Iraq: A Challenge to the Applicability and Relevance of International Humanitarian Law?’, in *Weltinnenrecht: Liber Amicorum Jost Delbrück*, ed. Klaus Dicke, and et al. (Berlin: Duncker & Humblot, 2005), 753–82.
Transition to Peace as a Matter of International Law

Law plays a fundamental role in the transition from armed conflict to peace. Although peace is a politically-oriented goal, legal considerations frame the process of negotiating and building peace. In particular, international law is gaining increasing relevance in domestic transitions to peace. The international obligations of states according to IHRL, IHL, and ICL are unavoidable considerations for negotiating parties when defining their conditions to end conflict and achieve peace. These obligations serve as a framework outlining limits, possibilities, and duties that ought to be followed when negotiating, defining, and implementing measures of transition from armed conflict to peace.

The increasing involvement of international law in domestic transitions is mainly due to the development of IHRL as a reliable means of protecting individuals, including from their own state. To Cecile Fabre, this phenomenon represents a new paradigm in international relations with at least two rules: “a) individuals are the fundamental unit of moral concern [...], b) whatever rights and privileges states have, they have them only in so far as they thereby serve individual's fundamental interests.” This argument is reinforced by the fact that IHRL has increased its protection of individuals not only by the substantial development of rights but also through the creation of effective mechanisms to enforce them internationally.

Regarding this paradigm, Stahn affirms that “The rise of human rights obligations and growing limitations on sovereignty [...] have not only changed the attitude toward the ending of conflicts, but have also set certain benchmarks for behavior. The process of peace-making itself has become a domain of international attention and regulatory action.” Here, one should add also the processes of peacekeeping and peacebuilding as matters of international concern. These concepts came to the international policy and legal arena since the 1992 UN Secretary-General’s Agenda for Peace.

UN Secretary-General, ‘An Agenda for Peace’ (New York: United Nations, 1992); UN Secretary-General, ‘Supplement to An Agenda for Peace’ (New York: United Nations, 1995).
them as: *peacekeeping*, meaning the actions aimed to end the immediate violence and hostilities; *peacemaking*, involving the peaceful resolution of the conflict through negotiation, mediation, or arbitration; and *peacebuilding*, as the process of addressing the root causes of the conflict with a view to establishing a sustainable peace. From the three concepts, peacemaking and peacebuilding are more closely related to the idea of transitioning to sustainable peace.

Peacemaking and peacebuilding processes have received increasing legal regulation through UN documents, IHRL, and international jurisprudence, mainly since the early 2000s after the adoption of the ICC Statute and different UN guidelines on transitional justice. This phenomenon is described by Christine Bell in the following terms:

> Indeed, legal analysis suggests a more pivotal role for international law in assisting, and perhaps even acting as catalyst to, the trend towards negotiated settlements in intrastate conflicts.

> Throughout the 1980s, a number of legal developments relevant to the peace agreement landscape took place and can be argued to have played a little-acknowledged role in creating the peace agreement phenomenon. These legal developments all worked to undo the concept of international law as the law of states, by opening up the black box of ‘the state’ to scrutiny of its internal configurations—traditionally the preserve of state sovereignty. In so doing, they increased the scope for international law to address intrastate conflict.

Then, she adds:

> The contemporary peace agreement is negotiated in a context where an expanding international machinery has a clear mandate in the areas that many peace agreements deal with, such as human rights, refugees and displaced persons, independence of the judiciary, policing, and economics.

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Never before have international law and international institutions had such an array of tools capable of application to intrastate conflict.\textsuperscript{19}

The expansion of the influence of international law in peacemaking and peacebuilding is reflected in a growing number of UN guidelines, reports, and resolutions addressing this matter and recommending the observance and incorporation of international legal standards in reparations, transitional justice, inclusiveness, and the rule of law.\textsuperscript{20} The General Assembly and the Security Council created the UN Peacebuilding Commission\textsuperscript{21} aimed at providing international support to countries in transition, and the Council has intervened in many transitional settings—most of them related to NIACS—pursuing its fundamental mandate to safeguard international peace and security.\textsuperscript{22}

However, as Bell argues, "peace agreement practice is increasingly posing a fundamental challenge to the existing international legal order."\textsuperscript{23} Despite the rising influence of international law in peace processes and peace agreements, there is no specific legal regime regulating transition from armed conflict to peace, and different branches of law can apply. As such, states and other parties in conflict must interpret and apply relevant international norms according to the specific needs and conditions of their own transitional context, but with no legal framework given to provide coherence to the matter. Offering such a framework is the purpose of \textit{jus post bellum}.\textsuperscript{24}

\begin{multicols}{2}
\textsuperscript{19} Bell, 104.
\textsuperscript{24} Chetail and Jütersone, ‘Peacebuilding: A Review of the Academic Literature,’ 5.
\end{multicols}
In the same way that the conditions for engaging in war are regulated under a legal framework known as *jus ad bellum*, and the legal regime for conducting armed conflict is defined as *jus in bello*, moral and legal scholarship has proposed the concept of *jus post bellum* to designate the legal framework applicable to transition from armed conflict to peace. However, while *jus ad bellum* and *jus in bello* are unified legal regimes, the law applicable to the transition from armed conflict to peace is not gathered into a specific legal framework but involves a complex interaction between different branches of law and between international and national law.

Therefore, the concept of *jus post bellum* appeared as a space to hold the debate around the interaction between law and transition to peace, and to offer a normative framework for peacemaking and peacebuilding practice. Following this logic, Vincent Chetail suggests that:

> *Jus post bellum* can be generally defined as the set of norms applicable at the end of an armed conflict—whether internal or international—with a view to establishing a sustainable peace. [...] The grouping disparate standards within the same frame of reference underscores the need for a comprehensive and coordinated approach to the numerous rules governing post-conflict situations. From a systemic perspective, it paves the way for a contextualized interpretation—and, by extension, a contextualized application—of existing norms in order to better take into account the specificities which characterize the difficult transition from war to peace.

This definition addresses different components of the concept: the substance of *jus post bellum* as a set of norms; a temporal scope placed to the end of armed conflict; its applicability to both international armed conflicts (IACs) and NIACs; and its systemic function to group different standards governing transition from armed conflict to peace under a common framework, allowing their contextualized interpretation and application. However, notwithstanding the comprehensiveness of this definition, the concept is far from reaching consensus, and Easterday, Iverson and Stahn even sustain that “there are

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almost as many conceptions of *jus post bellum* as scholars” working in this field.\(^{27}\)

Looking at the origin of the concept, Stahn sustains that this tripartite conception of the law of war can be found since St. Agustine (City of God, 410), Vitoria, Suarez, Grotius (Laws of War and Peace, 1625) and Kant (Science of Right, 1790).\(^{28}\) However, the first systematization of the idea of *jus post bellum* is generally attributed to Kant, who referred to a right to war (*jus ad bellum*), a right in war (*jus in bello*), and a right after war (*jus post bellum*).\(^{29}\)

Nevertheless, these three elements have not been developed at the same level. Both *jus ad bellum* and *jus in bello* were largely theorized since the 19th century. Then, *jus in bello* was codified since the 1899 and 1907 The Hague Conventions, and *jus ad bellum* in the 1945 UN Charter provisions on the use of force. However, *jus post bellum* did not receive the same attention neither in theory nor in legal codification. For Stahn, this situation is due to at least three reasons. First, until the 20th century there was a split conception of war or peace without intermediate states of transition from one to other.\(^{30}\) Second, peace has been traditionally considered as a matter of the discretion of states.\(^{31}\) And, third, peace-making has been regarded as a case-by-case issue and some legal scholars “even continued to conceive peace-making as an ‘art’ rather than a legal paradigm until the 1980s.”\(^{32}\)

Having this background, the concept of *jus post bellum* had only entered into the academic debate at the beginning of the 21st century, after the US-led interventions in Iraq and Afghanistan.\(^{33}\) This contemporary discussion on *jus post bellum* has been held within the framework of two disciplines: moral

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31 Stahn, ‘*Jus Post Bellum*: Mapping the Discipline(s),’ 2008, 96.

32 Stahn, 98.

33 Stahn, 98.
philosophy and international law. The first has been focused on the moral obligation of reparation and reconstruction in the aftermath of a military intervention, under the just war theory. On the other hand, international legal scholars have tried to identify and articulate the international legal regulation applicable to the transition from armed conflict to peace under this concept.

From the perspective of the just war theory, Orend proposed the first contemporary approach to *jus post bellum*. For him, the "just war theory, as currently conceived, is incomplete", and now it is necessary to look at "the justice [...] of the move back from war to peace." Then, since 2004, some philosophers used the concept to discuss the moral obligation of reparation and reconstruction after a military intervention.

Walzer presented an analysis on different wars around the world under a just war perspective; and, when referring to the Iraqi case, he has suggested the development of a *jus post bellum* component within the just war theory. Bass used the concept to analyze "the justice of a belligerent power’s postwar conduct," which Iasiello supported mapping the moral responsibilities of victors in war. In another perspective, Rigby discussed the concept and its implications in terms of forgiveness and reconciliation. Later, in 2006, DiMeglio continued working on the definition of *jus post bellum* as part of the just war tradition, and Williams and Caldwell insisted on connecting the justness of "how we intend to fight and what we intend to do after we have fought."

In 2012, Larry May published one of the most influential works on *jus post bellum*, entitled *After War Ends: A Philosophical Perspective*. Written under the umbrella of the just war theory, this book proposes six normative principles of

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34 Stahn, 112.
**Introduction**

*jus post bellum*: rebuilding, retribution, restitution, reparation, reconciliation and proportionality. Subsequent works have considered this proposal of principles as a solid basis to develop the content of *jus post bellum*.⁴⁴

From the perspective of international law, Thürer and MacLaren were the first authors to address the issue in 2005. In an article, entitled ‘*Jus Post Bellum*’ *in Iraq*, they analyzed the role of the concept to improve the application of IHRL in the occupation and post-occupation period in Iraq.⁴⁵ Similarly, Boon used the concept to assess the limits of occupant’s law-making powers,⁴⁶ which Cohen further addressed in 2006 examining the role of international law in post-conflict constitution-making.⁴⁷ The same year, Stahn presented the first article exploring *jus post bellum* in a comprehensive way as a legal category.⁴⁸

Later, in 2007, under the direction of Stahn, the University of Leiden’s Grotius Center for International Legal Studies undertook the *Jus Post Bellum* Project.⁴⁹ This project was conceived to “investigate whether and how a contemporary *jus post bellum* may facilitate greater fairness and sustainability in conflict termination and peacemaking.”⁵⁰ In ten years, the Project published three volumes presenting the most comprehensive contributions to the legal understanding of contemporary *jus post bellum*. The first one, published in 2008, *Jus Post Bellum. Towards a Law of Transition from Conflict to...*

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⁴⁵ Thürer and MacLaren, “*Jus Post Bellum*” in Iraq: A Challenge to the Applicability and Relevance of International Humanitarian Law?”


⁴⁹ This is the website of the *Jus Post Bellum* Project, where information about its activities, its team, and its publications can be found: http://juspostbellum.com/default.aspx (accessed on 21 September 2016).

⁵⁰ Ibid.
Peace,\textsuperscript{51} has focused on the foundations, contemporary challenges, and the future of the concept. Later, in 2014, they published \textit{Jus Post Bellum. Mapping the Normative Foundations},\textsuperscript{52} with a broader analysis on the different dimensions of the concept, its functions, and dilemmas. Finally, in 2017 the Project released the work \textit{Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices},\textsuperscript{53} in which several scholars have addressed the connection between \textit{jus post bellum} and environmental protection. At present, these works represent the most advanced analysis of contemporary \textit{jus post bellum}.\textsuperscript{54}

However, despite the existing contributions, the concept is still fragmented and contested. Lewkowicz considers that \textit{jus post bellum} creates semantic confusions on the law of the use of force,\textsuperscript{55} and it is just an abstract doctrine without any substantial contribution to peace practice.\textsuperscript{56} De Brabandere criticizes the usefulness of the concept,\textsuperscript{57} and he even affirms "that certain conceptions of \textit{jus post bellum} pose a danger to some very foundational principles of international law."\textsuperscript{58} In turn, even if Bell admits some usefulness in the concept, she has considered it as an aspirational regime for the future, being the current normativity applicable to transitions more a question of \textit{lex pacificatoria}, understood as the law of peacemakers.\textsuperscript{59}

\begin{itemize}
\item \textsuperscript{51} Carsten Stahn and Jan Kleffner, eds., \textit{Jus Post Bellum: Towards a Law of Transition from Conflict to Peace} (The Hague: T.M.C. Asser Press, 2008).
\item \textsuperscript{52} Carsten Stahn, Easterday, Jennifer, and Iverson, Jens, eds., \textit{Jus Post Bellum: Mapping the Normative Foundations} (Oxford: Oxford University Press, 2014).
\item For Bell, Carsten Stahn and the Leiden School have led the contemporary discussion on \textit{jus post bellum} under the perspective of international law. Bell, ‘Of \textit{Jus Post Bellum} and Lex Pacifictoria: What’s in a Name?’, 181.
\item \textsuperscript{56} Lewkowicz, ‘Présentation. Le \textit{Jus Post Bellum} Nouveau Cheval de Troie Pour Le Droit Des Conflit Armés?’
\item The concept of \textit{lex pacificatoria}, as related to \textit{jus post bellum}, will be analyzed in Chapter 1, Section 5.2. Bell, \textit{On the Law of Peace}; Bell, ‘Of \textit{Jus Post Bellum} and Lex Pacifictoria: What’s in a Name?’
\end{itemize}
Those discussions have evidenced the need for further research to clarify the concept and its concrete scope. In 2009 Chetail pointed out the importance “to recognize post-war law as a concept in its own right.”\textsuperscript{60} In 2012 May and Forcehimes considered \textit{jus post bellum} scholarship as an “emerging field [...] still in its formative years”.\textsuperscript{61} In 2014, Easterday, Iverson, and Stahn argued that despite “the expansion of references to \textit{jus post bellum} in a variety of journals [...] , there has been an increase of ambiguity, [instead of] a consolidation around a consensus definition.”\textsuperscript{62} And, in 2017 Iverson sustained that the concept “remains comparatively under-theorized, and frequently referenced without realizing that many authors be talking past each other, meaning different things while using the same term.”\textsuperscript{63}

Having this background on the scholarly debate of \textit{jus post bellum}, this study is aimed at offering an empirical analysis of the concept by testing its theoretical development in practice throughout a relevant case study.

3 The Relevance of the Colombian Transition

The Colombian transitional process from armed conflict to peace offers a proper test case to assess both the role of international law in transition to peace and the viability of \textit{jus post bellum} as the concept to frame such a role. Several reasons explain the relevance of the Colombian transition for this purpose.

First, the 2016 Peace Agreement in Colombia is the most recent comprehensive\textsuperscript{64} peace deal ending a \textsc{niac} in the world.\textsuperscript{65} The comprehensiveness of the

\begin{itemize}
  \item Chetail, ‘Introduction,’ 18.
  \item Larry May and Andrew Forcehimes, eds., \textit{Morality, Jus Post Bellum, and International Law} (Cambridge: Cambridge University Press, 2012), 1.
  \item According to the Peace Accords Matrix, of the University of Notre Dame’s Kroc Institute for International Peace Studies, which offers extensive data on the implementation of several peace agreements ending armed conflicts around the world, a peace agreement is considered comprehensive when: “(1) the major parties to the conflict were involved in the negotiations that led to the written agreement; and (2) the substantive issues underlying the conflict were included in the negotiations.” Peace Accords Matrix (Date of retrieval: (1/16/2019), https://peaceaccords.nd.edu/about, Kroc Institute for International Peace Studies, University of Notre Dame.
  \item Up to the end of 2018, peace agreements concluded in other countries after the 2016 Colombian Peace Agreement were mostly partial or ceasefire agreements, which did not
\end{itemize}
agreement implies both ending the armed conflict between the main opposing actors and addressing its root causes with a view to establishing lasting peace. In this sense, the Agreement addresses matters of justice, truth, reparation, socio-economic and political issues related to the causes of the conflict, the participation and inclusion of different groups in society, and other relevant questions.

Second, the 2012–2016 peace process has been designed to integrate and apply international legal standards. In the preamble of the Agreement, the parties expressly stated their strict respect for the Colombian Constitution and for the general principles of international law, IHRL, IHCL, and the ICC Statute. Further, the Agreement contains several references to international law, incorporating international legal standards applicable to different matters of the deal and using international enforcement mechanisms to ensure its compliance. The Agreement’s international legal status was affirmed through its configuration as a special agreement under IHCL and a unilateral declaration by the Colombian State before the UN. The process has incorporated an inclusive perspective that follows UN Security Council (UNSC) Resolution 1325 (2000) and other legal instruments and guidelines on the participation of women, ethnic groups, minorities, victims, and civil society. Crucial matters such as criminal justice for international crimes and reparations to victims were defined according to IHRL and ICL standards. Moreover, a monitoring role was assigned to the UNSC, which created a special mission for verifying the implementation phase.

address comprehensively the root causes of armed conflict. This is the reason why the Colombian agreement can be considered the most recent comprehensive peace deal. On this point, see Escola de Cultura de Pau, Peace Talks in Focus 2019. Report on Trends and Scenarios, 27.

This purpose of the Agreement is seen from its very title: Government of Colombia and FARC, ‘Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace.’ The main components of the Agreement will be developed in detail in Chapter 2 of the book.

Government of Colombia and FARC, ‘Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace,’ 1.


See Chapter 2, Section 5.

See Chapter 2, Sections 3 and 4.

Government of Colombia and FARC, ‘Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace,’ 216. The UN mission for verification of disarmament and reincorporation was created by UNSC Resolutions 2307 (2016) and 2366 (2017). The mandate of the Mission has been renewed by Resolutions 2381 (2017) and 2435 (2018).
Third, there was significant international involvement in the peace process through foreign support, observatory statements by the ICC Prosecutor, a UN Secretary-General Representative, and welcoming messages by the UNSC, which monitors the implementation of the Agreement. These actors have played a crucial role influencing the peace agreement discussions. Norway, as a guarantor of the process, sponsored a group of international legal experts to advise the parties on the conformity of the Agreement with international law. During the negotiations, the ICC Prosecutor’s Office sent letters and statements to Colombian institutions reminding them of their obligations in the prosecution of international crimes. In addition, various non-governmental organizations (NGOs) openly invoked the international legal obligations of the State when negotiating victim’s rights to justice, truth, and reparation.

73 Cuba and Norway serve as permanent guarantors. The process has been supported by the UN, the EU, the OAS, the US, the Vatican, and different foreign and international actors. In addition, it should be mentioned the Nobel Peace Prize awarded to Colombian President Juan Manuel Santos, acknowledging his leaderships and commitment to the peace process.

74 Office of the ICC Prosecutor, ‘Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Peace Negotiations between the Government of Colombia and the Revolutionary Armed Forces of Colombia,’ 1 September 2016, https://www.icc-cpi.int/en/Pages/item.aspx?id=160901-otp-stat-colombia (accessed on 1 April 2018). On the conclusion of a Final Agreement in Colombia, the ICC Prosecutor stated: “As a State Party to the Rome Statute of the International Criminal Court, Colombia has recognised that grave crimes threaten the peace, security and well-being of the world and stated its determination to put an end to impunity for the perpetrators and thus contribute to the prevention of such crimes. I note, with satisfaction, that the final text of the peace agreement excludes amnesties and pardons for crimes against humanity and war crimes under the Rome Statute […]. I have supported Colombia’s efforts to bring an end to the decades-long armed conflict in line with its obligations under the Rome Statute since the beginning of the negotiations. I will continue to do so during the implementation phase in the same spirit.”


78 Prominent international human rights NGOs claimed the consideration of human rights standards during the discussion and adoption of transitional justice mechanisms. Among them, the Commission of Jurists, the International Center for Transitional Justice, Human Rights Watch and Amnesty International. An analysis on this question takes place in Chapter 3 of the book.
Fourth, transition in Colombia has been a complex and prolonged process, during which international legal considerations related to peace have been present at different moments within the armed conflict. Before the recent peace process, the country had developed other domestic mechanisms of transitional justice (2005)\(^79\) and reparation for victims (2011)\(^80\) closely inspired by international standards. Some authors have even defined the Colombian experience as a case of transitional justice without transition.\(^81\) Because of these aspects, the Colombian case is particularly useful for assessing the application of *jus post bellum* during an ongoing armed conflict.

Fifth, Colombia has a legal system particularly receptive to international law, in which IHRL and IHL treaties are considered to have the same legal level of the Constitution.\(^82\) Additionally, as Céspedes points out, the country has relied "so much on international norms to understand its own conflict."\(^83\) Regarding transitional instruments, this feature has been ensured by an outstanding Constitutional Court controlling the domestic legal and constitutional framework under both the Colombian Constitution and international law.\(^84\) This condition offers advantageous insights on the relationship between international and domestic law, which is a crucial discussion regarding *jus post bellum*.\(^85\)

Finally, while international involvement has marked different stages of transition in Colombia, the peace efforts have maintained a solid local ownership. It can be attributed to, among other reasons, a strong institutional system and a vigorous civil society. This situation is almost paradoxical in a country living an armed conflict for more than five decades.\(^86\) For that reason,

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\(^79\) Congreso de la República de Colombia, ‘Ley 975 (Ley de Justicia y Paz)’ (2005).

\(^80\) Congreso de la República de Colombia, ‘Ley 1448 (Ley de Víctimas y Restitución de Tierras)’ (2011).

\(^81\) Rodrigo Uprimny et al., eds., *¿ Justicia Transicional Sin Transición? Verdad, Justicia y Reparación Para Colombia* (Bogota: DeJusticia, 2006).

\(^82\) Constitución Política de Colombia, 1991, Art. 93.


\(^84\) The Constitutional Court is playing a fundamental role in the process, since all the legal and constitutional instruments developed to implement the agreement have constitutional control. For a view to the main decisions of the Court on the matter, see Corte Constitucional de Colombia, Sentencia C-579/13; Corte Constitucional de Colombia, Sentencia C-379/16 (18 July 2016).

\(^85\) Iversen, Easterday, and Stahn, ‘Epilogue: *Jus Post Bellum*—Strategic Analysis and Future Directions,’ 553.

\(^86\) As noted by Saffon and Uprimny, there is certain ambiguity in the Colombian case, because there is a protracted armed conflict aside to a functional institutional system.
the case offers specific insights on the role of domestic actors voluntarily relying on international norms and institutions to resolve their own internal armed conflict.  

The above discussion highlights the substantial role of international law in Colombia’s domestic transition from armed conflict to peace, in which the parties in negotiation and other domestic and international actors have been involved in reaching peace under a normative framework seeking not only to end the conflict but also to achieve sustainable peace. Said features of the Colombian case offer a broad picture of the relevance of this transition in legal and policy terms, making this experience an especially insightful case study for an empirical analysis of the concept of *jus post bellum*.

4 Empirical Analysis from the Perspective of NJACS

The Colombian transition provides an opportunity to identify how international law shapes peacemaking and peacebuilding by analyzing the actors and discourses involved in that process, as well as the interaction between legal and political considerations and between international and domestic law. Moreover, framing such analysis under the concept of *jus post bellum* offers an opportunity to assess how theory works in practice and how practice provides new insights for theoretical development.

The 2014 publication of the University of Leiden’s *Jus Post Bellum* Project raised some questions that should guide future research on the topic, acknowledging that today there are “more questions than answers.” Some of those questions relevant for this study include the following: “Who is the addressee of *jus post bellum*? How does it impact the societies in which it is applied or practiced?” “How, exactly, does *jus post bellum* incorporate, blend, or otherwise draw on its various legal sources? To what extent is it feasible to contemplate further regulation and stocktaking, and what form should it take?” “What

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For them, “In spite of the persistence of the armed conflict and the seriousness of the human rights abuses therein produced, Colombian institutions have managed to maintain important democratic features.” Maria Saffon and Rodrigo Uprimny, ‘Uses and Abuses of Transitional Justice in Colombia,’ in *Law in Peace Negotiations*, ed. Morgen Bergsmo and Pablo Kalmanovitz (Oslo: Torkel Opsahl Academic EPublisher, 2010), 363.

Chapter 3 will analyze the actors of *jus post bellum* in Colombia.

would guiding principles include?" And, “How can, or should, *jus post bellum* be adopted and applied by practitioners?”

Most of these questions will be addressed by this work. Additionally, the empirical approach from a case study within a NIAC context provides new ideas to advance elements from theory and practice looking to give concrete substance to *jus post bellum*.

Thus far, few studies have examined concrete cases of transition from a *jus post bellum* perspective. In 2005, Thürer and MacLaren used Iraq as a test case to examine practical concerns in the application of the law of occupation. Their conclusions addressed the concrete responsibilities of post-occupant powers, suggesting that rather than reforming occupation law, *jus post bellum* provides a framework for better application of IHL in those contexts. In 2009, Labonte wrote a comprehensive case study on *jus post bellum*, examining the Afghan context. However, her analysis is conducted exclusively from the perspective of the just war theory rather than from the perspective of international law. She examined to what extent different peacemaking and peacebuilding measures adopted in Afghanistan respected *jus post bellum* principles as proportionality, discrimination, reconciliation and restoration, focusing on the challenges of non-state actors involved in these processes. In 2011, Ryngaert assessed the role of ICL and *jus post bellum* in Uganda following the country’s peace efforts after its situation was referred to the ICC in 2004. This study is concentrated on the role of the ICC when a country is conducting internal peace efforts, but it does not offer a systematic analysis in terms of *jus post bellum*. Finally, in 2012, Benson suggested how the development of emerging norms for economic reform in post conflict countries, discussing the Iraqi case, could be an expression of a rule of *jus post bellum*, though she does not assess the very application of the concept. As such, the Colombian

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89 Iverson, Easterday, and Stahn, 553.
90 Thürer and MacLaren, “Jus Post Bellum” in Iraq: A Challenge to the Applicability and Relevance of International Humanitarian Law?”
peace process represents a useful example with which to examine the concept under a legal empirical perspective, given the relevance of this case as discussed previously.

Moreover, using a NIAC as a case study challenges the current theorization on *jus post bellum*, which has been focused on IACs. Since the end of World War II, NIACs have been more common than IACs, and the termination of NIACs through peace processes has become more popular following the end of the Cold War.94 Between 1989 and 2008, only 7 of 124 active armed conflicts were interstate,95 and between 1990 and 2007, 646 documents of peace agreements were produced addressing 192 conflicts, of which 91% were NIACs.96 In 2017, 43 peace negotiations were in place around the world, of which 34 referred to NIACs and only 9 to IACs.97 Therefore, while the concept continues to be more frequently associated with IACs, today we have more cases of transitions from NIACs to peace from which to extract elements of *jus post bellum*.98

In addition to the above quantitative argument, substantive considerations increase the relevance of an analysis of *jus post bellum* with respect to NIACs. Negotiating peace in IACs is relatively easier than in NIACs. As highlighted by Kastner, “Whereas the main goal of state-to-state negotiations aiming to end traditional wars is to negotiate a truce and resolve an underlying easily identifiable problem, intrastate negotiations must address numerous issues and involve a wider range of actors, whose relationships are characterized by a higher degree of interdependence.”99 In NIACs, the parties ought to address matters as complex and diverse as criminal accountability, reparations to victims, gender and minority issues, the building of civil trust and reconciliation, the reestablishment of the rule of law, and the guarantee of civil, political, economic, social, and cultural rights. Therefore, a comprehensive analysis of *jus post bellum* in those contexts can provide further clarity on the contours and functions of the concept.

5 Purpose of the Study

Summarizing the above-discussed elements, the study is conceived under three premises. First, international law has an increasingly greater role in transition from armed conflict to peace. Second, the Colombian transition is the most recent and comprehensive example of such a role. And third, extensive legal scholarship has proposed the concept of *jus post bellum* to designate the normative framework for transition from armed conflict to peace.

In this way, the study aims to answer what role international law plays in the transition from armed conflict to peace by using the Colombian transition as a case study, and to what extent this experience can be framed under the concept of *jus post bellum*. By addressing this question, the study explores new ways to understand the role of international law in transition to peace as well as the concrete content and functioning of *jus post bellum* as the concept framing such a role.

As examined in the previous sections, it is necessary to understand the role of international law in transition under an analytical framework,\(^{100}\) in order to seek some coherence around the disparate set of legal considerations applicable to peacemaking and peacebuilding. Additionally, since *jus post bellum* is the framework proposed for said analysis, the current state of research on the concept reveals the need for further research, especially from an empirical perspective and from the point of view of NIACs. For both reasons, as previously discussed, the Colombian case offers advantageous elements for the analysis.

The main argument of this book is that the Colombian transition has been shaped by different international legal norms, discourses, and practices and that the concept of *jus post bellum* frames such a normative framework. In that way, the study will sustain a definition of the concept as a normative framework of principles guiding the contextualized interpretation and application of international law—understood in a broad sense as including positive and customary norms, legal discourses, and legal practices—to transition to peace, showing how it works in practice, what principles and functions can be identified, and who are its actors. In that sense, the study will show how the theoretical development of the concept mostly matches with practice in Colombia, and that practice also challenges some of its components, providing new insights to keep developing the theory.

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\(^{100}\) As argued by Kastner, most analysis on the role of legal norms in the resolution of armed conflicts have been conducted “in a superficial manner and without grounding such an examination in a theoretical framework.” Kastner, 15.
Methodological Considerations

Four considerations should be offered to delineate the methodology of this study. First, even if transitions from armed conflict to peace have more political features than legal ones, this book is focused on the legal elements shaping the political decisions. However, this does not mean that the policy aspects of peacemaking and peacebuilding will be neglected. They will be incorporated into the analysis of the context and implications of the legal formulas adopted in the case study and used to understand the rationale of the principles and functions of *jus post bellum*. Additionally, some aspects of the analysis, such as the socioeconomic and political components of transition, should be considered more so in terms of policy than from a legal perspective.

Second, the concept of *jus post bellum* is considered from the perspective of international law. Though the concept emerged within the just war theory and has been inspired by moral considerations on the justness of peace, this study will consider *jus post bellum* as referring to the legal norms, discourses, and practices governing the transition from armed conflict to peace. This does not mean that moral considerations will be excluded from the analysis; rather, the study will assume that those moral elements are already incorporated into or reflected by international law.

The third consideration concerns what this book understands by international law. The study will follow a broad understanding of law encompassing not only positive norms but also principles, discourses, and practices with a legal dimension. This understanding includes, in addition to conventional and customary law, soft law documents such as guidelines and declarations, as well as jurisprudential rules and legal principles and discourses built through peacemaking and peacebuilding practice.

Fourthly, it is important to mention that while the main emphasis of the analysis of the case study is given to the 2016 Peace Agreement and its negotiation process, other mechanisms of transition in Colombia since 2005 will also be considered.

With the above considerations in mind, the object of the study will be addressed using an inductive and a deductive methodological approach, as well as both primary and secondary sources. An inductive approach is necessary...

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for the examination of the Colombian case in order to determine lessons that could bring new insights to the academic debate on the role of international law in the transition from armed conflict to peace. At the same time, a deductive approach will allow the assessment of existing theory on the relationship between international law and transition to peace through the framework of *jus post bellum*.

For the empirical analysis of the case study, the official documents related to the Colombian transitional process from armed conflict to peace will be considered, including the agenda of negotiations, rules of procedure, joint communiqués, and the 2016 Peace Agreement. Also included are the constitutional and legal domestic framework to implement the Agreement, the legal instruments on transitional justice and reparations existing before the recent peace process, and the jurisprudence of the Constitutional Court, which has played a fundamental role in interpreting those norms under the Constitution and international law. In addition to these primary sources, other relevant international instruments such as treaties, jurisprudence, soft law and UN documents will be used to identify the legal frameworks.

Finally, secondary sources will be used such as bibliography on the different topics of the book, in particular those regarding the concept of *jus post bellum*, as well as the literature on subjects such as socioeconomic and political transitional reforms, criminal justice, reparations, inclusiveness, and the legal nature of peace agreements.

7 Structure of the Book

The book is divided into three chapters. The first chapter will explore the conceptual ground of *jus post bellum*. It will analyze different approaches to a definition of the concept, highlighting the challenges to achieving a unified understanding of *jus post bellum*. The chapter will then explore the object of *jus post bellum*, which is generally described as helping to achieve a sustainable peace. Here, the study will discuss what a sustainable peace would mean under a legal approach to *jus post bellum*. In relation to this subject, the chapter will explore the question of the principles of *jus post bellum*, as the substantive content of the concept. Finally, the chapter will examine similar categories related to the legal framework of transition, discussing how the concepts of transitional justice and *lex pacificatoria* could compete with *jus post bellum*, to then argue that the third term is the most appropriate for designating a comprehensive normative framework for the transition from armed conflict to peace.
The second chapter will assess how international law is reflected in the Colombian transition to peace. The chapter will first offer a general overview of the Colombian armed conflict and its transitional process to peace. It will then examine different components of transition in Colombia, identifying the applicable international legal framework and the way in which it shaped the formulas adopted in the country. The chapter will discuss how aspects such as the legal status of the peace agreement, socioeconomic and institutional reforms, criminal justice for serious crimes committed during armed conflict, reparations, and the inclusive dimension of the peace process were significantly influenced by international legal standards. As such, the chapter will offer the empirical elements that will then be contrasted, in the third chapter, against the conceptual elements of *jus post bellum* discussed in the first chapter.

The third chapter is aimed at connecting the previous two, analyzing what elements can be drawn from the Colombian case toward developing a better understanding of the concept of *jus post bellum*. It will address the conceptual elements of *jus post bellum* presented in Chapter 1 and assess them from the perspective of the Colombian case examined in Chapter 2. The purpose of Chapter 3 is to assess how the Colombian transitional process exemplifies elements of *jus post bellum* in practice and to draw conclusions on the potential definition, content, operation, actors, and functions of the concept based on this case study. As such, this chapter gathers the core of analysis of the study and offers new practical insights for the theory of *jus post bellum*.

Finally, a general conclusion will be presented. It will summarize the three chapters of the study. Then, the conclusion will reflect on the main contributions of the Colombian case to understanding the role of international law in transition to peace and the concept of *jus post bellum*. Lastly, from the perspective of the empirical analysis conducted by the study, the conclusion will discuss the challenges and opportunities of bringing *jus post bellum* from theory to practice, and what could be the future of the concept.