Deconstruction of the UN Discourse on Transitional Justice
An Understanding of Justice and Reconciliation through Derrida’s Concepts

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Abstract

The present thesis seeks to problematize the UN discourse within transitional justice. Many scholars have pointed out that the discourse has been normalised and that is why it is in need for deconstruction. The study aims to critically analyse how justice and reconciliation are understood in the field. For the purpose of the study Derrida’s concepts on justice and forgiveness have been chosen as theoretical frameworks. The method of study is a deconstructive analysis, based on Derrida’s notion of deconstruction. The method implies analysis of language of the research material, i.e. four UN reports regarding transitional justice from 2004, 2009, 2010 and 2011.

The study has shown, firstly, that the rule of law concept is closely connected with the idea of justice and, secondly, justice is often reduced to accountability. That in turn explains the dominance of the juridical instruments in transitional justice processes. Apart from this, based on Derrida’s concept of forgiveness, reconciliation and mechanisms applied represent a conditional forgiveness, seeking to re-establish normality. Another problem is that reconciliation is not sufficiently approached in the reports. Nevertheless, the history of the transitional justice development has shown that there is a potential for further changes and that is why it necessary to continue question the established norms.

Finally, deconstruction analysis has proved to be an adequate method for analysing transitional justice discourses and contributed to a nuanced analysis. The use of two languages, English and Russian versions of the reports allowed to identify and visualise some conceptual constructions that could otherwise have been missing.

Keywords: authority, accountability, conceptual constructions, deconstruction, Derrida, droit, forgiveness, human rights violations, justice, reconciliation, rule of law, transitional justice.
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Chapter 1. Introduction

After mass grievances and abuses of human rights, there is a number of questions that should be answered: how to treat the perpetrators and how to come to terms with the past. While these questions are not new, the way to handle them along with political transition dates back to the 1980s. And the field that seeks to answer these questions is called transitional justice.

The field has developed from a quite narrow perspective on how to approach past abuses and prosecute perpetrators, to a more holistic approach having victims’ needs, reconciliation and gender perspective in the focus. The questions that have come to the fore include how to build and maintain peace, what are the practical approaches for peaceful and constructive transformation of conflicts\(^1\), what groups should be included in these processes and so forth.

Today, transitional justice is often associated with the Truth and Reconciliation Commission in South Africa or International Tribunals for Rwanda and former Yugoslavia. Without any doubt these are the most well-known examples of dealing with past atrocities. However, transitional justice is a broader field and includes different mechanisms, processes and above all contexts. The contexts may vary from democratisation of Central and East Europe after the fall of the Soviet Union, the war on terrorism in Afghanistan to past human rights abuses of indigenous population in Australia, Canada or Denmark.\(^2\) Some processes are labelled as transitional justice, while others are not. The boundaries of transitional justice both as a theory and a practical solution are blurred.

The understanding of transitional justice provokes some general questions about what we mean when we talk about justice and transition, who has the legitimacy to talk about it and why. This paper has an aspiration to, if not answer these questions, at least discuss them in order to show the complexity of the field of inquiry.

It is possible to admit perhaps that the practical application of mechanisms has developed much further than the theoretical knowledge and understanding of these processes.\(^3\) This is problematic in different ways. Firstly, there is a tendency to apply a blue-print to different political contexts without adapting them to local conditions. Secondly, there is a clear western

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ownership of both practice and theory of transitional justice that results in inter alia the universalism versus cultural relativism dichotomy. Thirdly, there is a clear dominance of legal instruments in comparison with political and social ones.4

Along with the named problems that have a direct effect on the today’s post-conflict situations, there are a number of issues concerning transitional justice research and its gaps. Martina Fischer names some research gaps and open questions in her article about the theory and practice of transitional justice. Among them is the absence of sound and systemised empirical research, including the effects of the truth commissions and tribunals. Furthermore there is a big gap when it comes to transitional justice on micro-levels, including cultural phenomena, social discourse and narratives. She points out that the transitional justice field lacks criteria and knowledge about the factors that influence the outcome of applied mechanisms.5

The present study has been inspired by the theoretical complexity of the field and an aspiration to analyse it. Catherine Turner has made an attempt to deconstruct transitional justice, saying that it should be considered as a starting point for further debate and critical analysis of the themes raised by the deconstruction of transitional justice.6 Later on I am going to present her analysis in order to identify the questions that can be developed and argued further.

Apart from the theoretical complexity, the practical development is of importance. By practical development I mean the resolutions and guidelines enacted by the United Nations in the field of transitional justice. These documents represent what international community is supposed to reach consensus on. At the same time, they reflect the values and principles that the United Nations seek to promulgate and to use as guidelines for present and future transitional justice processes.

Thus, transitional justice may be examined based on both theoretical and practical points of departure. A fragmentary theory of transitional justice and complexity of the practical application of transitional justice mechanisms open the way to different scientific approaches. What’s more, theoretical concepts and practical development influence and form each other, and that is why both should be taken into consideration while studying transitional justice.

There are different ways to study transitional justice: using genealogical approach of the emergence of the field, case studies focusing on a concrete examples of applying transitional justice mechanisms etc. Not only methods, but theoretical approaches may differ as well. In the thesis poststructuralism has been chosen as an overall framework and point of departure. Jacques Derrida’s concepts on justice and forgiveness are the leading theoretical ideas that are examined through the approach of the research material - the UN policy documents. These two concepts are complex and include subcategories, such as questions about authority, responsibility, decision, language, reconciliation, that can contribute to a more detailed analysis of transitional justice discourse.

Furthermore, the method chosen for the study flows out from the theoretical choice, and represents a deconstructive analysis. The analysis itself can be considered as a theory and suggests a certain way of reading and interpreting the texts. While Jacques Derrida was deconstructing philosophical texts as a part of western philosophical heritage, he had also commented on political events and developments (not least the Truth and Reconciliation Commission’s work in South Africa7).

After having presented the problem of study and briefly introduced the theoretical and methodologic approach, I will further turn to the aim and research questions of the thesis.

**Aim and Questions of the Study**

To begin with, the thesis has a double aim. Firstly, it seeks to critically analyse the UN documents concerning transitional justice through the application of deconstructive analysis, i.e. interrogate the core assumptions and discourses that underlie the field of transitional justice. It aspires to result in an interpretation of transitional justice and visualisation of what the UN documents seek to say and what kind of results are expected, to illuminate and problematize the ideas that lie behind the documents as well as behind the subject promoting these ideas.

Secondly, the aim is to analyse the possibilities of deconstructive analysis as a scientific method in applying it to the policy documents. A detailed explanation of how critical analysis through application of deconstruction is going to be approached, is presented later in the chapter devoted to the theoretical and methodological approach.

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Turning from an overall aim to more specific research questions: firstly, how justice may be understood in the UN documents through the prism of Derrida’s concept of justice and discussion about language, subject and authority. In other words, how justice is described in the documents, what kind of underlying features of justice are present in the UN discourse on transitional justice.

Secondly, reconciliation is going to be approached based on Derrida’s notion of forgiveness as a part of a concept of justice. These questions are going to be answered by using deconstructive analysis, searching for conceptual constructions that are of significance to transitional justice, analysing the relationship between these constructions and illuminating the founded hierarchies. The present thesis aspires to question transitional justice discourse produced by the United Nations, problematize it and try to interpret it with the help of Jacques Derrida’s concepts.

Along with the critical analysis of the UN documents on transitional justice, the theoretical and methodological approaches are going to be discussed; whether Derrida’s concept of justice and forgiveness are relevant in solving concrete political and ethical dilemmas within transitional justice. Moreover, deconstruction as a method is going to be tested.

The second aim of the thesis is significant, since in the present study it is policy documents that are deconstructed and that is why the method itself should further be evaluated: whether it contributes to a more tenable understanding of the complexities, deconstruction’s possibilities and limitations, potentials and challenges.

Accordingly, the thesis has a double aim, on the one hand, the study object is transitional justice discourse within the UN and, on the other hand, the study object is the applied theory and method. The questions of the study, presented above, seek to develop the nuances of the corresponding aims.

The discussion on the aim and questions of the study is followed by the introduction to the method and material. Even though a more thorough and detailed description of the method is presented in Chapter 2, it is appropriate to introduce method and material already here in order to link them together with the aim of the study.

**Method and Material**
The method of the study is a deconstructive analysis. A deconstructive analysis implicates a narrow work with the text and language of the UN documents on transitional justice. The
method is based on the presupposition that there are implicit assumptions that need to be articulated and challenged.

The UN discourse in the field of transitional justice has been normalised and that is why it may include some ideas and assumptions, that are taken for granted. Thus these positions need to be revealed with the help of deconstructive analysis: whether these assumptions may influence the practice of transitional justice and in what way.

Turning to the material of the study, four documents enacted by the UN are going to be briefly presented below together with motivation for their relevance for this study. It is necessary to mention that since all the documents are reports issued by the UN, they are also translated in all six official languages. This allows me to use at least two different versions in the analysis – reports in English and Russian. As Derrida claimed himself there is no perfect translation since some idiomatic expressions are impossible to translate in other languages. In the present analysis the use of different translations has contributed to a deeper analysis of the linguistic constructions and opened the possibility to illuminate meanings that could have been otherwise missing.


To begin with, the report of 2004 is called “the landmark” by the International Centre of Transitional Justice since it for the first time linked together terms “rule of law”, “justice” and “transitional justice”. The report released in 2011 is a follow-up report and presents the progress made in implementing the recommendations contained in the 2004 report.

The importance of the report from 2009 by the High Commissioner for Human Rights is marked by the fact that it has included national consultations in the transitional justice agenda and public

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8 C. Turner, M. Fischer and R. Teitel have pointed this in their research. The way the discourse has been normalised is going to be presented later in the text.


participation was seen as an essential element for the success of transitions.\textsuperscript{11} The last document, Guidance Note, represents a policy document of a more general character that was passed in 2010.

All these documents are presented at the UN documents database devoted to transitional justice under the Rule of Law section. These reports were chosen due to several reasons. Firstly, they have been referred to as significant documents that formed the UN transitional policy\textsuperscript{12}. Secondly, they are enacted in different time periods that allows to see the development of the concepts they suggest, especially, reports of 2004 and 2011. Finally, the reports range from being quite general to dealing with more specific issues that contributes to a more comprehensive picture.

Apart from these documents, different bodies and agencies of the UN have enacted a number of other documents related to transitional justice. Despite the fact that these documents are relevant for the field, they treat more specific questions, such as Security Council Resolution 1889 on Women, Peace and Security 2009 or Human Rights Commission Resolution adopting the Updated Set of principles for the protection and promotion of human rights through action to combat impunity from, 2005. Thus, they have not been chosen for the study, but may be considered for further research.

After a short introduction to the method and material of the study, I will move on to the presentation of previous research.

\textbf{Previous Research}

One of the central articles that has become the starting point for this paper is “Deconstructing Transitional Justice” by Catherine Turner\textsuperscript{13}. She points out that even though transitional justice is a newly established field there has been normalisation of both transitional justice mechanisms and their discourse. Turner seeks to question the assumptions behind transitional justice literature concerning the relationship between law, politics and justice.\textsuperscript{14} This triangle needs to be deconstructed since the role of law seems to be overestimated.


\textsuperscript{12} See for example Catherine Turner article “Deconstructing Transitional Justice” or International Centre for Transitional Justice.

\textsuperscript{13} Catherine Turner is a Lecturer in the Durham Law School and Co-convenor of Law and Global Justice at Durham, Durham Law School; her research interest lies in the field of transitional justice.

Another reason for deconstructing transitional justice is that it is grounded on binary oppositions, namely, war and peace, peace and justice, democratic regime and repressive one, good and evil, victim and perpetrator etc. According to Turner, deconstructible structures of différance already exist within transitional justice.

Turner describes the emergence of transitional justice in terms of a “triumph of liberalism”. Human rights law and international criminal law contributed to the establishment of the transitional justice concept. And after the end of the Cold War the concept rested on two pillars: justice for victims of human rights abuses and transition to democracy. Hence justice was only understood through the prism of criminal justice. Even though peripheral concepts as truth and reconciliation have broaden the narrative of transitional justice, the emphasis was still on the rule of law.

As mentioned before there has been remarkably little theorisation of transitional justice. Ruti Teitel, Arthur Paige and Thomas Obel Hansne have tried to present their visions of the conceptual history of transitional justice with quite different theoretical and methodological starting points. Ruti Teitel, in her article “Transitional Justice Genealogy” at the Symposium: Human Rights in Transition, presented the genealogy of transitional justice by dividing its conceptual development in three historical phases: post-war, post-cold war and steady-state transitional justice. What is at interest here is the third stage which Teitel suggests continues today. The third stage is characterized by the established discourse of transitional justice that, however, tends to be more and more disconnected from a nexus to political transition. External supranational institutions tend to involve and assist weak states in the transition. These two processes create on the one hand transitional justice in terms of victims’ justice and on the other hand transitional justice in terms of political decision-making.

Teitel claims that during the post-cold war period there has been expansion of category of transitional justice and further normalisation. Normalisation of transitional justice has been accompanied by the normalisation of international humanitarian law and further development of humanitarian interventions. One of the central symbols of the normalization is the

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15 Turner, Catherine, op. cit., p.196.
16 Ruti Teitel is the Ernst C. Stiefel Professor of Comparative Law at New York Law School and Visiting Professor at the London School of Economics; an internationally recognized authority on international law, international human rights, transitional justice, and comparative constitutional law.
establishment of the International Criminal Court that preceded the ad hoc international criminal tribunals in the former Yugoslavia and Rwanda.

Paige Arthur\(^\text{18}\) is another prominent researcher in the field of transitional justice and human rights. In the article “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice” she examines development of transitional justice as a field, but her approach to the history of transitional justice is different from Teitel’s. She considered transitional justice as a field that developed within the human rights movement, but changed the focus from the present human rights abuses to the past, and as consequence, the responsibility for these crimes.

Furthermore, Arthur claims that there is a particular and distinctive conceptual contents of transitional justice. The content included inter alia “transition to democracy” as a normative lens, it emerged on the international level and is characterised by a new human rights activity in “transition”. Arthur makes an important observation about the character of the transition or rather what was meant with the transition. Liberal democracy was taken to be a goal for new transitions that definitely has influenced the actors involved and their legitimacy.

Martina Fischer\(^\text{19}\) has conducted research in the sphere of peacebuilding, dealing with the past and reconciliation. Among her extensive publications on these topics it is possible to distinguish one article, namely, “Transitional Justice and Reconciliation: Theory and Practice” that is important for the overview of the transitional justice paradigm and research trends.

In the article Fischer presents an analysis of the establishment of transitional justice as a field and some problematic aspects of this establishment. In her review of the debate on transitional justice and reconciliation, Fischer points out some general trends of the transitional justice paradigm emergence, for instance, the expansion of the burden of the term “transitional justice”, the focus on accountability and institutional instruments, both tribunals and truth and reconciliation commissions.

According to Fischer, despite the new trends in broadening of transitional justice field and its discourses, there are still some research gaps and open questions. One of the main problems is that most of the studies are focused on legal mechanisms and mostly on the macro-level, without analysing effects of non-juridical mechanisms and local processes. There are gaps in the

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\(^{18}\) Paige Arthur is the Deputy Director of Institutional Development of International Centre for Transitional Justice.

\(^{19}\) Martina Fischer is a senior researcher at the Berghof Foundation and a director of the Berghof Research Centre for Constructive Conflict Management.
research when it comes to the nature of micro-level engagement in transitional justice, cultural phenomena, social discourse and national narratives. Thus on the one hand, transitional justice research can be characterized by its ambiguity, but on the other hand, it lacks a systematic empirical research that makes drawing reliable conclusions about the effectiveness of transitional justice mechanisms impossible.

Finally, Thomas Obel Hansen\textsuperscript{20} in comparison with Ruti Teitel mentions the risk of constructing a general theory of transitional justice since it may lack sensitivity to details and nuances of different circumstances. One of the reasons is that today’s scholarship on transitional justice is dominated by the assumption that transitional justice is about applying legal instruments in a democratic transition, that in turn would help to consolidate liberal values.

Apart from this Hansen suggests a division of transitional justice in several subcategories: firstly, whether transition took place or not and, secondly, whether transition was of liberal or non-liberal character, and as for the second group, whether non-transition was in deeply conflicted societies or in consolidated democracies. To sum up, Hansen has tried to show that transitional justice should not be assumed as only liberal transition and be solely guided by liberal values.

Previous research presented above shows that there are many questions within transitional justice theory and practice that can be interpreted differently. The field is relatively new and there is no systematized knowledge about the experience of transitional justice. On the one hand, the field needs to develop constantly in order to answer the challenges of the faced reality. But on the other hand, it may be valuable to reflect over the past development and explain it considering the contextual changes. The normalisation of the field that was mentioned by all scholars, shows that transitional justice should be deconstructed. Moreover, there has been a few attempts to integrate transitional justice with a specific philosophy of justice\textsuperscript{21} and this study seeks to partly fill the gap.

**Delimitation**

As mentioned in the introductory part of the thesis the field of transitional justice is broad and the previous research has identified a number of research gaps that should be addressed. The

\textsuperscript{20} Thomas Obel Hansen is Doctor in Law with focus on transitional justice, Aarhus University Law School.

The delimitation of the thesis has been done in relation to both theoretical framework and research material.

Firstly, from the theoretical point of view, Derrida’s notions of justice and forgiveness have been chosen in order to critically analyse transitional justice discourse. What’s more, the methodological choice is also determined by the theoretical notions. However, there are some concepts that could have been applied as well, for instance, Derrida’s concepts on event, trauma or autoimmunity. They were left behind, since the character of the research material has adduced to analyse transitional justice from a societal and political perspective, rather than from an individual one, where notions on event and trauma can be better elucidated.

Secondly, the research material has also been limited to the four documents issued between 2004 and 2011. Three reports have been presented by the Secretary General and one report by the UN High Commissioner for Human Rights. This is entirely determined by the mandate of the Security Council and Human Rights Council, making the difference in their positions visible as well. All the documents concern transitional justice and represent the UN perception on how these processes should take place, giving definitions to the key concepts and seeking to establish a common language for transitional justice.

Disposition

The thesis consists of five chapters. The first chapter has introduced the problem of study and defined the aim and research questions. It has also given some introductory remarks about the method and research material, followed by the situating of the study in the previous research. The chapter has also presented the scope and limits of the study. The second part gives a more narrow and detailed review of the theoretical and methodological approach, where deconstructive analysis is discussed as a chosen research tool, together with Derrida’s concepts on justice and forgiveness.

Chapter three presents deconstruction of the research material, where each document is presented separately in the chronological order. It begins with a description of how justice and reconciliation are perceived in the UN documents. Afterwards it continues with the presentation of the identified conceptual pairs and comments on the relationship within the text. Presentation of each document is concluded by a summary.

The presentation of the research material is followed by the analysis and discussion of the research questions, formulated in chapter one, namely, how justice and reconciliation may be understood. Chapter four seeks also to address the second aim of the study about the potentials
of deconstruction as a scientific method. Chapter five, the last chapter of the thesis, presents a final discussion and some reflections about the conclusions of the exercised study and suggestions for future research.

Chapter 2. Theoretical and Methodological Approach

The following chapter presents the theoretical framework of the study. It begins with a general review of poststructuralist ideas that constitute ground and motivation for further discussion of Jacques Derrida’s concepts. After this general review, the chapter addresses deconstructive analysis as a scientific method, which is often connected with the name of Jacques Derrida.

Poststructuralism

Poststructuralism being a part of social constructivist theory, is based on the assumption that social reality is a product of historical, political, cultural and social changes.22 Markus Herz and Thomas Johansson discuss the term “poststructuralism” in their book “Poststrukturalism – Metodologi, teori, kritik” and point out that it is problematic to define the term as well as to set boundaries for poststructuralist theory23.

Poststructuralist tradition is rather vague in a sense of defining a theory as a poststructuralist. In poststructuralists’ view it is not appropriate to use such categorisation and they avoid identifying themselves with a certain tradition. However, the use of discourse analysis, answering questions how, when and why a certain phenomenon takes place, including the analysis of language, use of categories, social practices and power relationships behind them24, has been characteristic for the scientific method of poststructuralists. The way poststructuralists work and treat research object has been well formulated by Herz and Johannson who note that poststructuralism is “a much-needed injection and vaccinations against an attempt to lock and categorise, give name, store and package the social reality in actual boxes”.25

Furthermore, identification and analysis of dichotomies have had a significant role in the development of poststructuralist method. Dichotomies, as conceptual division of one category

25 Herz, Marcus & Johansson Thomas, op.cit., p. 46.
into two subcategories, imply dualism between two classes, having as a rule a binary relationship. Sometimes dichotomies take a central role in thought itself.\textsuperscript{26}

Poststructuralists have strongly criticised the central roll given to dichotomies. Instead they have tried to deconstruct and demystify the central polarity of the past and present. Poststructuralists mean that usage of these terms as dichotomies both in speech and thinking processes lead to the preservation of these conventions.\textsuperscript{27} Derrida claimed that this binary opposition serves a function of one preserving its dominance at the expanse of the other. Thus dichotomy implies a natural distinction between good and bad, when the dominant category marginalize the excluded one.\textsuperscript{28}

Thus, the main point of departure for this study is, firstly, the assumption that the language of the research material is to be analysed, how categories and other conceptual constructions are used in the text and why. Secondly, the discourse of transitional justice has often been dominated by dichotomies and the postructuralist point of departure contributes to redirect focus from dichotomies to new interpretations of established social practices and discourses.

**Why Derrida?**

Turning to Derrida’s ideas, some words should be said about why Jacques Derrida and his concepts have been chosen for the study. To begin with, Derrida’s scientific method and the way he argued for the claims he made, was case-studies of western philosophical thought, e.g. Plato, Rousseau and Husserl. Language and linguistics have been central in all his works. The transparency of language and linguistical meanings was necessary for a foundational account to be given, that echoes with Descartes notion that only that, which is clear and present to my consciousness, is indubitable.\textsuperscript{29}

The centrality of language and writing may be explained by Derrida’s view on writing. He treated writing as a process of creating memory or trace. Language and writing is a kind of movement that on the one hand structures our life, and on the other hand, is constantly changing.\textsuperscript{30} Derrida adds that we should relate to this change and reinterpret both past and present. There is no clear and logical line in history, but history is full of contradictions and

\textsuperscript{27} Miegel, Fredrik & Schoug, Fredrik, op. cit., p. 15.
\textsuperscript{29} May Todd: “Poststructuralism”, in Clemson University, 2012, p.548.
\textsuperscript{30} Herz, Marcus & Johansson Thomas, op. cit ,p. 93.
ambivalences. He encourages us to shake our basic view on history and not try to develop a single theory.

Derrida, even though rejecting to refer to deconstruction as a method, had still been using a distinct approach, the way he read and deconstructed philosophical texts. That is why for the purpose of this thesis, deconstruction is treated as a research method and the term “deconstructive analysis” is used in order to distinguish between deconstruction as a theory and deconstruction as a method.

One of the main purposes of deconstructing Western philosophical thoughts for Derrida was to take responsibility for the developed discourses and social science that constitute the Western heritage. Even though the aim of the present study is not to deconstruct philosophical texts, but practically applicable texts, the purpose is the same: it seeks to questions the established patterns of transitional justice discourse.

After having presented motivation for the theoretical and methodological choice, it is time to turn to a more narrow review of the method of the study – deconstructive analysis.

Derrida on Deconstruction

The first time Jacques Derrida used the term “deconstruction” was in his famous speech at the John Hopkins University, called “Structure, Sign and Play in the Discourse of the Human Science”. This speech was further included in the collection of Derrida’s essays “Writing and Difference”. Derrida used deconstruction as a tool to criticize the language and heritage of human science and to raise questions about the responsibility for the discourse:

“Here it is a question of a critical relation to the language of the social science and a critical responsibility of the discourse itself. It is a question of explicitly and systematically posing the problem of the status of a discourse which borrows from a heritage the resources necessary for the deconstruction of that heritage itself.”

Deconstruction seeks not only to question the language and the discourse of the science, but challenge the status the science has received, and Derrida encourages to understand that and take responsibility for it through deconstruction. However, in order to understand what Derrida puts in the term, it may be more useful to approach another writing of Derrida, namely, “Letter to a Japanese Friend”:

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“What deconstruction is not? everything of course! What is deconstruction? nothing of course!”

This writing presents Derrida’s prolegomena over how the term “deconstruction” may be translated into Japanese. Derrida presents a negative definition of what deconstruction is not, or ought not to be. Firstly, Derrida claimed that deconstruction is not an analysis or a critique. It does not suggest putting a complex structure into simple elements. Secondly, deconstruction is not a method and cannot be transformed into method either. It does not imply any methodological instrumentality and cannot be considered as an act or an operation. Derrida claims that it does not mean that deconstruction is something passive, but it takes place as an event. Deconstruction cannot be a method of reading a text, for example, since deconstructive process comes from the text itself.

McQuillan suggests an interesting interpretation of Derrida’s claim that “deconstruction is not a method”. He states that the claim as such can be deconstructed, referring to the French formulation:

“La déconstruction n'est ni une analyse, ni une critique […] Elle n'est pas non plus une méthode avec ses normes et ses procédures, ses techniques de lecture et d'interprétation.”

where “pas” in “pas non plus une méthode” may be interpreted either as “not a method” or as “a methodological step”. Hence the duality in interpreting Derrida’s claim leaves the possibility to treat deconstruction as a method open.

In “The time of a thesis: punctuations. In: Philosophy in France Today” Derrida wrote:

“. . . I tried to work out [. . .] what was in no way meant to be a system but rather a sort of strategic device, opening onto its own abyss, an enclosed, unenclosable,

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36 In English “The deconstruction is neither an analysis nor a criticism ... It is not a method with its standards and procedures, its reading and interpretation techniques.”
not wholly formalizable ensemble of rules for reading, interpretation and writing"38.

That perhaps shows that despite his conviction and aspiration not to define deconstruction in terms of Western philosophical scholarly as a method, he cannot but suggest that deconstruction is a strategy with certain working instruments.

Furthermore, Gyatri Spivak in the translator preface to Of Grammatology claims “All texts . . . are rehearsing their grammatological structure, self-deconstructing as they constitute themselves”.39 Consequently, what the deconstructionist needs to do, then, is write, because in the final analysis, deconstruction is writing.40 Derrida calls deconstruction an event: “it is an event that does not await the deliberation, consciousness, or organization of a subject”.41 The process of deconstructing begins with a very act or reading, and then continues by writing and producing a second text. There can be no right or wrong deconstructive reading and writing, Spivak means, because every text contains the possibility of a number of deconstructive texts. That leads us to “the prospect of never hitting bottom”42.

Gary Rolfe with the help of Gyatri Spivak’s Translator Preface, suggests how deconstruction can be dismantled in a more concrete strategy. The first step is to locate the promising marginal text, identifying such elements as casual metaphors, footnotes, incidental turns of argument. Secondly, it is necessary to disclose the undecidable moment by exposing the practice of double coding in order to show that the thesis already contains its antithesis. The final step is to reverse the resident hierarchy, challenge contradiction and binary opposites, expose unconscious taken-for-granted power hierarchies within the text.43

Another example of presenting deconstruction can be found in Giovani Borradori’s book “Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida”, where deconstructive analysis is elaborated in a very concrete manner. The first step is to identify conceptual constructions of the field of inquiry. The constructions are often used in pairs. Therefore the second step is to analyse the relationship within these pairs and highlight possible

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43 Rolf Gary, op. cit., p.275.
hierarchical orders. Thirdly, deconstruction inverts or subverts the hierarchies. The aim of the third step is to show that the hierarchies reflect certain strategic or ideological agendas. Finally, a new concept should be invented in order to reform existing hierarchies and dichotomies.44 

To sum up, methodologically speaking deconstructive analysis is about the questioning of self-righteous positions.45 Questioning of philosophical claim in Derrida’s works does not seek to undermine philosophy, but to force these claims to take account of their contradictions and question their reflexive self-identity.46 For the purpose of this thesis it has been decided to use deconstructive analysis as a research method and apply it in a manner similar to what Rolfe and Borradori have suggested. After this presentation of the method, it is time to turn to Derrida’s ideas about justice and its relationship to law.

Derrida on Justice

To begin with, the way Derrida addresses justice is different from the way most philosophers and law thinkers address it. He does not seek to give an exhaustive definition or concept of justice, but regards it as a matter of praxis, answering the question how we in a given time and place can achieve justice.47 What’s more Derrida suggests a normative concept of justice, discussing the possibilities of justice and just laws. Justice is conceptualised as a normative idea that people should seek but can never possess.48 

In his lecture “Deconstruction and justice possibilities” in 1989 he presents deconstructive potential of justice and the complexity in the relationship between justice and law. By reading his philosophical essay “Force of Law”, it becomes apparent that Derrida elucidates the meaning of justice through a contrast with law.49 From the very beginning, Derrida distinguishes between justice and law (droit). He develops a description of this binary relationship, setting justice against law.

Initially, in his lecture Derrida points out that the language and denomination of law attributes are also significant. “To enforce the law” or “enforceability of the law” bears a strong

45 Herz, Marcus & Johansson Thomas, op. cit , p. 46. 
49 Valverde Mariana, op. cit., p. 658.
significance of law having force in itself and be legitimized by this very force. In turn, this leads to either a contradictory or weird relationship between justice and law or may even be no relationship at all.

The nature of the force of law is often associated with authority. However, it can also come from violence that creates a risk for injustice. The question Derrida asks is how to distinguish then between the force of law and violence, between the force that can be just or deemed legitimate, and the violence that is always deemed unjust. While in English there are two terms for violence and legitimate force, the German term “gewalt” may be translated as both violence and legitimate power or authority. This reveals an interconnection between violence and the force of law that is potential risk of injustice coming from the law.

Trying to define justice and its possibilities Derrida uses deconstruction, which enables him to show contradictions between justice and law, and thus, recognize injustices. Derrida goes further and claims that deconstruction is justice:

“Justice in itself, if such a thing exists, outside or beyond the law, is not deconstructible. No more that deconstruction itself, if such a thing exists. Deconstruction is justice. It is perhaps because law (droit) is constructible [...] and so deconstructible and, what’s more it makes deconstruction possible…”

This claim may be understood through the premise that justice is never objective and not obtainable but constantly requires deconstruction, questioning, destabilizing existing ideas of justice and their meaning. Deconstruction, according to Derrida, is a way to “address” justice and its problems. He specifies that it cannot be addressed directly, by obliquely, never able to thematise or objectivize justice: “…I cannot say ‘this is just’ and even less ‘I am just’, without immediately betraying justice, if not law (droit).”

Derrida refers to Montgaine and his notion of legitimate fictions of justice, i.e. supplement of true grounds for justice that are otherwise absent. Distinction between law or droit and justice, where justice of law is not actually justice, invokes “mystical foundation of authority”, that

51 Derrida, Jacques, op. cit., p.6.
53 Derrida, Jacques, op. cit., p.10.
Montgaince talked about: “One obeys them not because they are just but because they have authority”.54

Furthermore, according to Derrida, Pascal combines a notion of justice and force and makes force an essential predicate for justice, while he suggests to substitute “justice” with “law” here. Furthermore, Pascal criticizes the judicial ideology about justice and law for both hiding and reflecting the economic and political interests of the dominant forces of society. The emergence of justice and law is always a result of a performative force and that is why it is always an object for interpretation.55

Derrida points out that law is enforceable by definition and hence constitutes groundless violence. Derrida concludes that law is therefore deconstructable on the ground of its textual interpretations and legitimacy by definition. And the paradox Derrida would like to discuss is the deconstructible structures of law or droit that creates the possibility for deconstruction.56

While it is possible to deconstruct the law, it is absolutely impossible to deconstruct justice, but both these start points lead to the fact that deconstruction is possible through the experience of the impossibility: “Deconstruction is possible as an experience of the impossible, there where, even if it does not exist (or does not yet exist, or never does exist), there is justice.”57 Derrida refers to justice as an experience of the impossible. Justice claims and structures can only be based on the experience of the impossible or experience of aporia. While law is computable and predictable, it is impossible to compute justice and, therefore, a just or unjust decision cannot be guaranteed by any rules.58

Following this logic, law as a decision can never be just or unjust, hence the claim of law to be grounded on justice is impossible. How then should the role of law and its legitimacy be understood? Derrida’s answer to this question may be interpreted in the way of finding the right “address” or direction of justice, accordingly, the context. Justice has always an exact address that is unique and, consequently law may be understood as a way of addressing the justice. Finally, Derrida dispels the illusion of possibility to act in a just way or to make just decisions, but at the same time he tries to show the potential of this impossibility.

54 Derrida, Jacques, op. cit., p.12
57 Derrida, Jacques: op. cit., p.15.
58 Derrida, Jacques, op.cit., p.16.
Apart from that, Derrida problematizes language and subject of law. According to him it is deeply unjust to convict and judge a person who does not master the language of law. On the one hand, this represents a thesis that is contradictory to most legal systems in the world, where no one may be exempted from responsibility due to the lack of knowledge. Hence it opens a dangerous way of interpreting the law and responsibility, including justifying of unjustifiable actions.

However, this notion should probably be understood in a broader sense through connecting it with the power subject. Derrida’s discussion on “we people” as white Europeans representing the subject leads to the conclusion that language problems should not be understood as a language problems per se, but as a problem of constructed rules by a dominant group:

“And however slight or subtle the difference of competence in the mastery of the idiom is here, the violence of an injustice has begun when all the members of a community do not share the same idiom throughout”.  

The concept of decision has an important role in deconstructing justice. The process of deconstructing includes identifying a number of aporia, i.e. hidden controversies and incompleteness. Derrida presents the first aporia while deconstructing justice that show a tension between justice and law. It concerns the widespread assumption that being just or unjust requires freedom and responsibility for actions and decisions. Here he introduces some notions that he further links together with justice, namely, freedom, responsibility and decision. Derrida maintains that there is no contradiction between just and unjust, but there is a double movement. Firstly, the historical development of the notions shows the limitation and boundaries of justice and law. Justice is always directed towards singularity, despite its universal claim. Secondly, the notion of responsibility takes a central place in the understanding of justice and treating decisions either as just or unjust. The notion of responsibility in turn is connected with a series of other notions, such as freedom, consciousness, intentionality etc.

Moving forward to the concept of decision, in the first aporia mentioned above, Derrida does not mean that freedom is unlimited. It should be combined with the idea that a decision must follow established rules and laws. What’s more, droit requires constant interpretation and

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59 Derrida, Jacques, op.cit., p. 17.
60 Derrida, Jacques, op.cit., p.18.
61 Derrida, Jacques, op. cit., p.22.
62 Ibid..
63 Derrida, Jacques, op.cit., p.20.
restoration of the rules. Derrida’s stance towards “decision” comes into play. In his view since every case is different, every decision is different as well and must be interpreted in a separate way. A judge in order to be just must be free and responsible at the same time: free in interpreting and making his/her own decision, and responsible in showing respect to the existing rules and laws:

“To be just, the decision of a judge, for example, must not only follow a rule of law or a general law but must also assume it, approve it, confirm its values, by a reinstituting act of interpretation, as if ultimately nothing previously existed of the law, as if judge himself invented the law in every case”

That means doing two incompatible things at the same time. In Derrida’s view it is totally impossible, but in order for a decision to be possible, it must be impossible.

Derrida’s example about the judge who must make a decision, reveals controversy in his view on the subject. In “Remarks on Deconstruction and Pragmatism” Derrida states: “The decision, if there is such a thing, must neutralize if not render impossible in advance the who and the what. If one knows, and if it is a subject that knows who and what, then the decision is simply the application of a law”. Derrida seeks to undermine the assumption that it is a subject that makes a decision and if subject has a fixed identity then a just decision is impossible. It is mere repetition and extension of identity. The aspiration to challenge the legal order and the role of judges who are in a position of direct applying law invokes not only the impossibility of justice, but also the impossibility of decision.

Derrida talks about the paradox of the decision, that there is never a moment of a just decision. Decision may be legal or legitimate, in conformity with established rules. The paradox that decision cannot be just depends on the violent foundation of law and its institutions. Other examples of it, is the establishment of nation states and “l’état de droit”, or in English – rule of law. These two institutions or set of norms represent a well-established discourse, that is often taken for granted and rarely challenged.

64 Derrida, Jacques, op.cit., p.23.
65 Derrida, Jacques, op.cit., p.23.
68 Sokoloff, William W., op. cit., p. 345.
The concept of decision is connected with the foundation of authority that Derrida characterizes as “mystical”. Despite impossibility, decisions must be made in order for justice to be enacted. But the problem occurs about the grounds of decision that should be justified in order to be accepted.\(^{70}\) The authority on which law is grounded is non-legal, in a sense that it is prior to law.\(^{71}\) The paradox of law enforcement\(^{72}\) leads Derrida to a conclusion that both law and droit are based on violent grounds.\(^{73}\) The fact that law and legal institutions are results of a violent illegitimate act does not lead in Derrida’s deconstruction to total rejection, but rather to the questioning of the authority of law.

Decision, according to Derrida, is an instrument for achieving justice. It represents not only the final notion, but should include the process of getting new knowledge in making decision. The paradox is that decision must be immediate in order to be just - there is no space or time for deliberating or following rules. Derrida talks about a ghost of undecidability, mystery, even moment of madness in every decision.\(^{74}\) This immediate requirement corresponds both with the nature of justice and decision. Law is present, but justice is never present, it is always to come, Derrida claims.\(^{75}\)

One of the main conclusions Derrida draws is that justice must always be connected with legal and political debate, otherwise it would only represent a mad idea of undecidability. Despite its madness, the idea requires the ability to decide or to calculate both in law, ethics, politics, philosophy and many other fields. The calculation opens the doors for questioning, new interpretation and emancipation of ideas established in the power structures.

The second part of the Force of Law, reinterpretation of Walter Benjamin’s “Critique of Violence”, refers to the question of violence within the law. According to Derrida, Benjamin criticizes violence without rejecting it or giving it a negative evaluation, but through discretion and examination that in turn enables an assessment of violence.\(^{76}\) Benjamin distinguishes between two kinds of violence in law: the founding violence and the violence that conserves\(^{77}\) that is always present. The law’s interest is not only about taking a position in order to preserve

\(^{70}\) Sokoloff, William W., op. cit., p. 343.
\(^{72}\) Note: The paradox is about the ungrounded authorities giving birth to law, and consequently law being enforced ungrounded.
\(^{73}\) Derrida, Jacques, op. cit., p. 23.
\(^{74}\) Derrida, Jacques, op. cit., p. 24.
\(^{75}\) Sokoloff, William W.: op. cit., p. 344.
\(^{76}\) Derrida, Jacques, op. cit., p. 30.
\(^{77}\) Ibid.
itself, but to “monopolise the violence”. And this monopoly does not have as its aim to protect any legal purposes or justice, but it seeks to protect itself.\textsuperscript{78} The rule of law concept is an example of the monopolisation in action.

Furthermore, Derrida comes up with a conclusion that all revolutionary situations legitimates the use of force in the process of establishment of a new law of new states.\textsuperscript{79} That is the violence used in the times of transition in the name of justice is legitimised retrospectively by the new upcoming law – the past future. The establishment of a new state leads to the establishment of a new law that is always accompanied by violence.\textsuperscript{80}

What does Derrida seek to achieve when deconstructing justice in such an unconventional manner? Despite the abstractness of his ideas, Derrida is political and questions the violent structures and grounds behind the law and legality. In my interpretation it is these violent grounds that he wants to question and destabilise. By using logical impossibilities, as justice to be possible it must be impossible or decision to be a decision it should be undecidable, Derrida exposes the violence behind the established structures. It is not a questioning of their existence, but rather a questioning of the grounds they are embedded in. The present study is focused on the practice of the United Nations, hence the idea of subject and political structures within international community are relevant.

To summarize my points so far, Derrida’s notion on justice should be understood through the embedded paradoxes: justice is impossible and law or droit does certainly not correspond with justice, but the presence of law makes it possible to deconstruct justice. The experience of justice impossibility and deconstruction of law structures make it possible to deconstruct justice, hence approach it. Meanwhile, law structures are authoritative and political, hence grounded on the unspoken violence. They are also an object for interpretation and should be interpreted in every context separately.

What’s more, Derrida suggests the way to address justice as a normative ideal, namely, through the concept of decision. Even though decision must be immediate to be just, Derrida claims that behind every decision there should be a process of getting knowledge, interpreting, contextualising. Accordingly, justice should also be perceived as a process.

\textsuperscript{78} Derrida, Jacques, op. cit., p. 33.
\textsuperscript{79} Derrida, Jacques, op. cit., p. 35.
\textsuperscript{80} Derrida, Jacques, op. cit., p. 35.
The next concept that is going to be discussed, also reveals the potential of impossibility as an inherent element of the concept of forgiveness.

**Derrida on Forgiveness**

Moving forward, the following part is devoted to Derrida’s notions of forgiveness and reconciliation. These questions need to be addressed since they represent a significant part in the transitional justice discourse and will be understood through the prism of impossibility, alike justice and a just decision.

In his essay “On Cosmopolitanism and Forgiveness” Derrida discusses the dilemmas that are central for the contemporary transitional justice discourse, for instance co-existence of reconciliation and amnesty. In time of writing this essay, in the year 2001, the question of reconciliation and forgiveness in transitional justice has been brought to the fore.

Turning to the bullet idea of the essay and Derrida’s notion, true forgiveness consists in forgiving the unforgivable. Derrida claims that the act of forgiveness is difficult to measure and it is often being confused with other actions, such as regret, excuse or amnesty.\(^81\) In the essay Derrida refers often to the South African Truth and Reconciliation Commission as the most well-known example of reconciliation processes of our time. In his view it is also an example of forgiveness being limited to reconciliation and re-establishment of normality:

> “Each time forgiveness is at the service of a finality…each time it aims to re-establish a normality…by a work of mourning, by some therapy of ecology of memory, then the forgiveness is not pure. Forgiveness is not, it should not be normal, normative, normalising”\(^82\).

Giovanna Borradori criticizes Derrida’s concept of forgiveness, stating that his ideas were a reflection over a specific post-apartheid situation in South Africa and the way society has been managing it\(^83\). In other words, the concept may be limited when it comes to empiric ground, and conclusions are not universally applicable. However, reflections over the Truth and Reconciliation Commission in South Africa are worth considering in terms of transitional justice development and shift from retributive justice to restorative.

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\(^{82}\) Derrida, Jacques, op. cit., pp.31-32

In order to follow Derrida’s reasoning it is necessary to assume that there is the unforgivable and this is the only thing to forgive. This deconstruction of the concept of forgiveness denounces the following aporia: “forgiveness forgives only the unforgivable”. Giovanna Borradori calls this aporia for an “illogical proposition” since it can only apply to an instance of irreparable harm.

Another juridical concept, that of imprescriptibility has been linked with the notion of forgiveness by Vladimir Jankélévitch that Derrida approaches as a starting point in his discussion. Imprescriptibility in its essence denotes that there is an apocalyptic horizon of a final judgement. It leads Derrida to the questioning of conditional forgiveness and as a contrary – the demand for unconditional forgiveness.

The dividing of forgiveness in unconditional or “divine forgiveness” and conditional or “human forgiveness” has its roots in Kantian registers of the conditional and the unconditional, where conditional represents a kind of utilitarian concept and unconditional is an absolute imperative. Borradori, analysing the multifaceted aporia of forgiveness that unconditional forgiveness which forgives the unforgivable, says that this aporia is contradictory in terms. But Derrida himself claims that there is always possibility in the impossibility that gives chance for the impossible to come, thus chance for forgiveness to come.

Aside from Borradori, Edith Wyschogrod has also questioned Derrida’s stand on the forgiving the unforgivable and claimed that it may open the way for hopelessness. Wyschogrod suggests that Jankélévitch distinction between the unforgivable and the inexcusable, where inexcusable is based on the factual findings of guilt or innocence, is a way of softening Derrida’s position when the possibility of forgiveness is ruled out from the very beginning.

Another critique may be invoked by Panu Minkkinen who analysed the phenomenon of ressentiment and impossibility of forgiveness. While Derrida focuses on the impossibility of forgiving the unforgivable, he leaves the question of ressentiment and willingness or unwillingness to forgive rather obscure.

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84 Derrida, Jacques, op. cit., p. 32
85 Borradori, Giovanna, op. cit., p. 79.
86 Borradori, Giovanna, op. cit., p. 82.
The element of madness that has been already introduced in the discussion of justice, is also present in the notion of forgiveness. “Forgiveness is mad…and it must remain the madness of the impossible, this is certainly not to exclude or disqualify it”.\(^9\) Being an attribute of the pure forgiveness, it is connected with the idea of the unconditionality of forgiveness. It assumes that the fact, that the part to be forgiven does not show any feeling of fault or guilt, aspiration not to repeat the crime, the condition of punishment, is not relevant. Only under these “conditions” forgiveness can itself be unconditional and therefore pure. And Derrida claims that the juridical-political approach is not capable of addressing this sort of “madness”.\(^9\)

As mentioned above forgiveness is often confused with reconciliation. Nevertheless the language of forgiveness is often used in political rhetoric. In Derrida’s view neither amnesty nor reconciliation as political acts may result in forgiveness or vice versa.\(^9\) While reconciliation can be a political strategy, forgiveness should never be finalised or normalised this way. Reconciliation and forgiveness are two poles of something pragmatic or empirical on the one side, and ideal on the other. At the same time, Derrida means, it should not lead to the conclusion that there is no point in discussing forgiveness. There is definitely a necessity to refer to this ideal ethical vision of forgiveness in order to orient history and evolution of law.\(^9\)

This idea is perhaps one of the main conclusions of the deconstruction of forgiveness.

But why after all is Derrida’s concept of forgiveness interesting for transitional justice? Edith Wyschogrod states that in the contemporary world full of an unprecedented scale of armed conflicts, starvation, poverty, disease and other forms of ills pandemic, there is a need for new interpretations of forgiveness.\(^9\) Rebecca Saunders confirms also that issues of forgiveness has gained surprising prominence in transitional justice discourse today due to the impact of the South African Truth and Reconciliation Commission, but also due to critiques of retributive justice by educational and social psychologists.\(^9\)

The answer may also lie in Derrida’s discussion on interchangeable use of terms forgiveness and reconciliation as having a similar meaning. Derrida himself distinguishes these two terms. However, it is impossible to avoid discussion of forgiveness and reconciliation in today’s

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\(^9\) Derrida, Jacques, op.cit., p. 55.


\(^9\) Derrida, Jacques, op.cit., p. 51.


transitional justice discourse, especially, after the rise of truth and reconciliation commissions. Panu Minkkinen in his analysis of the politics of transitional justice through the notion of forgiveness, calls the work of truth commissions “corruption of transitional processes”. He means that truth commissions apply a conditional forgiveness approach, instead of what Derrida calls, namely, unconditional forgiveness. And when forgiveness takes on pseudo-legal forms, the pure forgiveness is corrupted. 95.

To sum up, the way Derrida interprets the notions of forgiveness and reconciliation will contribute to a more complex analysis of the way these notions are approached in transitional justice. Even though Derrida focuses mostly on forgiveness, rather than reconciliation, it may help to elevate differences between them and how these two notions are understood. Moreover, Derrida’s reference to different juridical concepts shows how specific legal instruments correspond with the ethical ideals. And primarily, it demonstrates the potential of these judicial concepts for further development.

**Application of Deconstruction**

Firstly, the postructuralist theoretical framework determines the way the research material is approached: the text of the UN policy documents are analysed as a reflection of the UN perception of how transitional justice processes should be led and organised, what spheres should be prioritized etc. What’s more the subject behind the policies, i.e. the UN is treated as the western subject. Despite its global character and world-wide representation, the values that the UN promotes and the power relationship within the organisation is embossed by the West.

Moving further to the research material, it is necessary to point out that Derrida used deconstruction mostly in order to analyse philosophical concepts, to examine them and determine what philosophy must hide in order to remain philosophy. The present study seeks to deconstruct transitional justice discourse, not through philosophical or theoretical texts, but by reading and analysing the UN policy documents. These documents are worth analysing not only due to the practical character and as a consequence application, but also because they are a reflection of the leading discourse in the sphere of transitional justice. By today they can be considered as a result of transitional justice development, the accomplishment of both the theoretical and the practical formation of the field.

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95 Minkkinen, Panu, op. cit., p.515.
At the same time, it is worth mentioning that Derrida himself was interested and partly engaged in reconciliation processes and commented on the development in the South Africa after the fall of apartheid regime and the work of the Truth and Reconciliation Commission. Hence his ideas about justice and forgiveness are applicable for the analysis. While the term “justice” is directly articulated, the term “forgiveness” is not present in the documents, but can be analysed through another concept – reconciliation, revealing the reduced interpretation of theoretical concepts.

Furthermore, Derrida has applied three languages and translations of the same realia in his own writings that helped him reveal specific connotations and interpretations. This analytical move is partly used in the present study, since the research material can be found both in English and Russian.

The application of deconstruction is exercised in the way that was described by Gary Rolfe with the help of Spivak and Giovani Borradori, that is in three steps that are repeated in the beginning of the next chapter.

**Chapter 3. Deconstruction of the UN Documents**

The following chapter is devoted to the analysis of four policy documents, enacted by the United Nations in the sphere of transitional justice. Before moving forward to the deconstructive analysis of the documents, it is necessary to describe the way justice and reconciliation are perceived in the research material.

**Perception of Justice**

To begin with, the report of 2004 has an aspiration to articulate a common language of transitional justice for the UN through identifying three concepts: “justice”, “the rule of law” and “transitional justice”. Even though these definitions are discussed later in the analysis, the definition of justice should be presented already here:

“For the United Nations, ‘justice’ is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions…”

The way justice is defined in this report is further used in other reports as well. The definition includes in itself different perspectives: on the one hand, the perspective focused on a single
individual, and on the other hand – the societal or community perspective, the importance of punishing the perpetrators, but also the focus on the victims’ interests. Despite the international character of the documents and the international norms on human rights, it is recognized that the concept of justice is rooted in national cultures and traditions that opens the way for applying traditional justice mechanisms.

According to the report of 2004 justice along with peace and democracy are mutually reinforcing imperatives, meaning that none of them should be excluded or prioritized over the other one. This premise is further confirmed and developed by all the reports. The report of 2009, for instance, discusses the past dilemma between peace and justice that by then is considered to be overcome. While democracy as one of the imperatives mentioned in 2004, is not present in the further documents, security agenda became a new issue linked together with peace and justice in 2011. The main purpose of presenting these mutually reinforcing imperatives is to describe a new vision of justice, namely, a more comprehensive and holistic approach and a broader notion of justice.

A broader notion of justice, in turn, can be understood in two ways. Firstly, it is both judicial and non-judicial processes and mechanisms that should be applied. And one of non-judicial mechanisms is a truth and reconciliation commission. This mechanism is presented as a complementary tool for justice. Secondly, it means that not only the violations per se should be addressed, but the root causes of conflicts and violations as well, including economic, social and cultural rights violations. What’s more, in the report of 2011 it is suggested that physical and psychological consequences of the violations should also be addressed.

Another aspect of a broader notion of justice includes the emphasis on domestic justice capacities and justice systems as the first resort, and international institutions, ad hoc tribunals or the International Criminal Court as complementary ones. The problem of lacking capacity on national levels is widely addressed in all four reports, in terms of lacking competence among professionals, resources, effective institutions and creditability towards them. Informal justice mechanisms are presented as an alternative in the post-conflict settings where these mechanisms

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are the only available. The report of 2011 states that the UN has increased its understanding of informal mechanisms, its potential and role, and seeks to assist linkage between informal and formal systems.

It is necessary to mention that all the reports include a gender perspective in terms of gender justice and “women’s justice” and address the special vulnerability of women during the conflicts, their suffering from different types of warfare and discrimination; necessity to support women’s access to justice and participation in the peacebuilding processes in line with Resolution 1325. The report of 2011 states that gender equality may be achieved through a greater access to justice. Gender justice is not a subject of this thesis and is not included in the deconstruction analysis, though it seems to be important to mention that the UN documents include gender perspective along with other perspectives.

Furthermore, according to the reports, justice should not only focus on the perpetrators, but need to be victim-centred. The victim-centred approach is articulated in “the right to justice, the right to truth, the right to reparations, and the guarantees of non-recurrence of violations”.99 The fact that victim-centred justice is emphasized in the documents may be interpreted in several ways. Firstly, the former dichotomy between retributive and distributive justice100 has been resolved mostly in favour of distributive justice. Secondly, the focus on victims and their suffering reflects the idea that there is a necessity to overcome past conflicts and find the way to reconcile victims and perpetrators, who most likely are going to live within the same community or state. Thirdly, it reveals the limitations of criminal justice processes: “to do the things that courts do not do or do not do well”101.

To sum up, the UN seeks to adopt a broader notion of justice, including different perspectives on the methods of achieving it. After the presentation of the way justice is approached in the reports, it is necessary to move further to the presentation of reconciliation that has been partly treated above.

**Perception of Reconciliation**
In the analysed documents reconciliation is first mentioned in the report of 2004 in the context of truth commissions as a complementary tool in the quest for justice and reconciliation. The

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100 Dichotomy concerns two views whether it is necessary to prioritize criminal justice and thus accountability of perpetrators, or the victims should be in focus that can be achieved through reparations compensation etc.

term reconciliation is not defined in the texts, but may be interpreted through the description of
the work of truth commissions and their role. The report states that the main functions of truth
commissions are to facilitate truth telling and investigate a pattern of abuses of human rights or
humanitarian law. Commissions represent “a public platform for victims to address the nation
directly with their personal stories and can facilitate public debate about how to come to terms
with the past”. The last words – “to come to terms with the past”, being a quite abstract phrase,
may be interpreted as a definition of reconciliation.

Even though the aspiration of the report of 2004 was to introduce a common language of
transitional justice and present its aims, reconciliation as one of the aims was first mentioned in
the report of 2010: “…transitional justice is the full range of processes and mechanisms
associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in
order to ensure accountability, serve justice and achieve reconciliation”. Reconciliation is also
named as “a broader objective” along with prevention of further conflicts and peacebuilding.\(^\text{102}\)

A broader notion of justice that was presented earlier, also includes achieving sustainable peace
and reconciliation. It is stated to be important to find the way how to assist societies devastated
by conflicts.\(^\text{103}\) More concrete, it is considered that reparations to the victims may facilitate
reconciliation and increase confidence in the state\(^\text{104}\) that is often lacking in the post-conflict
settings, where states have either committed crimes or let the crimes be committed.

And lastly, vetting the public service, i.e. identification and removal of individuals, public
employees who perpetrated crimes and abuses\(^\text{105}\), is also an important element of reconciliation
process. The measures for assisting the vetting procedures, namely, investigation, initiating
allegations and fair trial principles are presented in the reports.

Generally speaking, it is possible to identify four elements in the text that are aimed to facilitate
reconciliation: the establishment of truth, through the personal stories of victims and
perpetrators, participation of victims in the justice processes and having a public platform for
their voices, reparations, and finally, vetting the public service.

\(^\text{102}\) United Nations General Assembly: \textit{Guidance Note of the Secretary-General. United Nations Approach to
Rights and Reports of the Office of the High Commissioner and the Secretary-General. Analytical Study on Human
\(^\text{104}\) United Nations Security Council: \textit{The Rule of Law and Transitional Justice in Conflict and Post-Conflict
\(^\text{105}\) Mayer-Rieckh, Alexander and De Greiff, Pablo (eds.): \textit{Justice as Prevention: Vetting Public Employees in
Moving forward to the deconstruction analysis of the documents, it is necessary to return back to the strategy of deconstruction in order to present the structure of the chapter. Firstly, the analysis presents the conceptual constructions of transitional justice in the examined documents and analysis of the relationship within these constructions. Secondly, relationships within these constructions are interpreted. Finally, the most relevant and significant findings are summarized and discussed.

The chapter follows a chronological order, beginning from the earliest report, written in 2004. The analysis of every policy document begins with an initial presentation of general terms and concepts, followed by deconstructive analysis of conceptual constructions in the texts, which analysis will contribute to approach the questions of the study.

Report of the Secretary-General “The rule of law and transitional justice in conflict and post-conflict societies”, 23 August 2004

To begin with, the objective of the report is formulated in the following way: “to highlight key issues and lessons learned from the Organization’s experiences in the promotion of justice and the rule of law in conflict and post-conflict societies” 106. This report is remarkable in a sense that it confirmed the broadened mandate, linking together the goals of transitional justice with peace, democracy and consolidation of the rule of law. 107

According to the report the main lesson learned is the experience that no long-term peace is possible without, firstly, redress for past abuses by a fair justice and, secondly, without restoration of the rule of law. How can the terms “redress” and “restoration” be understood? Redress is often used as a synonym for compensation, remedy, reparation for wrongdoings, i.e., violations of law. And restoration can be defined as an act of bringing something back. Consequently, it is possible to assume what kind of situations/societies the UN seeks to approach: it presumes the condition of rule of law prior to the outbreak of war, followed by the violations of the laws and mass grievances. Hence, with the help of redress transitional justice processes seek to restore rule of law.

These societies are labelled as “war-torn societies” in the report and are generally characterized by the context of lack. The context of lack means that these societies suffer from key deficits: “a lack of political will for reform, a lack of institutional independence within the justice sector,

a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in Government, a lack of official respect for human rights and, more generally, a lack of peace and security”. These deficits should be addressed in order to establish rule of law reform. Rule of law reform may be interpreted as enacting new laws and reforming of system of law enforcing bodies.

Further the report defines three key concepts of the field of transitional justice: rule of law, justice and transitional justice. The aim of these definitions in the report was to articulate a common language of justice for the United Nations.

Looking closer at the definitions, according to the report:

“the rule of law… refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”\textsuperscript{109}.

What does this definition aspire to say? Firstly, there are subjects of the principle, that is, persons, institutions, entities, state; and secondly, these subjects have an obligation to follow the laws, independently of their status. The laws in turn are enacted and enforced by the state. These concepts sends us back to Derrida’s notion on authority and the force of law, specifically, an unspoken violence structure behind law. Hence, the rule of law may be interpreted as an aspiration to make violence more objective, putting the state in a position where it is subject to law itself.

The principle is referred to as the very heart of the Organisation’s mission, its essence. The definition includes also a number of principles necessary to ensure the rule of law, among others – supremacy of law. In the Russian translation of the report, however, rule of law is referred to as “verhovenstvo prava”, that is supremacy of law, without making a distinction between rule of law and supremacy of law\textsuperscript{110}. These two concepts are identified by each other, even though one represents a general principle on everyone’s accountability to law and the other one represents the idea that law has the highest legal force. The interchangeable use of these two

\textsuperscript{108} United Nations Security Council, op.cit., Art.3.
terms, rule of law and supremacy of law, reveals the implied meaning of law as having the highest force and being applicable to everyone without exceptions.

In context of transitional justice, rule of law means more specifically an idea that law is the means of achieving justice.\textsuperscript{111} Looking back at the history of the emergence of the field, which is often associated with the post-World War II situation and the Nuremberg and Tokyo trials, the international community was passing through some new changes. There was an urgent need to give an appropriate response to the German’s aggression and to the Holocaust, while the legal grounds in international law were missing. The perpetrators were accused and charged with the crimes that were not present in any international document. And according to Teitel that was the time when belief in law as a tool in addressing grave violations of human rights got its birth.\textsuperscript{112} Further codification of individual rights has strengthened the trend.

David Fergusson describing moral realism points out that during the Nuremberg trial the universality of moral knowledge was assumed: “Despite the absence of any positive law, prosecution of war crimes took place on the basis of there being natural moral truth which had been seriously violated”.\textsuperscript{113} The rule of law has become a self-righteous concept not only on the states level, but on the international level as well, and is sometimes abused by the international community. The concept enables to legitimate violence, justify humanitarian interventions and so forth. This accusation was presented after the World War II against the Allied, but it is still up-to-date, specifically in the case of enforcing a debated doctrine of responsibility to protect, when the fundamentals of rule of law, fair trial and presumption of innocence, are betrayed.

Hence, the internationalisation of the rule of law concept and the extensive focus of the UN on the rule of law measures may also reveal the dissemblance on the international level, especially when it comes to the body that are enabled to use force or legitimize it – the UN Security Council.

The second definition articulated in the report is justice that is defined as “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs”. According to the report the idea of justice has roots in all national

\textsuperscript{111} Turner, Catherine, op. cit., p.197.
\textsuperscript{112} Teitel, Rut, op.cit.
cultures and traditions and does not necessarily include only formal judicial mechanisms, but traditional mechanisms as well.

In the definition the justice, having at least two connotations, is only referred to as a system of judgement, and not as an idea of fairness. According to Longman Dictionary of Contemporary English (combining “justice” and “fair”): justice – the system by which people are judged in courts of law and criminals are punished in a way that is right or equal. This can be also confirmed by the Russian text of the report and connotations of the term “justice”, which can either mean the system of judgement or a fair/just solution of the case, where fair/just may mean impartial, veracious, based on legal and true grounds, right. Interestingly, these different meanings words “fair/just” correspond partially with the principles described in the rule of law: legal certainty, avoidance of arbitrariness.

Two connotations of the term justice – system of judgement and fairness, may be interpreted as two perspectives on justice. On the one hand, justice perceived by the state or international community as a legal concept of what is legally right, and on the other hand, justice is perceived as fairness by the people who experienced violations of human rights and injustices. This different interpretation of the term may result in ineffective formal judgements that do not correspond with the ideal of fairness and the needs of the victims.

Finally, the notion of “transitional justice” is defined. It includes “a full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”. The only characteristics of abuses that is present in the definition is that they are “large-scale”. While the Russian version uses the other term instead of abuses – “large-scale violations of law”, abuses do not necessarily mean the abuse of law, that may be interpreted as violations within the law or prescribed by existing law.

After this short presentation of key concepts, namely, rule of law, justice and transitional justice, it may be useful to turn back to the purpose of articulating a common language of justice in the report. It is stated in the report that these concepts are “essential for international efforts to enhance human rights, protect persons from fear and want, address property disputed, encourage economic development, promote accountable governance and peacefully resolve

conflict”. Consequently, all these efforts, goals and methods should be understood through the prism of these three concepts. Then how can these efforts, goals and methods be understood?

Firstly, rule of law, justice and transitional justice are three interconnected concepts, and the certain understanding and interpretation of one, leads to the certain interpretation of the other. Thus they present a holistic paradigm. This paradigm can in turn be characterized as a legalistic one. All three concepts are influenced by the idea that law is the only instrument capable of establishing equality, when equality itself is articulated as “equality before the law”, to gain fairness through the legal system of judgement, and to be a response to the former violations of law.

The definitions of rule of law and justice as a system of judgement do not give any description of the quality of the law. And when it comes to transitional justice as a response to large-scale past abuses, these abuses are also understood as violation of law, not mentioning the fact that abuses are often the result of the law. In turn it undermines the potential of these concepts and the potential of the law itself. Turner calls it the paradox that transitional justice rests on, namely, the fact that transitional justice seeks to address past failings of the law by replacing it with a new law.117

One of the parts in the report is named “Filling a rule of law vacuum”. It describes post-conflict settings as situation where legislative frameworks are often neglected, contain discriminatory provisions and do not fulfil the requirements of international human rights and criminal law standards. To put it another way, the legislation of post-conflict societies is neither adequate nor sufficient. In cases when adequate laws are enacted, they are not followed or applied. Another reasoning may be the lack of legitimacy within national juridical systems. Within this description two concepts may be identified: firstly, legislation, and secondly, legitimacy. Legitimacy represents the force that must justify the enactment and then enforcement of legislation. While the UN operations and missions may contribute with the necessary capacity in submitting a new legislation, the undermined legitimacy problem cannot be resolved by the outsiders. Legitimacy concerns inner societal issues: trust, fidelity and reliance. Rebuilding, if yet rebuilding is an appropriate word for something that may never have existed, is a long and time-consuming process.

What’s more, the paradoxical nature of rule of law and the UN perception of this notion is again confirmed by the acknowledgement that having a law, having an adequate law does not

117 Turner, Catherine, op. cit., p. 199.
necessarily imply conditions of justice and fairness. Until rule of law gets a central role in the process of establishing justice after conflicts, there would be a risk of returning back to the same conflicts.

The normative foundation is another basic part of the report. Along with the UN Charter, there are four pillars of the international legal system, i.e., international human rights law, international humanitarian law, international criminal law and international refugee law. The norms of international law, the normative foundations of transitional justice are characterized as “wealth of the United Nations” and universally applicable standards. The UN participation and as a result of application of these standards set some normative boundaries for host countries, inter alia, no capital punishment or no amnesties for genocide, war crimes, crimes against humanity and gross violations of human rights.

After presenting some key concepts of the report, let’s turn to the conceptual constructions that can be identified in the text. The focus will lay on the most relevant ones that can contribute to a better and deeper understanding of the UN discourse on transitional justice.

The first pair to be analysed is peace and redress:

“Our experience in the past decade has demonstrated clearly 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…”

As mentioned above in describing the objective of the report, the Secretary General claims that a long term peace requires redress. This creates a relationship that perhaps reflects a hierarchy structure, where an overall aim is a long term peace, but it can only be achieved through redress. At the same time, redress in itself cannot lead to a long term peace. The term long term peace or even peace are not defined. While having such a big focus on redress as a necessary element for peace, leads to a conclusion that not having redress, not paying compensations to the victims, not initiating investigations and trials against the perpetrators, increase the risk for a new outbreak of conflict.

Another two pairs are interconnected in the following way: it is said in the report that prevention should be prioritized over cure, seeing prevention as the first imperative of justice: “Of course, in matters of justice and the rule of law, an ounce of prevention is worth significantly more than

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a pound of cure”119. Prevention of the conflicts is linked with the idea that root causes of conflicts should be addressed.

The importance of prevention is lifted up by the significance of approaching the root causes of the conflicts. Addressing the root causes such as inequality, previous injustices, abuses of power etc. includes perhaps both cure and future prevention, and cannot be divided among one of those. Furthermore, prevention without cure may be interpreted as a certain idea of reconciliation, however, it should probably be interpreted slightly different, as the UN’s future role in conflicts prevention and the necessity to take actions before the outbreak of mass violations. Interestingly, the idea of prevention of conflicts and articulation of the root causes is not linked to the rule of law concept and what’s more may be interpreted as contradictory to the imperative of the rule of law. Contradictory in a way that the rule of law concept assumes that mass atrocities are result of law violations, while here it seems to be accepted that the root causes may be embedded in the law itself.

The importance of addressing the root causes seems not to have been obvious before the report was written, in contrast with security needs and addressing previous grievances. Addressing the causes in a legitimate and just way, the presence of both these adjectives, leads to a conclusion that they are neither equivalent nor self-implied. Legitimate, meaning acceptable by law, does not necessarily includes the idea of being just or fair. Consequently, the law does not necessarily mean just or fair. But contrasting just and fair, the same way Derrida contrasted justice and droit, allows to deconstruct the law.

To sum up, the report from 2004 has introduced a common language for the key concepts of transitional justice: rule of law, justice and transitional justice itself. The articulation of the common language turned out to be slightly different in English and Russian translations, which can question the whole idea of common language for transitional justice, when different translations of the UN documents leave space for different interpretations of key concepts and principles.

The identified conceptual constructions: peace and redress, prevention and cure, legitimate and just as well as deconstruction of the key concepts, have showed the paradoxes of the rule of law concept that has a central role in the discourse, and a different understanding of justice in the report.

Office of the United Nations Commissioner for Human Rights (OHCHR) is supporting transitional justice processes from a human rights perspective. In the report they present an overview of the OHCHR activities in the field of transitional justice, giving concrete examples of peacekeeping and political missions. Based on the examples, the OHCHR draws conclusions about the lessons learned and the spheres that should be developed further. Some general leitmotiv is presented below.

To begin with, what characterizes the content of the report is a new understanding of justice. The notion has become broader and seeks to approach not only justice to victims of past abuses, but establishing sustainable peace and reconciliation. Establishment of sustainable peace requires addressing the root causes of conflicts and violations of all rights: economic, social and cultural. The idea of peace has also been broadened and is not reduced to the negative peace that is the absence of hostilities and ceasefire, but is considered as a positive peace with restoration of relationship, change in attitudes and fulfilling the needs of the population\textsuperscript{120}.

Two terms that are used in order to describe justice and the role of transitional justice, are peace and reconciliation. Turning to the Russian version of the report\textsuperscript{121} or translation of these two words in Russian, an interesting fact can be discovered: the Russian words “mir” meaning peace and “primirenie” meaning reconciliation are cognate words from the morphological viewpoint and are etymologically linked. Morphological construction often reveal semantic similarities. The concept of reconciliation or “primirenie” has its root in the concept of peace or “mir”, that may interpret peace as a precondition for reconciliation.

Later on, the past dilemma between justice and peace is considered to be dissolved. According to the report the UN treats peace and justice as two elements that are mutually reinforcing, promote and sustain each other. Interestingly, the dissolution of the dilemma and change in the international perception is articulated in reference to amnesties: “The growing realization that

\textsuperscript{120} Galtung, Johan: \textit{Theories of Peace: A Synthetic Approach to Peace Thinking}, International Peace Research Institute, Oslo, 1967, p. 19.
\textsuperscript{121} Совет по правам человека Организации Объединенных Наций: \textit{Аналитическое исследование по вопросам прав человека и правосудия переходного периода}. Ежегодный доклад Верховного комиссара по правам человека Организации Объединенных Наций и доклады Управления Верховного комиссара и Генерального секретаря. A/HRC/12/18, 2009.
justice and peace are mutually reinforcing is reflected in current international law and United Nations policy on amnesties.”  

The policies on amnesties state that amnesties are not permitted for war crimes, crimes against humanity, genocide, gross violations of human rights or serious violations of international humanitarian law. This total prohibition has its origin in, firstly, the victims right to an effective remedy and, secondly, the right of victims and societies to know the truth about violations.

In order to understand the chain of the argument (peace and justice – prohibition of amnesties – victims’ rights) it is necessary to approach the essence of the past dilemma between peace and justice. In the former debate focused on the dichotomy between peace and justice, the supporters of the legalist approach considered criminal justice as an appropriate tool for addressing past grievances, thus prioritizing justice over peace. It could contribute to the stigmatisation of the elites who perpetuate conflict and separation of individuals from collective guilt, hence breaking the cycle of violence, while the others were critical about the criminal justice capacity to address these questions and achieve peace, claiming that justice should follow rather than precede the consolidation of peace. The dichotomy and the fixation on the dichotomies were overcome and that led to the broadening of the discourse, where peace and justice were not put in a contradictory relationship, but as mutually reinforcing.

The absolute prohibition of amnesties for certain types of crimes enumerated before, made it possible to prioritize peace, but at the same time guarantee that the perpetrators of the most serious crimes would be prosecuted.

What is more, the report clarifies how the term “transition” is understood in the UN policies. In the section concerning disarmament, demobilization and reintegration, it states that support should be given in the states transition from violence to peace. The way in which the term “transition” is used sets boundaries for the application of transitional justice policies towards other forms of transition.

Generally speaking, it is possible to state that in the majority of the policies the focus lies on the questions of justice, not transition. It is widely discussed how the past abuses and atrocities should be dealt with, what mechanisms may be used and what support should be given to the

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123 Fischer, Martina, op. cit., p.409.
states. In contrast to that, very little is said about the transition and how it is understood within the UN. On the one hand, leaving this question open creates a broader space for the application of transitional justice policies to different contexts of transition, but on the other hand, which seems to be more likely the case, there is a certain perception, a view on the transition that is implicitly present in the UN discourse.

According to the report transition is understood as a transition from violence to peace. Thomas Hansen points out that the orthodox perception of transitional justice is limited to the liberal transition, while he identifies transitional justice in both liberal and non-liberal contexts and transitional justice without fundamental regime change in either deeply-conflicted societies or in consolidated democracies. But let’s focus on the first distinction: both the international community and transitional justice scholarship have predominantly been preoccupied with the cases of liberal transition, where the new regime is supposed to be more committed to the principles of democracy and the rule of law. Hansen gives such examples as South Africa, Eastern and Central Europe and Latin America, putting them against Rwanda, Nicaragua, Uzbekistan, where transitions are non-liberal.

In the UN discourse on transition the characteristic of transition as liberal or non-liberal is not articulated. The absence limits the possibility to discuss the challenges of transition, tension between democracy and human rights on the one hand, and nation-building, reconciliation and security on the other hand.

Furthermore, conceptual pairs identified in the text of this report are of quite general character in comparison with the previous report of 2004. They raise the fundamental questions about the relationship between human rights and transitional justice, justice and peace, rights of victims and rights of societies, national peace and international justice.

Firstly, the human rights approach to transitional justice is special in a sense that all the other reports come from the Secretary General, and not the High Commissioner for Human Rights. While other reports link together transitional justice and rule of law, this report assumes a human rights perspective. How then may this perspective be understood?

In the report human rights are mentioned in different forms, as a special component of peace missions, as a perspective and as an approach. However, it is not explicitly explained and that leaves room for interpretation. Furthermore, the violation of human rights is named as a root

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125 Hansen Thomas Obel, op. cit., pp.4, 9, 11.
cause for conflicts. The transitional justice field has its roots in the human rights movement according to Arthur Paige. During the establishment of the field there has been a shift from addressing the present human rights problems to the addressing the past violations, especially related to political transitions.126

Another construction of interest is the naming of rights of victims and rights of societies. There has been a contradistinction between the individual right of a victim to redress and the truth and the collective right of society to know the truth about the violations. The existence of individual and collective right causes a different scope of the consequences in terms of rights implementation. In the section of the report concerning the rights of victims and societies, there is a reference to the Basic Principle and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The Guidelines define the term “victims” that may explain the presence of both victims and societies as holders of the right to know the truth.

The definition reads as follows:

“… victims are persons who *individually or collectively* suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”127

As it has been marked with cursive above, victims are presumed to have suffered both individually and collectively. But if in case of individual victims, the implementation of the right to know the truth may take a form of police investigation and further trial, in a case of society, it cannot be limited to the same instruments, but may also invoke the necessity of more overall mechanisms, as documenting history, official acknowledgement and so forth.

The question of the past dilemma between peace and justice was linked together with the UN total non-recognition of blanket amnesties and the limitation of the scope of the permitted amnesties. In the same section it is noted that “states have the duty to combat impunity and ensure effective investigations and prosecutions of those responsible for serious violations of international law” which is followed by the next conceptual pair: “The simultaneous pursuit of national peace processes and international justice is further grounded in experience”. As a result, there are international laws that are violated, and when it comes to the peace processes, they are labelled as national, while justice is labelled as international. Why?

In this very construction some assumed and perhaps unexpected distinctions comes to the surface. On the one hand, it seems the UN perceives its own mission in assisting the exercise of justice, calling it international justice, while the peace processes are left for the national mandate.

It can be further developed in the next pair: constitutions and peace agreements. Both constitutions and peace agreements in such a context seek to establish peace on the national level. These two documents may have different nature and character, but in the post-conflict settings they are often combined and sometimes are interchangeable. In the text of the report three examples are given: the Constitution of South Africa, the Darfur Peace Agreement and the Nepal Comprehensive Peace Agreement, that similarly regulate and give protection to economic, social and cultural rights, exercising as a result the same function.

To sum up, the report from 2009 addressed the issues of transitional justice from a human rights perspective, bringing a new broader understanding of justice, and discussing the dichotomies peace and reconciliation and peace and justice. One of the important provisions the report mentions is the reference to transition as a transition from violence to peace. The human rights perspective of the report is expressed in the addressing rights of victims and rights of societies, as well as questions of national peace and international justice.

**Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, March 2010**

The next document, Guidance Note was enacted in 2010 and represents a document of a more general character. It provides the guiding principles for the approach to transitional justice. The document is important first and foremost since it defines transitional justice. The definition

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reads as follows: “transitional justice is the full range of process and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”\(^\text{129}\). On the one hand the aim of transitional justice has already been mentioned in the definition, but on the other hand it develops further and states that transitional justice is a critical component for strengthening the rule of law.

It is clearly stated in the document that transitional justice consists of three components: accountability, justice and reconciliation. At the same time transitional justice is a component of rule of law. Transitional justice seeks not only to strengthen rule of law, but re-establish it. The usage of the verb to “re-establish” denounces a presumed idea about the rule of law as an original condition and probably the only possible.

Furthermore transitional justice has a broader objective, namely, prevention of further conflicts, peacebuilding and reconciliation. Interestingly, reconciliation is named both in the definition of transitional justice as an aim and further as a broader objective. With a main focus on judicial processes and components, insufficient articulation of the concept of reconciliation allows us to question the grounds and effectiveness of naming reconciliation as a component of transitional justice and whether there is a serious aspiration to contribute to reconciliation processes.

Beginning with the guiding principles, they include several provisions about the compliance with international norms and taking account of the political context and unique country context. This leads to a question: to what extent can international norms that are presumed to be universal be an appropriate normative foundation in different contexts, and how is the uniqueness of contexts is approached? It may interpreted in a way that the international norms themselves do not take account of the unique contexts. Transitional justice processes have often been accused of using a blue print method in different contexts and that is why the approach of unique country context must be more précise, how the processes of facing the past can be applied to different historical and regional situations, taking into account given cultures and societal dynamics.\(^\text{130}\)


\(^{130}\) Fischer, Martina, op. cit., p. 423.
Another important aspect is mentioning that there are both juridical and non-juridical processes and mechanisms. Why is this distinction important? The definition of transitional justice, as mentioned before, includes accountability, justice and reconciliation. And while accountability and justice require judicial mechanisms, reconciliation requires non-juridical mechanisms as well. Looking at the list of the mechanisms: “prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultation”, there is a tendency for judicial mechanisms domination.

It is one again confirmed that peace and justice are mutually reinforcing imperatives. However, the report states that whether or not pursue accountability and justice should never be a question, what should be decided is how and when the appropriate measures should be taken. But when it comes to peace and how peace may be reached, there are no concrete mechanisms or processes suggested. Once again the report takes account of accountability and justice, leaving reconciliation and peace behind. The question may be asked whether a mere statement that “peace and justice are mutually reinforcing imperatives” is enough or if it is a formal answer to the critiques directed against transitional justice mechanisms, that has neither significance nor consequences.

Moving forward, rule of law and regard to traditions is the next conceptual construction: on the one hand, it is claimed that national and international efforts are directed to enhance the rule of law generally, and on the other hand, it is necessary to give due regard to indigenous and informal traditions for administering justice or setting disputes. Together with the acknowledgment of the vital role of the traditional mechanisms, there is a tendency to include these informal mechanisms in the general notion of the rule of law.

Finally, before moving to the next document, a question concerning victims’ rights should be discussed. It is undoubtedly accepted that violations of human rights constitute the root causes of conflicts and repressive rules. These violations should be addressed through both judicial and non-judicial processes, where non-judicial processes are mostly represented by the work of truth commissions. Addressing the rights of victims in the frames of truth commissions is articulated by the right to truth. This articulation induces a number of questions: whether the right to truth can be found in international law and if so, what are the implications of elaborating truth as a legal concept.

Firstly, there is no specific international convention that recognizes the right to truth, but the right is often referred to as a part of victims’ right to effective remedies. The explicit reference
to the right to truth can be also found in the Additional Protocol I to the Geneva Conventions and the International Convention for the Protection of all Persons from Enforced Disappearances:

“Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.”

Secondly, among the implications of recognizing the right to truth is the emergence of “legal truth” and truth per se, where legal truth represents a product of dispute settlement. But how is truth per se then to be understood? The concept of truth closely interrelates with reality and an agreement of what constitutes an objective reality. Contrary to that, Derrida claimed “there is nothing outside the text, all is textual play with no connection with original truth”. While Yasmin Naqvi in “The Right to the Truth in International Law: Fact or Fiction?” suggests to interpret Derrida’s claim as the right to truth is reduced to the right to an official statement about what happened, a matter of the use of language by the state, I understand it rather as the truth stated in the text does not correspond with original truth and original truth is not even possible since it is always impeded by different interpretations.

Thus, Guidance Note referring to the truth in the context of right concept brings to the fore an important question about what kind of truth is meant in the report and what kind of truth is needed in the post-conflict stage, how factual truth (based on forensic and other factual findings) may relate with what Fischer calls narrative and dialogical truth, and what restorative truth could look like. The questions that should still be addressed are how and when societies are ready to discuss and come to a necessary degree of consent about the facts and their interpretation.

To sum up, the report of 2010 enumerates the components of transitional justice: accountability, justice and reconciliation, mostly approaching the question of accountability. What’s more, the aim of transitional justice is articulated as “strengthening the rule of law”. There is a tendency to focus on judicial processes and mechanisms, leaving reconciliation unaddressed. Finally, the

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134 Fischer, Martina, op. cit., p. 421.
right to truth is presented that invokes an interesting discussion about the conceptualisation of truth as a legal concept and co-existence of legal truth or factual truth with different interpretations of truth.

**Report of the Secretary-General the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, 12 October 2011**

The Report of 2011 sought to evaluate the progress made after the implementation of the report of 2004 that has been discussed before. This fact brings a retrospective to the objectives that were set and the results achieved. Since it is a follow-up report, there are many references to the former formulations and initiatives that had been undertaken during the previous seven years.

According to the report the articulation of a common language for “justice”, “rule of law” and “transitional justice” together with a normative foundation for the UN assistance have resulted into “a robust and coherent discourse”. What’s more, it is stated that approaches in strengthening rule of law have become more clearly articulated. There are both challenges and opportunities for the rule of law sector. The very introductory part of the report puts rule of law in the central position.

Later on it is said to be “increasingly recognized that States marked by ineffective governance, repressive policies, poverty, high rates of violent crime and impunity pose significant threats to international peace and security”\(^1\). This formulation invokes at least two questions: firstly, who has recognized that, and, secondly, what kind of states are meant. If we turn our look at the real politics, even the state of affairs in 2011, it is hard to imagine that the global South that is often associated with ineffective governance and so forth, represents a threat to international peace and security, rather the opposite. The UN perception of threat to international peace and security reveals the hierarchy position in international affairs and its inequality.

Furthermore, the report recognizes transnational organized crime as a threat to peace and security, development and the rule of law. Organized crime challenges not only international peace and security, but the states as well: “Networks of organized criminal groups are challenging the State’s monopoly on the use of force. Law enforcement authorities can lay behind organized crime groups in organizational skill, employment of new technology and

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networking"\textsuperscript{136}. Based on these formulations, rule of law is challenged by transnational organized crime and states are often incapable of acting against it through the law enforcement, but law enforcement and rule of law principle are still considered to be the most appropriate response to it.

Since the most common examples of transnational organized crimes are piracy and illicit trafficking, the report points out statelessness as a significant source of forced displacement and violations of human rights, that is often being a part of the named crimes. The report calls for prevention of statelessness and respect of the human rights of statelessness persons. Not undermining the importance of the named provision, it is necessary to discuss the implications of statelessness.

Statelessness means the absence of citizenship, that is any juridical link between state and individual. Consequently, an individual is deprived of any juridical protection on behalf of the state that in turn leads to violations of human rights. However, the concept of human rights within international law is based on the idea that an individual as a human being, not as a citizen, is enabled to certain human rights and liberties. Therefore articulation of statelessness as a source for human rights violations shows the importance of the institute of citizenship and the juridical nature of the states’ protection, as if it was not enough to be a human being.

Since the report of 2011 is the last one to be presented and since it’s the follow-up report, many of the presented conceptual constructions have already been named, but some of them can still be mentioned. To begin with, the role of transitional justice initiatives is described in the following way: “Transitional justice initiatives promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance”\textsuperscript{137}. Apart from that, transitional justice initiatives are said to “become well-established components of the wider United Nations rule of law framework and indispensable elements of post-conflict strategic planning”\textsuperscript{138}. It is clear that transitional justice is linked to the notion of the rule of law. Despite quite juridical nature of transitional justice initiatives, seeking to establish accountability first and foremost, the task of the initiatives is meant to be a bit broader.

\textsuperscript{136} United Nations Security Council, op. cit., Art. 47.
Turning back to the definition of transitional justice, presented in the report of 2004: “The notion of “transitional justice” … comprises the full range of processes and mechanisms associated with a society’s attempts to come to turns with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”, it becomes obvious that while accountability and justice, meaning most often accountability, are widely discussed and approached in the report of 2011, the last element of transitional justice, i.e. reconciliation is totally missing.

Another pair presented in the report is the connection between national ownership and political stability: “There is a growing evidence that transitional justice measures that evolve over time and involve strong national ownership result in greater political stability in post-conflict settings”139. At the same time, national ownership or domestic capacity is often mentioned in the context of political will or rather the absence of it and inability to handle complex cases: “National institutions often do not have the capacity and resources to handle complex cases involving crimes of an international character or involving high-level suspects”. It is also mentioned that in these cases, the international community stands ready to respond, which seems to happen often. Nevertheless, the initiative to support national ownership and national capacity should be considered as a positive development, as long as it leads to real actions.

Furthermore, the next construction concerns truth commissions and creditability: “Experience reveals that truth commissions can quickly lose creditability when not properly resourced, planned and managed, thereby undermining the very confidence they are intended to build”. This statement is further developed by the examples that can lead to the loss of creditability: timing, political manipulation and insufficient efforts. According to the report of 2004, truth commissions represent official non-juridical fact-finding bodies. Interestingly, the creditability of judicial mechanisms, such as national courts, hybrid and international tribunals, the ICC is not discussed, however it seems that they may come across the same obstacles. The questions that are discussed when it comes to tribunals of different types, concern costs, access, national capacity-building and so forth. Thus the creditability of truth commissions is even more undermined by this clear contrast and favouring of juridical mechanisms.

The next provision is constructed in the form of a consequence link: “United Nations experience demonstrates that reparations may facilitate reconciliation and confidence in the State, and thus lead to a more stable and durable peace in post-conflict societies”. The construction consists of three elements: reparation – reconciliation, confidence – stable and durable peace. Reconciliation that was missing before, comes into play and may be achieved by reparations. Returning back again to the report of 2004, where transitional justice was defined and what’s more other concepts (rule of law and justice) were defined as well, reconciliation has never been defined. Consequently, one of the ways to understand what the UN means with reconciliation is interpreting the named provision. Reparations may result in reconciliation, that is economic compensation of victims’ suffering may result in reconciliation. It is inappropriate to draw a conclusion that reconciliation is only achieved by economical compensation for victims, but it stills reveals a possible reasoning in this question.

Moving forward to the next pair that concern access to courts and access to justice: “Access to courts is often obstructed by prohibitive costs, corruption and sociocultural biases. Among the most significant developments since 2004, United Nations access to justice programmes have assisted tens of thousands of vulnerable individuals in obtaining justice”140. This provision exemplifies the reduction of the notion of justice to juridical accountability, while in the Report of 2004, justice is referred to as an ideal of accountability and fairness, for the interests of victims and for the well-being of society at large. The absence of the ideal of fairness and especially the societal perspective on the well-being through the notion of justice seems to be common for all policy documents.

To sum up, the report of 2011 as a follow-up report refers back to the aim of the report from 2004 that is articulation of a common language for transitional justice. There are some new conceptual pairs that have been recognized through the report, namely, the connection between ineffective governance and threat to international peace and security, and finally, transnational organized crime and statelessness. These questions are new and are not present in the former reports.

The creditability of truth and reconciliation commissions have been questioned and brought to the fore, making the difference between judicial and non-judicial mechanisms more visible. A question of reconciliation has been partly addressed through the provisions on reparations, but it can be confirmed again that the fact that reconciliation is not defined in any of the documents,

revealing insufficient regulation of the issue. The presence of both “access to justice” and “access to courts” may be also interpreted as a reductionist view on justice.

**Chapter 4. Understanding Justice and Reconciliation**

After deconstructing the texts of the four reports, with reference to the aim of the documents, key definitions and the identified conceptual pairs that are relevant for the study, it is time to turn back to the questions of the study and approach them. Firstly, the study seeks to answer how justice may be understood in the UN documents through the prism of Derrida’s deconstruction of justice, i.e. how justice is presented in the documents, what underlying features are present in the UN discourse. Secondly, the study seeks to answer how reconciliation may be understood through Derrida’s notion on forgiveness.

Apart from these research questions that refer to the first aim of the study - critically analyse the core assumptions and discourses within the field of transitional justice, the present study seeks also to test deconstruction as a scientific method and its applicability, potentials and challenges.

**Justice**

This part presents the result of the deconstructive analysis of the documents and the trends that have been identified. Firstly, two leading themes are discussed: the rule of law concept and the reduction of justice to accountability. It is followed by discussion on subject and decision. Finally, an understanding of reconciliation is going to be discussed.

**Role of Law**

To begin with Derrida referred to justice as a matter of praxis and the central question for him was how justice can be achieved and it’s potential. Deconstruction of the UN policy documents in the present thesis has sought to visualise and question the way justice is articulated and understood within the UN. The analysis has revealed the complexity of the relationship between justice and law that Derrida was concerned about. What’s more, the complexity is actualised even more in post-conflict settings after mass violations of human rights.

Within the discourse of transitional justice the complexity of the relationship between justice and law takes a form of two main problems: firstly, the predominance of the rule of law notion and, secondly, the reduction of justice to accountability and juridical mechanisms. These problems may be explained through the binary relationship between justice and law.
Derrida describing the relationship between justice and law, talks about the force of law as an inherent element of law per se. But in order to talk about justice, it should be contrasted with droit (law). In the analysis of the UN documents it has been showed that the notion of rule of law has the main role in the whole discourse of transitional justice and according to Derrida it is not unproblematic. But how can rule of law be understood through the concept of force of law?

Firstly, in my understanding the rule of law represents the next stage, the extension of the force of law, since it already takes for granted the very existence of law, and proceeds with an aspiration not only to enforce the law, but to enforce it in an equal manner, putting even the authority behind the law (first and foremost, state and state institutions) in the position of the obliged subject.

Secondly, the use of another term in the UN documents – “the supremacy of law”, which in the Russian translation has shown to be the same as the rule of law, may open the space for another interpretation. Supremacy of law is mentioned as one of the principles of the rule of law that reveals the idea that law is considered to be the superior tool for addressing justice issues. That in turn corresponds with the notion of enforceability of the law: the law as having a superior force in itself and this is legitimized by the force.

In his essay, Derrida urges that the force of law may come not only from authority, but from violence and result in injustices. In the context of post-conflict settings the situation, when violence has been a result of application laws is common. The injustices have been legitimized and either exercised or let happen in the name of law. This reveals the paradox that the rule of law is grounded on and it’s paradoxical role in transitional justice.

Both within the theory of transitional justice¹⁴¹ and within the policy documents, there is a tendency to speak of law as an instrument for moving from the state of war to peace, from partisan politics to the rule of law. Turner calls the post-Cold war period the period when “law and legalism began to colonise the field” (field of transitional justice). From the narrow definition of transitional justice as a judicial response to human rights abuses, the scope of the field has expanded, including also political and social transformations, post-conflicts reconstructions. The upcoming debates characteristic for the period concerned the opposition

¹⁴¹ Turner, Catherine, op. cit., p. 194.
between justice and peace or truth and justice. But gradually these oppositions have been overreached and the narrative of transitional justice has become broader.\textsuperscript{142}

This reference to Turner’s analysis is important to mention since she names two reports of the UN that are examined within this study, namely, the Report of the Secretary-General on Transitional Justice and the Rule of Law in Conflict and Post Conflict Societies 2004 and 2011. These two reports reveal the shift in the UN understanding, linking together democracy and peace.\textsuperscript{143} She characterizes the explicitly increased focus on the rule of law as an adoption of a broader modus operandi, though I would suggest that it reveals the opposite tendency: the domination of legalistic approach in the field.

According to Derrida the paradox of law enforcement in relation to decision reveals that not only law, but legal justice are based on violent grounds, and rule of law is an example of the violent action. The paradox of the rule of law within transitional justice can be formulated in the following way: through the concept of rule of law there is an aspiration to “address past failings of the law by replacing it with law”\textsuperscript{144}. This paradox is very evident in the analysed reports which call for the restoration or re-establishment of the rule of law, filling the vacuum of rule of law.

When it comes to the rule of law in general and its legitimacy in international law, Dencho Georgiev makes a reasonable point that it is necessary to distinguish between the ideal of an international rule of law and its incapability to provide a useful approach to structuring international society. The ideal of rule of law implies objectivity, a counterweight against arbitrary power. And even though it is unclear why and how the rule of law should imply a general independence of the sphere of law from politics, the symbolic value of the rule of law is still worth to preserve. “If and whenever this ideal is used to hide political arbitrariness and the reality of power relations then it is the use of the ideal and not the ideal itself that should be the object of deconstruction.”\textsuperscript{145} Thus, the rule of law ideal should not be abandoned, but it should be subject to deconstruction, the same way justice should be deconstructed according to Derrida.

\textsuperscript{142} Turner, Catherine, op. cit., p. 196.
\textsuperscript{143} Op. cit., p.197.
\textsuperscript{144} Op. cit., p.199.
Referring back to the introduction of the thesis and discussion on the problems involved in
different levels of theoretical and practical development, it is possible to confirm at least one of
them – a clear dominance of legal instruments in comparison with political and social ones.
Transitional justice remains a resolutely legal field. One of the explanations for this is that
transitional justice has emerged as a response of international criminal law to human rights
abuses, where justice was strictly understood as “criminal justice”.146 Another conclusion that
can be drawn is that theoretical development should not only catch up with the practical
development, but be ahead of it, in order to be able to influence and address the existing
problems and gaps.

*Justice as Accountability*

Apart from the dominance of the rule of law concept, there is a tendency to reduce justice to
juridical accountability which in turn is also connected with the role of law in transitional justice
discourse.

To begin with, Derrida does not distinguish between justice and fairness, but he articulates two
other terms – justice and droit. Since in the texts of the UN documents, justice is defined through
the ideal of fairness and accountability, it may be reasonable to conclude that justice should be
interpreted as fairness and droit should be interpreted as accountability. Hence, justice in the
sense of fairness is impossible, while justice in sense of accountability is possible. Through the
experience of impossibility of fairness or putting in Derrida’s term the impossibility of justice.

The reduction of justice can however be explained by the nature of the analysed documents.
But on the other hand, since these documents represent guidelines for how transitional justice
should be performed, there is no space left for another discussion of justice. What are the
preconditions of discussing justice as fairness, and not only as a juridical term: system of
judgement and accountability?

Derrida claims that it is law that is computable and predictable, not justice, but through the
articulation of justice as accountability and as a set of mechanisms and processes, there is an
aspiration of turning justice into something computable and predictable. While it is
unreasonable to expect discussion of justice impossibility or fairness in the UN policy
documents, since these are the texts that are meant to be applied practically and the
philosophical discussion would rather confuse those who should apply these policies in their

146 Turner, Catherine, op. cit., p.196
everyday work, what should be questioned here is: whether justice is the right term to use, whether transitional justice is about justice or about addressing the past wrongdoings in a legal sense.

**Subject**

The issue of the subject of law and power subject should also be addressed within transitional justice policies. As it was shown in the previous research, the problem of external supranational institutions involvement has been addressed. The analysed documents have shown that the involvement is sanctioned and legitimized by the UN.

The description of the societies and their capacity to implement reforms and address past injustices contribute to the assumption that international community, often represented by the West, ought to involve and assist these countries. The involvement may be exemplified through the establishment of international tribunals, assisting in vetting procedures, implementing rule of law reforms and so forth. The problem, apart from those discussed above, is lacking description of how transition is understood within the UN discourse on transitional justice. A number of scholars have criticized that there is an assumption that transition implies transition to liberal democracy and hence, the international involvement having a political agenda.

What’s more, the way ineffective governance and threat to international peace and security are linked together opens another possibility for international involvement, actualising inter alia the Responsibility to Protect doctrine. The recent example of responsibility to protect in Libya expose the way international community under the command of the West violates the rule of law concept.

**Decision**

The concept of decision comes to the fore every time justice is to be practiced, it is the instrument for approaching justice, for finding the right address or direction. In the context of transitional justice decisions that are taken in order to punish the perpetrators, negotiating peace and coming to the terms with the past are crucial for the future of states and societies.

The discussion of decision and questioning of possibility of a just decision is even more complicated in the context of transitional justice. Derrida refers to the law and rules guiding decision-making and to the identity of the one to make a decision (for example, a judge): whether these decisions may be free, i.e. not influenced by the fixed identity and in obedience with the established rules. Post-conflict settings and transitional justice context is often
hampered by the fragile judicial system and sensitive relationship between the formed conflict sides. Question of identity is not only limited to one dimension of the identity, being a judge - but is complicated by the belonging to the former conflict sides, perpetrators or victims.

Despite the fact that the trend to focus on accountability and institutional instruments and dominance of the rule of law concept has been confirmed by the analysis, I argue that transitional justice is a relevant field for discussing justice and different ways of understanding and interpreting it. The field has already experienced the shift from retributive justice to distributive, from sole focus on the perpetrators to the needs of victims and society, from perceiving truth and justice or justice and peace as dichotomies to understanding that they are mutually enforcing. Criminal justice, both in national and international levels, has proved to be insufficient and which has even been confirmed by the UN. Thus, the shifts shows the potential for further development in the field and for a broadening of the justice concept not only de jure, but de facto as well.

**Reconciliation**

To begin with, in applying Derrida's notion of forgiveness, it becomes evident that reconciliation represents a conditional forgiveness, while unconditional true forgiveness, forgiving something that cannot be forgiven, remains unapproached. Derrida approaches forgiveness in his essay “On Cosmopolitanism and Forgiveness” in the same way he approaches justice, as an experience of the impossible. But despite its impossibility, the question of forgiveness and reconciliation as a conditional forgiveness should be addressed.

The analysed documents suggest the following mechanisms: amnesties, national consultations, truth commissions, vetting etc. These acts are aimed to achieve reconciliation, to come to terms with the past. According to Derrida these mechanisms represent the way to limit forgiveness to reconciliation and the juridical-political approach is not capable of addressing this sort of “madness”, forgiving the unforgivable. Derrida calls the work of truth commissions for a corruption of transitional processes. He means that truth commissions apply conditional forgiveness approach, instead of what Derrida calls, namely, unconditional forgiveness. And when forgiveness takes on pseudo-legal forms, the pure forgiveness is corrupted

But I suggest that the fact that forgiveness is limited to specific procedures in the UN documents, should not undermine the result, if these procedures succeed and reconciliation is achieved. After analysing the documents and the UN discourse they represent, the most serious
The problem that should be addressed is not about the limitation of forgiveness or that “forgiveness is not pure”, but rather the insufficient addressing of the question of reconciliation in general.

The questions of reconciliation and an ethical ideal of unconditional forgiveness should come to the fore to a bigger extent than it does now in order to orient history and evolution of law.\textsuperscript{147} It concerns first and foremost the theory of transitional justice that should address these questions and as a consequence influence the practical development.

\textbf{Deconstruction: Potentials and Challenges}

To begin with, Derrida has been rejecting calling deconstruction a scientific method. But for the purpose of this thesis deconstruction was articulated as deconstructive analysis and was approached as a research method following the steps suggested by Borradori and Rolfe. Why was this important? The absence of instrumental applicability of deconstruction results in ambiguity of what message deconstruction wants to deliver. At the same time Derrida encourages us to take responsibility for the discourse, for the language and the way it structures our life. In order to question self-righteous positions and take responsibility it is necessary to have methodological instruments. Otherwise we can find ourselves reproducing new structures and avoiding any responsibility at all.

Deconstructive reading and deconstructive analysis of the text enabled me to notice the patterns of the UN discourse on transitional justice. While it has been possible to criticize the established structures, the language of the discourse, is it really possible to take responsibility for that discourse in case of applying the methodological steps? Taking responsibility, I believe, invokes the question of the political potential of deconstruction.

In the 1980s Derrida was asked about the political potential of deconstruction, he admitted then that there was a gap between deconstruction and his own modes of conventional political participation. Deconstruction, however, can never be described as something conventional. Some critics claimed that deconstruction lacks political and ethical elements, while the other commentators insisted that deconstruction has both, but could not succeed in explaining how.\textsuperscript{148} Deconstruction implies a work with texts and language. “There is nothing outside the text; all is textual play with no connection with original truth”\textsuperscript{149} Derrida claims. After the completed analysis it is possible to claim that deconstruction has served its function while reading the texts

\textsuperscript{148} Sokoloff, William W., op. cit., p. 342
and using tools in order to deconstruct the texts, that is, enabled me to answer the research questions and achieve the aims of the study.

But rephrasing Derrida, I suggest, there is something outside the text as well. There are constructions, change in discourses and hierarchies that cannot be explained only by referring to the texts and the language constructions, but historical, political and social aspects should be taken into consideration, in order to be able to explain discourses and their development. I tend to agree that deconstruction contribute to visualising and challenging political and ethical dilemmas, though the lack of pragmatic element results in that what is found in the text, may remain in the text, if not approaching what is outside the text.

Furthermore, translations of the research material in English and Russian opened a possibility to work with the text from the perspectives of two different languages. Derrida claimed: “…translation, however excellent it may be necessarily remains a translation, that is to say an always possible but always imperfect compromise between two idioms” (while talking about “to enforce the law”, “enforceability”).\(^{150}\) However, the imperfections of translations, especially, when it comes to the official documents, that must be translated in different languages, having exactly the same meaning, is rather a potential, than a problem for a deconstructive analysis.

The advantage of using different translations of the same documents, in English and in Russian has also shown to be an important tool in revealing some of the relationships that would otherwise be taken for granted. It is possible to imagine what other nuances of other translations could have brought.

**Chapter 5. Final Discussion**

The thesis has sought to examine the discourse of transitional justice through the critical analysis of the UN documents in the field. The point of departure for the study was the normalisation of the UN discourse in the field of transitional justice and that is why it is in need for deconstruction.

The purpose of this thesis has been to examine what core assumptions underlie the UN discourse; how justice and reconciliation may be understood with the help of Derrida’s

concepts. Through the application of deconstructive analysis I have tried to illuminate and problematize the UN perception of the instruments for achieving justice and reconciliation in post-conflict settings.

Theoretical and methodological approaches have been discussed in chapter two. Deconstruction analysis was presented through Derrida’s concept of deconstruction and for the purpose of the study it was decided to use “deconstructive analysis” as a term in order to dissociate from Derrida’s claim that deconstruction is not a method and should not be treated as such. Subsequently, interpretation of deconstruction by Rolf and Borradori was applied for the analysis of the research material.

The research material included two reports from the UN Security Council, one report from the Human Rights Council and a Guidance Note of the Secretary General. These reports have been chosen due to their relevance for the aim of the study, broad character and time representativeness (from 2004 to 2011). Despite a broad content of the documents, I have focused on the general provisions about justice and reconciliation and those notions that were connected to these two concepts in the texts of the reports.

The research material has been presented and analysed in chapter three, beginning with a general presentation of how justice and reconciliation are described in the UN reports. Deconstructive analysis included a discussion on the key terms in the documents and subsequent presentation of the identified conceptual constructions in the text. The terms and constructions that were presented have been chosen due to their relevance for the aim and research questions of the study.

The previous chapter was devoted to answering the research questions based on the founding of the deconstructive analysis. Firstly, the way justice is understood within the UN discourse, the implicit connection with the rule of law concept and reduction of justice to accountability, leaving the ideals of fairness behind. This findings has confirmed the trends of transitional justice that were identified within previous transitional justice research.

Secondly, the concepts of subject and decision have also been problematized as a part of the justice concept. I argued that there are premises in the UN discourse that allows the legitimization of international involvement and thus reflects an imbalance in the power relations between those who seek to assist and those in need of this assistance. International involvement is not unproblematic, since it often involves other political agendas, than just giving assistance, and in a transitional justice context is connected with the view on transition.
The question of transition is left open in the reports, without any clear presentation of how it should take place, what kind of transition is meant and so forth. Consequently, the way transitional justice is presented in the documents give the impression that they seek to approach only justice, in extraordinary circumstances, that is after mass violations of human rights, such as crimes against humanity, war crimes, genocide. But transition, the second element of the field is not approached.

In most of the cases as it was noticed by Hansen, transitional justice is often understood as a transition from an authoritative regime to a democratic one, most often meaning liberal democracy for the West. The idea that human rights abuses have taken place in the consolidated democracies or that these abuses may be addressed without regime change is missing in the UN discourse.

Apart from this, the question of different contexts and the UN roll in the processes is not clear. On the one hand, the UN claims to support the national initiatives, but on the other hand it often describes the national systems as lacking capacity and in need of international assistance. Thus, the documents give a wide room for manoeuvre when it comes to peacekeeping operations. The local level is not addressed at all in the documents, but within theory of transitional justice it has been mentioned that a bottom-up perspective is more advantageous in post-conflict settings and local mechanisms should be approached more widely.

Trying to comment the questions stated in the introduction, that is what we mean when we talk about transitional justice, it is possible to conclude that in most cases it is juridical accountability of perpetrators that dominates discourse, though victims’ rights and needs, the idea about reconciliation and truth-seeking come also to the fore.

The field of transitional justice is still quite new, and there are still many questions that should be addressed. These questions are of both legal, political and ethical character. Below there are some suggestions for future research in the field.

**Further Research**
The present study has dealt with two key concepts within transitional justice – justice and reconciliation. It has turned out that the concept of justice is closely connected with the concept of rule of law in the studied documents, and hence, the theoretical framework concerning rule of law can be further developed and problematized, not only in the context of transitional justice, but in international politics in general.
Furthermore, some of the research gaps and open questions have already been presented in the introductory part, such as the absence of systematized empirical research, especially on the effects of different mechanisms, a micro-level perspective and so forth. The present deconstructive analysis of the documents has not addressed these questions, but had an aspiration to challenge the well-established discourse on transitional justice within the UN.

In the future the same research questions may be approached through applying another methodology or theoretical points of departure. The present study has a narrow focus on the texts of the UN documents, but the question about the UN discourse may be analysed differently, for instance, by case-study of the UN participation in peacekeeping missions, democratisation programmes or establishment of international or hybrid tribunals. The study may be complemented with interviews with UN representatives, local authorities or NGOs.

Reconciliation and different ways of achieving it are still the questions that have not properly been addressed. While reconciliation is a broad concept, it includes inter alia an element called truth-seeking and truth-telling, that can further be examined. One of the ways to do this is to focus exclusively on the concept of truth that is present in the UN discourse and is often limited to the legal concept of truth. The problem of the implications of establishing a legal concept of truth and its relation with various philosophical concepts may be a subject for further research.
References


