ADJUDICATING TRAUMA IN INTERNATIONAL COURTS: A DUTY TO THE VICTIMS OF CRIMES AGAINST HUMANITY

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ABSTRACT

This paper aims to discuss, using an interdisciplinary point of view, how international courts build, through judicial proceedings, the memories of victims of crimes against humanity, symbolically regaining their human condition. Firstly, it defines the concept of trauma as described by Caruth, Felman and Edkins and addresses the issue of recognition and its relation with the overcoming of violent experiences. Authors such as Friedlander, Lacapra and Seligman-Silva are brought to the theoretic framework of analysis to explain how political violence and grave human rights violations limit the possibilities of representation and narrative in traumatic contexts. This paper argues that trials work as a symbolic space for victims to interact and confront the political violence and their perpetrators. The judicial procedure builds an official narrative of the traumatic experience, inserting victims in a bigger context that helps make sense of their suffering, therefore, restoring them from their isolation into a broader political community. International Criminal trials have, in that sense, not only an obligation with punishing perpetrators, but also an obligation towards victims and the political communities destroyed by violence.

Keywords

ICJ; memory; Balkans; trauma.

1. INTRODUCTION

The crimes against humanity and genocide express the annihilation of an individual; they are crimes which impairs the idea of humanity, confronting the victims with their superfluidity and with the possibility that their lives might be eliminated without any legal or political interference. Their life is bare, killable, and disposable in the hands of the state (AGAMBEN, 2011)[1].

Generalized attacks, which are most of the times orchestrated by the state engaged in atrocity policies against its own civilian population, confronts us with the limitations of the state institutions when the violence of civil wars is triggered.

In popular imagination and even in many contract theories, the state arises and has its *raison d'être* in the protection of its population. Criminal and systematic policies, perpetrated by the representatives of those who have the duty to provide security, infringe this logic of protection. The institution which previously represented safety and protection becomes terror, violence, and abandonment.

A criminal policy of systematic attacks against the civilian population, perpetrated by the state, an institution that exists to guarantee the safety of its citizens, is responsible for a significant portion of the trauma suffered by the victimized population. In the symbolic universe of the individuals, the state exists to protect them, as well as the police and the family. In the words of Edkins (2003, p. 4)[2], for the event to be considered traumatic,

> It has to involve a betrayal of trust as well. There is an extreme menace, but what is special is where the threat of violence comes from. What we call trauma takes place when the very powers that we are convinced will protect us and give s security become our tormentors: when the community of which we considered ourselves members turns against us or when our family is no longer a source of refuge but a site of danger.

This vulnerability in the face of the state demonstrates the precariousness of the trust in

the safety of the world and creates a traumatic experience in the individual who endures it.

The word trauma originally referred to an open wound in the body, but later became to mean an open wound in the mind which discontinues the experience relating to the time, the world and the "self" (CARUTH, 1996)[3]. It is like a scar or mental wound, caused by the rupture of the mechanism that allows individuals to understand the world and to locate himself in it.

The contact between the violence of the political world and the superfluidity of the human condition triggers an institutional violation of trust, breaking the social, legal and community ties. The victims become isolated from the rest of the community that does not share with them the same experiences.

This absence of connection between the victim and the world, this isolation typical of the survivors of traumatic experiences, may spread in societies which undergo grave political violence, which becomes a serious problem in the perspective of identity formation and post-conflict social reconstruction (HUMPHREY, 2002)[4]. The victims lose trust in the world and in political, legal, and social institutions, and it is not possible to reconstruct a political and legal community if its members feel that they do not pertain to a common history.

Overcoming political traumas is an important part of conflict resolution and social reconstruction. The so-called transitional justice tackles this issue and deals with the notion of narrative and memory construction in order to ensure the trauma processing and the remaking of social ties. For the memory construction process to make sense, it must involve society as a whole and also the state.

The so-called Truth Commissions have been working as *fora* in which the experiences are registered, giving voice to the survivors who can see their stories tied in a common memory. A historical narrative that reintegrates the victims is formed.

Despite the success of the Truth Commissions regarding conflict transition, they cannot impose punishment. In fact, the victims are confronted with their tormentors, but watch them walking away freely, which might promote a revictimization.

International justice appears as an alternative to judge crimes that involve grave human rights violations committed during times of conflict. The competence of international courts derives from the fact that these crimes are so repulsive and abject that they excel the body of the victims to affect the whole international community, all the men and women, in what is most dear to them: their humanity.

An international trial has a practical bias. In general, the states affected by conflicts which lead to crimes against humanity or genocides are failing (ROTBERG, 2004)[5], which means that their institutions are not capable of minimally maintain political or legal stability, hence local punishment is either impossible or, at least, complicated.

More than a problem of physical and organizational infrastructure in the local and internal courts, there is a legitimacy deficit in these trials for the population persecuted by the state. The idea that the same state which massacred its population will judge the agents who have perpetrated the atrocity policy on its behalf arises suspicion and, frequently, impunity.

The impossibility of punishment faced by local courts could be solved by an international trial, although there is no punishment inflicted, either by a national or by an international court, capable of punishing these crimes,

To bring to justice these cases of generalized violence might be an unsurmountable challenge if we think strictly in positivist terms of investigating responsibility and applying law. However, if we distance ourselves from a pragmatic domain and start to analyze the symbolic aspects which involve a trial, we can begin to understand the complex relation among international trial, trauma and post-conflict society reconstruction.

Initially, an international trial is used to demonstrate that a specific act violates the international community as a whole and their authors must face humanity, which is represented in the international court. This instance does not represent ideologies and speaks for every human being outraged by such violence.

Secondly, the international justice constructs a narrative about the conflict, connects data, memories, and stories, and forms a coherent timeline, which intends to express the truth of the facts, the "official version" that might (or not) be used to contribute to the

pacifying of that society, filling in the blanks left by the trauma experienced.

Therefore, the aim is to investigate this symbolic role played by the international courts, which, more than punish, construct narratives and might contribute (or not) to overcome the trauma.

2. THE COURTS AND THE RECOGNITION OF THE VICTIMS

International trials involving crimes against humanity and genocide deal with what is most sensitive in Law: its limits of action. This refers to the confrontation between Law and its impossibility, its weaknesses. The relation between politics and Law becomes unsurmountable when we evaluate this type of trial.

The international legal proceedings need to tackle problems such as victim recognition, memory formation, trauma, a long-desired peace, and overcoming war. These issues shake the foundations of International Law, still attached to a positivist and voluntarist perception.

Post-conflict social restructuring has been a concern for the so-called Transitional Justice, embodied in the Truth Commissions. The Judiciary, unfortunately, has been avoiding a more serious and profound debate about these issues, seen as alien to Law. This cleavage between the legal world and the rest of the Humanities, this pure theory of law (KELSEN, 1994)[6] removes the Judiciary from that what might be its most important role: to contribute to overcoming conflicts.

The Truth Commissions deal with reconciliation and society restructuring through the victim recognition, giving them a symbolic space, which allows them to tell their stories, to socialize their pain and to connect with other victims and the audience. This speech act assists the victim isolated in his pain to belong once again to the community, sharing his experiences with others, experiencing, belatedly, the grief that had been denied to him. Based on victim recognition, who shares his suffering, the social ties broken by violence and trauma are restored.

Similar to how a Truth Commission works, why not conceive that an International Court, which intends to be a pacification instrument, may perform this task? Since one of the main elements of the traumatic experience is, in fact, the break of institutional trust, there is nothing more symbolic than the manifestation of an institution such as the international judiciary.

The need for the international judiciary to recognize the victims, however, is not something new. The International Criminal Courts (ICC, ICT for the former Yugoslavia and ICT for Ruanda) and Human Rights Courts, such as the Inter-American Court for Human Rights, have been using this argument in their decisions (CANÇADO TRINDADE, 2007; 2013)[7]. The effective participation of the victims of grave violations in regional Human Rights courts is something worth indicating. Nonetheless, the model of the regional courts specialized on the theme is not the rule.

The international judiciary oscillates between state protection and victim protection. In this regard, the International Court of Justice, the international system's main court, has repeatedly chosen the prevalence of state sovereignty in detriment to the protection of individuals.

Given the significant symbolic role of international trials that deal with the issue of grave Human Rights violations, it seems worth studying the International Court´s stances when faced with questions relating to Human Rights violations.

3. TRAUMA AND TRIAL: THE PROBLEM OF TESTIMONIES

To tell the story of a crime against humanity or genocide is a challenge that many areas of knowledge face.

Trauma literature, which stems from psychology and psychoanalysis, has been used by authors of International Relations Theory and International Political Theory to understand major historical massacres, such as the Holocaust, Rwanda and Yugoslavia. Among others, authors such as Jenny Edkins (2003)[8], Luckhurst (2008)[9] and Maja Zehfuss (2007)[10] have addressed this subject.

The role of an international trial is simple: it establishes a narrative about the matter, categorizing actions, defining them in closed, intelligible, and typical criteria. In spite of this, it is not possible to study the narrative developed by the International Court of Justice on genocide without resorting to the literature on testimonies, representations and trauma.

The most important bibliography relates to the Holocaust. The *Shoah* represents trauma beyond comparison in international politics and it is impossible today not to refer to these works in order to approach the object of this article, i.e., the narratives constructed by the Court.

Traditionally, historians have focused the analysis on the narratives of the Holocaust in three main groups: The Authors (Perpetrators), the victims and third parties/ observers (bystanders).

Initially, the field of research of the narratives of trauma was dominated by analysis directed at understanding the Authors (Perpetrators). The Nuremburg Trials contributed enormously to this first phase of research, since the prosecutors and the discourse they developed during the trials created the idea of "criminal", "racist", "anti-Semite minds", which until today are present in the research on Nazism[11].

The second group, that of the victims, especially important to this article, are based on the narratives of Primo Levi (1988; 2004)[12] and those of the victims of the genocide in the Balkans, compiled in testimonials in the memorials of Croatia and Bosnia presented to the International Court of Justice. This group is also based on the interviews with Kosovo survivors, compiled by Losi, Passerini e Salvatici (2001)[13]. The main focus of these narratives is the idea that even though there is a need to testify, it is marked by the impossibility to communicate the experience (EDKINS, op. cit.).

The main characteristic of a victim of genocide or crime against humanity is the fact that he has suffered a process of dehumanization, an experience which constitutes a trauma.

Freud understands that a traumatic experience is one "which cannot be entirely assimilated while it is happening (SELIGMANN-SILVA, 2006, p. 48, translated[14]).[15]" Individuals who face violent situations, such as wars or massacres, tend to relive the event, re-experiencing it (LUCKHURST, op. cit).

The traumatic experience is not understood by the individual when he is experiencing it and can only be apprehended *a posteriori*, through flashbacks and a "differed" attempt to understand the symptoms presented by the individual. "For Caruth, trauma is, therefore, a crisis in representation, of history and truth, and of narrative time (CARUTH *apud* LUCKHURST, op cit, p. 5)."

The representation problem derives from the impossibility of the victim to express in words his experience, since he cannot give meaning to the event based on his pre-conceived symbolic universe. LaCapra (1994)[16] argues that the testimonies of the victims of the Holocaust stressed the intricate relation between memory and event reconstruction. These statements also demonstrated that the victims, in some moments, did not believe what they had experienced.

According to Seligmann-Silva (op. cit), "the testimony would be the narrative not so much of these violent facts, but of the resistance to understand them. Language tries to encircle and limit what had not been subjected to a form when it was received (SELIGMANN-SILVA, 2005, p. 48, translated[17]).[18]" The drama of the survivor is the disjunction with reality, the incapacity to represent.

The Testimony Theory[19], elaborated mainly from the Holocaust, states that the catastrophic event would be "singular because, more than any other historical fact, from the standpoint of the victims and the people involved in them, it cannot be reduced in terms of discourse (SELIMANN-SILVA, 2005, op. cit. p. 83, translated[20])." In this regard, the importance and the challenges present in trials of such crimes arise.

A legal proceeding aims to establish facts, a single truth. However, pure facts do not exist; what exists are versions and texts, constructed linguistically (GADAMER, 2002)[21]. The accuracy of the facts constructed in the legal proceedings is formed through discourse and testimonials[22], which, however, lead to the impossibility of representation.

The testimony is a moment which seeks to reunite the fragments of a shattered memory, contextualizing them. "The testimony plays a role of historical justice (SELIGMANN-SILVA, 2005, op. cit. p. 85, translated[23])". It also has the power to unite people and make a previously individual and lonely experience into a shared one, leading to the identification with a collective memory.

The survivor appeals to the narrative to comprehend his experience. Collective memory, constructed through discourse, comes along to

fill the blanks left by the trauma in individual memory. The victim needs collective memory to support his individual memory or to give it meaning.

Judging is an attempt to signify the experience which did not have any sense. This is why it is so important that a culprit is found, thing is categorized and named, placing the unsayable into intelligible categories, into criminal definitions, such as genocide or crime against humanity (GARAPON, 2002)[24].

The proceedings are based in successive, detached evidences, which are frequently lost in the overall. A legal process is limited to the evidence that the parties (plaintiff and defendant) can give. The truth is constructed dichotomically, from the contraposition of the elements brought in by the litigants, i.e. the due process. It can be said that, legally, the truth is the discourse constructed by the victorious part in the due process, the one which was more powerful and convincing.

In the case of the crimes against humanity and genocide, the due process would be inexorably impaired. There would neither be a balance of strength nor such pretense. The whole process is previously conceived for the discourse of one the parties to win: the victim's discourse. The voice that would prevail and silence all other would be the voice of the victim. It is his unheard suffering that will be listened to and will smother all the rest.

The concern, therefore, would not be to clarify what had indeed happened, but to identify the monstrosity of the fact and the victim's suffering. The judge would search for the past, not to understand the causality of the events, but to legally categorize them. "Justice – as opposed to History – is not an instance of knowledge, but of recognition (GARAPON, op. cit p. 168, translated[25])." Public opinion cannot change a sentence, but can disagree with it. This means that the judge is not merely an observer of the past, he is an interfering agent.

International criminal trials have an active role in building memories and changing the narrative surrounding a conflict. Even though criminal tribunals have dealt with matters of trauma and recognition, somehow, these issues have been kept restricted to their realm and in that of regional human rights courts. The international Court of Justice still resists discussing symbolic aspects of adjudication.

The International Court of Justice has an educational background based on classic, voluntarist, International Law, in which the states are the main actors of the international system, which is made by and for them. This stance, we argue, is contrary to the contemporary reality of the international system and, specially, to the cases that have been brought to the Court.

Article IX of 1948 Convention on the Prevention and Punishment of the Crime of Genocide refers to the ICJ to dispute settlement concerning the fulfilment of the treaty. In that sense, even though ICJ cannot be described as a criminal court, it does have the duty to prevent Genocide. The Court refuses its role in building memories and narratives of conflict, acting in an isolated manner and, in some ways, opposing the experience from specialized human rights courts.

4. GOING FURTHER: THE ICJ ADJUDICATING GENOCIDE IN THE CASE CROATIA VS SERBIA

The Balkans War triggered in the 1990s two applications filed in the International Court of Justice discussing the enforcement of the Genocide Convention (one brought in by Bosnia and the other by Croatia). The sentence in the case Croatia vs Serbia was delivered on February 3rd 2015 and regrettably repeated the fiasco of the previous sentence – the Bosnia case.

The result of this ruling signals the great abyss that has separated the concerns of Human Rights International Law and those of General Public International Law. The concern with jurisprudential stability was a factor that affected the sentence. The Court had pronounced negatively regarding the Bosnia case; to change its jurisprudence would imply international legal instability.

The concerns with the survivors and the importance of integrating the victims to the social body and reconstituting the memories were not tackled by the majority of the judges. The case Croatia vs Serbia created a problem for the hearing of the victims appointed by Croatia. The fear of threats resulted in two witnesses being heard in closed session. The others were heard in plenary sessions, but could not give their testimonies in front of the other victims, who, consequently, could not hear other testimonies. This was a measure taken by

the Court to ensure the safety of the witnesses and to safeguard the neutrality and impartiality of the testimonies, which, at the end, hindered the Court from becoming a space for reparation and recognition of the victims (in the manner of Human Rights Courts).

The opportunity to speak in front of a court, to account one's story and hear those of the others, as we have argued, has an important effect for the victims and, consequently, to overcome conflict. This moment of testimony, given in front of a solid and important institution, such as the ICJ, would help to restore a sense of justice and institutional trust.

The hearing of several victims allows the construction of a general panorama of the conflict. If a narrative is repeated in the words of the survivors from several places, there is a strong sign of the generalized aspect of the attack and the *mens rea* of the genocide. This is the case of the annexes provided by Croatia in its memorials, which contained testimonies of individuals from several towns, all describing the same violence, the same white stripes, the same practices of sexual violence, the same practices of forced labor and family separation, the same insults (*ustasha*) etc.

Due to the heavy burden placed on Croatia to produce evidence and the victims' testimonials without proving force, the ICJ considered that there was no proof to determine the occurrence of rapes and other acts of sexual violence perpetrated by the army and other militias from Serbia. As a result, the Court decided that a genocide had not occurred in the Balkans. All the victims who had waited for sixteen years for the trial did not have the imagined ending. All their narrative and overcoming trauma effort were to no avail. The Court lost the opportunity to rewrite the memory of the conflict and fulfill its duty to promote peace and conflict resolution.

The Court's decision was rebuffed by the dissenting vote of Cançado Trindade, a magistrate who defended the Genocide Convention's *raison d'être*: to protect individuals against barbaric acts engendered by the states or with their consent.

The vote is based on the valorization of the protection of individuals who have suffered the most during the Balkan Wars. The real concern should be oriented toward the realization of justice for the people (justiciables), not for the states. The Genocide Convention enshrines the right to protection, which is frequently rejected by atrocity policies, which victimize civilians and dissolve societies.

Cançado Trindade disagreed with the Court on the issue of burden of proof and its value. The magistrate provided extensive jurisprudential base from the Inter-American and European Courts of Human Rights, where they adopted the inversion of the burden of proof and the possibility of inferring violence from signs, such as mass graves and the survivor's demonstrations of trauma.

The proof of the occurrence of the genocide, according to Cançado Trindade, should have been obtained from the vast documentation which indicated the occurrence of a generalized and systematic attack against whole families, homes, cultural symbols, as well as the random deaths intended to threaten Croatians to force them to leave the towns and flee to areas where they would be allowed (outside the territory of Greater Serbia).

Contrary to the Court's stance, the judge considered the testimonies annexed to Croatia's memorials as signs and evidence material of the genocide, strengthening the words of the victims.

The dissident vote also gave attention to the victim's suffering who survived the massacre and had missing relatives. The absence of a funeral or the impossibility to experience grief hinders the conflict from being finalized in order to society move on.

The importance of recognizing the pain is fundamental to reconcile societies and rebuild nations. Humphrey (op. cit) indicates that projects of public memory are based on two different paths: reconciliation or justice. Reconciliation depends on the state's will, which frequently does not have the power nor the institutional development to promote a trial, hence the importance of international justice, which compensates this absence of an internal justice.

5. FINAL CONSIDERATIONS

The idea of reconciliation involves the construction of a memory that contemplates the victims' demonstrations, who must be reintegrated to the political community. The peace and stability in a state are related to its social structure; this becomes clear when we look at Yugoslavia's case, where its social hotbed led to its violent dissolution.

The Truth Commissions throughout the world and, to a certain extent, the regional Human Rights courts have been based on the victims' testimonies to construct a legal truth and, tangentially, the memory of the conflict. The social relations are reconstructed through the victims.

In the case mentioned in this article, we notice that this symbolic dimension which exceeds the classic and formal perspective of Law was not applied in the decision of the International Court of Justice, which resists recognizing its role in this post-conflict reconstruction. This ICJ's distancing from the issues related to Human Rights International Law contradicts the reality which the organ has been facing. The Court dealt problematically with the specificities of the issue and there was no opportunity for the victims to participate. Moreover, the state was excessively protected, due to a questionable distribution of the burden of proof and its inadequate valorization.

The Court's decision did not contribute to the recognition of the suffering the victims, losing an opportunity to promote social restructuring and to overcome hatred. Even more serious is the inexistence of reparations, leaving the victims completely unsupported and left to their own woes.

The discussion about reconciliation and the role of international justice in overcoming conflicts through victim recognition thrived in Cançado Trindade's dissident vote. The thesis present in this article reverberates the vote that acknowledges the ICJ's and the international justice's importance in promoting peace and protecting human rights.

It is not possible to overcome conflicts in a society without an answer which, in some way, placates hatred and promotes a new social narrative through memory construction. There is no memory without considering trauma and its devastating consequences on the lives of individuals.

The ICJ confronted, in the present proceeding, a challenge to its jurisprudence: the need to rethink its role in Human Rights International Law. The historic orientation aimed to protecting the state and a classical concept of state sovereignty clashed with the statutory functions which are expected from the Court as an organ that contributes to social appeasement.

As Cançado Trindade points out well in his dissident vote, the option adopted by the Court to disregard the victim's testimonies and impose a hefty burden of proof made almost impossible to prove the state's responsibility. What will be the effect of this decision in future cases? What will be its consequences on the will of the states which might intend to question the Genocide Convention?

By not holding the states accountable, the Court's decision forgot the need to tackle the prevention of genocide, the aim stated right in the title of the Convention. The concern with state sovereignty has lost sight of the Convention's utmost objective: the protection of the most vulnerable individuals and the guarantee that these acts will not happen again.

Prevention must also focus on the issue of recognizing the pain of the survivors in order to accomplish reconciliation and victim reparation. Holding the states responsible is a means to honor the memory of those who have passed away, humanizing the dehumanized and rewriting the narrative of chaos and hatred for comprehension and reconciliation.

NOTES

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2. EDKINS, Jenny. *Trauma and the memory of politics*. Cambridge: Cambridge University Press. 2003.
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6. KELSEN, Hans. *Teoria pura do direito*. 4º. ed. São Paulo: Martins Fontes, 1994.
7. CANÇADO TRINDADE, Antônio Augusto. *Derecho Internacional de los Derechos Humanos: Esencia y Transcendencia (votos em La Corte Interamericana de Derechos Humanos. 1991-2006*)**.** México: Editorial Porrúa: Universidad Iberoamericana, 2007; CANÇADO TRINDADE, Antônio Augusto. *El ejercicio de la función judicial internacional: Memorias de La Corte Interamericana de Derechos Humanos*. Belo Horizonte: Del Rey, 2013.
8. Op. cit.
9. LUCKHURST, Roger. *The trauma question*. London: Routledge, 2008.
10. ZEHFUSS, Maja. *Wounds of Memory: The Politics of War in Germany.* Cambridge: Cambridge University Press, 2007.
11. Hannah Arendt's controversial work *Eichmann in Jerusalem*, published in 1963, established the foundations of the concept of banality of evil, which, to a certain extent, is opposite to the Nuremberg perspective of historical monsters, reiterating the idea that the Authors were emptied subjects. Arendt's work (2010; 2008; 2004) indicates the importance of understanding totalitarianism and the phenomenon of death on an industrial scale (ARENDT, 2004).
12 LEVI, Primo. *Os afogados e os sobreviventes*. Rio de Janeiro: Paz e Terra, 2004.

LEVI, Primo. É isto um homem. Rio de Janeiro: Rocco, 1988

13. LOSI, Natale. Beyond the archives of memory. In *IOM International Organization for Migration*. Archives of Memory: Supporting Traumatized Communities through narration and remembrance, Psychological Notebook, Geneva, v. 2, pp. 5-15, 2001.
14. In the original: "que não pode ser totalmente assimilada enquanto ocorre."
15. SELIGMANN-SILVA, Márcio. *História, Memória, Literatura: O testemunho na Era das Catástrofes*. Campinas: Editora da Unicamp, 2006
16. LACAPRA, Dominick. *Representing the Holocaust: History, Theory and Trauma.* Ithaca: Cornell University Press, 1994
17. In the original: "o testemunho seria a narração não tanto desses fatos violentos, mas da resistência à compreensão dos mesmos. A linguagem tenta cercar e dar limites àquilo que não foi submetido a uma forma no ato da sua recepção"
18. SELIGMANN-SILVA, Márcio. *O local da diferença: Ensaios sobre memória, arte, literatura e tradução*. São Paulo: Editora 34, 2005.

19 Some authors identified as part of this Testimony Theory or "Shoah testimonial canon" (SELIGMANN-SILVA, 2005, p.86) are Primo Levi, Paul Celan, Victor Klemperer, AharonAppelfeld, Robert Antelme, among others.

20. In the original: "singular porque, mais do que qualquer fato histórico, do ponto de vista das vítimas e das pessoas neles envolvidas, ele não se deixa reduzir em termos de discurso."
21. GADAMER, Hans Georg. *Verdade e método: traços fundamentais de uma hermenêutica filosófica*. 2ª. ed. Petropolis: Vozes, 1998.
22. The witness understood as primary is normally the one which has survived the event; it is the actual victim. Nonetheless, today several authors apply the ideas apprehended from the primary witnesses in the texts originated from secondary witnesses. "In the latter meaning, the witness is conceived according to the

notion of *testis*, of a third party who would be called forth in the trail to give his accounts of the 'facts'. (SELIGMANN-SILVA, 2005, p. 84, translated)". In the original: "Nesse último sentido, a testemunha é pensada segundo a noção de *testis*, de um terceiro que seria citado diante do tribunal para dar sua versão dos 'fatos'".

23. In the original: "O testemunho cumpre um papel de justiça histórica".

24. GARAPON, Antoine. *Crimes que não se podem punir nem perdoar: Para uma justiça internacional.* Lisboa: Instituto Piaget, 2002.

25. In the original: "A justiça – ao contrário da História – não é uma instância do conhecimento, mas do reconhecimento."