VERSUS COLÔMBIA – A TRÍADE PAZ, DIREITOS HUMANOS E DEMOCRACIA ANALISADA A PARTIR DE JULGADOS DO SISTEMA INTERAMERICANO DE DIREITOS HUMANOS

VERSUS COLOMBIA – PEACE, HUMAN RIGHTS AND DEMOCRACY TRIAD ANALYZED FROM INTER-AMERICAN HUMAN RIGHTS SYSTEM CASES

Ananda Hadah Rodrigues Puchta
Universidade Federal do Paraná – UFPR – (Curitiba, PR, Brasil)

Melina Girardi Fachin
Universidade Federal do Paraná – UFPR – (Curitiba, PR, Brasil)

Giulia Fontana Bolzani
Universidade Federal do Paraná – UFPR – (Curitiba, PR, Brasil)

Received on: February, 22nd, 2017
Accepted on: November, 7th, 2017

How to cite this article (inform the current date of access):

PUCHTA, Ananda Hadah Rodrigues; FACHIN, Melina Girardi; BOLZANI, Giulia Fontana. *Versus* Colômbia – A tríade paz, direitos humanos e democracia analisada a partir de julgados do Sistema Interamericano de Direitos Humanos. **Revista da Faculdade de Direito UFPR**, Curitiba, PR, Brasil, v. 62, n. 3, p. 31-59, set./dez. 2017. ISSN 2236-7284. Disponível em: <http://revistas.ufpr.br/direito/article/view/50862>. Acesso em: 21 dez. 2017. DOI: http://dx.doi.org/10.5380/rfdufpr.v62i3.50862.

RESUMO
O objetivo do artigo é analisar a contribuição do Sistema Interamericano de Direitos Humanos, em especial da sua jurisdição contenciosa, para o fortalecimento do processo democrático, da *rule of law* e do estabelecimento da paz no território colombiano. Para tanto, parte da premissa de um direito aberto, plural e multinível de impactos recíprocos entre direito interno e internacional em frutífero diálogo. Analisa-se, a partir de uma breve explanação do funcionamento do aparato regional, a jurisprudência da Corte – qualitativamente selecionada – a fim de demonstrar como a sua atuação jurisdicional compeliu o Estado colombiano a tomar medidas de fortalecimento de direitos humanos no país, o que contribuiu decisivamente para o processo de paz. Sendo assim, busca-se apresentar a influência positiva do Sistema Interamericano de Direitos Humanos, mediante a atuação contenciosa da Corte IDH, na construção de uma cultura de paz, direitos humanos e democracia, eixos fundamentais para o fortalecimento institucional do Estado Democrático de Direito.

PALAVRAS-CHAVE
Direitos Humanos. Democracia. Paz. Colômbia.

ABSTRACT
The purpose of this article is to analyze the contribution of the Inter-American Human Rights system, especially its contentious jurisdiction, to strengthening the democratic process, the rule of law and the establishment of peace in Colombia. To do so, it starts from the premise of an open, plural and multilevel right of reciprocal impacts between domestic and international law in meaningful dialogue.

From a brief explanation of the operation of the regional apparatus, the jurisprudence of the Court - qualitatively selected – is examined in order to demonstrate how its jurisdictional action has compelled the Colombian State to take measures to strengthen human rights in the country, contributing decisively to the peace process. Thus, it seeks to present the positive influence of the Inter-American Human Rights system, through the contentious actions of the Inter-American Court of Human Rights, in the construction of a culture of peace, human rights and democracy, fundamental axes for institutional strengthening of the Democratic Rule of Law in Colombia.

KEYWORDS
Human Rights. Democracy. Peace. Colombia.

INTRODUCTION

It is clear that Colombia has, for many years, been the scene of one of the longest non-international armed conflicts and of serious and systematic violations of human rights. It is precisely in this complex, intense and violent context that the influence of international human rights standards has produced a significant difference.

Nearly three hundred thousand dead – mostly civilians – thousands of missing and more than six million internally displaced people are the balance of decades of conflict between the Colombian State and the Revolutionary Armed Forces of Colombia (RAFC)[1]. The full and final peace agreement was signed on Cuban soil in August 2016.

A complex conflict motivated by diverse social, political and economic causes also had an unorthodox outcome. The tripod that underpinned the long conflict rests on "a tendency to use violence in power and politics, [a] lack of resolution on the issue of land ownership in the countryside, and lack of guarantees for plurality and exercise of politics", says Álvaro Villarraga Sarmiento (CENTRO NACIONAL DE MEMORIA HISTÓRICA, 2014, Preface), of the National Center for Historical Memory[2].

If it is true that the signing of the peace agreement does not put an end to the *ipso facto* conflict, the path to its signing was a tangled process in which multiple factors influenced it. For the present reflection, it is the influence of international human rights law that is worth highlighting.

[1] The Revolutionary Armed Forces of Colombia comprise a Colombian armed group, created in 1964. RAFC are the initials of the movement, which will be used in this article as an abbreviation.

[2] Free translation of the content in the preface of the work CENTRO NACIONAL DE MEMORIA HISTÓRICA. **Yo aporto a la verdad, acuerdos de contribución a la verdad y la memoria histórica**: mecanismo no judicial de contribución a la verdad, la memoria histórica y la reparación, Ley 1424/2010 / Centro Nacional de Memoria Histórica – Dirección de acuerdos de la verdad. Editor Álvaro Villarraga Sarmiento. Bogotá: Centro Nacional de Memoria Histórica, 2014.

The present article has as hypothesis the contribution of the Inter-American System of Human Rights, especially in the figure of its Court, for the strengthening of the democratic process, the rule of law and the peace in the Colombian territory. It is true that this did not happen *tout court* and depended on the modification of many internal structures, since international law can only touch those open to it[3].

With this hypothesis in mind, we will analyze, through a qualitative survey of the jurisprudence of the Inter-American Court in relation to the Colombian State, the interrelationship between the international human rights system and the internal system of strengthening the rule of law and culture of peace. Before, however, some notes on the Inter-American Human Rights System are necessary, only for an understanding of the functioning and structure.

As a preliminary methodological warning is the dialogical and open stance that the plural, multiple and porous constitutional law of the twenty-first century demands of us. Impossible would be to deal with the imbrications of the internationalization of human rights process with the experience of democratic consolidation and peace in Colombia without the exchange between systems being premised.

The success of regional human rights systems, however, depends on a large extent on the degree of commitment of the constituent States. According to Cançado Trindade (2003, p. 91), "*the future of the international system for the protection of human rights is conditioned to the national mechanisms of implementation.*" Dialogue should, therefore, be strengthened between the local and regional spheres in the sense of mutual reinforcement, because – in Jack Donnelly's words (2003, p. 141) – "*good national human rights records*" imply "*a strong international procedure*".

The progress of regional fields, in terms of both normativity and practical implementation, depends on the commitment of States and their political will to operate the systems. It is precisely in such an influx that the strength and potential of international justice must, after all, be translated into the protection of human rights within States, at the place occupied by the victims. It is from this inseparability that it starts, from the lens of the inter-American system, to read the Colombian experience.

The research was therefore developed on the basis of specialized doctrine in the matter and the analysis of the cases judged against the Colombian State in the Inter-American Court of Human Rights. In spite of the importance of the Inter-American Commission on Human Rights, as it will be

[3] Thus, for ratification of treaties to have beneficial effects on the performance of States, there must be conditions for domestic groups, parties, individuals and civil society organizations to persuade, convince and pressure governments to translate their promises of best practice in reality (BERNARDI, 2013, p. 145).

pointed out below, the focus in the Court was used because it is the judicial body responsible for the last word in the system – although extremely precarious and changing, given, on one hand, the doctrine of margin of appreciation (GREER, 2000, p. 5) [4] and, on the other hand, the understanding of international instruments as living instruments[5].

It is true that the inter-American process of strengthening human rights has had a twofold impact on Colombia: on one hand, with the opening of its civil society to help itself in the system of state bankruptcy in responding satisfactorily to the massive human rights violations that occurred, and, on the other hand, as a result of this use of the system, with the condemnatory sentences that demanded a change of position of the State, which gradually contributed to the strengthening of democracy and the construction of the peace process. It is precisely the analysis of this set of decisions that we intend to focus here.

1 SUBSTANTIAL METHODOLOGICAL WARNING

The methodological warning presented here calls for a new perception of the juridical phenomenon that flows from the centrality of human rights and from the mantra of prevention to human suffering spread throughout the globe. It is a method in that it changes the angle of view of domestic law, international law and public law in general. At the same time it is substance, because this optical change denotes a change in the perception of the formative contents of these fields. This renewed formal posture of substantial results is critical to the present analysis.

The contemporary conception of the protection of human rights inaugurated a new sphere of responsibility of States in the implementation of these rights, which ceased to be the exclusive subject of constitutional and state sovereignty. This has impacted the way of thinking and conceiving not only human rights but also international law, constitutional law and their reciprocal borders. Thus, the notions of domestic and international law are approached, especially in the area of human rights.

However, it is still true that the primary responsibility for the realization of human rights generally lies on States, which in the abstract are better able to respond satisfactorily to the victims of human rights violations. That is why international human rights law operates through the

[4] European doctrine that "Broadly speaking it refers to the room for man oeuvre the Strasbourg institutions are prepared to accord national authorities in fulfilling their obligations under the European Convention on Human Rights" (GREER, 2000, p. 5).

[5] The evolutionary interpretation aims to contextualize the protection elements foreseen in the pact, keeping them alive and connected to reality and the surrounding demands. Based on this dynamic and evolving principle, the European Court of Human Rights has rescued the protection of social rights, albeit indirectly.

subsidiarity code (OLIVEIRA, 2007, pp. 147-148)[6]: only when the State does not have sufficient internal structures or has failed to resolve satisfactorily, adequately and timely the demand that has been exposed to it, then the international apparatus enters the scene.

This new scenario demands an extension of the traditional publicist vision, according to which the State has responsibilities only with regard to the human rights of its citizens (Trindade 1997, p. 175)[7]. Although the State has primary responsibility, the importance of the interface and dialogue between the different protection plans for the realization of human rights is highlighted and this demands a relationship between local constitutionalism and international human rights law.

Thus, a new form of public law – backed by the coexistence of several parallel and harmonious orders between them – emerges, which must dialogue on the principle of *pro persona* and which is "governed by the expansive force of the principle of human dignity and rights human, giving prevalence to the *human centered approach*" (PIOVESAN, 2012, p. 72).

Domestic law and international law end up being mutually impacting and from this cathars emerges a new international order and a new international public law and State. In the relationship between these two layers the internal and international structures of protection are re-defined, according to Flávia Piovesan:

> […] the growing openness of the law – now "impure" – marked by dialogue between the internal angle and the external angle (there is the permeability of law through dialogue between jurisdictions, constitutional loans, and interdisciplinary, of Law with other knowledges and various social actors, thus re-signifying legal experience). (PIOVESAN, 2012, p. 72).

It is in this climate of dialogue and sum of forces that the present reflection is strengthened, taking as a starting point the indispensable linkage that the internal angles (here Colombian law) and

[6] "Subsidiarity is a general principle of Public International Law with regard to the multilateral solution of disputes at the international level. It means that international tribunals can only be invoked after the unsuccessful exhaustion of internal mechanisms for solving the problem" (OLIVEIRA, 2007, p. 147).

[7] Initiatives at the international level cannot be dissociated from the adoption and improvement of national implementation measures, since the latter – we are convinced – depend to a large extent on the evolution of international human rights protection itself. The primary responsibility for the observance of human rights rests on the States, and the human rights treaties themselves assign important functions of protection to State bodies. In ratifying such treaties, States Parties enter into a general obligation to bring their domestic legal framework into line with international protection standards, alongside specific obligations relating to each of the rights protected. In this current area of protection, international law and domestic law are thus in constant interaction. It is international protection itself that requires national measures for the implementation of human rights treaties, as well as the strengthening of national institutions linked to the full observance of human rights and the rule of law. From all this, it can be seen the urgency of the consolidation of *erga omnes* obligations of protection, according to a necessarily integral conception of the human rights (TRINDADE, 1997, p. 175).

external (inter-American system), and articulating in favor of the consolidation of the democratic constitutionalism and the expansion of human freedoms.

2 BRIEF NOTES ON THE INTER-AMERICAN SYSTEM

The Inter-American system is born peculiar, because it appears in a very paradoxical moment in the region. The starting point is the Pact of San José, Costa Rica, which came into force in 1978; back then, at least half of the signatory countries did not have democratic experiences at home. In addition, prevailing authoritarian logic was worth political instability as a pretext for internal conflicts and the truculent use of force. It is in this context that the System emerges, having contributed substantially to the implementation of the Democratic State of Law in the region.

The *text* and *context* – as Joaquín Herrera Flores points out – are central elements in the understanding of the inter-American regional apparatus, because, despite being born based on the European model for the protection of human rights, the system has been establishing its own identity, especially if we observe the political vicissitudes that permeate it. Viviana Kristicevic notes that:

> […] in particular, the Inter-American Commission and the Court of Human Rights, the two bodies that oversee the implementation of human rights instruments in the Americas, have developed their powers and jurisprudence in order to avoid or reform the brutal and massive human rights violations recurrent human beings in the region (WILT, KRISTICEVIC, 2004, p. 371).

Inevitable is the comparison between the systems, since the European, as a pioneer, served as a template. One must, however, take into account the large differences, even budgetary ones, that separate them. It is always important to note that the inter-American system is of recent existence and that, in spite of its great achievements, the improvement is also imperative in the European system with the present enormous challenges. Thus, rather than comparing, it is necessary to approach and dialogue, as explained in the above topic.

In addition to the Inter-American Court of Human Rights, there is therefore a commission structure. The Inter-American Commission on Human Rights has as its primary goal to promote the protection of human rights in the Americas. In pursuit of its objective, three main functions of the Commission are: processing individual complaints, reporting on the human rights situation in member States, and proposing measures to strengthen human rights in the region.

The Commission is one of the most important organs of the region in the promotion and protection of human rights, having compulsory jurisdiction to all the member states of the Organization of American States. It also has a broader role than the Court, since its nonconventional basis – a resolution of the OAS Commission on Human Rights in 1959 – extends its mandate to countries not signatories to the Convention, such as the United States and Canada. Antônio Cançado Trindade makes it clear:

> Created (in 1959) by a resolution (rather than a treaty), the Inter-American Commission on Human Rights had originally a mandate limited to the promotion of human rights and enjoyed a *sui generis* position within the inter-American system. Soon it endeavored to enlarge its own competence, as an organ of *in loco* investigation of situations of human rights and of examination of communications of alleged violations of human rights. Its enlarged attributions and powers were also to comprise the reporting system (reports of distinct kinds, such as session and annual reports, and reports on specific countries). With the 1967 Protocol of Reform of the OAS Charter (which entered into force in 1970) the Commission was at last established as one of the main organs of the OAS and thus endowed with a conventional basis. Ever since it has had a duality of functions, namely, v*is-a-vis* States Parties to the American Convention as well as States not Parties to the Convention (as to these latter, on the basis of OAS Charter and 1948 American Declaration). (TRINDADE, 2005, p. 53).

The Commission, made up of seven experts, has jurisdiction accessible to all individuals and non-governmental organizations of the member countries. According to Article 44 of the Inter-American Convention, any person, group of persons, or non-governmental entity has the right to submit a petition to the Commission for review. Given the pusillanimity of States and Law in the region, and the frequent threats to human rights defenders, open legitimacy is quite respectable, since many victims may suffer retaliation due to international action.

The Commission is the principal organ of the Inter-American Court of Human Rights, since only the Inter-American Commission or the States can submit a dispute to the Court. This, in turn, was structured by the American Convention on Human Rights, Pact of San José, Costa Rica, as an ingenuity to safeguard fundamental rights in the American continent.

The Court is composed of seven judges personally elected by the General Assembly of the Organization of American States. It is, under its terms of reference, an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights that gives it a mandate.

It has two-fold competence: contentious (WILT; KRISTICEVIC, 2004, p. 378) and advisory; the latter much more developed than in the old continent, which demonstrates the peculiarity of regional systems. Regarding the activities of the Court, Cançado Trindade explains:

> For the exercise of the Court's contentious jurisdiction, a declaration of acceptance is required from States Parties to the American Convention. In its turn, the advisory jurisdiction is particularly wide, given that all OAS member States and all organs mentioned in the chapter X of the OAS Charter can request advisory opinions from the Court on distinct topics (e.g., interpretation of the American Convention or of other treaties relating to the protection of human rights in the American States with the American Convention or other human rights treaties). The Court has also been developing, in recent years, a remarkable practice on provisional or interim measures of protection. (TRINDADE, 2005, p. 53).

The Court's litigious jurisdiction is, with some specific exceptions, the interpretation and application of the American Convention on Human Rights to which it is submitted, in relation to the obligations of the signatory States that have expressly and separately recognized its competence, and that they must have been exhausted procedures provided for in this Convention. It represents, in fact, the extension of the individual petitioning activities that unfolds before the commission. In the litigation area, the Leading Case was Velásquez Rodrigues Vs. Honduras, in 1989, which deals with enforced disappearances.

There are, at present, five major jurisprudential lines highlighted by Flávia Piovesan (2004, pp. 116-118). The first one deals with the violations committed by the States as agents of barbarism; the second focuses on transitional justice, whose reference case is Barrios Altos Vs. Peru, which pioneered that laws of auto-amnesty are an international offense; the third highlights the contribution to the consolidation of states of law, whose landmark is that of the Constitutional Court Vs. Peru – in which the constitutional judges were removed from office for opposing the executive interests of the Fujimori government; the fourth deals with violations of vulnerable groups rights, including indigenous cases that fill the court's long jurisprudence

on the subject – with evidence to the pioneering case of the Awas Tingni Vs. Nicaragua, in which the Court recognized the right to collective land ownership. Finally, the fifth and timid line is focused on the indirect litigation of social rights, for the possibilities of the right of petition in the protocol of San Salvador, highlighting in this bias the case of the Five Pensioners Vs. Peru.

The system relies essentially on a wide range of civil and political rights (Articles 3 to 25 of the Convention); the American Convention contains a generic clause providing for the prediction of social rights, which establishes the progressiveness of their implementation, linking them to the available resources of the States (Article 26). In order to complement the insufficient protection of social rights in the Americas, it was only in 1988 that the Protocol of San Salvador, which established rights for social welfare and adopted a long list of economic, social and cultural rights that covered labor, trade union rights and social security guarantees, including the right to health, education and culture, among others, with the exception of environmental rights. However, with the exception of the right to education and the right to freedom of association, under Article 19, paragraph 6, they also lack the right to appeal, being outside – at least directly – the jurisdiction of the Inter-American Court of Human Rights.

In addition to the lack of justiciability, that means, deficit in effectiveness through instruments of applied justice, the significant difference in the number of countries that have ratified the protocols on economic rights demonstrates how distressing the States are in engaging in the enforcement of these rights.

Also in the lecture of Professor Flávia Piovesan, four are the main aspects for the future of the inter-American system: 1– adoption by the States of domestic legislation regarding the implementation of international decisions; 2– provision of sanction to the State that fails to comply with international decisions; 3– allow direct access of individuals to the Court; 4– permanent functioning of the Commission and the Court (PIOVESAN, 2004, pp. 16-18). In this sense, it should be noted that the strengthening of the system is the strengthening of local regimes and democratic states of constitutional law, given the important and fruitful exchange that these dialogues provide.

This imbrication is projected in the dialogues and openings of expansion of human rights systems, and in consolidating their inseparability from the notions of peace and democracy. Flávia Piovesan is categorical in stating that “there are no human rights without democracy, no democracy without human rights. That is to say, the regime most compatible with the protection of human rights is the democratic regime” (PIOVESAN, 2004, p. 16). The consolidation of democracy is a fortifying component of the logic of rights and finds direct identification with the construction of peace. To rely on law rather than force – hence the peaceful component – is at the same time beginning and

initiated by the re-establishment of democratic institutions, and it works best to prevent and punish the combustion and violation of human rights.

It is based on the dialogical spirit outlined above and based on this normative-axiological charge of strengthening of the triad of human rights, democracy and peace that the experience of the inter-American system contributes to the Colombian context and contributes to the peace process in evidence.

As the doctrine says:

> The jurisprudence of the inter-American system was important and exerted an influence on the topic of demobilization of paramilitaries in Colombia, not only during the discussion of the laws on this topic, when it was mobilized by NGOs and other critical actors to draft criminal justice and alternative legislation and peace, but also when the decision of the Constitutional Court in sentence C-370/2006. This normative framework gave human rights groups the ability to claim and demand that demobilization was not simply a process of pardon and impunity, while providing constitutional judges with a broader set of legal principles and tools to change the policy preferred by the Executive and for his majority seat in Congress. (BERNARDI, 2013, p. 162).

As indicated above, the cut of elected cases is designed to show how judges of the Court have contributed to the strengthening of the rights culture in that State and have had a direct impact on the peace process.

3 VERSUS COLOMBIA: RECURRENCE OF RELEVANT CASES

As explained above in the light of conventional rules, the States that are part of the American Convention on Human Rights have a duty both to respect and guarantee human rights and, where appropriate, to provide reparations to victims. In this sense, the Inter-American Court, under the terms of the American Convention, now also known as the ACHR, demands the State to consider remedial measures to be taken to end the violations. Still in these terms, Pasqualucci clarifies that the duty of reparation to human rights violations rests primarily on States. However, in the absence of adequate or sufficient internal measures, the Inter-American System is used (PASQUALUCCI, 2014, pp. 188-189).

Once the State has been convicted and the Court has established remedial measures, the State has the obligation to observe the sentence in its entirety. Thus, the domestic authorities remain bound by the Court's decision, and the measures may be directed to the country's Legislative, Executive or Judiciary Power (PASQUALUCCI, 2014, pp. 299-300). More important

than the condemnatory act is the multilevel dialogue between local and regional systems to strengthen the human rights culture in the region.

In order to ensure compliance with the reparation measures indicated, the Inter-American Court of Human Rights monitors the State through the submission of reports and public and private hearings (PASQUALUCCI, 2014, pp. 303-305). It is only from the State's detailed monitoring of it that full compliance with the judgments handed down by the Court will be enforced.

The aim of the system is to work with leading cases that not only impact the lives of the victims of the case, but alter the similar reality throughout the American territory. American jurisprudence is purposely more invasive than that of the European system, giving in some cases little discretion to States and aiming at structural changes in law and society. It was precisely with this spirit that the Colombian cases were brought to the system by the Inter-American Commission on Human Rights – hereinafter also the IACHR – and judged by the Court, as described below.

It should be pointed out that the selection of cases does not exhaust all the jurisprudence of the system and was done in a qualitative way, in order to give prestige to those judged to have been more attentive about the tangent cases of internal conflict and the need for a transition to peace. The presentation of the cases, by expository option, will follow the chronological criterion.

A) Case of Las Palmeras versus Colombia

The first case analyzed, Las Palmeras Vs. Colombia (IACHR, 2001, 2004a, 2008a, 2009a, 2010) refers to facts dating from January 23, 1991, when members of the National Police, with the assistance of army troops, conducted operations in Las Palmeras. In the context of that operation, at least six people were extra-judicially executed by armed forces that fired from a helicopter. In this scope, the National Police presented the body of seven people, six of them civilians and the seventh, whose causa mortis was not confirmed. Worsening the situation, the police and military involved in the executions were not held accountable for acts that had resulted

in serious violations of human rights, and military criminal proceedings before the domestic courts had not progressed.

Given the international responsibility of the State for violations of Articles 4, 8 and 25, combined with Article 1.1 of the Convention, the Court established that the Colombian State should, in summary, in addition to the pecuniary compensation established in the judgment[8]:

> i) Conclude the ongoing criminal proceedings in relation to the events that led to the death of the victims that had caused the violation of the ACHR, as well as to identify and punish those responsible and to publish the result of the process;
> ii) Take the necessary steps to identify the seventh victim, as well as to use all means necessary to locate his/her relatives;
> iii) Publish in the Official Gazette and in a press release of the National Police and the Colombian Armed Forces the merit judgment of December 6, 2001 and the Sentence of Reparations and Costs;
> iv) Return the remains of the victim Hernán Lizcano Jacamanejoy to their relatives, so that they could provide an adequate grave;

In the first resolution of the Inter-American Court of Human Rights in November 2004, on compliance with the measures imposed on the State, the Court understood that Colombia complied with two of the thirteen recommendations of the Court's Reparations judgment in November 2002. In this sense, in the Official Gazette and in the press review of the National Police and the Armed Forces of Colombia, the merit sentence of the present case, but also returned to the relatives of one of the victims the remains to be given proper burial.

In the second sentence compliance supervision, in August 2008, the Court decided that the State had partially complied with the first point of the reparations judgment regarding the steps taken to investigate this case and identify those responsible. However, it stated that it would continue to monitor the measures taken by the State, since the measures taken to identify the seventh victim within the acceptable time frame would still be pending analysis.

Then, in December 2009, the Court convened a hearing for the State to provide complete and up-to-date information on compliance with the pending points. At that moment, in relation to the seventh victim (N.N./Moisés), the State reported that it continued to work to locate its remains, but that it had not obtained positive results. The Court did not

[8] The State was condemned to the payment of US$ 100,000.00 (one hundred thousand dollars) to be delivered to the families of N.N./Moisés; US$ 139,000.00 (one hundred and thirty-nine thousand dollars) corresponding to the compensation of damages in relation to articles 8 and 25 of the ACHR; US$ 14,500.00 (fourteen thousand and five hundred dollars) in relation to the relatives of Hernán Lizcano Jacanamejoy; US$ 50,000.00 (fifty thousand dollars) to the Colombian Commission of Jurists and US$ 1,000.00 (one thousand dollars) to CEJIL. INTER-AMERICAN COURT OF HUMAN RIGHTS (IACHR). Case of Las Palmeras Vs. Colombia. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of August 4, 2008, p. 2.1-2.9. Available at: <https://goo.gl/CQa6r8>. Accessed on: September, 6th, 2017.

find sufficient information to show a real and significant advance in determining the identity, location and delivery of the remains of N.N./Moisés to their relatives, as well as the payment of adequate compensation. Seven years after the award of reparations had been issued and all points had not been complied with by the State, the Presidency thought it best to convene another private hearing.

In resolution from February 2010, the Court finally analyzed the State's attempts to complete investigations of the facts of the case and publish the results and decided that the State did not provide complete information for monitoring compliance with the judgment.

Regarding the obligation to publish the results of the internal criminal proceedings regarding those responsible for the violations, the State reported that it published the first and second instance criminal sentences on the website of the Ministry of Foreign Affairs, the National Police, the Ministry of Defense and the Vice-Presidency of the Republic. In addition, related to the websites of the presidential human rights program of the Vice Presidency and the Ministry of Foreign Affairs, the decisions of the Inter-American Court concerning Colombia will be published on a permanent basis. Also, in the page of the National Police, the State decided by the creation of a permanent link in which the pertinent sentences become available.

Notwithstanding the State's partial compliance with the remedial measures, monitoring compliance with the judgment remains open for the *Las Palmeiras* Case.

B) Case 19 Merchants versus Colombia

In 1984, a group called *Asociación de Campesinos y Ganaderos del Magdalena Medio* was established in the municipality of Puerto Boyacá. The region then became a center for disputes between the army and self-defense groups – which received aid and support from the army – against the guerrillas. Back then, Colombia was in a state of emergency.

The 19 merchants, victims of the present case, were working as freight transport across borders and selling them in Colombian cities. The leadership of the aforementioned paramilitary group decided to execute the merchants, stealing their goods and vehicles as a retaliatory measure, since the merchants did not pay the "taxes" charged by the group in the region. Thus, in October 1987, 17 merchants were arrested and killed, their bodies dismembered and thrown into the river. Fifteen days after the disappearance of the 17 merchants, two men went in search of the disappeared, and with them the same events were repeated.

To make the violations worse, state officials did not take immediate steps to carry out the search for the disappeared, largely because paramilitary groups received collaboration and support from the military authorities. Regarding the criminal case, two people were convicted of murder, two for acting as accomplices and one for kidnapping. With regard to the two merchants executed afterwards, there was not, for lack of evidence, condemned by the crimes.

In view of the foregoing, in a judgment on July 5th, 2004 (IACHR, 2004b), the State was condemned, in addition to paying indemnities, costs and expenses, to

> i) Effectively investigate the facts of the case, identifying and judging all persons involved in the violations committed, and the result of the process publicly judged;
> ii) Make, within a reasonable period of time, searches to determine what happened with the remains of the victims and hand over, as far as possible, to the families;
> iii) Build a memorial for the victims and by means of a public ceremony and in the presence of the relatives of the victims, to place a plaque with the name of the 19 merchants;
> iv) Perform a public act of recognition of its international responsibility in relation to the facts of the case, in the presence of the relatives of the victims and with the participation of the highest authorities of the State;
> v) Provide free medical and psychological treatment required by the victims' relatives;
> vi) Establish the necessary conditions so that the family members of the victim Antonio Flórez Contreras, who are in exile, can return to Colombia and
> vii) Ensure the life, integrity and safety of the persons who provided testimony to the Court, as well as their families.

In the supervision of compliance with the judgment of February 2006 (IACHR, 2006a), it was found that the State organized a public act, with the presence of a high authority of the State, for the recognition of international responsibility. Colombia also informed that, in May 2005, the Public Prosecutor specialized in the unit of human rights and international humanitarian law included the court's judgment in the case file that he is accompanying. He claims that the fact itself has reparatory nature because it proves the internalization of the international decision. Still, regarding the search for the remains of the victims, the prosecution alleged that it would reopen the investigations.

However, the Court understood that measures such as the location of relatives and effective investigation of the case to identify, punish and prosecute the perpetrators of the violations, as well as the public dissemination of the results, were not adequately complied with by Colombia, which is why it would continue to follow measures adopted by the State.

In November 2008 (IACHR, 2008b), in a resolution on compliance with the judgment, the Court found that the State informed that in March 2008, the Criminal Cassation Chamber of the Supreme Court of Justice issued a decision declaring the processed act to be invalid by the military criminal justice

and the termination of the procedure, as well as the continuation of the investigations. The State underscored the importance of the sentence for the protection of human rights in Colombia.

In a resolution from July 2009 (IACHR, 2009b), the Court acknowledged the information provided by the State that in May 2008, the Criminal Cassation Chamber of the Supreme Court of Justice issued an unprecedented decision in the country. In that decision, the decision of the military criminal justice was declared invalid, ordering the reopening of the investigation in the ordinary courts. The Court understood this decision as an important step, highlighting its jurisprudential value and relevant measure to combat impunity, opening the way for accountability of state members who violate rights.

Regarding the obligation to offer free medical and psychological treatment requested by the relatives of the victims, although late, informed the State that the measure is being complied with in conjunction with other judgments issued by the Court, and the information was sent within the framework of compliance supervision of the judgment of the Massacre case of *Pueblo Bello*.

Thus, in February 2012, the Court issued a resolution in order to convene a private hearing specifically addressing reparation measures on medical and psychological care ordered in cases involving Colombia, including the cases *19 Merchants, Mapiripán Massacre* and *Pueblo Bello Massacre*.

In June 2012, regarding the recommendation to carry out a search within a reasonable time for the remains of the victims, the State informed that the Single Virtual Identification Center would support the Public Prosecutor's Office in its activity – the Center would execute a "National Plan for the search of persons disappeared" (IACHR, 2012a, p. 18). The State indicated that it was sent a copy of the document to the Court within the framework of supervision of compliance with judgment in the case of the Mapiripán Massacre v. Colombia, which will be analyzed below.

In June 2016, the Court recognized the decision of the Colombian Constitutional Court[9], which considered possible to enforce and order the execution of international provisions, pointing out the possibility of demanding and imposing on the public authorities compliance with the reparation measures of the Inter-American Court, when they were not respected (IACHR, 2016, p. 9).

[9] COLOMBIA. Fifth Review Room of the Colombian Constitutional Court. Judgment nº T-653/12. Colombia, August, 23rd, 2012.

Notwithstanding the important steps taken by the Colombian State, the Inter-American Court has held that full compliance with the reparation measures has not been given, and compliance with the judgment in this case remains open.

C) Case of Massacre of Mapiripán versus Colombia

In the same context of fighting against *guerrilla* groups, the present case, in which the Colombian State promoted the creation of self-defense groups aimed at assisting the public forces in operations against *guerrilla* groups. In that sense, in July 1997, approximately 100 members of the United Self-Defense Forces of Colombia, wearing military clothing and carrying state monopoly weapons, tortured and murdered 49 people who had been deprived of their liberty, destroying their bodies and throwing them to the River Guaviare, in the Municipality of Mapiripán.

The Inter-American Court concluded that, despite the difficult circumstances in which Colombia passed, they do not exempt the State from fulfilling its obligations under the ACHR, which remain in cases such as this. Therefore, the State was condemned to:

> i) Investigate the facts of the case, identify, judge and punish those responsible;
> ii) Identify and individualize the victims of the Massacre and their families;
> iii) Establishment of an official mechanism to monitor reparations;
> iv) Provide health care to the families of the victims executed and disappeared;
> v) The establishment of state guarantees for the safety of the former inhabitants of the Municipality of Mapiripán who wish to return;
> vi) The construction of an appropriate and dignified monument to remember the facts;
> (vii) The implementation of a human rights and international humanitarian law education program in the armed forces, at all hierarchical levels;
> viii) Publication of the Court's decision in the official Gazette and in another national daily newspaper;

Regarding the above measures, on November 26th, 2008 (IACHR, 2008c), in supervising compliance with the Judgment, the Court found that the State created an official mechanism to comply with the reparations to which it was condemned, M.O.S Mapiripán. In this regard, the petitioners reported that, in fact, the mechanisms had been created with the participation of the representatives and put into operation.

As for the obligation to carry out investigations to identify the executed and disappeared victims, the actions were carried out within the scope of M.O.S, and were carried out by the Attorney General of the Nation. Also regarding the obligation to take necessary actions

to ensure the safety of the families of the victims, the State created a plan of action, but it was not successful, since the victims were afraid to return.

In monitoring compliance with the judgment of July 8th, 2009, it was found that the State reinforced the M.O.S. action plan, an exemplary way of supervising compliance with measures ordered by the Court (IACHR, 2009b, p. 3). In addition, the Office of the Attorney General of the Nation, with the help of the National Human Rights Unit, has linked 30 persons, carried out 18 counts and 13 convictions in relation to those involved in this case. Nevertheless, the Inter-American Court considered that impunity remained, and concrete measures were lacking to end the existing impunity.

In 2008, a tripartite committee for the displaced population was created. The representatives valued the creation as positive, but insufficient.

Regarding the obligation to implement a human rights education program, Colombia announced that it has signed a cooperation agreement with the United Nations High Commissioner for Human Rights. In the army, the head of human rights was created, as well as a cooperation agreement with the Inter-American Institute of Human Rights to oversee the progress of the matter. Human rights education is essential as a measure of non-repetition of the facts.

As a result, in March 2011, the State, together with the representatives, signed an agreement composed of the victims' representatives, the Director of Human Rights and IHL Directorate of the Ministry of Foreign Affairs and the Head of the Ministry of Foreign Affairs and Cooperation of Social Protection. Nevertheless, a private hearing was called due to the State's failure to provide information on medical and psychological care ordered as reparations.

Regarding the supervision of November 23rd, 2012 (IACHR, 2012c), the State clarified that, in order to comply with the recommendation to identify other victims, the steps were taken by the National Human Rights and Human Rights Department and by Justice and Peace, of Attorney General of the Union. He also acknowledged the facts that had occurred, clarifying that it would continue to comply in good faith with that ordered by the Court. Thus, the procedure for supervision of compliance with the judgment remains open, given that there are points of the sentence still pending full compliance.

D) Massacre Case of *Pueblo Bello* v. Colombia

Following the chronology of the decisions of the Inter-American Court of Human Rights, we proceed to analyze the *Pueblo Bello* case, whose sentence dates back to 2006. Presenting facts similar to those outlined above, the conflict

in *Pueblo Bello* again involves violent acts carried out by paramilitary groups. In this sense, the human rights violations occurred in January 1990, when a group of approximately sixty heavily armed men belonging to the paramilitary organization called *Los Tangueros*, led by Fidel Antonio Castaño Fil, entered the village of *Pueblo Bello*, with the main objective of looting and kidnapping members of the community.

The armed group was heavily armed, wearing civilian clothes and uniforms for private use by the Armed Forces. The paramilitaries sacked some houses, mistreating their occupants, and an indeterminate number of men were taken to the town square. Arriving there, based on a list they carried, the *guerrillas* chose 43 men, alleged victims in this case, who were tied up, gagged and forced into the trucks used for transport. The prisoners were taken to the Santa Monica farm, where they were received by Fidel Castaño Gil, who ordered the interrogation and torture of the victims, who were killed violently and some buried in *Las Tangas*. Only six of the 43 alleged victims were identified and their remains returned to their families. Another 37 people are still missing.

As reparation measures, in addition to compensation to relatives of the victims (IACHR, 2006, Annexes I and II), the Inter-American Court of Human Rights has determined, in summary:

> i) Immediately and within a reasonable period of time, the effective conclusion of investigations that delimit those responsible for the actions and omissions of the facts narrated;
> ii) Adopt measures so that the violations that have occurred are duly processed and judged, and judicial measures are guaranteed, so that there is reparation for what happened in *Pueblo Bello*;
> iii) Immediately identify the whereabouts of the victims' remains so that their families can carry out the appropriate burial, respecting the international regulations that are in line with the search and identification of missing persons and using all the scientific knowledge and institutional apparatus necessary for them to be found;
> iv) To promote adequate medical treatment for the relatives of the victims for the necessary time;
> v) Guarantee the safety of the relatives of the victims so that they can return to live in *Pueblo Bello*, if they wish;
> vi) Carry out a public act of recognition of international responsibility for the violations listed, making reparation to the missing and dead victims, as well as to their relatives;
> vii) Build an appropriate and dignified monument to remember the *Pueblo Bello* massacre.

After the publication of this decision, both the Colombian State and the victims' representatives requested the Inter-American Court of Human Rights in November 2006 to interpret the judgment (IACHR, 2006c). At this point, the State requested an interpretation on the reparations of the family members for reparation, and requested clarification on the housing program to be developed for the benefit of the victims' relatives. On the other hand, the representatives of the victims

presented doubts related to the determination of the beneficiaries of the indemnifications. This measure already demonstrates the Colombian State's more diligent behavior in carrying out the correct reparation of victims, which, unlike the cases previously analyzed, shows an improvement in the state's behavior in adapting its actions to the Inter-American Human Rights System.

Nonetheless, subsequent resolutions on compliance with the judgment came in the years 2008, 2009 and 2012 (IACHR, 2008d, 2009c, 2012d). As the operative paragraph of the first statement on compliance with the judgment, published in 2008 (IACHR, 2008d), the Inter-American Court of Human Rights convened a hearing with the purpose of obtaining more information from the State on compliance with the reparation measures, considering that, according to allegations of the parties, little had been done. The most controversial points in this first analysis were based on the information provided by the State, which were not considered up to date and showed a certain delay in the fulfillment of the reparation measures.

Regarding the supervision of compliance with the judgment issued in 2009 (IACHR, 2009c), after the referred hearing established in a previous resolution, the State did not present developments regarding the obligation to investigate the facts and punish those responsible. However, with regard to the search and identification of the disappeared victims, efforts and state advances have been recognized. Still, with regard to the psychological treatment of victims, the Court considered delays in carrying out the measure. Regarding compensation and other measures, the Court considered the hearing (IACHR, 2009c, p. 26) to be positive, so that adequate compliance parameters could be established, which were still awaited.

Lastly, in the last compliance supervision presented in 2012 (IACHR, 2012d), the Court decided to reconvene a private hearing for the State to present specific operative points. Even so, the procedure for supervision of compliance with the judgment remains open, given that there are points of the sentence still pending full compliance, demonstrating the state default.

E) Massacre Case of Santo Domingo v. Colombia

The next case presented in a chronological sequence of analysis by the Inter-American Court of Human Rights was held in the hamlet of Santo Domingo, located in northeastern Colombia. The context of the region is complex, as are the other cases already analyzed, covering a series of armed conflicts and territorial disputes. The violations took place in mid-December 1998, when the

Colombian Army learned that an airplane would land in the area of Santo Domingo clandestinely with arms loaded for the *guerrilla* of the Revolutionary Armed Forces of Colombia (FARC). Even knowing the great flow of people who, as a result of a sporting event, circulated in the place, the Colombian Army dropped bombs in the main street of the village of Santo Domingo, followed by attacks by machine guns. This military assault has killed 17 people, including six children, and wounded 27 people, including 10 children. Still, the incident caused the displacement of the villagers to neighboring towns, leaving Santo Domingo deserted until mid-January 1999, when survivors began to return to the region.

In its defense, the Colombian State presented preliminary objections alleging incompetence *ratione materiae*, as well as the non-exhaustion of domestic remedies. Accordingly, the State argued that the petition was inadmissible, since the facts covered possible violations of International Humanitarian Law, since it was an armed conflict and did not cover the jurisdictional role of the Inter-American Court. In addition, it clarified that the incidents that occurred in Santo Domingo were being determined in an administrative litigation process, in internal jurisdiction, and that, therefore, the domestic remedies had not been exhausted.

The Inter-American Court dismissed the first preliminary objection, since, although the judicial review list is exhaustive, other international provisions may be used to support the merits and merits analysis. The IACHR reiterated that the ACHR can and should be interpreted in the light of other treaties and conventions, especially IHL rules, in the specific case (IACHR, 2012e, p. 10).

As reparation measures, after condemning the State for violations of Articles 4, 5, 19, 21 and 22 of the ACHR, all of which are cumulated with Article 1.1 of the same law, the Inter-American Court of Human Rights has ruled:

> i) That the sentence of preliminary objections, merits, reparations and costs is, in itself, reparation to the victims;
> ii) That the State must carry out a public act recognizing its international responsibility in face of the facts of the case;
> iii) That the State make available a summary of the sentence in official gazette and in vehicle of wide national circulation, as well as publish the sentence in its official website;
> iv) That the State provide adequate medical treatment to the victims, through appropriate medical institutions;
> v) That the State must, within a year and a half, compensate quickly victims and relatives of victims who have not been repaired by the administrative jurisdiction internally;
> vi) That the State must pay, by way of procedural costs, the amount of US$ 5,000.00 (five thousand dollars), to be divided among the institutions that defended the victims;
> vii) That the Court will supervise the full compliance with the Judgment and will conclude the case after all the remedial measures have been completed by the State;

After the publication of the aforementioned sentence, the representatives of the victims requested interpretation of the operative paragraphs (IACHR, 2013a) without, however, terminating the procedure for supervising compliance with the judgment, which remains open.

F) Genesis Operation Case versus Colombia

The events occurred in the second half of the 1990s, when armed paramilitary groups and *guerrillas* spread throughout the territory of Urabá Chocoano. As a result of the hostile presence of *guerrillas*, accompanied by threats, forced disappearances, assassinations, there was a massive forced displacement of the Afro-Colombian population who lived there.

It was not enough, between February 24 and 27, 1997, the Genesis military operation was carried out in the region of the Salaquí and Truandó rivers. The purpose of the siege was to capture and/or destroy members of the FARC. In addition to Operation Génesis, paramilitary groups from the United Self-Defense Units of Córdoba and Urabá (ACCU), in the so-called Cacarica operation, made progress from north to south, starting from the Katios National Park, along the Cacarica River, through Bijao and other communities located on the banks of the rivers Salaquí and Truandó, where they carried out joint operations with the army. As a milestone in the Cacarica operation, the paramilitaries executed Marino López in Bijao, dismembering his group.

After the operations, hundreds of residents were forced to move to Turbo, Bocas de Atrato and Panama, where they stayed in different camps for four years. Many returned to communities that were at peace in the Cacarica river basin. Even so, many continued to be persecuted, threatened and abused by paramilitary groups.

Nevertheless, the State was condemned as responsible for violations of Articles 4.1, 5.1 and 5.2 plus 1.1, before the death of Marino López Mena. The Court also concluded that the actions along the Cacarica river basin were jointly undertaken and collaborated between the State – the Genesis operation – and the paramilitary groups that drove the Cacarica operation. Thus, the State violated Articles 5, 19 and 1.1 of the ACHR, to the detriment of displaced children and those born in the course of displacement. With regard to the expropriation of the ancestral territory of Afro-descendant communities, the State was held liable for violation of Article 21 and Article 1.1 for violating collective property rights to the detriment of the Council of Communities of the Cacarica River Basin (IACHR, 2013b).

Regarding judicial guarantees and protections, the Court considered that the State partially acknowledged its responsibility for breaching the reasonable period of time for internal

investigations, which does not comply with Article 8 of the ACHR. Given the fact that some facts were verified and some were not verified, the Court held the State responsible for not carrying out due diligence investigations into the participation of state agents and paramilitary structures, even after the conviction of a high ranking Army officer jurisdiction. The Court also condemned the State for violating articles 25.2.a and 25.2.c of the ACHR to the detriment of Afro-descendant communities (IACHR, 2013b).

In the recently issued supervision of compliance with judgment, in 2016 (IACHR, 2016), the Court reinforced the operative paragraphs of the judgment of merit, namely:

> i) To continue effectively and with due diligence investigations, and to open the necessary investigations, in order to identify, prosecute and punish all those responsible for the facts of this case and remove all obstacles, *de facto e de jure*, that may maintain impunity ;
> ii) To perform a public act of recognition of international responsibility for the facts of the present case;
> iii) To provide appropriate medical treatment and priority required by victims in this case in the context of reparation programs under national regulations;
> iv) To restore the use, enjoyment and effective possession of the territories recognized in the national legislation for Afro-descendant communities grouped in the Council of Communities of the Cacarica River Basin;
> v) To ensure that the territories restored to the victims in this case, as well as the place where they currently live, are adequate, safe and ensure a dignified life for both those who have returned and those who have not yet done so;
> vi) To ensure that all persons who have been recognized as victims at trial actually receive the compensation provided for in the relevant internal regulations;
> vii) To pay the amounts established in the judgment for pecuniary and non-pecuniary damages caused to Mr. Marino López Mena and their families, for which the relevant issues and publications must be made; and
> viii) To pay the amounts established for reimbursement of costs.

In addition, in view of the recent manifestation of the Inter-American Court of Human Rights in this case, it is inferred that the procedure for supervision of compliance with the judgment remains open and pending state manifestation until the end of February 2017.

In the context of the exemplary menu of the cases briefly explained above, the analysis of the judgments, as well as the resolutions issued by the Court with regard to the analysis of their compliance, it is firstly noted the importance of the decisions of the Inter-American Court of Human Rights as well as measures to provide reparations to victims and a step forward in building greater concern for human rights. It appears from the analysis that the measures imposed on the State serve to reinforce a greater concern for human rights, to avoid repetition of the facts, and to preserve the memory of the victims (IACHR, 2016, p. 3). In addition, the publication of results of internal criminal proceedings regarding those responsible for the violations, as it was the case in the *Las Palmeras* case, is also a step towards the consolidation of the rule of

law, as well as the condemnatory measure of carrying out accountability of the perpetrators of the violations.

The decisions of the Inter-American Court of Human Rights, in addition to the resolutions on compliance with the judgment, also led the Colombian State to coordinate efforts to solve recurring problems of human rights violations common to the cases analyzed, as can be seen from the joint analysis carried out in seven cases concerning to the extent of repairing health care and psychosocial care. The pressure exerted by the Inter-American Court, which led the State to take such measures, strengthens the possibility of redress for the victims of human rights in the country.

In addition, another measure created and driven by the Court's injunctions, and salutary in complying with its convictions, concerns the plan created by the Colombian State in the case of the Mapiripán Massacre, within the framework of the M.O.S program, cited above. From this measure, there are efforts to identify victims and their families, strengthening the possibility of reparation and consolidating human rights in the country.

However, the decision of the Colombian Constitutional Court brought to light in Case 19 Merchants, in which an internal judicial decision established an important milestone in pointing out that the domestic courts also have jurisdiction to enforce the decisions of the Inter-American Court of Human Rights (CIDH, 2016, p. 5). The importance of the dialogue between international and domestic law is thus seen, with a view to building a rule of law with respect to human rights.

Given this analysis, it can be seen that the condemnations of the Colombian State before the Inter-American System had, *per se*, a positive character in the construction of a culture of human rights in the country. In spite of the length of the procedural process before the IACHR, after the referral of the merit report to the Inter-American Court for processing in international jurisdiction, the State's position becomes clearly more attentive and rigid.

In this sense, the first three cases analyzed are more symptomatic, since they demanded a much more active stance from the Inter-American Court in relation to the State's call for clarification of compliance with the sentence. This concern of the Inter-American Court of Human Rights to monitor state action, even if it implies a partial compliance on behalf of the State, can be considered of great value, since it presents alternatives for the insertion of human rights in internal institutions.

It is also curious to point out that, in the last three sentences analyzed, compliance by the State proved more effective, although not standard. In addition, the Inter-American Court has been increasingly fast in maintaining dialogue with the Colombian State, making it less

comfortable to violate postulates in international regional jurisdiction. Thus, the efforts made by the Inter-American Court of Human Rights in the late 1990s and throughout the 2000s to the present day, in the case of Colombia, are indeed effective and positive.

The course of the cases shows how the dialogical exchange between the Inter-American Court and the Colombian State, although based on the repressive view of violations, shed light on institutional structures and promoted important paradigmatic changes, contributing to the strengthening of human rights and enabling the process of Colombian peace.

4 NOTES OF CONCLUSION: A (NEW) BEGINNING FOR COLOMBIA

The promotion of peace and the defense of human rights are two sides of the same coin, and both feedback the very notion of the Democratic Rule of Law. Human Rights, Democracy and Peace – although they are signs of changing meanings – are the triad that sustain contemporary international discourse.

The creation of the United Nations, which, once it has produced important changes in the international and internal order, is a watershed in the international arena, and has inaugurated, at the international level, a new stage in the protection of human rights in contemporary times. The United Nations entered the international arena with the Charter of Saint Francis, dated 1945, which contains among its provisions the main challenge of the institution of peacekeeping. So, within this larger objective, the role of human rights and the dignity of the human person as an instrument of the preservation of future generations against the "scourge of war"[10] is highlighted. The protection of human rights now occupies a fundamental place on the agenda not only of the UN but also of other spheres of all international spheres, and has become, at the same time, the cause and consequence of the maintenance of peace and the guarantees of the rule of law.

The emphasis of human rights replaces the law of force with the force of law, calling for "the multilateralist logic of dialogue, the legitimacy of international negotiations and consensus" (PIOVESAN, 2011, p. 54). Again, the spirit of the dialogues emerges as a catalyst for the promotion of human rights, bridging the gap between international jurisdiction and national ones, rather than

[10] This is an expression used in the preamble to this document which, in its first chapter, in stating the purposes and principles of the United Nations, makes clear the main goal of guaranteeing peace, in verbis: "1. To maintain international peace and security and to this end: collectively take effective measures to prevent threats to peace and suppress acts of aggression or any other breach of peace and arrive, by peaceful means and in accordance with the principles of justice and international law, to an adjustment or settlement of disputes or situations that may lead to a disturbance of the peace." Available at: <https://goo.gl/NG8bwr>. Accessed on: September, 6th, 2012.

being an agenda against States but incorporated by them. The idea of the rule of law is associated with the progress in the process of justicialization of internationally enunciated human rights.

In the case of Colombia, the fruitful dialogue between the local and regional systems made it possible to move forward, leading to the paving of the peace process and consolidating the institutional structures of the rule of law. It is no wonder that the Colombian Constitution is today an example on reception of international human rights law, giving these treaties privileged status and working with the idea of control of convention.

The jurisprudential recurrence of the inter-American system corroborates the announced triad. Since the cases under analysis were a common stage of serious non-international armed conflict in Colombia, it focused on international human rights law, in particular from the convictions and resolutions of compliance with the judgment of the Inter-American Court of Human Rights, in combating systematic violations. However, it is noted that notwithstanding the Court's condemnation of the human rights violated in each specific case, by adopting specific measures of reparation, the dialogue promoted between the local and regional spheres, especially in the area of compliance with the sentence, strengthens the Rule of law and the culture of peace.

In addition, the Inter-American Human Rights System, in particular with the Inter-American Court of Human Rights, as evidenced by the analysis of the cases examined, allowed the Colombian population to rely on international intervention, when internal forces were imminently unable to guarantee their protection – and, on several occasions, directly involved in the violations. Hence the importance of the sentences handed down by the Inter-American Court of Human Rights, inasmuch as they, at the same time, strengthen the protection of human rights at national and international level, reparations to victims of grave violations and, consequently, strengthening of democracy and process in the context of intricate armed conflict. Thus, with the migration of human rights from the exclusive sphere of constitutional and state sovereignty to the sphere of international responsibility, there is a new pattern not only of human rights and international law, but with direct interference in constitutional law.

The contribution of the Inter-American System of Human Rights, with a strong emphasis on its jurisdiction, has been demonstrated to strengthen the democratic process, the rule of law and peace in Colombia. These circumstances, once again, highlight the "rationality of resistance" (FLORES, 2009, p. 32) of human rights as an emancipatory platform (PIOVESAN, 2011, p. 54) that enables the transformation of reality.

REFERENCES

BERNARDI, Bruno Boti. O sistema interamericano de direitos humanos e a lei de justiça e paz na Colômbia: política doméstica e influência de normas internacionais. **Contexto int.** [online]. 2013, p. 139-172. ISSN 0102-8529. Disponível em: <https://goo.gl/icB8X5>. Acesso em: 6 set. 2017.

CENTRO NACIONAL DE MEMORIA HISTÓRICA**. Yo aporto a la verdad, acuerdos de contribución a la verdad y la memoria histórica**: mecanismo no judicial de contribución a la verdad, la memoria histórica y la reparación, Ley 1424/2010 / Centro Nacional de Memoria Histórica – Dirección de acuerdos de la verdad. Editor Álvaro Villarraga Sarmiento. Bogotá: Centro Nacional de Memoria Histórica, 2014. Prefácio.

COLÔMBIA. Quinta Sala de Revisão da Corte Constitucional Colombiana. **Sentença nº T-653/12**. Colômbia, 23 ago. 2012.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Mérito, Reparações e Custas. Sentença de 5 de julho de 2004b. Disponível em: <https://goo.gl/phqcFU>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução de 2 de fevereiro de 2006a. Disponível em: <https://goo.gl/fJwCQu>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 10 de julho de 2007. Disponível em: <https://goo.gl/m1Sm8x>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 26 de novembro de 2008b. Disponível em: <https://goo.gl/S5kcMk>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 8 de julho de 2009b. Disponível em: <https://goo.gl/iefkFG>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 8 de fevereiro de 2012a. Disponível em: <https://goo.gl/GLMXGv>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso 19 Comerciantes Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 26 de junho de 2016. Disponível em: <https://goo.gl/kGVajt>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso das comunidades afrodescendentes deslocadas da Bacia do Rio Cacarica (Operação Génesis) Vs. Colômbia**. Sentença de 20 de novembro de 2013b. Disponível em: <https://goo.gl/xcNgYV>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso das comunidades afrodescendentes deslocadas da Bacia do Rio Cacarica (Operação Génesis) Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 20 de outubro de 2016. Disponível em: <https://goo.gl/sgT7J5>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Las Palmeras Vs. Colômbia**. Mérito. Sentencia de 6 de dezembro de 2001. Disponível em: <https://goo.gl/ECDyp2>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Las Palmeras Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 17 de novembro de 2004a. Disponível em: <https://goo.gl/hoZySu>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Las Palmeras Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 4 de agosto de 2008a. Disponível em: <https://goo.gl/CQa6r8>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Las Palmeras Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Presidenta da Corte Interamericana de Direitos Humanos de 7 de dezembro de 2009a. Disponível em: <https://goo.gl/nBbucH>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Las Palmeras Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 3 de fevereiro de 2010. Disponível em: <https://goo.gl/pfZhgN>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Mapiripán vs. Colômbia**. Sentença de 15 de setembro de 2005. Disponível em: <https://goo.gl/WuB6yr>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Mapiripán vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 26 de novembro de 2008c. Disponível em: <https://goo.gl/xQe52X>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Mapiripán vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução do Presidente da Corte Interamericana de Direitos Humanos de 8 de fevereiro de 2012b. Disponível em: <https://goo.gl/xUGe5z>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Mapiripán vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 23 de novembro de 2012c. Disponível em: <https://goo.gl/eQoeAD>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Pueblo Bello Vs. Colômbia**. Sentença de 31 de janeiro de 2006b. Disponível em: <https://goo.gl/LW1ShZ>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Pueblo Bello Vs. Colômbia**. Solicitação de Interpretação de Sentença, de 25 de novembro de 2006c. Disponível em: <https://goo.gl/dQsz5N>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Pueblo Bello Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 26 de novembro de 2008d. Disponível em: <https://goo.gl/bicDMB>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Pueblo Bello Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 9 de julho de 2009c. Disponível em: <https://goo.gl/WQuSCt>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Pueblo Bello Vs. Colômbia**. Supervisão de Cumprimento de Sentença. Resolução da Corte Interamericana de Direitos Humanos de 8 de fevereiro de 2012d. Disponível em: <https://goo.gl/Rnw668>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Santo Domingo Vs. Colômbia**. Sentença de 30 de novembro de 2012e. Disponível em: <https://goo.gl/2kaHpu>. Acesso em: 6 set. 2017.

CORTE INTERAMERICANA DE DIREITOS HUMANOS (CIDH). **Caso Massacre de Santo Domingo Vs. Colômbia**. Solicitação de Interpretação de Sentença, de 19 de agosto de 2013a. Disponível em: <https://goo.gl/7JAUU1>. Acesso em: 6 set. 2017.

DONNELLY, Jack. **Universal Human Rights**: in theory and in practice. 2nd edition. Ithaca: Cornell University Press, 2003.

FLORES, Joaquín Herrera. **A (re)invenção dos direitos humanos**. Florianópolis: Boiteux, 2009.

GREER, Steven. **The Margin Of Appreciation**: Interpretation And Discretion Under The European Convention On Human Rights. Council of Europe, 2000.

OLIVEIRA, Márcio Luís de. **O sistema interamericano de proteção dos direitos humanos**: interface com o direito constitucional contemporâneo. Belo Horizonte: Del Rey, 2007.

PASQUALUCCI, Jo M. **The Practice and Procedure of the Inter-American Court of Human Rights**. Nova Iorque: University of South Dakota Press, 2014.

PIOVESAN, Flávia. **Direitos Humanos e Justiça Internacional**. São Paulo: Saraiva, 2011.

PIOVESAN, Flávia. Direitos humanos e diálogo entre jurisdições. **Revista Brasileira de Direito Constitucional – RBDC**, São Paulo, n.19, p. 72, jan./jun. 2012.

PIOVESAN, Flávia. Direitos sociais, econômicos e culturais e direitos civis e políticos. **Sur Revista Internacional de Direitos Humanos**, São Paulo, 2004.

TRINDADE, Antônio Augusto Cançado. Dilemas e desafios da proteção internacional dos direitos humanos no limiar do século XXI. **Revista Brasileira de Política Internacional**, Brasília, p. 167-177, jan./jun. 1997. Disponível em: <https://goo.gl/mwHGDD>. Acesso em: 6 dez. 2012.

TRINDADE, Antônio Augusto Cançado; ROBLES, Manuel E. Ventura. **El Futuro de la Corte Interamericana de Derechos humanos**. San José, Costa Rica: Corte Interamericana de Direitos Humanos e UNHCR, 2003.

TRINDADE, Antônio Augusto Cançado. The Inter-American System of Protection of Human Rights (1948-2005): evolution, present state and perspectives. In: **Apostila do Curso Fundamental [em inglês] do Instituto Internacional dos Direitos do Homem (IIDH)**, sessão de 4-29 de julho de 2005.

WILT, Harmem van der; KRSTICEVIC, Viviana. The OAS System and Human Rights. In: HANSKI, Raija; SUKSI, Markku. **An Introduction to the International Protection of Human Rights**. 2nd edition. Turku: Institute for Human Rights Abo Akademi University, 2004. p. 371.

Ananda Hadah Rodrigues Puchta
Bachelor in Law at Universidade Federal do Paraná (2013) and specialist in Constitutional Law at the Brazilian Academy of Constitutional Law (2015). Researcher on Constitutional Law, Fundamental Rights and International Human Rights Law at Universidade Federal do Paraná. He is a member of the Center for Research on Constitutionalism and Democracy and the Center for Studies on Human Rights Systems at UFPR. Lawyer. Member of the OAB/PR Sexual and Gender Diversity Committee. Legal Coordinator of International Organizations of the Dignity Group and the LGBTI National Alliance. E-mail: ananda.hadah.rp@gmail.com

Melina Girardi Fachin
PhD in Law at PUC-SP. Adjunct Professor in the Postgraduate Program in Law at Universidade Federal do Paraná. E-mail: melinafachin@gmail.com

Giulia Fontana Bolzani
Graduated in Law at Universidade Federal do Paraná. E-mail: giulia.bolzani@gmail.com

Versão em inglês elaborada por Luciana Almeida Menezes, doutoranda no Programa de Pós-Graduação em Direito da Universidade Federal do Paraná (PPGD–UFPR), mediante seleção conduzida conforme as normas do Edital de Apoio à Editoração e Publicação de Periódicos Científicos da UFPR – 2017, da Pró-Reitoria de Pesquisa e Pós-Gradução (PRPPG–UFPR).

Original em português disponível em <http://dx.doi.org/10.5380/rfdufpr.v62i3.50862>.