

Human Rights in Crisis: The Case of Colombia

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Let me take this opportunity to share with you some experiences and one or two ideas about possibilities of action in international relations to overcome human rights crises, like the Colombian case. In order to do so, first I will try to explain briefly what the Colombian case is, and then what international relations have done about it, what the reactions and the result of these actions have been, and what can be expected regarding Colombia in the near future.

1. Colombia: An ambiguous regime

Colombia is a country that is essentially ambiguous, characterized by the coexistence of democratic institutions and socio-political violence. The level of development of its democratic institutions is relatively important: presidential and parliamentary elections every four years, without exception; an independent judiciary headed by four high courts, one of them capable even of abolishing legislation contrary to the Constitution; freedom of information and of speech, based on a variety of strong enough private media. Yet the level of socio-political violence is also important: more than 5 million internally displaced people, the country most seriously affected by internal displacement in the world; thousands of social activists killed or forcibly disappeared, including more than 2,800 trade-unionists since 1986, the more dangerous country for trade-unionists on the planet; violence against women as part of war aggressions or domestic practices is widespread.

This ambiguity has accompanied the country's history for many years, even before independence from Spain, 200 years ago. At that time, most of the social contradictions took place between slave indigenous peoples and slave afro-descendants on the one hand, and landowners on the other, in dispute over the economic resources of the country, and among Spaniards and creoles competing over political power. Throughout the 19th Century, most of those political disputes were confrontations among members of new leading groups that emerged from the elites. Early in the 20th Century, a big war broke out --"The Thousand Days' War"-- opposing members of the only two parties of that time, Liberal and Conservative, from 1899 to 1902. This confrontation between Liberals and Conservatives continued during the first half of that Century, based on many different values, but specially focused on land distribution, rural reform, and social exclusion. A period of extreme violence took place, more than a decade long, beginning in the late 1940's.

After a short military regime in the 1950's, in 1957 Liberals and Conservatives reached a peace agreement based on the distribution of political power among the two parties, with the participation of the military, but excluding other political expressions of the society, minorities at

that time. In the midst of the international Cold War, in the second half of the past century, an internal armed conflict quickly arose between the Liberal-Conservative coalition supported by the Army, on the one hand, and Marxists guerillas created since the 1960's, on the other. The social movement, and the civilian population at large, were held hostage in the midst of this violent confrontation.

The ambiguity of the Colombian political regime did not start half a century ago. It has been present during different periods of the country's history. It has not only been manifested by the pair legal or democratic institutions and socio-political violence, but more generically by the pair modern State and arbitrariness. According to the rules of a modern State, and in contrast to most of its neighbors, Colombia was built on a republican and civilian--rather than a military--model. That means separation of powers, judicial resources protecting fundamental rights, and promotion and approval of most of international legal instruments, such as international human rights declarations and treaties. In compensation, Colombian governments have also made room for arbitrariness, both through legal and illegal mechanisms.

The arbitrary legal mechanism par excellence has been the state of siege, a constitutional privilege allowing the government to suspend constitutional guarantees and laws and to adopt legislation by decree. The state of siege has been transformed and restricted by a new Constitution adopted in 1991, introducing time limits, substantial prohibitions and serious judicial control of its powers and renaming it "state of exception" (no more "state of siege"). Before 1991, the common practice was to govern by means of state of siege powers on average 75% of the time (three years out of four). After 1991 there have been some attempts to return to that practice and to reform the Constitution to allow some arbitrary measures as normal powers, but so far those attempts and reforms have failed.

The arbitrary illegal mechanisms have consisted mainly of an irregular use of force directly by State agents or indirectly by private agents linked to national or local State powers. Participation of civilian armed groups supported by official authorities to kill or attack other civilians or rebels existed in Colombia in the 19th Century and in the first half of the 20th Century. Since 1965 this practice was partially formalized through state of siege norms that authorized the official Military Forces to provide weapons of war to civilians organized as so-called "self-defense groups". Secret or confidential guidelines, adopted by top-level military Commanders, ordered the soldiers to promote and organize that kind of groups, known as "paramilitaries," and to instruct and support them in carrying out irregular actions, like forced disappearances and tortures. Although the norms adopted by exceptional or regular legislation authorizing the existence of paramilitary groups are no longer in force, the already mentioned secret or confidential military guidelines have not been eliminated.

Paramilitary activity has not been eliminated either, even though between 2002 and 2008 the Government worked out an agreement supposedly to make peace with these groups. Some of them, especially their main leaders, demobilized, which is not a negligible political fact. Most of

those leaders, around 30 in total, were extradited to the United States in 2008 to respond for drug trafficking related crimes, which shows the failure of this agreement as a peace process. It is difficult to believe Government's assertion that the number of collectively demobilized paramilitaries was 31,500, when, according to official figures, there were no more than 12,000 of them in 2002. It is estimated that there are 10,000 members still active, under the command of new leaders. The Government doesn't recognize them as paramilitaries but rather as criminal gangs. They continue to kill social activists and human rights defenders, and in many cases enjoy the support of local authorities, as the previous paramilitaries did prior to the demobilization. Since the Government doesn't identify them as part of the socio-political violence, but only as minor drug traffickers, the level of ambiguity concerning human rights violations rises.

A key element guaranteeing the functioning of this ambiguous regime is impunity. Rare are the cases of human rights violations that have been sentenced in Colombia: less than 1%. Many factors can intervene to produce this level of impunity. One is the normal inefficiency of the judiciary, concerning not only human rights violations but ordinary criminality in the country. According to the more optimistic studies, the rate of common impunity is 90%, while for the more pessimistic it is around 97%. If a human rights violation falls within this 3 to 10% of crimes investigated by the judiciary in Colombia, the prosecutors and judges involved have to overcome serious attacks. Perpetrators being themselves very violent actors, they don't mind threatening or killing whoever dares to investigate them. This is a second factor that can explain impunity, especially concerning private actors.

Regarding members of the Armed Forces, impunity for human rights violations committed by them can be additionally secured by the military jurisdiction system. That is why one of the most important international recommendations formulated in relation to the human rights situation in Colombia is to guarantee that human rights violations perpetrated by State agents be brought to the ordinary or civilian justice system. In 1999, following that recommendation, the military penal code was amended to include a provision in this sense, which was reiterated in a new military penal code adopted in 2010.

Surprisingly, not long after the promulgation of this new code, the Government promoted a constitutional reform guaranteeing the military that most of human rights violations in which they are involved belong to the military jurisdiction, and cannot be sent to the civilian justice system. Furthermore, according to the reform, these crimes should be analyzed not as human rights violations but as mistakes against international humanitarian law. All the international human rights bodies, and many Governments, including the UK,¹ highlighted the contradiction between this initiative and the legal obligations of Colombia, according to international human rights treaties, but they were ignored and the Constitution was amended anyway in December 2012.

¹ Recommendations made to the Colombian government at the UN Universal Periodic Review in 2013:

This reform was declared unconstitutional by the Constitutional Court last October due to faults in legislative procedure. The reaction against this decision by the military sector was strong and the Government announced that a new initiative in the same sense will be presented to insist on this constitutional reform.

These three factors –the fundamental inefficiency of the judiciary, obstacles of a violent nature hindering investigations under civilian justice, and military jurisdiction— should be sufficient to explain impunity for human rights violations in Colombia. But there are two other factors. A fourth factor is related to the legal benefits granted by the Government to the paramilitary groups to reduce sentences for their crimes. Instead of 60 years of prison foreseen for their crimes in the regular penal code, the main perpetrators can be sentenced for up to 8 years. The remaining paramilitaries, estimated at 28,000 individuals, can benefit from the suspension of the whole sentence. Even if the agreement with the paramilitaries has contributed to a reduction of their activity and to other important results, there is no doubt that it has been the biggest operation of impunity in the history of Colombia.

A fifth factor of impunity could come from the peace process that the current Government is conducting with the most important guerilla group in the country, the Revolutionary Armed Forces of Colombia (Farc). The Government promoted and reached a constitutional reform allowing “renunciation” of judicial prosecution of human rights violations and serious breaches of international humanitarian law. This authorization would apply not only to crimes committed by guerillas but also by paramilitaries and by members of the Armed Forces. The Constitutional Court, while declaring that provision constitutional, stated that the law regulating this reform should take into account that human rights violations and serious breaches of international humanitarian law should be prosecuted by the judiciary, according to international treaties binding for Colombia. It is uncertain what is going to be the result of this contradictory decision.

In any case, as was said before, impunity is not only a key element to guarantee the functioning of this ambiguous regime --it is also an important component of this ambiguity. Impunity contributes to make more obscure the assessment of socio-political violence in Colombia. It makes it more difficult to identify the human rights violations perpetrated, to clarify the nature and the meaning of these crimes and their motivations, to establish responsibilities for this situation, and to determine the solutions to it. Impunity deepens the ambiguity of the regime, hiding its violent and arbitrary face, and exaggerating its democratic qualities, underestimating its serious failures. An accurate perception of the Colombia situation must take into account the two sides of the regime, its double personality.

2. International consequences of the ambiguity: Reluctance to acknowledging the human rights crisis

At the international level, the characteristic ambiguity of the Colombian regime has tended to translate into a reluctance on the part of relevant actors to acknowledge the human rights crisis in

the country. Due, in part, to the difficulties of perception emerged from this ambiguity, the Colombian human rights situation is not always seen as a crisis, but as a normal dysfunction of a democratic regime. At times, even when perceived as a crisis, it is not seen as a human rights crisis, but as another kind of crisis. Many people, both within the country and abroad, believe that what is happening in Colombia is a problem of violence generated by drug trafficking. Other people think that violence in Colombia originates primarily, or only, in the guerrillas. Other observers are convinced that Colombia is a violent society because of the supposed violent nature of most of its members as a consequence of the country's long history of violence. These views are simplifications of a more complex problem that cannot be understood if it is not seen as what it is: a very serious crisis of human rights.

What Colombia is suffering from is the result of the lack of institutional commitment to credibly protect and respect the human rights of its entire population. Obviously, this lack of institutional protection and respect is aggravated by factors like the violence perpetrated by drug traffickers or guerrillas. Moreover, the existence of drug traffickers and guerrillas in Colombia is one of the outcomes of that lack of protection and respect. But the hard core of the problem is the human rights crisis, and not the particular expressions of violence that aggravate that crisis or are among its consequences.

If the focus is put on the lack of institutional respect and protection that characterizes the Colombian situation as a human rights crisis, the responsibility of the State comes sharply into focus. But if the focus is put on drug traffickers or guerrillas, it is natural that the State is seen as a victim. Actually, many observers see the State as a victim of the crisis rather than a protagonist deeply involved in it. The State itself, in the analysis that each Colombian government has made of the crisis during the last 50 years, has promoted this image of being a victim.

For instance, in the 1980's, the government officially acknowledged the existence of a human rights problem in Colombia but this acknowledgement did not imply that the government recognized the State's responsibility in this tragedy. Responsibility for the whole situation was artificially attributed almost exclusively to a single sector: drug traffickers. Between 1984—with the assassination of Minister of Justice Rodrigo Lara, ordered by drug trafficker Pablo Escobar—and 1993, with the killing of Escobar, the main official explanation for violence and human rights violations in Colombia was that these were violent acts perpetrated by drug traffickers.

Without a doubt, drug traffickers did arrange many murders and organize terrorist actions specifically aimed at forcing the Colombian government to refuse extradition requests, or to resolve disputes between illegal competitors. Some drug traffickers were also involved, along with members of the armed forces, in developing new paramilitary groups or strengthening some of the existing groups. Nevertheless, setting aside the violence drug traffickers committed as part of paramilitary groups, the deeds attributed to drug traffickers in their fight against the State were more obvious but considerably less numerous than rampant socio-political murders and other

human rights violations. The people being killed each day by State agents, paramilitary groups, or guerrilla forces—especially peasants from isolated rural areas, or trade-unionists, among other human rights defenders—were not interesting topics for coverage by the national or, particularly, the international media. This type of reporting distorted the perception of the human rights crisis in Colombia, obscuring State responsibility and the participation of State agents and paramilitary members—other than drug traffickers—in the bulk of the violations.

This distortion served the needs of the Colombian administrations, which fought diligently during that period to block in any possible way the involvement of the international community as observers of the treatment given to the human rights crisis. This was one of the State's top priorities. For many years, they were successful, due to the prevailing perception of the Colombian State as victim of drug trafficking and of the human rights crisis as the logical result of institutions weakened and a society threatened by drug traffickers. This view was held by several key member States of the United Nations at that time. The ever-growing number of political killings and the persistence of impunity for them, even after the end of the terrorist era in which drug traffickers like Pablo Escobar had reigned, finally made it clear that systematic human rights violations in Colombia did not begin or end with drug trafficking and that the killings and impunity would not end if the illegal drug trade weakened or even disappeared.

3. Overcoming the ambiguity and the reluctance: The importance of international monitoring of human rights crises

Taking into account these circumstances, it was not at all easy for Colombian human rights defenders to convince the United Nations, and particularly its Human Rights Commission, to include Colombia as a case of gross and systematic violations of human rights. Many reports needed to be produced about the human rights situation in Colombia, first by non-governmental organizations, like Amnesty International, Human Rights Watch, the International Commission of Jurists, and other relevant private observers, and then by authorized intergovernmental mechanisms, like the UN Working Group on Forced Disappearances, the UN Special Rapporteur on Extrajudicial Executions, the Inter-American Commission on Human Rights, and the UN Special Rapporteur on Torture, who visited the country from 1988 to 1994, the Norwegian Parliament and the UN Sub-Commission on Human Rights who approved in 1994 resolutions in favor of the appointment of a Special Rapporteur for Colombia by the UN Human Rights Commission.

All these reports were necessary to demonstrate that Colombia, even being a constitutional or democratic regime, was affected by a serious human rights crisis, that its violence was not only related to drug trafficking and that the State was not a victim of this situation but an actor bearing responsibilities for arbitrary policies, involvement in violations and lack of protection of the population. The European Union took the case in its hands and in 1996 the UN Commission on Human Rights approved by consensus, with the acquiescence of the Colombian government, a decision (called Chairperson Statement) requesting the creation in Colombia of a permanent office

of the High Commissioner for Human Rights with the two-fold mandate of giving technical assistance to the authorities and to civil society, and of observing the human rights situation by presenting analytical reports to the Commission every year. One year later, in April 1997, the permanent office was inaugurated in Colombia and has played a very important role. It was the first office of the High Commissioner created by political mandate of the Commission. Some years later, the office for Nepal would be created as well by political mandate of the Commission.

Before the creation of the permanent office of the High Commissioner in Colombia the actions of the international community have had limited yet important effects on the adoption of measures by the authorities vis-à-vis the systematic violations of human rights. But the creation of this office potentiated significantly these effects. In the late 1980's, for instance, as a result of international observations, the armed forces were partially restructured, and for the first time since the 1950s a civilian was appointed as minister of defense in the late 1980s. Similarly, since the 1980s the deputy inspector general (*procurador delegado*, in Colombia) for the military forces has been a civilian, with the mandate of carrying out disciplinary investigations of members of the armed forces. This was a position formerly reserved for high-ranking military officers, whose impartiality in such matters was not necessarily credible. In addition, in 1989, as it has been said, the government suspended the norm established in 1965 to provide a legal basis for the existence of paramilitary groups.

These measures and other similar decisions were based on the assumption that perpetrators acting as State agents would automatically or progressively be weakened if they lacked the official support of the civilian government. Unfortunately, with rare exceptions, this assumption was not backed up with effective actions for prosecuting such perpetrators. Though the government ordered in 1989 the creation of a specialized task force of one thousand policemen to fight paramilitary groups, under the personal direction of the national chief of police, this force was never actually created. The administration put more effort into altering the official language used to discuss human rights issues than into organizing concrete plans to block the actions of human rights violators and punish them.

Nevertheless, the shift in official human rights language in the late 1980's marked the government's decision to accept the legitimacy of the human rights approach and marked a significant difference from the past, when a simple mention of human rights was automatically categorized as a subversive act by governments who refused to recognize the occurrence of serious violations in this field. As such, this modification in the official stance on human rights was an important change, but one that was insufficient to redress the situation.

In keeping with this point of view, substantial innovations in the area of human rights were included in the new Constitution approved in 1991. Peace agreements were achieved with five guerrilla groups from 1989 to 1994. Those and other significant results would not have been possible without this changed mind-set and language. The change allowed the authorities to see

that negotiating with armed enemies was politically possible and that there were outcomes to the conflict beyond defeat, imprisonment, or death. It also allowed Colombian society to accept that a State built on a foundation of human rights could be accepted as upholding democratic principles, instead of being rejected as an attempt to weaken the government.

In 1994, the government ratified Additional Protocol II to the Geneva Conventions on humanitarian law. The armed forces had opposed this approval for seventeen years, arguing that it would imply the recognition of the “belligerent status” of guerrilla groups, even though the protocol explicitly states that this possibility is excluded. Other decisions were taken by the government without the consent of the armed forces. In 1995, on behalf of the State, the president took responsibility for a horrendous series of massacres committed between 1989 and 1991 by military and paramilitary forces in the town of Trujillo. This recognition was made before the Colombian people and the Inter-American Commission on Human Rights and resulted in the dismissal of an army colonel who had organized and carried out the atrocities. The generals in the military reacted strongly to this decision. In 1996, the Colombian Congress approved a bill recognizing the binding nature of decisions regarding human rights violations in Colombia made by the Inter-American Commission on Human Rights and the Human Rights Committee of the International Covenant on Civil and Political Rights (law 288 of 1996). This bill established a judicial and summary procedure to define the monetary damages that must be paid to victims by the Colombian government in cases decided by the aforementioned agencies. This bill was also adopted without the consent of the high commanders of the armed forces.

Those and other achievements were possible due to the action of victims and civil society requesting respect for human rights in Colombia, supported by international reports from non-governmental organizations and by reports and decisions produced by the Inter-American and United Nations human rights systems, before the creation of the permanent office of the High Commissioner in Colombia. The presence of the office in the country has been important to strengthen the understanding of the human rights crisis as such, to promote policies in favor of protection of human rights and confront decisions contrary to international human rights obligations, and to clarify the responsibility of the State in the human rights crisis.

4. International mechanisms contributing to confront persistence of ambiguity

This responsibility is more evident every day regarding paramilitarism, created originally by decision of the State, as has been mentioned. When the norm supporting paramilitarism was declared illegal in 1989, the President ordered taking action against them but those orders were not put into practice. On the contrary, in 1995 the Government authorized once again giving war weapons to civilians, which was the legal support for the creation of new groups legally organized by paramilitaries, called “Convivir” (Living Together), declared again unconstitutional by the Constitutional Court in 1997. The office of the High Commissioner that had been established recently in the country played an important role in relation to this decision. Today there is a clear

confirmation about the intense activity that paramilitary groups have deployed in Colombia with the complicity of thousands of State officers as well as of politicians and entrepreneurs, according to judicial confessions made by the paramilitaries themselves. Those elements are the clearest evidence of the responsibility of the State in the crisis.

The State's responsibility is also evident in the illegal and violent actions committed by State agents against the civilian population for many years, as well as in legal but arbitrary decisions and activities which have been repeatedly undertaken by successive Colombian governments under the state of exception even after 1991. For instance, under the pretext of reacting to the assassination of an important leader of the Conservative party in November 1995, the government declared the state of exception. The Constitutional Court did not initially block the decree, and the government was able to grant exceptional powers to the armed forces, such as the right of making arrests without a warrant or forcibly occupying private property with military personnel. Fortunately, the Constitutional Court, on examining the case more closely, decided that there was no justifiable connection between the unfortunate and reprehensible murder of the Conservative leader and some of the exceptional powers granted to the armed forces and therefore ruled for their revocation. The judicial investigation into the killing has since indicated that the crime was organized by members of the armed forces, ironically enough, by members of the very same body that would have benefited from the exceptional powers granted under the state of exception brought on by the crime.

The office of the High Commissioner had not been established in Colombia at that time, but that measure was related to another arbitrary initiative approved by Congress in 2001: the "National Security Bill" promoted by the Ministry of Defense. The bill authorized the armed forces to capture individuals without arrest warrants and instituted new mechanisms of impunity in favor of members of the armed forces. The bill was also one more attempt to revive the legalization of paramilitary groups by authorizing the development of national security and defense activities through private vigilante and security services "under the control of the Ministry of Defense." The intention was to establish that it was the duty of all residents of Colombia to cooperate with "national power" to obtain what were called "national objectives."

This kind of proposal does not seem strange compared to similar initiatives inspired by the "National Security Doctrine" that governed the South America's military dictatorships during the 1970s and that was undertaken during the state-of-siege regime in effect in Colombia from the 1960s to the 1990s. Such measures are one of the most possible outcomes of the State-as-victim theory. If the State is indeed the victim of violent actors threatening the society and the government, one solution to this weakness is to strengthen the State, albeit through authoritarian measures. This is not an innovative recipe for change, and it certainly is not a solution that has worked in the past.

This National Security Law, adopted in August 2001, was declared unconstitutional by the Constitutional Court in April 2002. As the office of the High Commissioner had prevented, the Court found that such a law was contrary to the basic principles of democracy and rule of law, especially because of its aspiration to merge society and State and militarize them under the pretext of providing security and development to the population. According to the Court, all societies have the right to organize a national security system but must respect essential notions violated by the 2001 law, such as the principle of separation of powers, the distinction between civilians and combatants, a certain degree of autonomy for civil society vis-à-vis the government, and the predominance of civilian over military authorities.

On December 10, 2003, the government insisted on the approval of a constitutional reform in a similar sense, allowing members of the military forces to act as judicial police officers, to arrest civilians, interrogate them, collect evidence, and carry out other judicial functions that could decisively influence the direction of trials and the rulings of judges. The reform, called “Anti-Terrorist Statute”, also authorized administrative authorities to carry out detentions, registration of domiciles, and interception of communications without judicial warrants. They were authorized as well to force inhabitants of particular regions in the country to formally inform them, for military purposes, of all circumstances concerning their private life, including domicile, activities, and family. The 1991 Constitution had prohibited military forces to exercise judicial power over civilians. The government insisted on pushing through these constitutional changes, ignoring numerous and explicit recommendations made by international bodies, and especially by the office of the High Commissioner for Human Rights in the country, that warned that the changes were contrary to basic human rights principles and to the Colombian state’s international obligations and commitments. In 2004, the Constitutional Court declared unconstitutional this reform to the Constitution, due to procedural faults during its adoption.

5. Strengthening of the ambiguity and attempts to weakening international scrutiny of the human rights situation in Colombia

Despite the creation of the office of the High Commissioner for Human Rights in Colombia, the government continued insisting on avoiding international human rights supervision by sophisticating the State-as-a-victim theory. In late 1990’s there was a more elaborated version of it, according to which State agents would be the victims of a situation caused by two crazed or criminal groups that were destroying the nation: the guerrillas and the paramilitaries. The spin was as follows: both groups had connections to drug trafficking because they protected coca or poppy growers in their respective territories, thereby profiting economically from extortion payments from producers. Both groups also frequently took part in processing or trading cocaine and heroin. Consequently, if State agents bolstered their efforts to eradicate coca and poppy crops, both guerrillas and paramilitary groups would be weakened and then defeated, either through armed combat or after peace negotiations. Therefore, the only thing that the Colombian authorities needed from the international community was economic and political support for strengthening

military operations and social programs to put an end to drug production in the country. Once this was achieved, the government expected human rights to improve automatically in Colombia.

The Government, led at that time by President Pastrana, proposed a peace process with guerrilla groups starting in 1998, and at the same time garnered the support of the United States in the form of military aid and equipment, complemented by some social and institutional programs. This approximately one-billion-dollar by year package, known as Plan Colombia, was approved by the U.S. Congress in early 2000. After Israel and Egypt, it was the third largest foreign military aid package granted by the United States.

The Government, in that period, considered the economic, military, and political support of the United States more important than the international cooperation of the UN Human Rights Commission and the Inter-American Commission on Human Rights. The international agencies' reiterated recommendations concerning the need to act against paramilitary groups—the authors of almost 80 percent of sociopolitical killings, committed with varying degrees of complicity by State agents—and strengthen the capacity of the Colombian system to bring perpetrators to justice fell on deaf ears. This attitude limited the effectiveness of the Permanent Office of the High Commissioner for Human Rights, established in 1997. Instead of seriously implementing the UN and Inter-American Commission on Human Rights recommendations, official government efforts focused on developing a sophisticated publicity campaign to convince U.S. authorities that the Colombian government was meeting the human rights requirements established by the United States, some of which were prerequisites for releasing monies authorized under Plan Colombia. To lend credibility to its publicity campaign, the Government issued decisions and took action as proof of its willingness to redress the human rights situation. Unfortunately, these were no more than small-scale cosmetic measures, even if they included the dismissal of several military officers and other decisions confronting the Armed Forces, but they did not express a serious commitment to human rights protection. Consequently, they did not result in any reduction in the level of violations.

For instance, in August 1997, the Constitutional Court made clear that every human rights violation should be brought before the ordinary courts and not before the military tribunals. In that decision, the Constitutional Court had ordered the military courts to transfer to the ordinary courts all cases of human rights violations that they were then trying. None of the more important or renowned cases, including those eventually decided by international bodies, were transferred to ordinary courts. In 1999, human rights groups made a formal petition to the president of the republic to request his compliance with the Constitutional Court's decision, insisting that military judges not impede that order by accepting or keeping cases of human rights violations in their jurisdiction. The president denied this request, arguing that the military judges were independent of the executive branch. Nevertheless, one month later, the president signed a brief letter stating that, since the entry into force of the new military criminal code in August 1999, he hoped that from then on military judges would abstain from dealing with cases of human rights violations,

such as forced disappearances, genocide, or torture. That letter was one of the six human rights prerequisites established in Plan Colombia for the release of U.S. military aid to the Colombian government. Two days after this letter was made public, the U.S. State Department officially certified that the Colombian government had fulfilled that condition and proceeded to waive, “for national security reasons,” the other five conditions, authorizing the disbursement of the promised funding to the Colombian government. This is a clear example of human rights decisions made by the government during this period simply as part of a publicity campaign.

The Uribe administration (2002-2010), continued, at the beginning, the theory of his predecessor pointing at paramilitaries and guerrillas as the main sources of the crisis in Colombia, making the State its victim, but oriented its efforts to obtaining the active involvement of Colombians and of the international community in supporting measures allegedly aimed at providing security rather than worrying about human rights concerns. In the end, the theory was modified because, with the agreement made by this government with paramilitary groups in order to organize their demobilization, the only source of problems for the government remained the guerrillas. Furthermore, for that government the crisis was over because the levels of homicides decreased as a result of the paramilitaries’ demobilization, and the guerrillas were supposedly substantially weakened due to the security policy.

Concerning international monitoring of the Colombian human rights situation, the Uribe administration proposed to the UN High Commissioner for Human Rights to close her office in Colombia, or at least to reduce its mandate to concentrate on technical assistance without observation or supervision. Fortunately, the High Commissioner enjoyed enough international support to reject this proposal. But, at the same time, international relations in the field of human rights changed significantly during the 2000’s, particularly in two aspects, affecting the commitment and the capacity of international bodies to monitor and to contribute to overcome human rights crises.

First, the attack against the Twin Towers in New York on September 11, 2001, had as a reaction a reduction of respect for human rights standards in security policies, especially in the US and other Western countries. The security policies promoted by the Colombian government during the years 2000’s, some of them contrary to international human rights obligations, coincided with the orientation of initiatives taken internationally as a reaction to the 9/11 attack.

Second, in 2006 the UN created the Human Rights Council to replace the UN Human Rights Commission. The mandate of the Council clearly established more conditions to intervene in country situations than the Commission did.² As a consequence, without any discussion, the

² Morton H. Halperin and Diane F. Orentlicher, “The New Human Rights Council,” American University, Washington College of Law, Center for Human Rights and Humanitarian Law, *Human Rights Brief*, Vol. 13, Issue 3 (Spring 2006), pages 1-5.

Council did not renew the Commission's practice regarding the adoption of a decision on the situation of human rights in Colombia every year, under the modality of a Chairperson Statement. The report on the situation in Colombia continued to be presented to the Council every year by the High Commissioner for Human Rights, but the supervision by the Council, based on this report, decreased notably.

6. Perspectives for peace

The support of the international human rights mechanisms to overcome the human rights crisis in Colombia appears more important today, when the government and the Farc are trying to reach a peace agreement. A roundtable for talks was established formally a year ago, the 15th of October 2012, which has produced two partial accords: one related to land ("comprehensive rural development") and the other one to political participation. There are four issues remaining for discussion: illicit drugs, end of the conflict, victims, and implementation-verification-confirmation.

For the first time in Colombia's recent history, it seems that both parties have decided to reach a serious agreement, even if there is explicit opposition from a significant sector organized around the former president Uribe, who is in favor of a military solution and not of a negotiated solution. From the four issues remaining for discussion, the subject concerning victims is closely related to human rights concerns and especially to the question of justice. A sustainable peace should be based on a consistent and fair treatment of justice for victims.

The developments of international human rights law during the past 15 years have made clear that the right to justice cannot be ignored in peace processes, and that both rights, peace and justice, should be harmonized instead of being mutually exclusive. The right to justice is not a monolithic entity but is complex, made up of several elements: truth, declaration of responsibility, punishment, reparation, and guarantees of non-repetition. In order to harmonize peace and justice, it is acceptable to reduce the element of punishment, provided that the other elements of the right to justice remain intact. This clarification has been made by the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, formulated by the UN expert Louis Joinet in 1997 and updated by the UN expert Diane Orentlicher in 2005.³ The Colombian Constitutional Court incorporated these principles into its jurisprudence.

The Colombian government promoted an amendment to the Constitution, called "Legal Framework for Peace", authorizing, as was already mentioned, "renunciation" to the judicial

³ United Nations, Economic and Social Council, Commission on Human Rights, *Impunity. Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher*, doc. E/CN.4/2005/102, 18 February 2005.

persecution of human rights violations and serious breaches of international humanitarian law committed by the guerrilla, paramilitaries and State agents. This authorization ignored the updated principles as well as the obligation to prosecute judicially those violations and breaches, according to the International Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights. That is why the Constitutional Court decided last August that the regulatory law of this constitutional amendment should take into account these obligations.

This doesn't mean that there is no solution to the tension between peace and justice, but that the declaration of responsibility, truth, and reparation should be made through judicial trials, even collective ones if necessary, but not through administrative procedures. It also means that the starting point for this issue should be the acknowledgment by the perpetrators of the damage inflicted by their crimes, a genuine request for forgiveness by them, and their intention—genuine as well—to repair the damage. Based on these conditions, society would be in favor of reducing sentences in exchange for peace and for the contribution of the perpetrators to the reconstruction of the country.

What is not acceptable is a peace based on a mutual pardon among combatants, ignoring the victims' rights. Peace should center on the victims. They are the ones who have to forgive the atrocities committed. They are also those who should, ultimately, legitimize the peace agreement. A society that allows impunity of human rights violations that were certainly committed in the past is not able to generate the necessary confidence regarding the State's commitment to act on violations eventually perpetrated in the future. A reliable society cannot be built on this uncertainty.

The peace process in Colombia benefits from the support of the international community, with Norway and Cuba as guarantor countries and Venezuela and Chile as accompanying countries. This presence of the international community is very important in order to contribute to successfully achieve the process. Also very important are the efforts of the international human rights bodies in the entire process and after the peace agreement is reached, in order to help synchronize peace and human rights, including peace and justice.

If the peace roundtable being held in Cuba between the Government and the Farc is important, even more important would be the cessation of the ambiguity of the Colombian regime with regards to the respect and the protection of human rights of its inhabitants who don't belong to any armed movement. This ambiguity has meant actually a strong break up between the State and important sectors of civil society, particularly the enormous quantity of victims of human rights violations plus thousands of other individuals or groups who, without being themselves direct victims of those violations, feel that the institutions are not seriously committed to protecting their rights and that they are living under an unfair and insecure political regime.

This break has developed similarly to a war, a war without weapons but a strong confrontation, between the State and the civil society, as it can be seen today at the Inter-American Court on Human Rights, where is taking place precisely this week the trial for violations committed by the authorities during the events of the Palace of Justice in Bogotá, on November 5 and 6 of 1985. After the violent and reprehensible assault of the Palace by the guerrilla group M-19, the Army stormed in, using military tanks, dynamite and all kinds of guns, as if it were a battlefield, without regard for most of civilians who were inside the building. As a result, more than one hundred people died, and there were some others who were disappeared forcedly by the Army: eleven persons at least (ten civilians and one guerilla woman). There is also evidence that two magistrates left the Palace alive and their bodies were taken back to the building after having been assassinated by the Army, who considered them allies of the guerrilla group.

Two retired Army officers--one General and one Colonel--were condemned two years ago by domestic civilian tribunals in Colombia for these violations. They and the Army have rejected these sentences, and the different Governments, even before they were sentenced, have felt obliged to call them "heroes" whenever they have to raise the issue in public. But the trial at the Inter-American Court, 28 eight years after the massacre, has confronted the Government with the risk of being internationally condemned, so the Government decided to change the legal strategy it has used so far, and recognize its responsibility for two out of the eleven persons disappeared. This decision is inconsistent because the other nine disappeared persons were in the same conditions as the two whose forced disappearance has been recognized by the Government. The Government's requirement that the victims accept this partial recognition and consider the controversy closed has made them feel re-victimized, and the Government's complicity with the perpetrators has been made increasingly evident for observers of the case.

Colombian authorities cannot continue denying the violations committed by the State nor protecting perpetrators and the Army that has been put as a whole in complicity with these public servants who have acted against civil society. Colombian State has to make the peace with its society in order to build credible and reliable institutions, and the Palace of Justice's trial is a unique opportunity to do so. The international community should also joint its valuable efforts to this purpose.

The High Commissioner for Human Rights visited the country in July 2013, and the government tried to put an end to its office's mandate in Colombia, according to a public statement made by the President. A touch of ambiguity, again, as well as the impunity promoted trough the amendment to the military jurisdiction system and through the renunciation of judicial prosecution of human rights violations. To close the office of the High Commissioner in Colombia would be a serious mistake because if the peace agreement is finally reached, there will be much work to be done to overcome the human rights crisis, cleaning the institutions from their harmful ambiguity and taking the necessary and effective measures in order to assure that there won't be any more systematic violations of human rights in the country. The President corrected his public

statement when he met privately with the High Commissioner and assured her that the mandate is renewed for one more year, until October 2014, to allow the incoming government in 2014 to negotiate a new period with the High Commissioner. The international community should pay close attention to the effective continuation of the presence in Colombia of the office of the High Commissioner for Human Rights after 2014, because this will be the time when its accompaniment will be most needed.

7. Conclusion

I have tried to present to you an overall presentation of the international relations concerning the critical situation of human rights in Colombia. I hope that it can be useful for you all, and especially for those who want to develop their efforts towards the ability of international relations to contribute to redress situations of human rights violations in different parts of the world. I think that the main lesson we can extract from the Colombian experience is that people engaged in international relations can help achieve this purpose if the different mechanisms working in this field are joined in the same direction and in close coordination with the respective civil society to request from the State to fulfill its national and international duties on human rights. This is the only way to strengthen democracy, and build peace in a country in crisis, like Colombia, to make it strong enough to solve its other problems, such as drug trafficking, criminality or corruption, without ambiguities.

Saint Andrews, Scotland, UK
November 14, 2013

Bibliographical suggestions:

The most accurate information and analysis on the Colombian case published in Great Britain is the book of Jenny Pearce, *Colombia inside the labyrinth*, London, Latin America Bureau (Research and Action) Limited, 1990.

Updated information on human rights in Colombia can be found in the reports made by Special Rapporteurs and Working Groups who visited the country, and by the High Commissioner for Human Rights every year since 1998. The last report of the High Commissioner is: United Nations, General Assembly, Human Rights Council, Twenty-second session, *Annual report of the United Nations High Commissioner for Human Rights. Addendum. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, doc. A/HRC/22/17/Add.3, 7 January 2013.

Concluding observations made by Human Rights' Treaty Bodies are also a relevant source of information about the country. The last concluding observations concerning Colombia published by a Human Rights' Treaty Body have been made by the CEDAW: United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of

Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Colombia*, doc. CEDAW/C/COL/CO/7-8, 18 October 2013.

The Inter-American Commission on Human Rights has included a report on Colombia every year since 2000 until 2011 in Chapter IV of its Annual Report. Its last report on Colombia is included in Organization of American States, Inter-American Commission on Human Rights, *2011 Annual Report*, OEA/Ser.L/V/II., Doc. 69, 30 December 2011. A special report on the visit *in loco* made by the Commission to Colombia in December 2012 is forthcoming.

The dissertation is also based on the following publications made by the author:

«Desafiando la intransigencia. Notas sobre las políticas de derechos humanos del Estado colombiano, especialmente frente a la desaparición forzada (1965-2013)», in Comisión Colombiana de Juristas and Centro Nacional de Memoria Histórica, *Desafiando la intransigencia*, Bogotá, 2013, pages 17-312.

“Human Rights: A Path to Democracy and Peace in Colombia” and “This war can not be won with bullets”, in Christopher Welna & Gustavo Gallón (editors), *Peace, Democracy, and Human Rights in Colombia*, University of Notre Dame Press, Indiana, USA, 2007.

“Diplomacia y derechos humanos: más de una década de ambigüedad”, in Martha Ardila et al. (eds.), *Prioridades y desafíos de la política exterior colombiana*, Fescol & Hanns Seidel Stiftung, Bogotá, 2002.