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Inter-American System

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III INTER-AMERICAN SYSTEM

CLAUDIA MARTIN*

During the period covered by this report, the Inter-American Court on Human Rights (hereinafter the “Court”) issued several decisions on the merits, which include: *Palamara Iribarne vs Chile*; *Gómez Palomino vs Perú*; *García Asto & Ramírez Rojas vs Perú*; *Blanco Romero et al. vs Venezuela*; *Massacre of Pueblo Bello vs Colombia*; *López Álvarez vs Honduras*; *Acevedo Jaramillo et al. vs Perú*; *Indigenous Community Sawhoyamaxa vs Paraguay*; and *Baldeón García vs Perú*.

The present report will review current developments in the case law of the Court regarding issues of international State responsibility, reparations and the determination of the beneficiaries of those reparations. The report will analyze three cases decided against Colombia, namely: the 19 Merchants Case, the Mapiripan Massacre Case and the Pueblo Bello Massacre Case. The factual background behind these cases reflects the perpetration of grave human rights violations by members of paramilitary groups in Colombia and their relationship to state agents for the purposes of attributing international responsibility to that State. It is important to note that the facts and issues presented in 19 Merchants were previously reported in this section; however, for analytical purposes, I will refer again to that case in the present report.

The full text of these decisions can be found in Spanish on the website of the Court at www.corteidh.or.cr.

The first section provides an overview of the context in which the three cases took place. The next section examines the facts that transpired in those cases. The final section discusses the new developments in the case law of the Court related to the issues of international State responsibility, reparations and the determination of beneficiaries of those reparations.

1. THE RELATIONSHIP BETWEEN PARAMILITARY GROUPS AND STATE SECURITY FORCES IN COLOMBIA: A BRIEF OVERVIEW¹

Beginning in the 1960s, diverse guerrilla groups arose in Colombia whose activities disturbed public order, giving support to the declaration of a state of emergency. To

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face this situation, the State issued legislation reorganizing the national defence system. Some provisions of this legislation provided the legal foundation for the creation of “autodefensa” (self-defence) groups, by stipulating that all Colombians not already subjected to obligatory military service could be used by the government in activities and jobs that would contribute to the reestablishment of normalcy. Furthermore, this legislation gave power to the Minister of National Defence to authorize private individuals to carry arms that had been exclusively used by the armed forces. The “autodefensa” groups were created from within the civilian population to cooperate with the security forces in fighting guerrilla groups and, for that purpose, its members were provided with arms, military equipment and logistical support. In the 1980s, particularly from 1985 onward, it was revealed that many of the “autodefensa” groups had evolved into delinquent groups, commonly called “paramilitaries.”

In 1988 and 1989, Colombia issued new legislation to address the situation of the paramilitary groups which criminalized belonging to, promoting or directing the activities of these groups. Moreover, it made it a felony to instruct or train members of these groups in military tactics or procedures or to provide them with military equipment. Also, the legislation provided for an aggravated punishment for those retired or active members of the Armed Forces, National Police or other security forces that perpetrated any of those crimes. Finally, the legislation suspended the Minister of Defence’s power to authorize private individuals to carry arms of exclusive use of the security forces; this provision was later found unconstitutional by the Supreme Court of Colombia.

Reports from international inter-governmental and non-governmental organizations have extensively documented the existence in Colombia of numerous cases of human rights and international humanitarian law violations perpetrated by paramilitaries with the collaboration, support or acquiescence of members of the state security forces. Since 1997, reports published by the Office of the United Nations High Commissioner for Human Rights regarding the state of human rights in Colombia have documented representative cases relating to violations of the right to life. In these cases, it was established that the armed forces collaborated with the paramilitaries in assassinating, threatening or displacing the civilian population. Moreover, these reports have continuously referred to the prevailing impunity resulting from the failure of the State to conduct an effective investigation to identify and punish the perpetrators of human rights violations. Also, in 1999, the Inter-American Commission on Human Rights in its Third Report on the Human Rights Situation of Colombia found that the link between private and state actors was clearly established in the perpetration of human rights and international humanitarian law

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¹ The information for this section was taken from the facts stated by the Court in the three decisions under analysis.

violations.² Likewise, the close ties between the paramilitary groups and the state security forces have been extensively documented by international non-governmental organizations, such as Human Rights Watch.³

2. FACTUAL BACKGROUND

2.1. THE 19 MERCHANTS CASE

The victims in the 19 Merchants Case were engaged in commercial activities that included the transporting of goods and persons and the purchasing of goods at the Colombian-Venezuelan border, which were sold in the cities of Bucaramanga, Medellin and others. On 4 October 1987, 17 merchants left Cucuta, Colombia, in several trucks and cars to sell goods in Medellin. Two days later, the merchants were stopped by members of the armed forces who established that they were transporting a considerable amount of smuggled goods; yet, they authorized the merchants to continue their trip after confirming that they were not carrying guns. This was the last time that the 17 merchants were seen alive. That afternoon, the merchants were detained by members of a paramilitary group operating in the Magdalena Medio region that later killed them, dismembered their bodies and disposed of their remains in a nearby river. Fifteen days later, a family member and a friend of the 17 victims both went to the place where the victims disappeared and experienced a similar fate.

It was established that prior to these events, the leaders of the paramilitary group held a meeting and decided to murder the merchants because they refused to pay “taxes” for transporting goods across the region under its control. In addition, the paramilitary group leaders and members of the armed forces believed that the merchants were selling guns to the guerrilla groups that operated in that region. The meeting was coordinated with the acquiescence of the military authorities based in the region, who apparently also agreed with the plan.

Once the victims disappeared, their next of kin immediately requested that state authorities carry out an investigation to establish the location of the 19 merchants. The authorities, however, failed to take any action to determine the fate of these merchants. Moreover, though the civilian courts prosecuted and convicted some of the material suspects of the crimes, the military courts that took jurisdiction over the prosecution of the members of the armed forces involved in the disappearances failed to carry out an effective investigation and acquitted the accused. Disciplinary actions initiated to investigate the involvement of the members of the armed forces were discharged due to the alleged lack of evidence proving their involvement in the

² I/A Commission H.R., *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102 Doc.9 Rev.1, February 26, 1999, Chapter IV, at www.cidh.org.

³ See, *inter alia*, *The Ties that Bind: Colombia Military-Paramilitary Links*, February 1, 2000, at www.hrw.org.

murders. Finally, petitions filed to request reparations for the victims' next of kin were still pending when the present case was decided by the Court.

2.2. THE MAPIRIPAN MASSACRE CASE

Since the early 1990s, paramilitary groups, narco-trafficking organizations and the Revolutionary Armed Forces of Colombia ("FARC"), the most important guerrilla group in Colombia, tried to take control of the area where Mapiripan is located because of its strategic position in the cocaine-growing business. In 1997, Mapiripan was under the jurisdiction of the "Joaquin Paris" Battalion of San Jose de Guaviare, which was assigned to the VII Brigade of the National Army of Colombia. The "Joaquin Paris" Battalion was in control of the San Jose de Guaviare airport.

In early 1997, the United "Autodefensas" of Colombia ("AUC"), one of the most powerful paramilitary groups in Colombia, held several meetings to plan a military incursion in Mapiripan because, according to the paramilitary chief Carlos Castaño, a consolidated front of a subversive group that had absolute dominion over land used in narco-trafficking operated in that area. On 12 July 1997, about 100 members of the AUC arrived at the airport of San Jose of Guaviare via chartered airplane and were picked up by members of the armed forces, who facilitated their transportation to Mapiripan. On their way, paramilitaries from other regions joined them, passing by training military camps where a mobile brigade was stationed, without being detained.

On 15 July 1997, the members of the AUC, wearing armed forces uniforms, carrying weapons of close and long range whose use was monopolized by the State, and using radios of high frequency, surrounded Mapiripan. They remained in Mapiripan from 15–20 July 1997 during which time they impeded the free circulation of the inhabitants, and tortured, dismembered, and beheaded approximately 49 people and disposed of their remains in the Guaviare River. Once the operation had concluded, the AUC destroyed a large part of the physical evidence, with the objective of preventing its collection for future identification of the victims. As a result of this modus operandi, only about twenty of the victims have been identified and, from them, only three bodies have been recovered and properly buried. Moreover, the victims' next of kin and other residents of Mapiripan were forcibly displaced by the massacre and threats of paramilitary groups that similar events could happen in the future.

It is established that the Commander-in-Chief of the VII Brigade of the National Army of Colombia and the Commander of the "Joaquin Paris" Battalion learned about the paramilitary presence in Mapiripan the same day that the AUC arrived in town. However, they failed to prevent the actions of this group even though they were aware that grave human rights violations were about to happen. The armed forces arrived in Mapiripan on 22 July 1997, after the massacre had concluded and the media

had arrived, and after the paramilitaries had already destroyed much of the physical evidence.

Though several criminal proceedings were pursued against the perpetrators of the massacre, including members of the paramilitary group and the Colombian armed forces, by the time the case was decided by the Court only a few low ranking AUC members and state officials had been convicted. The State provided monetary compensation to the next of kin of four victims of the massacre after settling suits for damages filed in domestic courts.

2.3. THE PUEBLO BELLO MASSACRE CASE

Pueblo Bello is located in a strategic economic area of Colombia, the Uraba region, which has a strong presence of guerrilla groups, paramilitary groups and state security forces.

Between 13–14 January 1990, a group of approximately 60 heavily armed men, who were members of a paramilitary organization created by Fidel Antonio Castaño Gil called “Los Tangueros,” departed from “Santa Monica,” a farm on his property. Their purpose was to carry out an attack on Pueblo Bello to kidnap a group of individuals who were thought to be collaborators of the guerrillas. On 14 January 1990, between 8:30pm and 10:50pm, the members of the paramilitary group violently entered Pueblo Bello in two stolen trucks and divided into four groups. Each group was under the command of a chief of task and had specific functions: occupy the centre of town and capture the suspects; cover the escape routes bordering Pueblo Bello; and block the routes that go from Pueblo Bello to Turbo and to San Pedro de Uraba. The paramilitaries carried different calibre weapons, were dressed as civilians and as members of the military forces, and carried around their necks red and pink rags. The paramilitaries raided homes, mistreated inhabitants and removed an undetermined number of men, who they took to the town square. Similarly, some members of the armed group entered the church located in front of the square, and ordered the women and children to remain inside while the men were forced to come out onto the square. There they were placed face down on the floor and, with a list on hand, 43 men were chosen, tied up, gagged and forced onto the two trucks.

The two trucks, with the kidnapped persons, left Pueblo Bello at approximately 11:30 PM toward the farm “Santa Monica,” apparently via the road connecting Pueblo Bello to San Pedro de Uraba, which had been declared an emergency zone with military presence. There was a military roadblock between Pueblo Bello and San Pedro de Uraba that controlled the transportation of vehicles and persons. The inspection consisted of asking for identity papers and a search of the cars, its occupants and cargo.

At approximately 1:30am on 15 January 1997 the paramilitaries arrived at the farm “Santa Monica,” where Fidel Castaño Gil ordered that the kidnapped individuals be

taken to a shore of the Sinu River, located in the farm “Las Tangas.” Once there, Fidel Castaño Gil had the trucks removed and divided the detained individuals into two groups of three to five people to interrogate them. During the interrogation, some of the kidnapped individuals had their veins, ears or genitals cut, or their eyes plucked. Consequently, approximately 20 people are estimated to have lost their lives. The survivors were likely transferred to a wooded area to avoid being seen. Around 7:00 AM on 15 January 1997 Fidel Castaño Gil personally proceeded to interrogate those captured; during which the survivors were most likely kicked and beaten to death. Then, the paramilitaries transferred their corpses to the farm “Las Tangas.” Close to 22 corpses were transported to another shore of the Sinu River within the same farm, where they apparently were buried. Until the date of the Court’s decision, the whereabouts of most of the victims are unknown; only 6 of the 43 victims have been identified and their remains delivered to their families.

Several investigations were opened in the civilian, military and disciplinary jurisdictions to investigate the facts that transpired in Pueblo Bello. Although some members of the paramilitary group were convicted of murdering the six victims whose remains were identified, they remain at large and, consequently, have not served their convictions. Moreover, the State failed to establish the fate of the remaining 37 victims and identify and punish the perpetrators of their disappearance. Disciplinary actions initiated to investigate the involvement of the members of the armed forces were discharged due to the alleged lack of evidence proving their involvement in the disappearance of the peasants. Finally, petitions filed to request reparations for the victims’ next of kin were still pending when the present case was decided by the Court.

3. LEGAL DEVELOPMENTS

3.1. INTERNATIONAL RESPONSIBILITY OF THE STATE

The three cases referred to in this report showed the existence of close ties between paramilitary groups and the state security forces in the perpetration of grave human rights violations against the civilian population. In litigation before the Court, Colombia challenged the existence of international responsibility for the acts carried out by the paramilitary groups in the three cases, arguing that the perpetrators were private actors whose actions were not attributable to the State. In the Massacre of Maripipan Case, Colombia accepted international responsibility for the human rights violations resulting from the failure of its security forces to protect the victims; however, it rejected any responsibility for the acts of the members of the paramilitary groups.

The case law of the Inter-American System reflects an interpretation consistent with general rules of international law regarding the attribution of international

responsibility for state acts or omissions. Any act or omission carried out by an organ of the State or a state agent which infringes upon the rights protected by the Convention constitutes a violation of the duty to respect provided by Article 1.1 of that treaty.⁴ According to the Court:

[t]his conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.⁵

Moreover, the motivation of the state agent to perpetrate the violation is irrelevant for attributing international responsibility to the State. The Court has consistently held that the State can be found responsible even in cases in which the perpetrator of the violation cannot be identified.⁶ In addition, the Court and the Commission have consistently found that support, tolerance or acquiescence by state authorities to acts perpetrated by private actors that violate rights protected by the American Convention engage the responsibility of that State.⁷

On the other hand, Inter-American case law follows a well established international law principle according to which the acts and omissions of private individuals are not directly attributable to a State. In *Velásquez Rodríguez*, however, the Court stated that:

[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.⁸

⁴ I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community et al. Case*, Judgment of 31 August 2001, Ser. C No. 79, para. 154; I/A Court H.R., *Baena-Ricardo et al. Case*, Judgment of 2 February 2001, Ser. C No. 72, para. 178; I/A Court H.R., *Velásquez-Rodríguez Case*, Judgment of 29 July 1988, Ser. C No. 4, para. 169.

⁵ I/A Court H.R., *Caballero Delgado and Santana Case*, Judgment of 8 December 1995, Ser. C No. 22, para. 56; I/A Court H.R., *Neira Alegria Case*, Judgment of 19 January 1995, Ser. C No. 20, para. 63; I/A Court H.R., *Godínez Cruz Case*, Judgment of 20 January 1989, Series C No. 5, paras 178–180; I/A Court H.R., *Velásquez-Rodríguez*, *supra* (note 4), para. 170.

⁶ I/A Court H.R., *“Five Pensioners” et al. Case*, Judgment of 28 February 2003, Ser. C No. 98, para. 163; I/A Court H.R., *Panel Blanca et al. Case*, Judgment of 8 March 1998, Ser. C. No. 37, para. 91; I/A Court H.R., *Gangaram Panday Case*, Judgment of 21 January 1994, Ser. C No. 16, para. 62; I/A Court H.R., *Godínez Cruz Case*, *supra* (note 5), para. 183; I/A Court H.R., *Velásquez-Rodríguez Case*, *supra* (note 4), para. 173.

⁷ I/A Court H.R., *Panel Blanca et al. Case*, *supra* (note 6), para. 91; I/A Court H.R., *Velásquez-Rodríguez Case*, *supra* (note 4), para. 173.

⁸ I/A Court H.R., *Velásquez-Rodríguez Case*, *supra* (note 4), para. 172. *See also* I/A Court H.R., *Godínez Cruz Case*, *supra* (note 5), paras 181–182; I/A Court H.R., *Caballero Delgado and Santana*

The legal basis for attributing responsibility to a State for private action in those cases stems from the failure of the State to comply with its duty to ensure the protections provided for in Article 1.1 of the American Convention. The Court has well-established case law holding States internationally responsible as a result of their failure to act with due diligence to prevent the perpetration of a human rights violations, investigate and sanction the perpetrators or provide appropriate reparations to the victims or their next of kin.⁹

Before deciding the three Colombian cases, the only existing precedent in which the Court had to rule on the relationship between paramilitary groups and state security forces was *Blake vs Guatemala*. In that case, the Court held that the members of the civil patrols, a private paramilitary group who murdered Mr Blake, were agents of the State because:

at the time the events in this case occurred, the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces' functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision.¹⁰

In *19 Merchants*, the first Colombian case in which the issue arose again, the Court followed an analysis similar to *Blake's* in establishing the international responsibility of the State. Colombia had argued that the victims were kidnapped and deprived of their lives by a group of criminals with no ties to the State. Moreover, there was no evidence proving collaboration, support or acquiescence of the state security forces in the perpetration of those crimes. The Court found the State responsible on two grounds. First, the Court concluded that paramilitary groups were created under the legislation that promoted the participation of civilians in the struggle against the guerrilla armed groups. Moreover, the legislation empowered the State to authorize private individuals to carry arms of exclusive use of the armed forces and provide them with military equipment and logistical support. Though the State conceded that by 1985 it was clear that these groups' actions amounted to criminal activity, Colombia failed to act to prevent their actions until several years later. When the killings of the 19 merchants occurred in 1987, the State had failed to adopt and implement concrete policies to prevent the perpetration of grave human rights violations by these groups. Moreover, it was well documented that the armed forces based in the

Case, supra (note 5), para. 56.

⁹ I/A Court H.R., *Juan Humberto Sánchez Case*, Judgment of 7 June 2003, Ser. C No. 99, paras 109–113; I/A Court H.R., *Bámaca-Velásquez Case*, Judgment of 25 November 2000, Ser. C No. 70, paras 132–135. Also, for a different approach, see I/A Court H.R., *Las Palmeras Case*, Judgment of 6 December 2001, Ser. C No. 90, para. 42 (where the Court, after establishing that the act could not be linked to a state agent, held that Colombia had carried out a proper investigation into the alleged murder of one of the victims and that, therefore, it had discharged its duty to ensure the victim's right to life).

¹⁰ I/A Court H.R., *Blake Case*, Judgment of 24 January 1998, Ser. C No. 36, para. 76.

area where the disappearances took place had actively promoted and supported the local paramilitary group to engage in the struggle against guerrilla groups and those suspected of supporting them. Thus, the failure of the State to act with due diligence to prevent the actions of paramilitary groups engaged the international responsibility of Colombia.

Second, the Court found the existence of close collaboration and support provided by high officers of the battalion stationed in the area and the leadership of the paramilitary group that carried out the killings. The evidence showed that before the killings, members of the paramilitary group held a meeting with the acquiescence of high military officials – and even in the presence of members of the armed forces – in which a decision was made to kill the merchants due to their alleged relationship with the guerrilla groups operating in the region. Furthermore, the merchants were stopped at a military roadblock before they encountered their murderers and were allowed to continue even though it was clear that they were carrying out smuggled goods. In sum, the collaboration provided by state agents made the acts attributable to the State.

In the Mapiripan Massacre Case, the Court introduced a new analysis on the rules of international State responsibility applicable under the American Convention of Human Rights. Colombia recognized State responsibility for the failure of its state agents to protect the civilian population; however, it rejected allegations that the grave human rights violations perpetrated by a paramilitary group should be attributable to the State. Colombia argued that since the American Convention does not provide for rules of attribution of international responsibility, this treaty is not *lex specialis* in this matter. Thus, to attribute international responsibility to a State for acts of private individuals, the Court should follow the rules codified in the Draft Articles on Responsibility of States for Internationally Wrongful Acts drafted by the UN International Law Commission and enshrined in customary international law. According to Colombia, under those rules there are only three circumstances in which acts of private individuals may be attributed to a State, namely those contemplated in Articles 8, 9 and 11 of the Draft Articles, none of which were present in the case.¹¹ First, the acts of the paramilitary group were not directed or controlled by the State government. Though there were a few state agents who failed in their duty to protect the rights of the civilian population, the paramilitary groups have an autonomous

¹¹ Article 8 of the Draft provides: The conduct of a person or group of persons shall be considered an act of State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct. Article 9 provides: The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority. Article 11 provides: Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

structure and financial support and conduct their actions independently from the State. Second, the paramilitary groups were not exercising authority in default of the official authorities and their actions were not approved or adopted by the State as its own. In contrast to 19 Merchants, where the Court found the State internationally responsible for its failure to prevent the actions of paramilitary groups, by the time the facts in Mapiripan occurred, Colombia had acted with due diligence to criminalize the activities of those groups and prosecute its members for violations of human rights and international humanitarian law.

The Court held that although the American Convention refers to general rules of international law to establish State responsibility, Articles 1.1 and 2 constitute *lex specialis* in this matter. These provisions enshrine the duties to respect, ensure and adopt the necessary measures to guarantee that the rights protected by the Convention are respected in the domestic sphere of a State. The special nature of the Convention as a human rights treaty, *vis-à-vis* general rules of international law, require that the attribution of international responsibility, as well as the determination of its scope and effects, be established in light of the provisions of the Convention. Therefore, according to the Court's precedents, whenever state agents act in collaboration, support or acquiescence to the acts of private individuals, those acts can be attributed to the State under the American Convention. Likewise, if the State fails to act with due diligence to prevent, investigate and punish the acts of private individuals, those acts can be imputed to that State under the Convention.

The Court concluded that Colombia was internationally responsible for the human rights violations perpetrated by a paramilitary group in Mapiripan because they acted with the collaboration and support of state agents. Moreover, state agents failed to prevent the violation of the rights of the civilian population, as well as investigate and sanction the perpetrators of those violations, as required by the American Convention.

Finally, in the Pueblo Bello Massacre Case, the Court clarified the scope of the obligation to act with due diligence in ensuring the rights of individuals under Article 1.1 of the American Convention. Colombia argued that there was no evidence of collaboration, support or acquiescence of state agents in the perpetration of the disappearances carried out by a paramilitary group in Pueblo Bello. The allegations that the trucks carrying out the victims drove through a military roadblock without being stopped and checked by the members of the armed forces in charge have not been established. On the contrary, the State was able to prove that there were several alternative routes from Pueblo Bello to the "Santa Monica" farm that could have been used by the trucks where there was no military presence. Furthermore, the State cannot be found internationally responsible for a failure to prevent, investigate and punish the perpetrators. Though initially the paramilitary groups were created in light of existing legislation, the State adopted new laws to combat the acts of these groups once it turned out that their activities had become criminal. Moreover, the State acted

with due diligence to investigate and punish the perpetrators of these grave human rights violations. Though the State conceded that the military forces present in the area of Puerto Bello had a duty to ensure the rights of the civilian population, this obligation was not open-ended. Colombia should only be found responsible when state agents were aware of the existence of a risk and failed to act properly to protect the victims

The Court accepted that there was no evidence of collaboration or support by state agents to the members of the paramilitary group that perpetrated the disappearances. Nonetheless, it concluded that Colombia was internationally responsible for the victims' human rights violations as a result of its failure to prevent with due diligence their kidnapping and subsequent murder. In this respect, the Court held that the duty to ensure does not imply an unlimited responsibility of a State for any act of private individuals. The duty of the State to prevent and protect against private acts or omissions is limited to situations in which the State is aware of the existence of an actual and immediate risk for an individual or group of persons and it has reasonable opportunities to prevent or avoid such risk. When promoting the formation of "autodefensa" groups, Colombia contributed directly to the creation of a risk. Aware of the existence of that risk, the State passed new legislation and adopted other measures, such as increasing the military presence in areas of conflict to protect the civilian population. Nevertheless, those measures were not sufficient and effective to combat the existent risk. The State, therefore, should have acted with special diligence to protect the civilian population in areas where the paramilitary groups operated. Colombia failed to act with that level of diligence when about 60 members of a paramilitary group drove two trucks into Pueblo Bello at a time when vehicle traffic was severely restricted and later transported the 43 victims without being intercepted in an area with extensive military presence. This situation shows that the State failed to prevent the victims' human rights violations in an area in which, given the presence of paramilitary forces, it should have acted with special diligence. The Court's conclusion was reinforced by the fact that Colombia also failed to conduct an effective investigation into the facts to establish the truth and punish the perpetrators.

3.2. REPARATIONS

As part of the reparations under Article 63(1) of the American Convention¹², the Court in the three cases followed its consistent practice of awarding monetary and

¹² Article 63(1) of the American Convention provides: If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

non-monetary reparations. In *Massacre of Mapiripan*, however, the Court addressed issues related to reparations and the determination of beneficiaries that are worth noting for purposes of this report, since they entail new developments in the case law of the Court.

In contrast to the other two cases, in *Mapiripan* the State provided monetary compensation to the next of kin of four victims of the massacre, after settling suits for damages filed in domestic courts. The existence of this compensation at the domestic level raised two novel issues for the Court to consider. First, whether the monetary compensation awarded by Colombia extinguished the responsibility of the State at the international level; and if not, whether the Court should order the State to pay monetary compensation in addition to the compensation received by these victims as a result of the settlement in domestic courts. In regard to the first issue, the Court in *Las Palmeras* appeared to suggest that paying damages for a human rights violation at the domestic level extinguishes the State's international responsibility, even if that State has failed to provide the victim with an effective investigation to identify and punish the perpetrators of that violation.¹³ In *Mapiripan* the Court clarified its position on this issue and held that the integral reparation of a human rights violation cannot be reduced to the payment of damages; in fact, victims of human rights violations have the right to an effective remedy which, in the case of the right to life, includes a thorough investigation to identify the perpetrators and apply the appropriate punishment. Thus, the Court in this case held the State internationally responsible for the violation of all the victims' right to life, including those victims whose next of kin had benefited from an award of damages at the domestic level.

With respect to the award of monetary compensation for material and moral (pain and suffering) damages to the victims and their next of kin, the Court faced an additional problem when it came to those who have benefited by the payment of damages at the domestic level. In this regard, the Court appears to have held that since the victims' next of kin were awarded damages for the same grounds on which this tribunal estimates its compensation – material and moral – no additional amount should be conferred to them in its decision on reparations. The only exception to that holding was that the victims themselves were not awarded damages for the suffering experienced until their death, but for the suffering of their next of kin; thus, the Court decided to award a sum to compensate for that particular suffering. It is worth noting that in regard to the victims that were not redressed at the domestic level, the Court ordered the State to award full monetary compensation. Moreover, the Court suggested that the State should inform the domestic courts that are reviewing pending suits on the monetary compensation awarded by this tribunal so that they can take this fact into account when making a decision on the matter. Finally, all the victims and their next of kin were considered beneficiaries for purposes of the non-monetary

¹³ I/A Court H.R., *Las Palmeras Case*, *supra* (note 10), paras 33–34.

reparations ordered by the Court, which included, inter alia, the duty of the State to continue the investigation and punish the perpetrators, to identify the victims' bodies and hand them over to the next of kin for proper burial, and to provide adequate psychological treatment to the victims' next of kin.

Lastly, the Mapiripan Massacre Case raised another relevant issue for purposes of compensation, which is the determination of its beneficiaries. In previous cases with multiple victims, such as the Plan Sanchez Massacre Case¹⁴ and Moiwana Village Case,¹⁵ the Court had consistently held that victims must be identified during the course of its contentious proceedings and before the final judgment on reparations is issued. In Mapiripan, however, the Court appeared to show more latitude with respect to the identification of victims for purposes of reparation. The Court awarded moral damages for each of the alleged 49 victims and their next of kin, even though less than half of those victims were identified by the time the Court issued its decision. To supervise compliance with the reparations awarded, the Court ordered the State to set up a follow-up mechanism which should come into operation within a six-month period. Among other powers, this mechanism would follow up with the State's action to identify the remaining victims, inform their next of kin of their right to compensation and award the reparations established in the decision.

¹⁴ I/A Court H.R., *Case of Plan de Sánchez Massacre vs Guatemala*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of 19 November 2004, Series C No. 116.

¹⁵ I/A Court H.R., *Case of Moiwana Village vs Suriname*, Judgment of 15 June 2005, Series C No. 124, para. 177.