

Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*

N.B. As per the **disclaimer**, neither the ICRC nor the authors can be identified with the opinions expressed in the **Cases and Documents**. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven**; nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Inter-American Court of Human Rights, Case of *Bámaca-Velasquez v. Guatemala*, Judgement of November 25, 2000 (Merits), Series C No. 70, available at: <http://www.corteidh.or.cr/casos.cfm>, footnotes omitted]

Inter-American Court of Human Rights
Case of *Bámaca-Velásquez v. Guatemala*
Judgment of November 25, 2000(Merits)
[...]

I INTRODUCTION OF THE CASE

1. On August 30, 1996, pursuant to articles 50 and 51 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) the Inter-American Commission on Human Rights (hereinafter “the Commission” or the Inter-American Commission”) submitted an application to the Court against the Republic of Guatemala (hereinafter “the State” or “Guatemala”) [...].
2. The Commission stated that the purpose of the application was for the Court to decide whether the State had violated the following rights of Efraín Bámaca Velásquez:

[...] Article 3 common to the Geneva Conventions.

[...]

III PROCEDURE BEFORE THE COMMISSION

1. The Inter-American Commission opened case No. 11.129 as the result of a complaint filed by the petitioners on March 5, 1993, regarding a request for precautionary measures, based on the detention and mistreatment inflicted on [Efraín] Bámaca [Velásquez] and other combatants of the URNG [Guatemalan National Revolutionary Unit (hereinafter “the URNG”)]. [...]

[...]

IVPROCEDURE BEFORE THE COURT

1. [...] The Court summarizes the facts set out in the application as follows:
 - a. Efraín Bámaca Velásquez, known as “Comandante Everardo”, formed part of the Revolutionary Organization of the People in Arms (hereinafter “ORPA”), one of the guerrilla groups that made up the URNG; Bámaca Velásquez led this group’s Luis Ixmatá Front.
 - b. Efraín Bámaca Velásquez disappeared on March 12, 1992, after an encounter between the Army and the guerrilla in the village of Montúfar, near Nuevo San Carlos, Retalhuleu, in the western part of Guatemala.
 - c. Bámaca Velásquez was alive when the Guatemalan armed forces took him prisoner, and “they imprisoned him secretly in several military installations, where they tortured and eventually executed him.”

[...]

IXPROVEN FACTS

1. The Court now proceeds to consider the relevant facts that it finds have been proved, which it will present chronologically. They result from the examination of the documents provided by the State and the Inter-American Commission, and also the documentary, testimonial and expert evidence submitted in the instant case.

[...]

- a. At the time when the facts relating to this case took place, Guatemala was convulsed by an internal conflict.

[...]

1.
 - d) In 1992, there was a guerrilla group called the Organization of the People in Arms (ORPA) in Guatemala, which operated on four fronts, one of which was the Luis Ixmatá Front, commanded by Efraín Bámaca Velásquez, known as Everardo.
 - e) On February 15, 1992, the Quetzal Task Force, established by the Army to combat the guerrilla in the southwestern zone of the country, began its activities. Its command post was initially at the Santa Ana Berlín military detachment, in Coatepeque, Quetzaltenango. Other military zones, such as Military Zone No. 18 in San Marcos also collaborated with it.
 - f) It was the Army’s practice to capture guerrillas and keep them in clandestine confinement in order to obtain information that was useful for the Army, through physical and mental torture.

These guerrillas were frequently transferred from one military detachment to another and, following several months of this situation, were used as guides to determine where the guerrilla were active and to identify individuals who were fighting with the guerrilla. Many of those detained were then executed, which completed the figure of forced disappearance.

4. g) At the time of the facts of this case, various former guerrillas were collaborating with the Army, and providing it with useful information. [...]
5. h) On March 12, 1992, there was an armed encounter between guerrilla combatants belonging to the Luis Ixmatá Front and members of the Army on the banks of the Ixcucua River, in the municipality of Nuevo San Carlos, Department of Retalhuleu. Efraín Bámaca Velásquez was captured alive during this encounter.
6. i) Efraín Bámaca Velásquez, who was wounded, was taken by his captors to the Santa Ana Berlín military detachment, Military Zone No. 1715, located in Coatepeque, Quetzaltenango. During his confinement at this detachment, Bámaca Velásquez remained tied up, with his eyes covered, and was submitted to unlawful coercion and threats while he was being interrogated.
7. j) Efraín Bámaca Velásquez remained at the Santa Ana Berlín military detachment from March 12, 1992, until April 15 or 20 that year. Subsequently, he was transferred to the detention center known as La Isla (the Island), in Guatemala City.
8. k) After his stay in Guatemala City, Efraín Bámaca Velásquez was transferred to the military bases of Quetzaltenango, San Marcos and Las Cabañas.
9. l) On about July 18, 1992, Efraín Bámaca Velásquez was in Military Zone No. 18 in San Marcos. Here he was interrogated and tortured. The last time that he was seen, he was in the infirmary of that military base, tied to a metal bed.
10. m) As a result of the facts of this case, several judicial proceedings were initiated in Guatemala, including: petitions for habeas corpus, a special pre-trial investigation procedure and various criminal lawsuits, none of which was effective, and the whereabouts of Efraín Bámaca Velásquez are still unknown. As a result of those proceedings, on various occasions, exhumation procedures were ordered in order to find his corpse. These procedures did not have positive results as they were obstructed by State agents.

[...]

XIIIVIOLETION OF ARTICLE 4(RIGHT TO LIFE)

[...]

1. In this case, the circumstances in which the detention by State agents of Bámaca Velásquez occurred, the victim's condition as a guerrilla commander, the State practice of forced disappearances and extrajudicial executions (supra 121 b, d, f, g) and the passage of eight years and eight months since he was captured, without any more news of him, cause the Court to presume that Bámaca Velásquez was executed.

[...]

XVIIIFAILURE TO COMPLY WITH ARTICLE 1(1)IN RELATION TO ARTICLE 3

COMMON TO THE GENEVA CONVENTIONS(OBLIGATION TO RESPECT RIGHTS)

1. As for the violation of Article 1(1) of the American Convention and its relation to Article 3 common to the Geneva Conventions, the Commission alleged that:
 1. a) the forced disappearance, torture and execution of Efraín Bámaca Velásquez by agents of the Guatemalan armed forces shows that the State violated its obligation to respect and guarantee the rights established in Article 1(1) of the Convention. These violations cannot be justified by the fact that the State was faced with a guerrilla movement, because, although the State has the right and obligation to guarantee its own security and maintain public order, it must do so in accordance with law and ethics, including the international legislation to protect human rights;
 2. b) when a State faces a rebel movement or terrorism that truly threatens its “independence or security”, it may restrict or temporarily suspend the exercise of certain human rights, but only in accordance with the rigorous conditions indicated in Article 27 of the Convention. Article 27(2) of the Convention strictly forbids the suspension of certain rights and, thus, forced disappearances, summary executions and torture are forbidden, even in states of emergency;
 3. c) according to Article 29 of the Convention, its provisions may not be interpreted in the sense of restricting the enjoyment of the rights recognized by other conventions to which Guatemala is a party; for example, the Geneva Conventions of August 12, 1949. Therefore, considering that Article 3 common to those Conventions provides for prohibitions against violations of the right to life and ensures protection against torture and summary executions, Bámaca Velásquez should have received humane treatment in accordance with the common Article 3 and the American Convention; and
 4. d) Article 3, common to the Geneva Conventions, constitutes a valuable parameter for interpreting the provisions of the American Convention, as regards the treatment of Bámaca Velásquez by State agents.
2. With regard to applying international humanitarian law to the case, in its final oral arguments the State indicated that, although the case was instituted under the terms of the American Convention, since the Court had “extensive faculties of interpretation of international law, it could [apply] any other provision that it deemed appropriate.”

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* *

1. 205. Article 1(1) of the Convention provides that

[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

1. 206. Article 3 common to the 1949 Geneva Conventions provides:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

[... t]he following acts are and shall remain prohibited at any time and in any place whatsoever [...]:

1. 1. a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
2. b) taking of hostages;
3. c) outrages upon personal dignity, in particular humiliating and degrading treatment;
4. d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

[...]

1. The Court considers that it has been proved that, at the time of the facts of this case, an internal conflict was taking place in Guatemala (supra 121 b). [...] [I]nstead of exonerating the State from its obligations to respect and guarantee human rights, this fact obliged it to act in accordance with such obligations. Therefore, and as established in Article 3 common to the Geneva Conventions of August 12, 1949, confronted with an internal armed conflict, the State should grant those persons who are not participating directly in the hostilities or who have been placed hors de combat for whatever reason, humane treatment, without any unfavorable distinctions. In particular, international humanitarian law prohibits attempts against the life and personal integrity of those mentioned above, at any place and time.
2. Although the Court lacks competence to declare that a State is internationally responsible for the violation of international treaties that do not grant it such competence, it can observe that certain acts or omissions that violate human rights, pursuant to the treaties that they do have competence to apply, also violate other international instruments for the protection of the individual, such as the 1949 Geneva Conventions and, in particular, common Article 3.
3. Indeed, there is a similarity between the content of Article 3, common to the 1949 Geneva Conventions, and the provisions of the American Convention and other international instruments regarding non-derogable human rights (such as the right to life and the right not to be submitted to torture or cruel, inhuman or degrading treatment). This Court has already indicated in the Las Palmeras Case (2000) [See Case No. 246, Inter-American Court of Human Rights, The Las Palmeras Case, paras 32-34] that the relevant provisions of the Geneva Conventions may be taken into consideration as elements for the interpretation of the American Convention.
4. Based on Article 1(1) of the American Convention, the Court considers that Guatemala is obliged to respect the rights and freedoms recognized in it and to organize the public sector so as to guarantee persons within its jurisdiction the free and full exercise of human rights. This is essential, independently of whether those responsible for the violations of these rights are agents of the public sector, individuals or groups of individuals, because, according to the rules of international human rights law, the act or omission of any public authority constitutes an action that may be attributed to the State and involve its

responsibility, in the terms set out in the Convention.

5. The Court has confirmed that there existed and still exists in Guatemala, a situation of impunity with regard to the facts of the instant case (supra 134, 187 and 190), because, despite the State's obligation to prevent and investigate, it did not do so.. The Court understands impunity to be the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human right violations, and total defenselessness of victims and their relatives.
6. This Court has clearly indicated that the obligation to investigate must be fulfilled in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government.
7. The violations of the right to personal safety and liberty, to life, to physical, mental and moral integrity, to judicial guarantees and protection, which have been established in this judgment, are attributable to Guatemala, which had the obligation to respect these rights and guarantee them. Consequently, Guatemala is responsible for the non-observance of Article 1(1) of the Convention, in relation to violations established in Articles 4, 5, 7, 8 and 25 of the Convention.
8. In view of the foregoing, the Court concludes that the State violated Article 1(1) of the Convention, in relation to its Articles 4, 5, 7, 8 and 25.

[...]

Discussion

1. (Paras 121(b)) How does the Inter-American Court of Human Rights (the Court) qualify the situation in Guatemala at the time of the events? Does IHL apply to the situation? Does the Court apply IHL? Would it have jurisdiction to do so? (GC I-IV, Art. 3; P II, Art. 1)
2.
 - a. During non-international armed conflicts, which body of law (IHL or human rights law (HRL)) should regulate the detention of fighters? Would your answer be different if there were an international armed conflict instead of a non-international one? Why? Did the Inter-American Commission on Human Rights apply IHL in the Coard case, which also dealt with detention during armed conflict? Do you think that the Commission would have reached a similar conclusion if the conflict between the United States and Grenada had been a non-international one? [See Inter-American Commission on Human Rights, *Coard v. United States*, paras 48-61]
 - b. Does the IHL of non-international armed conflict provide rules as to the grounds for detention and conditions under which a person may be interned? When the rules provided by the IHL of non-international armed conflict – if any – are insufficient, which provisions should be applied to regulate a situation? Should the rules of the IHL of international armed conflict apply by analogy, or should human rights law apply instead? Should one follow the principle of *lex specialis*? What would this principle imply? Do the answers to these questions matter in the present case? [See *Nuclear Weapons Advisory Opinion*, para. 25; ICJ/Israel, *Separation Wall/Security Fence in the Occupied Palestinian Territory*, para. 106]
 - c. If Bámaca-Velasquez had been killed by the Army during combat, would IHL have applied instead

of HRL? Why could the conduct of hostilities, during a non-international armed conflict, be governed by a body of law other than that regulating the detention of persons captured during combat? [See Human Rights Committee, *Guerrero v. Colombia*]

3.
 - a. Does HRL also protect members of armed groups? Should not the latter rather be protected by IHL? Is the regime of the two branches of law governing the present case different in that regard?
 - b. In times of non-international armed conflict, do the rights laid down in HRL have to be read in the light of IHL? Or should rather the IHL of non-international armed conflict be read in the light of HRL? Does this matter in the present case?
 - c. (Paras 203-214) Why does the Court refer to common Article 3? Why does it need to use common Article 3 to apply other provisions of the American Convention on Human Rights?
4. Does IHL provide any rule on enforced disappearances? What are the obligations of States when a person goes missing as a result of an armed conflict? Does the IHL of non-international armed conflict provide rules on missing persons? (P I, Arts 32-34; CIHL, Rule 117)