Inter-American Court of Human Rights, The Las Palmeras Case

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, *Las Palmeras Case*. Preliminary objections, Judgement of February 4, 2000. Available on http://www.corteidh.or.cr/; footnotes are partially reproduced.]

INTER-AMERICAN COURT OF HUMAN RIGHTS LAS PALMERAS CASE PRELIMINARY OBJECTIONS

JUDGMENT OF FEBRUARY 4, 2000 [...]

I. INTRODUCTION OF THE CASE

1. This case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) on July 6, 1998. The Commission’s application originates from a petition (No. 11.237) received by its Secretariat and dated in Bogota on January 27, 1994.

II. FACTS SET FORTH IN THE APPLICATION

1. [...] It is alleged that on January 23, 1991, the Departmental Commander of the Putumayo Police Force had ordered members of the National Police Force to carry out an armed operation in Las Palmeras, municipality of Mocoa, Department of Putumayo. Members of the Armed Forces would provide support to the National Police Force.

That, on the morning of that same day, some children were in the Las Palmeras rural school waiting for classes to start and two workers, Julio Milcíades Cerón Gómez and Artemio Pantoja, were there repairing a tank. The brothers, William and Edebraiz Cerón, were milking a cow in a neighboring lot. The teacher,

Hernán Javier Cuarán Muchavisoy, was just about to arrive at the school.

That the Armed Forces fired from a helicopter and injured the child Enio Quinayas Molina, 6 years of age, who was on his way to school.

That in and around the school, the Police detained the teacher, Cuarán Muchavisoy, the workers, Cerón Gómez and Pantoja, and the brothers, William and Edebraiz Cerón, together with another unidentified person who might be Moisés Ojeda or Hernán Lizcano Jacanamejoy; and that the National Police Force extrajudicially executed at least six of these persons.

That members of the Police Force and the Army have made many efforts to justify their conduct. In this respect, they had dressed the bodies of some of the persons executed in military uniforms, they had burned their clothes and they had threatened those who witnessed the event. Also, that the National Police Force had presented seven bodies as belonging to rebels who died in an alleged confrontation. Among these bodies were those of the six persons detained by the Police and a seventh, the circumstances of whose death have not been clarified.

That, as a consequence of the facts described, disciplinary, administrative and criminal proceedings had been initiated. The disciplinary proceeding conducted by the Commander of the National Police Force of Putumayo had delivered judgment in five days and had absolved all those who took part in the facts at Las Palmeras. Likewise, two administrative actions had been opened in which it had been expressly acknowledged that the victims of the armed operation did not belong to any armed group and that the day of the facts they were carrying out their usual tasks. That these proceedings proved that the National Police Force had extrajudicially executed the victims when they where [*sic*] defenseless. As regards the criminal military action, after seven years, it is still at the investigation stage and, as yet, none of those responsible for the facts has been formally accused. [...]

IV. PROCEEDING BEFORE THE COURT [...]

1. On September 14, 1998, Colombia filed the following preliminary objections; [...]

Second:

The Inter-American Commission on Human Rights is not competent to apply international humanitarian law and other international treaties.

Third:

The Inter-American Court of Human Rights is not competent to apply international humanitarian law and other international treaties. [...]

VIII. THIRD PRELIMINARY OBJECTION: LACK OF COMPETENCE OF THE COURT

1. In the application submitted by the Commission, the Court is requested to “conclude and declare that the State of Colombia violated the right to life, embodied in Article 4 of the Convention and Article 3, common to all the 1949 Geneva Conventions... .” In view of this request, Colombia filed a preliminary objection affirming that the Court “does not have the competence to apply international humanitarian law and other international treaties.”

In this respect, the State declared that Articles 33 and 62 of the Convention limit the Court’s competence to the application of the provisions of the Convention. It also invoked Advisory Opinion OC-1 of September 24, 1982 (paragraphs 21 and 22) and stated that the Court “should only make pronouncements on the competencies that have been specifically attributed to it in the Convention.”

1. In its brief, the Commission preferred to reply jointly to the objections regarding its own competence and that of the Court with regard to the application of humanitarian law and other treaties. Before examining the issue, the Commission stated, as a declaration of principles, that the instant case should be decided in the light of “the norms embodied in both the American Convention and in customary international humanitarian law applicable to internal armed conflicts and enshrined in Article 3, common to all the 1949 Geneva Conventions”. The Commission reiterated its belief that both the Court and the Commission were competent to apply this legislation.

The Commission then stated that the existence of an armed conflict does not exempt Colombia from respecting the right to life. As the starting point for its reasoning, the Commission stated that Colombia had not objected to the Commission’s observation that, at the time that the loss of lives set forth in the application occurred, an internal armed conflict was taking place on its territory, nor had it contested that this conflict corresponded to the definition contained in Article 3 common to all the Geneva Conventions.

Nevertheless, the Commission considered that, in an armed conflict, there are cases in which the enemy may be killed legitimately, while, in others, this was prohibited. The Commission stated that the American Convention did not contain any rule to distinguish one hypothesis from the other and, therefore, the Geneva Conventions should be applied. The Commission also invoked in its favor a passage from the Advisory Opinion of the International Court of Justice on The Legality of the Threat or Use of Nuclear Weapons as follows [**See** ICJ, Nuclear Weapons Advisory Opinion]:

In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable lex specialis, namely, the law applicable in armed conflict that is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.

The Commission stated that, in the instant case, it had first determined whether Article 3, common to all the Geneva Conventions, had been violated and, once it had confirmed this, it then determined whether Article 4

of the American Convention had been violated. [...] [footnote 2: Legality of the threat or use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, **See** ICJ, Nuclear Weapons Advisory Opinion]

1. During the public hearing, Colombia tried to refute the arguments set out by the Commission in its brief. In this respect, the State emphasized the importance of the principle of consent in international law. Without the consent of the State, the Court may not apply the Geneva Conventions.

The State's representative then affirmed that neither Article 25 or Article 27.1 of the American Convention may be interpreted as norms that authorize the Court to apply the Geneva Conventions.

Lastly, Colombia established the distinction between "interpretation" and "application." The Court may interpret the Geneva Conventions and other international treaties, but it may only apply the American Convention. [...]

1. The American Convention is an international treaty according to which States Parties are obliged to respect the rights and freedoms embodied in it and to guarantee their exercise to all persons subject to their jurisdiction. The Convention provides for the existence of the Inter-American Court to hear "all cases concerning the interpretation and application" of its provisions (Article 62.3).

When a State is a Party to the American Convention and has accepted the contentious jurisdiction of the Court, the Court may examine the conduct of the State to determine whether it conforms to the provisions of the Convention, even when the issue may have been definitively resolved by the domestic legal system. The Court is also competent to determine whether any norm of domestic or international law applied by a State, in times of peace or armed conflict, is compatible or not with the American Convention. In this activity, the Court has no normative limitation: any legal norm may be submitted to this examination of compatibility.

1. In order to carry out this examination, the Court interprets the norm in question and analyzes it in the light of the provisions of the Convention. The result of this operation will always be an opinion in which the Court will say whether or not that norm or that fact is compatible with the American Convention. The latter has only given the Court competence to determine whether the acts or the norms of the States are compatible with the Convention itself, and not with the 1949 Geneva Conventions.

Therefore, the Court decides to admit the third preliminary objection filed by the State.

IX. SECOND PRELIMINARY OBJECTION: LACK OF COMPETENCE OF THE COMMISSION

1. As its second preliminary objection, Colombia alleged the lack of competence of the Commission to apply international humanitarian law and other international treaties. [...]

Although the Inter-American Commission has broad faculties as an organ for the promotion and protection of human rights, it can clearly be inferred from the American Convention that the procedure initiated in contentious cases before the Commission, which culminates in an application before the Court, should refer specifically to rights protected by that Convention (cf. Articles 33, 44, 48.1 and 48). Cases in which another

Convention, ratified by the State, confers competence on the Inter-American Court or Commission to hear violations of the rights protected by that Convention are excepted from this rule; these include, for example, the Inter-American Convention on Forced Disappearance of Persons.

Therefore, the Court decides to admit the second preliminary objected filed by the State. [...]

SEPARATE OPINION OF JUDGE A.A. CANçADO TRINDADE [...]

1. In sustaining, as I have been doing, for years, the convergences between the *corpus juris* of human rights and that of International Humanitarian Law (at normative, interpretative and operational levels), I think, however, that the concrete and specific purpose of development of the obligations *erga omnes* of protection (the necessity of which I have been likewise sustaining for some time) can be better served, by the identification of, and compliance with, the *general obligation of guarantee* of the exercise of the rights of the human person, *common to the American Convention and the Geneva Conventions (infra)*, rather than by a correlation between sustantive norms – pertaining to the protected rights, such as the right to life – of the American Convention and the Geneva Conventions.
2. That general obligation is set forth in Article 1.1 of the American Convention as well as in Article 1 of the Geneva Conventions and in Article 1 of the Additional Protocol I (of 1977) to the Geneva Conventions. Their contents are the same: they enshrine the duty to respect, and to *ensure respect* for, the norms of protection, in all circumstances. This is, in my view, the common denominator (which curiously seems to have passed unnoticed in the pleadings of the Commission) between the American Convention and the Geneva Conventions, capable of leading us to the consolidation of the obligations *erga omnes* of protection of the fundamental right to life, in any circumstances, in times both of peace and of internal armed conflict. It is surprising that neither doctrine, nor case-law, have developed this point sufficiently and satisfactorily up to now; until when shall we have to wait for them to awake from an apparent and prolonged mental inertia or lethargy?
3. It is about time, in this year 2000, to develop with determination the early jurisprudential formulations on the matter, advanced by the International Court of Justice precisely three decades ago, particularly in the *cas célèbre* of the *Barcelona Traction* (Belgium versus Spain, 1970). It is about time, on this eve of the XXIst century, to develop systematically the contents, the scope and the juridical effects or consequences of the obligations *erga omnes* of protection in the ambit of the International Law of Human Rights, bearing in mind the great potential of application of the notion of *collective guarantee*, underlying all human rights treaties, and responsible for some advances already achieved in this domain.
4. The concept of obligations *erga omnes* has already marked presence in the international case-law. [...] Nevertheless, in spite of the distinct references to the obligations erga omnes in the case-law of the International Court of Justice, this latter has not yet extracted the consequences of the affirmation of the existence of such obligations, nor of their violations, and has not defined either their legal regime.
5. But if, on the one hand, we have not yet succeeded to reach the opposability of an obligation of protection to the international community as a whole, on the other hand the International Law of Human Rights nowadays provides us with the elements for the consolidation of the opposability of obligations of protection to all the States Parties to human rights treaties (obligations *erga omnes partes* – cf. *infra*). Thus, several treaties, of human rights as well as of International Humanitarian Law, provide for the general obligation of the States Parties to guarantee the exercise of the rights set forth therein and their

observance.

6. As correctly pointed out by the *Institut de Droit International*, in a resolution adopted at the session of Santiago of Compostela of 1989, such obligation is applicable *erga omnes*, as each State has a legal interest in the safeguard of human rights (Article 1). Thus, parallel to the obligation of all the States Parties to the American Convention to protect the rights enshrined therein and to guarantee their free and full exercise to all the individuals under their respective jurisdictions, there exists the obligation of the States Parties *inter se* to secure the integrity and effectiveness of the Convention: this general duty of protection (the collective guarantee) is of direct interest of each State Party, and of all of them jointly (obligation *erga omnes partes*). And this is valid in times of peace as well as of armed conflict.
7. Some human rights treaties establish a mechanism of petitions or communications which comprises, parallel to the individual petitions, also the inter-State petitions; these latter constitute a mechanism *par excellence* of action of collective guarantee. The fact that they have not been used frequently (on no occasion in the inter-American system of protection, until now) suggests that the States Parties have not yet disclosed their determination to construct a the [sic] international *ordre public* based upon the respect for human rights. But they could – and should – do so in the future, with their growing awareness of the need to achieve greater cohesion and institutionalization in the international legal order, above all in the present domain of protection.
8. In any case, there could hardly be better examples of mechanism for application of the obligations *erga omnes* of protection (at least in the relations of the States Parties *inter se*) than the methods of supervision foreseen in the human rights treaties themselves, for the exercise of the collective guarantee of the protected rights. In other words, the mechanisms for application of the obligations *erga omnes partes* of protection already exist, and what is urgently need [sic] is to develop their legal regime, with special attention to the *positive obligations* and the *juridical consequences* of the violations of such obligations.
9. At last, the absolute prohibition of grave violations of fundamental human rights – starting with the fundamental right to life – extends itself, in fact, in my view, well beyond the law of treaties, incorporated, as it is, likewise, in contemporary customary international law. Such prohibition gives prominence to the obligations *erga omnes*, owed to the international community as a whole. These latter clearly transcend the individual consent of the States, definitively burying the positivist-voluntarist conception of International Law, and heralding the advent of a new international legal order committed with the prevalence of superior common values, and with moral and juridical imperatives, such as that of the protection of the human being in any circumstances, in times of peace as well as of armed conflict. [...]

Discussion

1. Was there a violation of the Geneva Conventions? Of Protocol II? If yes, what recourse is there to see the perpetrators brought to justice if the Inter-American Court does not have jurisdiction? Has Colombia fulfilled its obligations as party to the Geneva Conventions by initiating disciplinary, administrative and criminal proceedings?
2.
    a. On what basis does the Inter-American Commission of Human Rights want to apply IHL? On the basis of IHL? On the basis of the American Convention? In your opinion, is the Inter-American Commission of Human Rights competent to apply IHL? In “the light of ‘the norms embodied in [...]

the American Convention'"? Of those embodied in customary international law?

   b. What about the Court? Does it answer the arguments made by the Commission? Does its judgement mean that it cannot take IHL into account when interpreting the American Convention?

3. What do you think of the Commission's use of the ICJ's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons to justify the application of the Geneva Conventions?
4. Is the right to life absolute (See para. 29)? Do you agree with the Commission's arguments?
5. Why has the "doctrine" and "case-law" brought up by Judge A. A. Cançado Trindade in paras 8-10 not been developed? Do you agree with his opinion on the development of the concept of erga omnes obligations? Does he argue that the Court is necessarily competent to monitor compliance with all erga omnes obligations? That Art. 1 common to the Conventions makes the Court competent to apply those Conventions?