

Colombia, Case of the Santo Domingo Massacre

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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 The Santo Domingo Massacre v. Colombia (Preliminary objections, merits and reparations)*, Judgment of November 30, 2012, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_259_ing.pdf, footnotes omitted]

[...]

I. INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. In a brief of July 8, 2011 (hereinafter “submission brief”), the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the Court’s jurisdiction, in accordance with Articles 51 and 61 of the Convention, case 12,416 against the Republic of Colombia (hereinafter also “the State” or “Colombia”).

[...]

3. According to the Commission, the case refers to an alleged bombardment perpetrated by the Colombian Air Force on the village of Santo Domingo, municipality of Tame, department of Arauca, on December 13,

1998. In its Merits Report, the Commission considered that, on December 13, 1998, at 10.02 a.m., the crew of a helicopter of the Colombian Air Force (FAC) launched a cluster device, composed of six fragmentation bombs, on the urban area of the village of Santo Domingo, resulting in the death of 17 civilians, including four boys and two girls, and 27 injured civilians, including five girls and four boys. The Commission noted that the members of the Armed Forces who formed the crew of the aircraft were aware that these persons were civilians. In addition, it considered probable that, following the explosion, the survivors and injured were machine-gunned from a helicopter when they tried to assist the injured and to flee the village. It considered that the foregoing resulted in the displacement of the population of Santo Domingo, after which the empty homes were sacked or pillaged.

4. Based on the above, the Commission asked for the Court to declare that the State was internationally responsible for the violation of the following rights, in relation to Article 1(1) of the Convention:

[...]

- a) The right to life, contained in Article 4(1) of the American Convention, [...]
- b) The right to life, in relation also to Article 19 of the Convention, [...]
- c) The rights to life and to personal integrity contained in Articles 4(1) and 5(1) of the American Convention [...]

[...]

III. PRELIMINARY OBJECTIONS

A. First preliminary objection: “Lack of competence *ratione materiae*”

A.1. Arguments of the Commission and allegations of the parties

16. The State asked the Court to admit the preliminary objection in relation to the alleged violations of the right to life [...], because these were matters relating to the presumed violation of norms of international humanitarian law. [...] The State indicated that both the general context and specific context of the facts that are in dispute correspond to a typical situation of armed conflict, because the Colombian Army was fighting the FARC guerrilla about 500 meters from the village of Santo Domingo. Consequently, the State argued that the eventual violations and responsibilities that could be derived from them could not be determined by the Court, because the latter does not have competence to make the type of declarations that relate to the application of international humanitarian law, because “war law” does not fall within its competences.

[...]

A.2. Considerations of the Court

21. Regarding the first preliminary objection filed by the State, the Court reiterates that the American

Convention is an international treaty under which the States Parties undertake to respect the rights and freedoms recognised therein and to ensure the exercise of such rights and freedoms to all persons subject to their jurisdiction, and that the Court is competent to decide whether any State act or omission, in times of peace or armed conflict, is compatible with the American Convention. [...]

22. In addition, the Court recalls that several judgments delivered in the context of its contentious competence refers to acts that occurred during non-international armed conflicts. The American Convention does not establish limitations to the Court's competence to hear cases in situations of armed conflict.

23. Similarly, with regard to the application of international humanitarian law, the Court has indicated on other occasions that although "the Court lacks competence to declare that a State is internationally responsible for the violation of international treaties that do not attribute the said competence to it, it may observe that certain acts or omissions that violate human rights under the treaties that it is competent to apply also violate other international instruments that protect the individual, such as the 1949 Geneva Conventions and especially their common Article 3." In addition, in the case of *Las Palmeras v. Colombia* [see Inter-American Court of Human Rights, *The Las Palmeras Case*], the Court indicated, in particular, that the relevant provisions of the Geneva Conventions could be taken into account as elements for the interpretation of the American Convention. [...]

24. [...] In this case, by using IHL as a supplementary norm of interpretation to the treaty-based provisions, the Court is not making a ranking between normative systems, because the applicability and relevance of IHL in situations of armed conflict is evident. This only means that the Court can observe the regulations of IHL, as the specific law in this area, in order to make a more specific application of the provisions of the Convention defining the scope of the State's obligations.

[...]

26. Consequently, the Court rejects the first preliminary objection filed by the State.

[...]

VI. FACTS

A. Context in the department of Arauca

54. In 1998, Santo Domingo was a village in the rural area of the municipality of Tame with a population of 247 persons living in around 47 houses located beside the highway that leads from Tame to the capital of the department.

55. Regarding aspects relating to economic geography, there is no dispute about the fact that petroleum exploitation is one of the most important economic activities of the department. In 1983, the multinational company, *Occidental Petroleum Corporation* (hereinafter "OXY"), discovered the Caño Limón-Coveñas

pipeline operated by the Colombian company, ECOPETROL S.A.

56. In addition, there is no dispute that the armed conflict in Arauca is closely related to the revenue derived from the oil and the location of the Caño Limón-Coveñas pipeline; this is also a transit area for both legal and illegal merchandise and goods bound for Venezuela. These factors make this region strategically important, and have resulted in the establishment of illegal armed groups since the 1980s.

57. As alleged by the representatives, observed by the Commission, and acknowledged by the State, in 1998, a situation of generalized violence existed in the department of Arauca, which affected both the civilian population and the civil authorities. In addition, during the 1990s, there was increased militarization in the department of Arauca.

58. According to the Human Rights and International Humanitarian Law Observatory of the Vice Presidency of the Republic, the guerrilla of the National Liberation Army (hereinafter also “ELN”) settled in Arauca as one of the main scenarios of its actions in the middle of the 1970s, while the FARC guerrilla arrived in the department at the beginning of the 1990s.

[...]

B. The bombing of the village of Santo Domingo on December 13, 1998, and subsequent events

C. 1. Undisputed facts

68. It is an uncontested fact that, on December 13, 1998, several aircraft flew over the area around Santo Domingo during the morning and in greater numbers after 9 a.m. The aircraft were subsequently identified as: (i) a UH 60L armed Black Hawk helicopter, under the command of Major S.G. [...]; (ii) a UH1H 4407 helicopter with cluster bombs, piloted by Lieutenant C.R.P. [...]; (iii) a Hughes-500 armed helicopter under the command of Lieutenant L.S. [...]; (iv) a Skymaster plane crewed by two foreigners and the Colombian Air Force Captain C.G. [...]; (v) a UH 60 helicopter, piloted by Captain R.G.G. [...], and (vi) a MI 17 helicopter owned by the company Heliandes piloted by a civilian [...]. In its answering brief, the State acknowledged that the UH1H helicopter carried an AN-M1A2 cluster device.

69. In addition, it has not been disputed that, during the operations in the area, at 10:02:09 a.m., the crew of the Colombian Air Force UH1H 4407 helicopter composed of the pilot Lieutenant C.R.P., his co-pilot, Lieutenant J.J.V., and the aircraft technician H.M.H.A., launched a cluster device (“AN-M1A2”).

70. Similarly, it was not disputed that 17 individuals died as a result of the events that occurred between December 12 and 14 in Santo Domingo, of whom six were children. In addition, according to the Commission’s Merits Report, 27 individuals were injured, including 10 children.

[...]

73. However, there is a second version of the facts that can be inferred from the statements made by members of the Air Force, according to which, the Air Force launched a light bomb, not on the village, but on

wooded area more than 500 meters from the village of Santo Domingo. In addition, under this hypothesis, the civilians were victims of an explosive device installed by members of the FARC in the back of a truck on the main street of the village, so that the deaths and injuries of the individuals described above could not have been caused by the State.

VII. MERITS

[...]

VII-2. RIGHTS TO LIFE, TO PERSONAL INTEGRITY AND MEASURES OF PROTECTION FOR CHILDREN, AND OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS

A. Arguments of the Commission and allegations of the parties

A.1. Right to life

174. The Commission concluded in its Report that the State had violated the rights recognised in Article 4(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the 17 people who died in the village of Santo Domingo on December 13, 1998, in relation to the launch of the cluster bomb on the urban area of the village. The Commission also stated that “the fact that 27 people were injured and not killed [was] merely fortuitous” and, therefore, it considered that the violation of Article 4 also applies to those who were injured in the bombardment. The Commission referred to principles and norms of international humanitarian law and considered “that the precision of cluster bombs is limited and they have considerable anti-personnel force” and that those who were in the village at the time of the bombardment were civilians, which was known by the members of the Armed Forces who crewed the aircraft.

175. The representatives agreed with the Commission’s statement [...]. The representatives also argued that “since this was an indiscriminate attack with a fragmentation bomb [...] [it was] necessary to assess the situation of all the people who were in the village of Santo Domingo at the time of the aerial attack, because it was only a question of luck that they were not hit by shrapnel or fragments of the cluster bomb.” In this regard, they argued that, also, “the right to life was directly affected” of those who were seriously injured and that, since this was an indiscriminate attack with a fragmentation bomb, the State was also responsible for the violation of Article 4(1) of the Convention “to the detriment of all the persons who were present at the moment of the launch” that day in the village of Santo Domingo, who they did not identify. [...]

176. For its part, the State argued that, in this case, none of the structures of State responsibility are constituted, so that the claim of the Commission and of the representatives should not be admitted, because it has been proved that there was no causal relationship between the actions deployed by the State agents and the events that occurred in Santo Domingo. It added that “there was no type of complicity or collaboration between the FARC and the Armed Forces.” Lastly, the State affirmed that the civilian population had not been placed in any objective danger because the AN-M1A2 device had been launched at a distance where it was not possible to cause damage to the village and that “the destructive force of [this type of] device [...] is less than 30 meters.”

[...]

B. Considerations of the Court

B.1. The obligation to respect and guarantee the rights to life and to personal integrity and measures of protection for children

187. In light of the arguments of the parties, the Court will now examine the alleged international responsibility of Colombia for the presumed violation of the rights to life, personal integrity and measures of protection for children in relation to the obligations of respect and guarantee. [...] since the events occurred in the context of a non-international armed conflict, [...] as it has on other occasions, the Court considers it useful and appropriate to interpret the scope of the treaty-based norms and obligations in a way that complements the norms of international humanitarian law, based on their specificity in this matter, in particular the 1949 Geneva Conventions and, in particular, Article 3 common to the four conventions (hereinafter also “common Article 3”), the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (hereinafter “Protocol II”), to which the State is a party, and customary international humanitarian law.

[...]

B.2. The launch of an AN-M1A2 cluster bomb on Santo Domingo

195. Regarding the events that resulted in the death of 17 people and injuries to another 27 in the village of Santo Domingo on December 13, 1998, as already indicated, the Court observes that the arguments and evidence provided reveal that there are two versions of what happened: first, the one presented by the Commission and the representatives according to which the Colombian Air Force was responsible for launching an AN-M1A2 device on the village at 10.02 a.m., a version also concluded by the 12th Criminal Court of the Bogotá Circuit [...] and the Bogotá Superior Criminal Court [...], which is based on testimony and different investigative measures taken by the Prosecutor General’s Office. The second version arises from the corresponding arguments submitted by the State that concur in part with the statements of several members of the Colombian Armed Forces who were present at the time of the events (*supra* para. 73), according to which the said cluster bomb was launched 500 meters to the north of the village and that the deaths and injuries that occurred resulted from the explosion of a car bomb, supposedly placed by the FARC.

[...]

210. Consequently, the Court concludes, taking into consideration the conclusions of the judgment of the 12th Criminal Court, confirmed by the Superior Court in its judgment of June 15, 2011, that the AN-M1A2 device launched at 10:02:09 a.m. on December 13, 1998, effectively fell on the main street of Santo Domingo, causing the death of 17 presumed victims and the injuries of another 27.

211. Having established how the incident occurred, the Court will now examine the State’s responsibility in

the effects on the life and integrity of the victims of the bombardment. To this end, [...] it will analyse the facts of the case interpreting the provisions of the American Convention in light of the pertinent norms and principles of international humanitarian law, namely: (a) the principle of distinction between civilians and combatants; (b) the principle of proportionality, and (c) the principle of precaution in attack.

a) The principle of distinction between civilians and combatants

212. As established in international humanitarian law, the principle of distinction refers to a customary rule for both international and non-international armed conflicts which establishes that “the parties to the conflict must at all times distinguish between civilians and combatants,” that “attacks may only be directed against combatants” and that “attacks must not be directed against civilians.” In addition, customary international humanitarian law establishes that: “the parties to the conflict must at all times distinguish between civilian objects and military objectives,” so that “attacks may only be directed against military objectives,” while “attacks must not be directed against civilian objects.” Similarly, paragraph 2 of Article 13 of Protocol II Additional to the Geneva Conventions prohibits attacks being directed against civilians or the civilian population. The jurisprudence of the international criminal courts has also referred to this principle.

213. In the instant case, the Court has found proved that, in the context of confrontations with the FARC guerrilla, on December 13, 1998, the Colombian Air Force launched an AN-M1A2 cluster bomb on the village of Santo Domingo, causing the death and injury of civilians [...]. The Court takes note that the domestic judicial and administrative organs have considered that the State failed to comply with the principle of distinction when conducting the said airborne operation.

b) The principle of proportionality

214. As established by international humanitarian law, the principle of proportionality refers to a customary rule for both international and non-international armed conflicts that stipulates that “launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.” Thus the said principle establishes a limitation to the purpose of the war, stipulating that the use of force must not be disproportionate, limiting it to what is essential to obtain the military advantage pursued.

215. In this regard, as already indicated, although the launch of the cluster bomb directly affected the population of the village of Santo Domingo, the more general military objective of the airborne operation was the members of the guerrilla who were presumably located in a wooded area near Santo Domingo. In this hypothesis, the military advantage that the Colombian Air Force hoped to obtain was to undermine the military capability of the guerrilla located in a place where, presumably, there was no civilian population that could be incidentally affected by the cluster bomb. Consequently, the Court considers that it is not appropriate to analyse the launch of the said device in light of the principle of proportionality, because an analysis of this type would involve determining whether the deceased and injured among the civilian population could be considered an “excessive” result in relation to the specific and direct military advantage expected if it had hit a military objective, which did not occur in the circumstances of the case.

c) *The principle of precaution in attack*

216. According to international humanitarian law, the principle of precaution on attack refers to a customary rule for both international and non-international armed conflicts which establishes that “in the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects,” and that “all feasible precautions must be taken to avoid, and in any event minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects.” Similarly, rule 1 of customary international humanitarian law stipulates that “each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

217. Based on the evidence in the case file, the Court observes, first, [...] that the AN-M1A2 device, developed in the 1940s, is not a precise weapon, and its launch mechanism is operated manually by means of a cord that is pulled when the pilot gives the order. In addition, it is worth recalling that device is composed of six bombs that separate from the cluster when the device is launched, and that this type of device falls due to the effects of gravity. In this regard, [...], there can be differences of various dozens of meters between the points of impact of each of the AN-M41A1 bombs of which it is composed. [...]

[...]

219. Similarly, it is worth recalling, as did the first instance judgment of the 12th Criminal Court of the Bogotá Circuit, that the commander of the Apiay Base himself indicated, referring to the AN-M1A2 device, that “each cluster bomb [...] can have a theoretical range of action of 150 meters depending on dispersion” [...].

220. In addition, the Court notes that the 12th Criminal Court referred to the Colombian Air Force manuals and regulations in force on December 13, 1998, which the aircraft pilots “were obligatorily [...] aware of.” In particular, it referred to the norms that regulated aerial support, as well as the launch of precision missiles (“alpha” missions) and bombardment missions (“beta” missions). Regarding the “alpha” mission, the 12th Criminal Court noted that the regulations established that they “are used as a weapon against specific objectives [and] despite being a weapon of great precision, their use is not appropriate in populated areas. As for “beta” missions, the norms indicated that they “should not be carried out in villages or areas where there is a civilian population.” [...]

221. In addition, it is relevant to note, as did the Superior Court, that the use of explosive weapons launched from an aircraft constitutes an activity that it necessarily categorised as dangerous, and therefore should be executed under strict safety conditions that guarantee that only the selected objective will be harmed.

222. Furthermore, according to the evidence presented, it could be considered that the designated objective for dropping the cluster bomb was not the place where it ended up falling. Indeed, the State argued that the bomb was directed at a wooded area 500 meters to the north of the village. However, it is also true that the reference that the pilot of the aircraft “Hunter” gave the aircraft “Owl” (the aircraft that executed the launch) does not refer to a precise distance, but merely indicates a “wooded area” that is “nearby the village, on the

right side (to the north) and specifying that they wanted the “cluster bomb” to fall to the west of this “wooded area”. [...]

223. The foregoing allows the Court to conclude that the launch instruction was imprecise and, even though it indicated a “wooded area”, it only clarified that it wanted “the cluster bomb” on the western side of it, without specifying at what distance from the village, so that the instruction could have been interpreted either that it was designating a point at 500 meters or at another nearer distance, which could even be 70 meters. [...]

224. With regard to the other circumstances surrounding the events of December 13, 1998, the Court considers it relevant to mention that, some minutes before the cluster bomb was dropped, the Colombian Air Force had already committed one error by firing a precision missile on misinterpreting the orders received. [...]

225. The 12th Criminal Court also indicated in its first instance judgment that seconds before the launch of the device, the “intensity of the combat was evident [...] to the point that [...] the Puerto Rican crew of Skymaster warned C.G. that there were a lot of aircraft, suggesting that more order should be established.”

226. Finally in its second instance judgment, the Bogotá Superior Court referred to the testimony of Captain S.A.C.E., who stated that “[the airborne support was not necessary] because the ground conditions (vegetation) did not allow it.” This leads to the conclusion that the aircraft that launched the cluster bomb did not take the necessary care to consult the ground troops in order to find out if the bomb was needed to achieve the eventual effects on a military objective.

227. Consequently, based on all the above, the Court notes that: (i) the AN-M1A2 device used is a weapon with limited precision; (ii) the launch instruction was imprecise, having designated a launch area that could refer to an objective that it is unclear whether it was defined, because it could range from 70 meters from Santo Domingo to 500 meters further to the north; (iii) manuals and regulations were in force at the time of the events indicating that weapons such as the one used could not be used in populated areas or near villages with civilian population; (iv) the circumstances surround the events reveal that errors had already been committed with more precise weapons than the cluster bomb some minutes before 10.02 am; (v) doubts existed about the need to use this type of weapon in the confrontations that took place on December 13, 1998, and (vi) a few seconds before the launch, one of the Skymaster pilots suggested the need to introduce some order among the aircraft, which denoted that there was a certain confusion in the airborne operation at the precise moment.

228. In addition to the above, it should be underlined that, neither from the evidence provided nor from the conversations between the pilots of the aircraft, can it be inferred that the fact that there was a village populated by civilians nearby was taken into account at any time during the operation; nor was the need expressed to take any kind of precaution or care when launching cluster bombs or other missiles in relation to the safety of the civilian population. To the contrary, the only concerns expressed by the aircraft pilots were in relation to the troops who were near the bridge.

229. In any case, given the lethal capacity and limited precision of the device used, its launch in the urban

centre of the village of Santo Domingo or nearby, was contrary to the principle of precaution in attack.

230. Based on all the above, this Court finds that the State is responsible for the violation of the right to life recognised in Article 4(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the persons who died in the village of Santo Domingo [...], as well as Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the persons who were injured on December 13, 1998 [...].

B.3. The presumed machine gun attack

[...]

232. As indicated previously [...], the Court notes that, from the evidence provided and from the arguments, that there are two versions of what happened. Thus, the State alleges that the Air Force did not machine gun the civilian population or the village of Santo Domingo. However, the testimony of several inhabitants of the village of Santo Domingo are consistent in stating that, following the explosion of the cluster bomb, the Colombian Air Force machine-gunned those who were fleeing from Santo Domingo by the highway towards Tame from the aircraft. In addition, the testimonies are congruent with the conversations of the aircraft pilots that took place as of 10:10: 33 a.m., referring to the persons who moving on the road, and which were recorded in the Skymaster video, in which it can be heard:

(10: 10: 33 a.m.) “No, no, don’t fire, fuck, they’re civilians” (10: 10: 59 a.m.) “Are they civilians?” “Yes, those are civilians”; (10: 11: 02 a.m) “Jesus Christ, they’re firing on civilians [...] don’t shoot [...]” [...]

[...]

234. Regarding the principle of distinction between civilians and combatants, the Court recalls that, according to the norms of international humanitarian law indicated above [...], conducts that constitute indiscriminate attacks are also prohibited “which employ a method or means of combat which cannot be limited as required by international humanitarian law [...] and, consequently, [...] are of a nature to strike military objectives and civilians or civilian objects without distinction.” [...]

235. In the instant case, the Court notes that, as can be heard in the recordings, the aircraft pilots expressed doubts as to whether or not the people they were observing moving on the highway towards Tame were civilians, and despite this they used their weapons (in this case machine guns), in manifest lack of concern for the life and integrity of these persons, and in non-compliance with the principle of distinction [...]. In addition, even in the hypothesis that there could be members of the guerrilla among the civilian population, the military advantage sought would not have been so great that it could justify eventual civilian deaths and injuries, so that, in that hypothesis, these actions would also have affected the principle of proportionality.

236. Lastly, the Court notes that the Colombian Air Force manuals and regulations in force at December 13, 1998 [...], established clearly that machine gun attacks could only be used “in response to subversive attacks or seizure, when there is certainty that the civilian population will not be affected, and may never be used in populated or semi-urban areas,” so that the machine gun attack also breached the principle of precaution in attack.

237. The Court notes that this action by members of the Colombian Air Force entailed a failure to comply with the obligation to guarantee the rights to life and personal integrity in the terms of the American Convention of the inhabitants of Santo Domingo, who were affected by the endangerment of their rights by the mere fact of having been the object of these indiscriminate attacks, irrespective of whether anyone was killed or injured. [...]

VIII. REPARATIONS

(Application of Article 63(1) of the American Convention)

290. Based on the provisions of Article 63(1) of the Convention, the Court has indicated that any violation of an international obligation that has resulted in harm entails the obligation to repair this adequately, and that this provision “reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility.” [...]

292. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitution in integrum*), which consists in re-establishment of the previous situation. If this is not possible, as in most cases of human rights violations, the Court will determine the measures to guarantee the violated rights and to repair the consequences of the violations. [...]

293. Consequently, [...] the Court will proceed to order measures designed to repair the harm caused. To this end, it will take into account the claims of the Commission and the representatives, and also the arguments of the State, in light of the criteria established in the Court’s case law in relation to the nature and scope of the obligation to make reparation.

[...]

C. Measures of satisfaction, rehabilitation and restitution, and guarantees of non-repetition

[...]

C.3. Other measures requested

[...]

318. The Commission recommended that the State implement “permanent programs of human rights and international humanitarian law in the Armed Forces training academies.” The representatives requested the creation of a seminar on human rights and international humanitarian law, to be given in all the courses for promotions in the Colombian Air Force, which should include in its content the obligations relating to the means and methods of war, and the special protection that children deserve during armed conflicts.

319. The State indicated that article 149 of Law 1448 of 2011 (Victims Act) includes the application of sanctions on those responsible for violations of international humanitarian law, the creation of a social pedagogy that promotes the constitutional values on which reconciliation is based in relation to the events that have taken place in the historical truth, the creation of a single training strategy and pedagogy on respect for human rights and international humanitarian law, which includes a differentiated approach, directed at public officials responsible for ensuring compliance with the law, as well as the members of the Armed Forces, the effective control of the Armed Forces by civil authorities, and the promotion of mechanisms designed to prevent and resolve social conflicts.

320. The Court observes that the State provided certain information on programs and actions implemented in this area, the existence and validity of which was not contested by the Commission and the representatives, and regarding which no information was presented indicating possible shortcomings. Since the State has been implementing the requested measure of reparation by taking certain measures, the Court does not find it appropriate to order this. Nevertheless, the Court considers it extremely important to urge Colombia to comply with the said commitment to continue adopting all necessary measures to adopt and strengthen (including with the respective budgetary allocation), an obligatory programme or course as part of the general and ongoing training for members of the Colombian Air Force, of all ranks, that includes, *inter alia*, courses or modules on national and international standards for human rights and on the principles of international humanitarian law that guide the use of force by the State's security forces.

[...]

IX. OPERATIVE PARAGRAPHS

350. Therefore,

THE COURT

DECIDES,

unanimously, that:

1. To reject the two preliminary objections files by the State, regarding the Court's alleged lack of competence *ratione materiae* [...].

[...]

DECLARES,

unanimously, that:

1. The State is responsible for the violation of the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of those who died

in the events of December 13, 1998, in Santo Domingo, and in relation to Article 19 thereof with regard to the child victims who died [...].

2. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the persons who were injured in the events of December 13, 1998, in Santo Domingo, and in relation to Article 19 thereof with regard to the child victims [...].

3. The State is responsible for the violation of the right to personal integrity recognised in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of the victims of the events that occurred in Santo Domingo on December 13, 1998 [...].

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. (Paras 3, 16, 54-58)

a. How would you qualify the situation in Colombia? Which rules of IHL apply? (GC I-IV, Art. 3; P II, Art. 1)
b. What are the two criteria that need to be fulfilled to determine the presence of a NIAC? Are they satisfied in this case? What factors can be taken into account to answer this question? From the information in the paragraphs referred to above, why do you think that FARC and ELN are located in the department of Arauca? Do their illegal trafficking activities have any influence on whether they may be qualified as an armed group under IHL?

2. (paras 16-24)

a. Does IHRL continue to apply in armed conflicts?
b. Does the Inter-American Court of Human Rights have the competence to hear cases in situations of armed conflict? According to the government of Colombia? According to the Court? Does it have the competence to apply IHL? Can it declare that a State has violated its IHL obligations?
c. How does IHRL apply in times of armed conflict? Must its application and interpretation in armed conflicts take IHL into account? Why? Do you agree with the Court that IHL is “the specific law” in situations of armed conflict? Can there be situations or issues in armed conflicts for which IHL is not “the specific law”? Is the Court referring to the principle of *lex specialis*? What does this principle mean?

3. (paras 187, 211-230, 350)

a. In this case, how does the Court apply the right to life under the Convention in a situation of NIAC? Which principles of IHL does it take into account to interpret this right? Does the Court actually refer to any of the requirements to respect the right to life under IHRL? If not, do you think there is a difference between interpreting the right to life in light of IHL and directly applying IHL? By its actions in the village of Santo Domingo, did Colombia violate the right to life of its inhabitants?

II. Conduct of Hostilities

1. (paras 68-73, 195-210, 212-213)

a. What is the source of the IHL principle of distinction? Which rules apply in the case at hand? (P I, Art. 51;

P II, Art. 13; CIHL, Rule 1)

b. Who is protected by the principle of distinction under IHL? Does this differ between IACs and NIACs? Are all members of FARC, ELN or the Colombian army lawful targets? Could the civilian pilot of the MI 17 helicopter owned by a private company be targeted? In what circumstances?

c. What is protected by the principle of distinction under IHL? Is the Caño Limón-Coveñas pipeline a military objective, considering that “the armed conflict in Arauca is closely related to the revenue derived from the oil and the location of the Caño Limón-Coveñas pipeline”? (see *para.* 56) What about the wooded area located more than 500 metres from Santo Domingo that the Air Force was allegedly targeting (see *para.* 73)? Can wooded area be considered a military objective? In what circumstances? Isn't the environment specially protected under IHL? (P I, 35(3), Arts 50 and 52(2); CIHL, Rules 5, 8, 43, 44, 45).

d. Did the Colombian Air Force respect the principle of distinction when it launched a cluster bomb on the village of Santo Domingo? According to the Inter-American Commission, the Colombian armed forces knew that civilians were in the village at the time of the attack (see *paras* 3 and 174) – does that change the assessment whether the principle of distinction was violated? If the armed forces thought they were launching a cluster bomb on a FARC camp, what other IHL prohibition could nevertheless have been violated? (P I, Art. 51(4); CIHL, Rule 11)

2. (*paras* 214-215, 235)

a. What is the source of the IHL principle of proportionality? Which rules apply in the case at hand? (P I, Art. 51(5)(b); CIHL, Rule 14)

b. How do you assess whether an attack is proportionate under IHL? Would it have been correct to assess “whether the deceased and injured among the civilian population could be considered an ‘excessive’ result in relation to the specific and direct military advantage expected” (*para.* 215)? Do you take into account the actual effects of the attack? Or only what was expected? According to the Court, “even in the hypothesis that there could be members of the guerrilla among the civilian population, the military advantage sought would not have been so great that it could justify eventual civilian deaths and injuries”. Do you agree with the Court's proportionality assessment (*para.* 235)? (P I, Art. 51(5)(b); CIHL, Rule 14)

c. What is the relationship between the principles of distinction and of proportionality? If the attack violated the principle of distinction, was it necessary to determine whether the principle of proportionality was respected? If civilians were targeted, could the principle of proportionality have been respected?

d. In this case, was the attack of the Colombian Air Force proportionate? If we consider that no incidental civilian loss was expected if the cluster bomb had hit its original target? Why does the Court refuse to answer the question? Do you agree with its reasoning?

3. (*paras* 216-229, 235)

a. What is the source of the IHL principle of precaution? Which rules apply in the case at hand? (P I, Art. 57; CIHL, Rule 15)

b. What is the relationship between the principles of distinction, proportionality and precaution? If the attack violated one of the former two, was it necessary to determine whether the principle of precaution was respected? Could the latter possibly have been respected in case the former were violated? If civilians were targeted, was the principle of precaution relevant? What if the civilians were killed or injured, but not targeted?

c. What precautionary measures have to be taken before and during an attack? In this case, did the Colombian Air Force take the necessary measures before launching the cluster bomb? Did it do everything feasible to verify that the objective of the attack was not civilian in nature? Do you think the instructions the pilots received were precise enough? Should the attack have been cancelled following the errors that had

been committed by the Air Force before 10.02 a.m.? Should the attack have been suspended until more “order” had been introduced among the aircraft as suggested by one of the pilots? Isn’t an armed conflict by definition disorderly? Should the Colombian Air Force have suspended its attack as soon as it had doubts as to whether or not the people they were targeting were civilians? Who specifically should have made the decisions about cancelling or suspending the attacks? Could the Colombian air force have warned the civilian population of Santo Domingo of the attack, or did the circumstances not permit this?

d. Did the use of cluster bombs by the Colombian air force violate the principle of precaution? Why? What specific rules of IHL are challenged by the use of cluster bombs in armed conflicts? Why are cluster bombs considered problematic weapons systems? Does IHL prohibit cluster bombs? Can they ever be used in compliance with IHL? If yes, in what situations? In this case, if the cluster bomb had been launched 500 metres away from Santo Domingo, do you think its use would have complied with IHL? Taking into account that “each cluster bomb [...] can have a theoretical range of action of 150 meters depending on dispersion”? (see *para* 219). (P I, Art. 51(4); CIHL, Rule 71)

4. (*paras* 234-237)

a. How does the principle of distinction relate to the prohibition of indiscriminate attacks? How does IHL define indiscriminate attacks? Did the Colombian Air Force respect this prohibition in the machine gun attack? (P I, Art. 51(4); CIHL, Rules 11 and 12)

III. Implementation of IHL

5. (*paras* 290-320)

a. What IHL-related measure does the Court order to repair Colombia’s violation of the Convention? Does a State have an obligation to instruct IHL to its armed forces? Only in times of armed conflict? (GC I-IV, Art. 1; GC I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, Art. 144; P I, Art. 83; P II, Art. 19; CIHL, Rule 142)

b. Does the Court have the competence to order such a measure? Can human rights courts serve as a mechanism to ensure and strengthen the application of IHL?