2017 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION

Case of Ricardo Madeira et al. v. Republic of Zircondia

Bench Memorandum

CONFIDENT IAL

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FOREWORD

This document is structured in two parts. The first presents a general background on international humanitarian law, its relation to international human rights law, and the manner in which it has been taken into account by the Inter-American Court in its jurisprudence. The second deals specifically with the Hypothetical Case, analyzing its various facets and explaining the different arguments that the teams could present in relation to the three instances of alleged human rights violations that occurred in Zircondia.

In this sense, this memorandum seeks to present to the judges guiding criteria, which will help them to value the arguments of the teams that defend the different positions, but it does not pretend to be

PART I: GENERAL BACKGROUND

1. Sources and Principles of International Humanitarian Law (IHL) [1]

International Humanitarian Law (IHL) can be defined as the branch of international law limiting the use of violence in armed conflicts by: sparing those who do not or no longer participate in hostilities, and restricting it to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy. Also known as law of armed conflict (or *jus in bello*) is one of the most codified branches of international law. In practice, therefore, the most relevant sources of IHL are applicable to the armed conflict in question. For example, in situations of international armed conflict, the most important sources of applicable IHL would be the four 1949 Geneva Conventions[2], their Additional Protocol I, and weapons treaties, such as the 1980 Convention on Certain Conventional Weapons, the 1997 Ottawa Treaty on Landmines, the 2008 Convention on Cluster Munitions, or the 2013 Arms Trade Treaty, among others.

The First Convention, which protects wounded and sick soldiers on land during war, is based on a version of earlier instruments adopted in 1864, 1906 and 1929. It also provides protection for medical and religious personnel, medical units and transports, and recognizes the distinctive emblems (mainly the Red Cross and the Red Crescent on a white background). The Second Convention closely follows the provisions of the first Geneva Convention in strto0r f3-1(sv)-1(a)-4(C)

Customary law plays an important role in IHL, given the fact that a number of rules and principles set out in treaties have not been ratified by certain States, including rules governing the conduct of hostilities and the treatment of persons not or no longer taking a direct part in hostilities. Since they are also part of customary law, they are therefore binding on all States, regardless of which treaties they have or have not adhered to. For instance, a belligerent State may not have ratified a treaty prohibiting the use of certain weapons (for example, the ones that cause "superfluous injury or unnecessary suffering"), but as there is a universally

responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence

aimed at preventing the States from claiming that the Court is applying treaties that are out of its range of competence.

It is important to recall at this point two key provisions of the American Convention. Article 29 ("Restrictions Regarding Interpretation") states:

> No provision of this Convention shall be interpreted as:
> a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
> b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
> c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
> d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 62, part of Chapter VIII of the Convention which addresses the role of the Court within the Inter-American system, establishes:

> 1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
> 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
> 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 62(3) of the American Convention clearly defines the limits of the Court's

But the Court has also interpreted the prohibition under Article 29.b – an interpretation restricting the scope of Human Rights – as an *authorization* to enlarge the content of the rights protected by the Convention. This broad interpretation of Article 29 is justified by the Court itself given the aim and object of the American Convention, which is the protection of *Human* Rights. This is the so-called *pro homine* interpretation of the American Convention.[18]

In the *Case of the Massacre of Mapiripan*, the Court explained the role played by IHL in its legal reasoning:[19]

> 114. [T]he Court cannot set aside the existence of general and special duties of the State to protect the civilian population, derived from International Humanitarian Law, specifically Article 3 common of the August 12, 1949 Geneva Agreements and the provisions of the additional Protocol to the Geneva Agreements regarding protection of the victims of non-international armed conflicts (Protocol II). Due respect for the individuals protected entails passive obligations (not to kill, not to violate physical safety, etc.), while the protection due entails positive obligations to impede violations against said persons by third parties. (…)
>
> 115. The obligations derived from said international provisions must be taken into acco[illegible]

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The following academic definitions of NIACs are also relevant:

> Non-international armed conflicts are armed confrontations that take place within the territory of a State between the government on the one hand and armed insurgent groups on the other hand. [].Another case is the crumbling of all government authority in the country, as a result of which various groups fight each other in the struggle for power.[26] The hostilities have to be conducted by force of arms and exhibit such intensity that, as a rule, the government is compelled to employ its armed forces against the insurgents instead of mere police forces. Secondly, as to the insurgents, the hostilities are meant to be of a collective character, [i.e] they have to be carried out not only by single persons. In addition, the insurgents have to exhibit a minimum amount of organisation. Their armed forces should be under a responsible command and be capable of meeting minimal humanitarian requirements.[27]

The two above-mentioned NIAC criteria – organisation of the parties and intensity of the violence – are meant to distinguish an armed conflict "from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law."[28] The criteria are closely related. They are factual matters which ought to be determined in light of the particular evidence available and on a case-by-case basis.[29] The criteria are assessed by weighing up several indicative factors, none of which are, in themselves, essential to establish whether each criterion is fulfilled.

Regarding the organisation criterion, governmental forces are always presumed to reach the minimum level of organisation required.[30] Therefore the assessment of the level of organisation concerns only non-State armed groups (including dissident armed forces) involved in the violence. Where in a given case there is insufficient information to conclude that the armed group meets the requisite threshold of organisation, the latter may nonetheless be deduced from factors indicating that the intensity threshold is met – notably the kind, complexity and frequency of the armed confrontations. Conversely, the requisite level of intensity of the violence can obviously not be deduced from the mere existence of an organised armed group. It is therefore preferable to begin by analysing the organisation criterion before that of intensity, as doubts regarding the former may subsequently be resolved in light of the latter.

According to the ICTY, the following are the main indicative factors of organisation of the parties[31]:

- hierarchical structure and chain of command;
- capacity to plan and launch coordinated military operations;
- capacity to recruit, train and equip new combatants;
- existence of an internal regulation or a code of conduct;

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[26] GASSER, Hans-Peter, "International Humanitarian Law: an Introduction", in HAUG, H. (Ed.), *Humanity for All: the*

- commanders have a minimum capacity to control the members of the group and thus to ensure respect for IHL;
- control of territory.

With regards to the aim indicative factors of intensity of the violence, the Tribunal cites the following:[32]

- number, duration and gravity of the armed confrontations / clashes;
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perhaps especially when in addition to such confrontations the situation also presents numerous unilateral acts of violence, such as killings. The situation may then amount to an international armed conflict even when it does not constitute the type of high intensity conflict the ICTY was addressing in the above mentioned cases.

The ICTY has explained in this regard that "[t]he essential point made by the Trial Chamber in *Tadic* is that isolated acts of violence, such as certain terrorist actions committed in peace time, would not be covered by Common Article 3,[94] and that "what matters is whether the acts are perpetrated in isolation or as part of a protracted campaign that entails the engagement of both parties in hostilities.[95] The tribunal further considered that "while isolated acts of terrorism may not reach the threshold of armed conflict, when there is protracted violence of this type, especially where they require the engagement of the armed forces in hostilities, such acts are relevant to assessing the leve of ine i i15s t, i15s(c)1()11(r)7(n)4()11((e)1(d)4(oc)1(h)4(t)6(h)4((h)4xr)3(t)7(i)3(s)9l)13(e)1(n)4(c)1(d

Law enforcement officials may resort to using force only when all other means of achieving a legitimate objective have proven useless (necessity) and the use of force can be justified (proportionality) with regards to the importance of the legitimate objective (legality) they seek to achieve. They must exercise restraint when using force and firearms and act in proportion to the seriousness of the offence and the legitimate objective to be achieved,[38] and may only use as much force as is necessary to achieve a legitimate objective.

As far as the use of firearms goes, since it is considered an extreme measure, Basic Principles 9, 10 and 11 underscore that law enforcement officials shall not use firearms against persons, except: in self-defense or defense of others against the imminent threat of death or serious injury; to prevent the perpetration of a particularly serious crime involving grave threat to life; to arrest, or to prevent the escape of, a person presenting such a danger and resisting their authority, when less extreme means are insufficient to achieve these objectives.

Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.[39] The rules of behavior to be observed prior to using a firearm (precaution) stated in Basic Principle 10, require law enforcement officials to identify themselves as such, give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, (unless such warning would unduly place the law enforcement officials at risk, create a risk of death or serious harm to other persons, be clearly inappropriate or pointless in the circumstances).

The Inter-American Court has established in its case law that the principles of legality, absolute necessity and proportionality are paramount; in the Case of *Nadege Dorzema and others* vs. *Dominican Republic*,[40] among others, it has for instance stated:

> 85. In order to respect the appropriate measures to take if the use of force becomes essential, this must be used in keeping with the principles of legality, absolute necessity, and proportionality:
> *i. Legality*: the use of force must be addressed at achieving a legitimate goal (…). The law and training should established [know] how to act in this situation (…).
> *ii. Absolute necessity*: it must be verified whether other means are available to protect the life and safety of the person or situation that it is sought to protect, in keeping with the circumstances of the case. The European Court has indicated that it cannot be concluded that the requirement of "absolute necessity" for the use of force against people who do not pose a direct threat is proved, "even when the lack of the use of force would result in the loss of the opportunity to capture them." (…)
> *iii. Proportionality:* The level of force used must be in keeping with the level of resistance offered. Thus, agents must apply the criteria of differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.

Based on the foregoing, a few relevant differences between conduct of hostilities and law paradigms can be identified.[41]

[38] Basic Principles 4 and 5.
[39] Basic Principle 9.
[40] Paragraph 85; see also Corte IDH. Caso Cruz Sánchez y otros Vs. Perú. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 17 de abril de 2015. Serie C No. 292, para. 282.

provisions of IHL within their briefs and as part of the oral pleadings. Also, the State's
seem to acknowledge the existence of a NIAC by referring to Restrepo as a "legitimate target"
(although it is not clear if they are using that term within the meaning provided for by IHL).
it must be recalled that the existence (or not) of a NIAC does not depend upon the declar
by a State in one sense or another.

The situation in Serena is deliberately more difficult to qualify based on the information provided
the Hypothetical Case and the answers to the Clarification Questions. The main actors involved in
violence are the security and armed forces of the government, which are presumed to
organization criterion, and the two main gangs, whose level of organization must be examin
of the indicators mentioned earlier. Based on Paragraphs 25 to 29 of the Hypothetical Case, t
might be inclined to present their legal reasoning based on the premise of the (in)existence of
NIAC in Serena.

1.2. State of emergency

Most constitutions contain emergency clauses that empower the head of State or the go
take exceptional measures (including restrictions on or the suspension of rights) with or withou
the consent of the Legislative branch in times of war or in other emergency situations. The
enact such clauses is taken by States when they lose confidence in their ability to control a situatio
with the measures they have at their disposal, and should be aimed at reestablishing a situa
normality. This has occurred in several countries of the continent since the ratification of

It is important to point out the Turku / Abo Declaration of minimum humanitarian standards in 1990 by a expert meeting convened by the Institute for Human Rights of Åbo Akademi U which ought to guide States' actions during states of emergency.[42]

According to the "Questions and Clarifications", the answer provided to Question 13 indicates that President of Zircondia addressed a communication to the Secretary General of the OAS o 2006, informing him that he believed that a "broad and general" suspension of the obligatio under the American Convention was necessary in Zircondia territory for a period of six months. teams will most likely argue that this declaration is (im)compatible with the wording of Article depending on the position they have to defend.[43]

Among the interpretations of Article 27 by the Inter-American Court, the following is particula useful:[44]

> 120. This Court has established that the suspension of guarantees constitutes an exceptional situation in which it is licit for the Government to apply certain restrictive measures on rights and freedoms that, under normal conditions, are prohibited or subject to more rigorous requirements. The Court notes that the Convention does not prohibit the suspension of the right to personal liberty under Article 7 of the Convention, temporarily and to the extent strictly necessary to deal with the exceptional situation. Nevertheless, this Court has already indicated that, "according to Article 27(2) of this instrument, the legal procedures established in Articles 25(1) and 7(6) of the American Convention […] cannot be suspended, because they constitute essential judicial guarantees to protect rights and freedoms that cannot be suspended according to this same provision." Similarly, international human rights bodies have expressed a similar opinion that, as in the case of the right of everyone deprived of liberty to have recourse to a competent judge or court to decide the legality of his detention or habeas corpus, the prohibition of the arbitrary deprivation of liberty is a non-derogable right that cannot be suspended. In addition, the International Committee of the Red Cross has established that the prohibition of arbitrary deprivation of liberty is a rule of customary international humanitarian law, applicable to both international and non-international armed conflict. Consequently, pursuant to "the obligations that […] are imposed by international law," the prohibition of arbitrary detention or imprisonment cannot be suspended during an internal armed conflict.

2. Exhaustion of domestic remedies / Preliminary objections

Considering the facts of the Hypothetical Case and the Clarifications provided, it has to be that the Commission, within the boundaries established in Articles 34 to 37 of the Rules Procedure of 2009 (in force at the time), decided to admit the petition filed by the Association of P in Law (most likely based in part on the situation prevailing in Zircondia –

out kidnapping). Their belongings were confiscated, including their computers and cell phone both were taken to a clandestine jail. There they were chained by their hands and feet, monitored closed-circuit camera, and given food that did not appear fit for human consumption. They were interrogated for more than four hours at a time in order to obtain from them additional information about the Interamerican earth shipments, using methods such as submerging their heads in a basin of freezing water.[45]

According to foreign media correspondents, there are ties between members of the Terror Squad and members of the provincial police forces, as they provide each other with mutual support to conduct illegal activities.[46] Some members of the Police Forces have agreed to turn a blind eye to the activities of the Terror Squad in exchange for financial compensation; in some cases [illegible]

have been carried out by private actors[54].

In the *Paniagua Morales* v. *Guatemala* Case, the Court highlighted the following:

> 91. Unlike domestic criminal law, it is not necessary to determine the perpetrators' culpability or intentionality in order to establish that the rights enshrined in the Convention have been violated, nor is it essential to identify individually the agents to whom the acts of violation are attributed. The sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations.

In the *Mapiripán Massacre* v. *Colombia* Case, the Court specifically asserted:

> 110. In other words, the origin of the international responsibility of the State is found in "acts or omissions by any authorities or bodies of the State, whatever their hierarchical level, that violate the American Convention", and it is generated immediately with the internationally unlawful act attributed to the State. To establish that there has been an abridgment of the rights embodied in the Convention it is not necessary to establish, as would be the case in domestic criminal law, the guilt of its perpetrators or their intent, and it is also not necessary to individually identify the agents deemed responsible for said abridgments. It is enough to prove that there has been support or tolerance by public authorities in the infringement of the rights embodied in the Convention, or omissions that enabled these violations to take place.
>
> 111. Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstance and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations enshrined in Articles 1(1) and 2 of the Convention.

Some teams might invoke the *2001 Draft A*

development and provided clarification on an issue regarding which the Court should ce continue to occupy itself.[56]"

The Commission has recently issued reports in the matters of *Noel Emiro Omeara Carrasco and others* as well as *Victor Manuel Isaza Uribe* (both against Colombia), in which it identifies the need for the Cou to further develop its case law on the issue of international responsibility of the State a collaboration between its agents and private actors.[57]

3.3. Enforced disappearance / ill treatment / torture

The Inter-American Court has examined the right to personal liberty (Art. 7 of the America Convention) in light of IHL,

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unfavorable distinctions in keeping with Common Article 3, given that IHL "prohibits [violations of the rights to life and humane treatment] [. . .] at any place and time."[64]

Regarding torture and cruel, inhuman or degrading treatment or punishment, in its decision in *González* vs *Peru*, the Court stated

> 141. The Court has established that torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited by international human rights law. The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, states of emergency, or internal unrest or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes. Nowadays, this prohibition is part of international *jus cogens*. Both universal and regional treaties establish this prohibition and the non-derogable right not to be subjected to any form of torture. Also, numerous international instruments recognize this right and reiterate the same prohibition, including international humanitarian law.

In *Bueno Alves* v. *Argentina*, the Inter-American Court

> under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. (…)

Also, a report issued by the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or P

confirmed by the appellate tribunal)

- 50.000 USD lump sum compensation was granted to the family in accordance wit law; it is sufficient and acceptable with reference to Inter-American system / internatio standards,

- The competent authorities, with the support of the Army, launched an exhaustive operatio find the kidnapped victims[75] The State continued to investigate the facts even after Tim Anaya was convicted, with a view to finding other perpetrators[76]

- The State has made specific and ongoing efforts to confront, to the extent possible that the Terror Squad poses to the private citizens live in the region. The Army and Police have concentrated on the protection of the population.[77]

4. The case of Reynaldo Restrepo

4.1. Brief summary of the facts

On November 19, 2006, at 3:00 a.m., a

lose protection from attacks if they become military objectives, and for as long as they rem
objectives, since they are being used for military purposes or for military actions.
If such an object is to be attacked, the use of force should be preceded by a warning givi
opponent a reasonable amount of time to comply. Also, damage should be kept to the
minimum.

In the present case, if the Court was to consider that there is indeed a NIAC occurring in Filipoland
it may wish to take into account the circumstances under which the attack was carried out,
done so in cases taking place during an armed conflict (e.g. the *Santo Domingo Massacre* Case). As
mentioned in the first part of this document, the analysis could consider the principles of distinction
(Rule 12 of the Study on Customary IHL), proportionality (Rule 14), and precaution (Rules 15-20),
among other items.

4.4. Possible arguments submitted by the teams

4.4.1. Petitioner Arguments

- The attack destroyed a good part of the Museum and may have been disproportionate (the information available does not allow us to know the extent of damages based on the size the museum). The question of the military advantage is also at play.

- It could be argued that the information provided in the Hypothetical Case and the answers to the Clarification Questions is insufficient to determine if Restrepo was really participating in the activities of the FNC, or if he was just a sympathizer of the movement.

- The investigation carried out after the attack may not have been sufficient in the case of suspicious death.

4.4.2. State Arguments

- There is no legal argument barring the State from using drones on its territory, in furtherance of its legitimate objectives.

- In the present case, given that the Museum is a public structure, it could be inferred that in order to place weapons and ammunitions, there had to exist some kind of help from within (maybe the Curator).

- The weapons found in the rubble seem to indicate that the intelligence the Army possessed was indeed accurate.

- A warning of an impending attack was given (principle of precaution), Mr. Restrepo should not have been there.

- Some measures were undertaken after the attack to verify that the person killed was a member of the FNC,[89] and the presence of his body in the rubble must be taken as information that he was.

5. The case of Esteban Martínez

5.1. Brief summary of the facts

On January 5, 2007, a demonstration was held to protest against the Federal and Provincial Governments. The members of the military assigned to supervise the manifestation managed to identify Esteban Martínez, one of the leaders of "los Locos," in the midst of the demonstrators. His mobile phone was under surveillance, and it was known that he was close to launching an attack on government institutions. An operation to apprehend him was improvised at that time. To this end, the authorities used megaphones and loudspeakers to ask the demonstrators to disperse. However, that call was taken as a provocation, and the protests intensified and turned more violent.[90]

In order to face the situation, the State agents initially took

service, but

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cannot in principle be regarded as inhuman and degrading. The same can be said about force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food".[114] This holding was reiterated by the same Tribunal several years later in *Rappaz* v. *Switzerland* (2013).

- A doctor is taken as hostage, which justifies the use of lethal force.

- The medical team that performed the forced feeding operation had been sent from the Army and therefore had basic training to act in combat situations. Furthermore, the medical team on duty conducted a few drills in scenarios that replicated the jail as closely as possible.[115] In its judgement in *Cruz Sánchez* the Court took into account similar efforts aimed at protecting the lives of hostages.[116]

After the death of Esteban Martinez

- An internal investigation is carried out, and a policeman is dismissed.

- A Commission is created by the State to investigate the circumstances surrounding the events which took place during the protest and during the detention, which can be seen as a token of its good faith.

[114] European Court of Human Rights, Case of *Nevmerzhitsky* vs. *Ukraine*, Judgment of 5 April 2005, Para. 94.
[115] See answer to Clarification Question 43.
[116] Para. 284.

BIBLIOGRA PHY

ARNOLD, Roberta & QUENIVET, Noelle, *International Humanitarian Law and Human Rights Law – Towards a New Merger in International Law*, Leiden, Brill Publishers, 2008.

BALLESTEROS MOYA, Vanessa, *Actores no estatales y responsabilidad internacional del Estado*, Barcelona, Bosch editor, 2016.

BURGORGUE-LARSEN, Laurence & ÚBEDA DE TORRES, Amaya, ""War" in the Jurisprudence of the Inter-American Court of Human Rights", *Human Rights Quarterly*, Vol. 33, 2011.

DOSWALD-BECK, Louise, "The right to life in armed conflict: does international humanitarian law provide all the answers?", *IRRC*, Vol. 88, No. 864, December 2006.

GAGGIOLI, Gloria, "A legal approach to investigations of arbitrary deprivations of life in armed conflicts: The need for a dynamic understanding of the interplay between IHL and HRL", *Questions of International Law*, Zoom-in 36, 2017; available at *http://www.qil-qdi.org/*.

GASSER, Hans-Peter, "International Humanitarian Law: an Introduction", in HAUG, H. (Ed.), *Humanity for All: the International Red Cross and Red Crescent Movement*, Paul Haupt Publishers, Berne, 1993.

GERVASONI, Luca, "A contextual-functional approach to investigations into right to life violations in armed conflict", *Questions of International Law*, Zoom-in 36, 2017, available at *http://www.qil-qdi.org/*.

GIRALDO MUÑOZ, Marcela, *Criterios de la Corte Interamericana sobre la interpretación de los derechos humanos a la luz del derecho internacional humanitario*, Ciudad de México, Comisión nacional de los derechos humanos, 2016; available at *appweb.cndh.org.mx/biblioteca/archivos/pdfs/fas-CSIDH-Criterios-CIDH.pdf*.

GOWLLAND-DEBBAS, Vera & GAGGIOLI, Gloria, "The Relationship between International Human Rights and Humanitarian Law: An Overview", in KOLB, Robert & GAGGIOLI, Gloria, *Research Handbook on Human Rights and Humanitarian Law*, Northampton, Edward Elgar Publishing, 2013.

HATHAWAY, Oona A., "Which Law Governs During Armed Conflict? The Relationship between International Humanitarian Law and Human Rights Law", *Minnesota Law Review*, Vol. 96, 2012.

HEINTZE Hans-Joachim, "Theories on the Relationship between International Humanitarian Law and Human Rights Law", in KOLB, Robert & GAGGIOLI, Gloria, *Research Handbook on Human Rights and Humanitarian Law*, Northampton, Edward Elgar Publishing, 2013.

HENCKAERTS, Jean-Marie & DOSWALD-BECK, Louise, *Customary International Humanitarian Law – Vol I: Rules*, ICRC – Cambridge University Press, Geneva; available at *https://www.icrc.org/spa/resources/documents/publication/pcustom.htm*.

IBÁÑEZ RIVAS, Juana María, "El derecho internacional humanitario en la jurisprudencia de la Corte Interamericana de Derechos Humanos", *Revista Derecho del Estado*, núm. 36, January-June 2016.

ZEGVELD, Liesbeth, "The Inter-American Commission on Human Rights and international humanitarian law: A comment on the Tablada Case", *International Review of the Red Cross*, No. 324, 1998.

INTERNATIONAL ORGANISATIONS

CASALE, Silvia S. G., *Minimum Standards for Prison Establishments: A NACRO Report*, London, National Association for the Care and Resettlement of Offenders, 1984.

Council of Europe, "Living space per prisoner in prison establishments: CPT standards", Doc. CPT/Inf (2015) 44, Par. 9; available at: *www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf.*

Human Rights Council, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development - Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak", Doc. A/HRC/7/3 , 15 January 2008.

ICRC Opinion Paper, "How is the Term "Armed Conflict" Defined in International Humanitarian Law?", March 2008; available at: *http://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm.*

ICRC, *Violence and the use of force*, Geneva, 2011; available at: *https://www.icrc.org/eng/assets/files/other/icrc_002_0943.pdf.*

ICRC, *The use of force in armed conflicts: interplay between the conduct of hostilities and law enforcement paradigms – Report of an expert meeting*, Geneva, 2013; available at: *https://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf.*

ICRC, *Summary of the Geneva Conventions of 12 august 1949 and their Additional Protocols*, available at *https://www.icrc.org/eng/assets/files/publications/icrc-002-0368.pdf*

International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987; available at *www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf*.

ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, October 2011; available at: *https://app.icrc.org/e-briw9011;fC /TT1l0CTd6:rg(h)1T9(d526)Tj0.49 0 Td35Tw -39.seT1th3(R)-e CTd(*

Corte IDH. Caso de la *Masacre de Pueblo Bello* v. *Colombia*. Sentencia de 31 de enero de 2006. Serie C No. 140.

Corte IDH. Caso de las *Masacres de Ituango* v. *Colombia*. Sentencia de 1 de julio de 2006. Serie C No. 148.

Corte IDH. Caso *Osorio Rivera y familiares* v. *Perú*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 26 de noviembre de 2013. Serie C No. 274.

Corte IDH. Caso *Rodríguez Vera y otros (Desaparecidos del Palacio de Justicia)* v. *Colombia*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 14 de noviembre de 2014. Serie C No 287.

Corte IDH. Caso *Suárez Rosero* v. *Ecuador*.