

A large group of people, many carrying boxes on their heads, are walking along a dirt road in a valley. The scene is set in a rugged, mountainous landscape with a winding road and a river in the distance. The image is overlaid with a semi-transparent orange border containing the title text.

NON-STATE ACTORS AS PERPETRATORS: PRECEDENTS FROM INTER-AMERICAN JURISPRUDENCE AND THEIR APPLICABILITY TO DISAPPEARANCE CASES

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DPLF is a non-profit organization dedicated to human rights and the rule of law in Latin America. DPLF is headquartered in Washington DC, with an office in El Salvador and a multinational team of professionals based throughout the region. Working with civil society organizations throughout Latin America, DPLF provides technical legal assistance, promotes dialogue with government representatives, and creates opportunities for the exchange of information and experience. DPLF also conducts research and produces publications that analyze and discuss the main human rights challenges in the region, in light of international law and comparative perspectives. Founded in 1996 by Professor Thomas Buergenthal and his colleagues from the United Nations Truth Commission in El Salvador, DPLF has worked on transitional justice issues since its inception, promoting compliance with international standards and the use of inter-American and international law to improve legislation, policy, and practice through comparative research and the exchange of lessons learned in the Americas and other regions of the world.

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We hope that this synthesis and critical analysis of the most significant jurisprudence from the Inter-American Court regarding disappearances and non-state actors helps support the interpretation of standards for similar cases or for new developments before the challenges that we are facing in the region.

Washington DC, February 2022

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NON-STATE ACTORS AS PERPETRATORS: PRECEDENTS FROM INTER-AMERICAN JURISPRUDENCE AND THEIR APPLICABILITY TO DISAPPEARANCE CASES

INTRODUCTION

Enforced disappearances occur when people are **deprived of liberty** by government/State actors, or organized groups or private individuals acting on **behalf of, or with the support, consent, or direct or indirect acquiescence** of, the **government/State actors**. The deprivation of liberty is **followed by a refusal to disclose the fate or whereabouts of the persons concerned** or a **refusal to acknowledge the deprivation of their liberty**. Consequently, such persons are placed outside the protection of the law. As such, the crime and the human rights violation of enforced disappearance comprise many different types of State repression. The enforced disappearance of persons is a grave human rights violation according to Inter-American and universal human rights standards, and, in some cases is considered a crime under international law.¹

Despite some key differences depending on the country and on the historical period, in Latin America, most the enforced disappearances have followed a common pattern. In many cases, such as in the dictatorships of the 1970s and 1980s in Argentina, Chile, Paraguay and Uruguay, government agents selected the victims, deprived them of their liberty, took them to clandestine detention centers where the victims were generally tortured and usually executed. The perpetrators would then dispose of the victims' bodies. In other contexts, such as in the armed conflicts of Guatemala, El Salvador and Colombia, several patterns for disappearances have been identified, with different criminal logic and distinct modus operandi that did not necessarily imply "secret detentions" of victims. In general, State agents have denied having any involvement or information regarding the whereabouts of disappearance victims.

¹ In international law, enforced disappearance is considered a crime against humanity when committed as part of a widespread or systematic attack directed at any civilian population, and thus is not subject to a statute of limitations

However, in certain contexts of structural violence in Latin America, non-State actors have played a role in the commission of enforced disappearances, or the commission of disappearances has been “outsourced” by the State to non-State actors, with non-State actors acting with the support, authorization, or acquiescence of the State. This was the case with the operation of paramilitary groups during the armed conflicts in Colombia and Guatemala, as well as in El Salvador during that country’s conflict where “death squads” with hidden ties to the State carried out acts of violence and human rights violations against peasant populations. At the same time, in some armed conflicts non-State guerilla groups, as in the cases of Brazil, Colombia, El Salvador, and Peru, were responsible for acts of kidnapping and deprivation of liberty; when aimed at certain groups of people—that is, the taking of political hostages—these acts technically might fall within the definition of terrorism, rather than disappearance, although many of the characteristics of the acts themselves are the same.

In other scenarios of disappearances involving non-State actors, the link between non-State perpetrators and the State apparatus is less obvious, or at least more difficult to prove; this is the case with the complex phenomena of disappearances currently being committed in both Mexico and El Salvador. These more novel contexts include disappearances carried out by gangs, organized crime groups, and drug cartels; scenarios which also overlap with disappearances caused in the contexts of human trafficking and/or to the flow of migration between Central America, Mexico, and the United States. These changing circumstances, as well as shifting perceptions about how disappearances, and other grave human rights violations occur, have challenged academics and practitioners to re-think international human rights law’s exclusive focus on State actors as the only possible perpetrators of human rights violations.

Specific international instruments on enforced disappearance have referred to disappearances committed by non-State actors. The definitions of enforced disappearance contained in the preamble of the Declaration on the Protection of All Persons from Enforced Disappearance,² Article 2 of the Inter-American Convention on Forced Disappearance of Persons,³ and Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance,⁴ using similar terminology, all establish that this crime may be committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State.

2 UN Commission on Human Rights, *Declaration on the Protection of All Persons from Enforced Disappearance*, E/CN.4/RES/1992/29, 28 February 1992, available at: <https://www.ohchr.org/en/professionalinterest/pages/enforceddisappearance.aspx>

3 Organization of American States (OAS), *Inter-American Convention on Forced Disappearance of Persons*, 9 June 1994, available at: <https://www.oas.org/juridico/english/treaties/a-60.html>

4 UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, available at: <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

Taking this into account, according to the abovementioned consolidated international law, perpetrators of enforced disappearance can be State agents or non-State actors, depending on whether the perpetrator belongs or has a connection to the organic structure of the State. It bears reiterating the distinction that is made between non-State actors who have some connection with the State insofar as they act with its authorization, support or acquiescence, and those non-State actors who have no relationship to the State apparatus. Regarding the latter, there is an ongoing debate as to whether this category of non-State actors can legally commit enforced disappearances according to international law⁵.

It is clear that, in principle, a State cannot be responsible for all acts or facts occurring between individuals within its jurisdiction. Despite this general principle, international doctrine and jurisprudence have established that a State can be internationally responsible for acts of individuals that violate human rights under certain conditions. This type of international responsibility of the State has been called “indirect responsibility”, since the illicit act that violates human rights is not directly attributable to a State.

For its part, the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) has ruled on numerous cases of enforced disappearance committed by State actors as well as a smaller number of cases of disappearances committed by non-State actors with connections to the State. While the Court has not yet ruled on cases of disappearances committed by non-State actors with *no* ties to the State, its jurisprudence provides a good sampling of precedents that could inform the treatment of this latter category of cases going forward. In particular we can look to 1) precedents identifying criteria for the attribution of State responsibility for human rights violations committed by private individuals or non-State actors, and 2) precedents declaring States’ international responsibility in enforced disappearance cases, and examine their applicability to cases of disappearances committed by non-State actors without clear ties to the State. Among these cases, sentences handed down by the Court on disappearances committed by paramilitary groups warrant special attention.⁶

Although no judgments of the Inter-American Court directly address cases of enforced disappearances committed by non-State actors acting without the authorization, support, or acquiescence of the State, as mentioned above, the potential exists for such a case to emerge, for example, from the Mexican context, where non-State actors play a central role in the perpetration of distinct modalities of disappearance. Given this possibility and given the Court’s es-

5 For a more extensive discussion of non-State actors as perpetrators of enforced disappearance, see Pietro Sferazza-Taibi, “Desapariciones forzadas por actores no estatales: la jurisprudencia de la Corte Interamericana de Derechos Humanos.” *Iconos. Revista de Ciencias Sociales*, núm. 67, pp. 17-37, 2020, FLACSO Ecuador. Disponible en <https://revistas.flacsoandes.edu.ec/iconos/article/view/4171/3328>

6 As mentioned above, Latin America’s recent history is rife with States resorting to the creation, support, and control of paramilitary groups as a counterinsurgency strategy to combat those they considered domestic enemies during moments of heightened social conflict,

stantial contributions to international law on enforced disappearance—including to the debate surrounding the involvement of non-State actors as perpetrators—DPLF considered that it would be of value to present a synthesis of the Court’s most significant jurisprudence on the subject in order to examine how it might inform future decisions on disappearances committed by non-State actors.



CUSI TINED FLAVIO
DESAP. 15.02.74
"VIVO LO LLEVARON
VIVO LO QUEREMOS"
QUE APAREZCAN

MOISES TINED ZA
MDRA detenida
POR MILITARES
TAL CONFORME
APARESCA VIVO

GREGORIO PASILLAS
CAJAMAR AYLLA 20 años
Desaparecido 12.12.74
VIVO LO LLEVARON
VIVO LO QUEREMOS

Photo: AP Foto/Martin Mejia

1. ATTRIBUTION OF INTERNATIONAL RESPONSIBILITY TO THE STATE FOR HUMAN RIGHTS VIOLATIONS DUE TO ACTS COMMITTED BY PRIVATE INDIVIDUALS OR NON-STATE ACTORS

Attribution of international responsibility to the State for human rights violations can be direct or indirect. A violation is directly attributable to a State when it is committed via, or occurs because of, the actions of State agents. On the other hand, according to the jurisprudence of the Inter-American Court, there are two sets of circumstances which can give rise to indirect attribution of international responsibility to the State for acts of private actors. First, indirect attribution of international responsibility to the State can be made when a private actor commits a violation with either the State's tolerance or complicity; in the second scenario, international responsibility can be indirectly attributed to the State when the State fails, because of a lack of diligence, to prevent an act of a private actor that violates the human rights enshrined in the American Convention and other applicable instruments.

From its earliest judgments on enforced disappearances, the Inter-American Court of Human Rights has recognized the possibility of attributing international responsibility to States for human rights violations arising from the acts of private individuals. In the *Case of Velásquez Rodríguez v. Honduras*, the Court said:

Thus, in principle, **any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State.** However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights, and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention (emphasis added).⁷

⁷ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 172.

The same finding was reiterated in the *Case of Godínez Cruz v. Honduras*⁸ and has been reaffirmed by the Court in subsequent judgments in cases of enforced disappearance.⁹ Since its first judgments on enforced disappearance, and in relation to determining the international responsibility of the State for the violation of human rights, the Court has also held that:

What is decisive is **whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible.**

Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention (emphasis added).¹⁰

In subsequent judgments in cases of enforced disappearance, the Court has referred to the State's obligation to respect the rights and freedoms recognized in the Convention, which includes the acts of private individuals. In the *Case of Bámaca Velásquez v. Guatemala*, the Court held that:

[B]ased on Article 1(1) of the American Convention, (...) Guatemala is obliged to respect the rights and freedoms recognized in it and to organize the public sector so as to guarantee persons within its jurisdiction the free and full exercise of human rights. This is essential, independently of whether those responsible for the violations of these rights are agents of the public sector, individuals or groups of individuals, because, according to the rules of international human rights law, the act or omission of any public authority constitutes an action that may be attributed to the State and involve its responsibility, in the terms set out in the Convention.¹¹

In addition to establishing that acts of private individuals can give rise to international State responsibility the Court has held, from its earliest decisions on disappearances, that that impunity for private individuals who have committed human rights violations may also incur the international responsibility of the State. In the cases of *Velásquez Rodríguez v. Honduras* and

8 I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, para. 182.

9 I/A Court H.R., *Case of Caballero Delgado and Santana v. Colombia*. Merits. Judgment of December 8, 1995. Series C No. 22, para. 56; I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 100.

10 I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.173; I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, para. 183.

11 I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 210.

Godínez Cruz v. Honduras, the Court found that:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention (emphasis added).¹²

In the Inter-American system, the State obligation to investigate human rights violations committed by private parties is derived from both the American Declaration on the Rights and Duties of Man¹³ and the American Convention on Human Rights.¹⁴ Since its first judgments in cases involving enforced disappearances, the Inter-American Court has indicated that the State's failure to meet this obligation as it relates to the acts of private individuals or non-State actors could incur international responsibility. In the cases of *Velásquez Rodríguez v. Honduras* and *Godínez Cruz vs. Honduras*, the Court found that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, investigation must be undertaken in a serious manner and not carried out as a mere formality destined to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.¹⁵

12 I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.176; I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, para. 187.

13 See Inter-American Commission on Human Rights (IACHR), *Jessica Lenahan (González) et al. v. United States*. Case No. 12.626. Merits. Report No. 80/11, July 21, 2011, para. 130 (establishing that States may be held responsible for violations of their duty to investigate and punish cases of domestic violence under the American Declaration).

14 IACHR. *Simone André Diniz v. Brazil*. Case No. 12.001. Merits. Report No. 66/06, October 21, 2006, para. 101.

15 I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para.177; I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, para. 188. See also I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs.

In the *Case of Gómez Palomino v. Peru*, the Court echoed this notion of States' responsibility to investigate and hold accountable private actors responsible for human rights violations, holding that:

In accordance with the general obligation of protection, the States have the duty to investigate, prosecute, try and punish those responsible for human rights violations. This obligation is also applicable to any illegal act violating human rights that is not directly committed by a government official but, for example, by a private individual acting with the support or acquiescence of the State. Thus, criminal punishment must be imposed on all persons who commit acts that constitute forced disappearance.¹⁶

In the same judgment, the Court said that:

in order to guarantee full protection against enforced disappearance pursuant to Articles 1 and 2 of the American Convention and I(b) of the Inter-American Convention on Forced Disappearance of Persons, domestic criminal law must ensure that all 'persons who commit the crime of forced disappearance of persons, their accomplices and accessories' are punished, whether they are agents of the state or 'persons or groups of persons acting with the authorization, support, or acquiescence of the State.'¹⁷

Judgment of January 31, 2006. Series C No. 140, para. 145.

16 I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para.100.

17 I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para.101.



Photo: AP Foto/Rodrigo Abd

2. INTERNATIONAL RESPONSIBILITY OF THE STATE FOR HUMAN RIGHTS VIOLATIONS DUE TO ACTS COMMITTED BY INDIVIDUALS OR NON-STATE ACTORS IN CASES OF ENFORCED DISAPPEARANCES

The Court has repeatedly held that the enforced disappearance of persons is a human rights violation consisting of three “concurrent and constituent elements”: “(a) the deprivation of liberty against the will of the person concerned; (b) involvement of governmental officials, at least directly or by acquiescence, and (c) refusal to disclose the fate and whereabouts of the person concerned.”¹⁸

18 I/A Court H.R., *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 55. See also I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 85; I/A Court H.R., *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 60; I/A Court H.R., *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, para. 104; I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 65; I/A Court H.R., *Case of Torres Millacura et al. v. Argentina*. Merits, Reparations and costs. Judgment of August 26, 2011. Series C No. 229, para. 95; I/A Court H.R., *Case of Contreras et al. v. El Salvador*. Merits, Reparations and costs. Judgment of August 31, 2011. Series C No. 232, para. 82; I/A Court H.R., *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 128; I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 4, 2012. Series C No. 250, para. 115; I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 193; I/A Court H.R., *Case of García and family members v. Guatemala*. Merits, Reparations and Costs. Judgment of November 29, 2012. Series C No. 258, para. 97; I/A Court H.R., *Case of Osorio Rivera and family members v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, para. 113; I/A Court H.R., *Case of Rochac Hernández et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 95; I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 226; I/A Court H.R., *Case of Peasant Community of Santa Barbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015*. Series C No. 299, para. 161; I/A Court H.R., *Case of Tenorio Roca et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 141; I/A Court H.R., *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328, para. 133; I/A Court H.R., *Case of Vásquez Durand et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 332, para. 99; I/A Court H.R., *Case of Gutiérrez Hernández et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339, para. 123; I/A Court H.R., *Case of Munárriz Escobar et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 20, 2018. Series C No. 355, para. 63; I/A Court H.R., *Case of Terrones Silva et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 360, para. 135; I/A Court H.R., *Case of Alvarado Espinoza et al. v. Mexico*. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370, para. 171. In the *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of

In some cases, the Court has characterized the second element, in accordance with Article II of the Inter-American Convention on Forced Disappearance of Persons, as: “(b) the direct intervention of State agents or persons or groups of persons acting with their authorization, support, or acquiescence.”¹⁹

The Court has also distinguished between enforced disappearances and other offenses, such as kidnapping,²⁰ and has stated that “the disappearance of a person, because their whereabouts are unknown, is not the same as an enforced disappearance.”²¹ Concerning the attribution of international responsibility to the State for an act of enforced disappearance, the Court has specifically cited the second element. In the *Case of Vereda La Esperanza v. Colombia*, it stated:

The Court will examine **whether the acts are attributable to the State through the conduct of its agents or persons or groups of persons acting with the authorization, support, or acquiescence of the State. This determination would allow the Court to establish whether the State is responsible for the commission of the international crime of enforced disappearance**, as defined in Article II of the [Inter-American Convention on Forced Disappearance of Persons], as well as in the case law of this Court (emphasis added).²²

The Court has further noted that the Inter-American Convention on Forced Disappearance of Persons, as well as other relevant international instruments on the subject and its own decisions, “have provided for and prohibited the most serious forms of enforced disappearance, which **should not be understood as encompassing all possible forms of this most serious**

August 12, 2008. Series C No. 186, para. 110, the Court synthesized the three elements in this way for the first time, stating, “Similarly, other international instruments refer to the following coexisting and constituent elements of this violation: (a) deprivation of liberty (b) intervention of State agents, at least indirectly by their concurrence, and (c) refusal to acknowledge the detention and reveal the fate or the whereabouts of the person involved. These elements can also be found in the definition of forced disappearance of persons established in Article 2 of the abovementioned United Nations International Convention on this matter, and also in the definition found in Article 7 of the Statute of the International Criminal Court, an instrument that Panama ratified on March 21, 2002.”

- 19 I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 150; I/A Court H.R., *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para. 84.
- 20 I/A Court H.R., *Caso Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 67, citing the Working Group on Enforced or Involuntary Disappearances.
- 21 I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 226. *See also* I/A Court H.R., *Case of Gutiérrez Hernández et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339, para. 123; I/A Court H.R., *Case of Terrones Silva et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 360, para. 135.
- 22 I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 148.

human rights violation to the exclusion of others not specified (emphasis added)²³ This acknowledgment of the diverse modalities of disappearance that are committed should be a key clue to the Court's intention to address disappearances that do not fall within the exact terms of the definition articulated in the Convention and other instruments on enforced disappearance, including those committed by non-State actors.

The Court has, in several cases, declared the international responsibility of the State for human rights violations caused by acts of enforced disappearance in which private individuals or non-State actors have participated. This declaration has been based on several considerations made by the Court, specifically: (1) finding that non-State actors were acting as agents of the State; (2) finding that State actors were tied to, supported, and collaborated with non-State actors; (3) finding that, even though the ties between State agents and non-State actors have not been established in the facts, the authorities failed to diligently take the necessary measures to protect the disappeared person, in breach of their duties of prevention and protection; (4) finding, where there are ties between State agents and non-State actors, the authorities, in their capacity as guarantors, failed to ensure the safety and protection of the disappeared person; and (5) finding, based on a prior context of joint acts by agents of the State and private individuals, that the disappeared person may have been detained by private individuals acting with the acquiescence of State agents.

The Court has made these findings especially in cases involving Guatemala and Colombia.²⁴ In the *Case of Alvarado Espinoza et al. v. Mexico*, while the judgment provides an extensive and detailed description of the broader context of organized crime operations in Mexico and in the area where the events occurred, and expressly refers to the collusion between State agents and organized crime, the Inter-American Commission and the victims' representatives presented the case as one involving the actions of State security forces in the fight against organized crime and the direct participation of State agents in the detention of the disappeared victims and in the denial of the detentions.²⁵

23 I/A Court H.R., *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para.92.

24 See cases discussed in sections 3 and 4 below.

25 I/A Court H.R., *Case of Alvarado Espinoza et al. v. Mexico*. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370.



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DESAPARECIDO



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3. NON-STATE ACTORS ACTING AS AGENTS OF THE STATE

The first case in which the Inter-American Court established the international responsibility of the State for human rights violations because of enforced disappearances committed with the participation of private individuals or non-State actors is the *Case of Blake v. Guatemala*. Here, the Court declared the international responsibility of the State for the actions of paramilitaries (civil patrols), considering that they “in fact acted as agents of the State.”²⁶ The Court considered it proven that:

at the time the events in this case occurred, the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces’ functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision. A number of human rights violations, including summary and extrajudicial executions and forced disappearances of persons, have been attributed to those patrols.²⁷

The Court declared, consequently, that:

the acquiescence of the State of Guatemala in the perpetration of such activities by the civil patrols indicates that those patrols should be deemed to be agents of the State and that the actions they perpetrated should therefore be imputable to the State.²⁸

26 I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 75.

27 I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 76.

28 I/A Court H.R., *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 78.



Photo: AP Foto/Rodrigo Abd

4. EXISTENCE OF TIES, SUPPORT, AND COLLABORATION OF STATE AGENTS WITH PRIVATE INDIVIDUALS OR NON-STATE AGENTS

The second case in which the Court declared the international responsibility of the State for human rights violations caused by acts of enforced disappearance involving private individuals or non-State actors is the *Case of the 19 Merchants v. Colombia*. In this case, the Court found that the violations against the 19 tradesmen were perpetrated by a “self-defense” group that became a “paramilitary” group, “at a time when the State had not taken the necessary measure to prohibit, prevent, and punish adequately the criminal activities of such groups, even though such activities were already notorious.”²⁹ The Court therefore concluded that the State was responsible

for the interpretation which, for many years, was given to the legal framework that protected such ‘paramilitary’ groups, for the disproportionate use of the arms given to them, and for failing to adopt the necessary measures to prohibit, prevent and punish adequately the said criminal activities. Besides, the military authorities of Puerto Boyaca encouraged the ‘self-defense’ group that controlled the said region to assume an offensive attitude towards the guerrilla, as happened in this case, because they believed the tradesmen collaborated with the guerrilla groups.³⁰

In this case the Court also found that the “paramilitary” group that disappeared the 19 tradesmen “had close ties to senior officers of the law enforcement bodies of the Magdalena Medio region, and received support and collaboration from them,”³¹ and that “members of law enforcement bodies supported the ‘paramilitary personnel’ in the acts that preceded the detention of the alleged victims and the crimes committed against them.”³²

29 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 122.

30 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 124.

31 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 134.

32 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 135.

In attributing direct responsibility to the State, the Court relied on its case law on the international responsibility of the State for “any act or omission of any [agent, body, or branch of the State], independent of its hierarchy, which violates internationally enshrined rights,”³³ as well as its decisions on the international responsibility of the State for an unlawful act violating human rights that is not initially directly imputable to the State but that may give rise to its international responsibility, “not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”³⁴ The Court also referred to its case law on the establishment of the international responsibility of the State for human rights violations, according to which “**it is sufficient to demonstrate that public authorities have supported or tolerated the violation of the rights established in the Convention** (emphasis added).”³⁵

33 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 140.

34 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 140.

35 I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 141.



Photo: AP Foto/Rodrigo Abd

5. AUTHORITIES FAILED TO DILIGENTLY TAKE THE NECESSARY MEASURES TO PROTECT THE DISAPPEARED PERSONS, IN BREACH OF THEIR DUTIES OF PREVENTION AND PROTECTION

Another case in which the Court declared the international responsibility of the State for human rights violations caused by acts of enforced disappearance involving the participation of private individuals or non-State actors is the *Case of the Pueblo Bello Massacre v. Colombia*.³⁶ In this case, as they have done in other cases, the Court referred to **the special duties of protection derived from the obligations to respect and guarantee the rights enshrined in the American Convention on Human Rights**. It stated,

There are special obligations that derive from these [general] obligations, which are determined [based on] the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself.³⁷

The Court also cited its jurisprudence on the attribution of international responsibility to a State for acts committed by private parties, circling back to its earlier decisions and stating that:

This international responsibility may arise also from the acts of individuals, which, in principle, are not attributable to the State. [The obligations *erga omnes* to respect and ensure respect for the norms of protection, which is the responsibility of the States Parties to the Convention] extend their effects beyond the relationship between its agents and the persons subject to its jurisdiction, because they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations. The attribution of responsibility

³⁶ The Court found that the facts of enforced disappearance and extrajudicial execution were proven in this case. In an earlier case, the *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, in which the Court attributed international responsibility to the State “from a set of actions and omissions by State agents and private citizens, conducted in a coordinated, parallel or linked manner, with the aim of carrying out the massacre” (para.123), the Court addressed the disappearance of several of the victims, but not enforced disappearance specifically.

³⁷ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111.

to the State for the acts of individuals may occur in cases in which the State fails to comply with the obligations *erga omnes* contained in Articles 1.1 and 2 of the Convention, owing to the acts or omissions of its agents when they are in the position of guarantor.³⁸

In this judgment, the Court also identified several standards for attributing international responsibility to a State for the acts of private parties. It said

[T]he Court acknowledges that a State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered.³⁹

Here, even though the Court did not find that the State authorities had specific prior knowledge of the date and time of the attack on the population of Pueblo Bello and of the methods of attack,⁴⁰ it did find that:

Colombia did not adopt sufficient prevention measures to avoid a paramilitary group of approximately 60 men from entering the municipality of Pueblo Bello at a time of day when the circulation of vehicles was restricted and then leaving this zone, after having detained at least the 43 alleged victims in the instant case, who were subsequently assassinated or disappeared. In brief, the mobilization of a considerable number of people in this zone, whatever route they took, reveals that the State had not adopted reasonable measures to control the available routes in the area.⁴¹

38 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 113, citing *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111.

39 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 123.

40 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 135.

41 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 138.

This led the Court to say that the State had failed to take, “with due diligence, all the necessary measures to avoid operations of this size being carried out in a zone that had been declared ‘an emergency zone, subject to military operations,’” which, according to the Court, placed the State “in a special position of guarantor, owing to the situation of armed conflict in the zone, which had led the State itself to adopt special measures.”⁴²

The Court reasoned that, although there was no evidence in this case that the acts were carried out by State agents or that there were ties between State agents and paramilitary groups, the facts were attributable to the State for failing to diligently take the measures needed to protect the population – that is for failing to prevent the violations from occurring. It said:

The Court observes that even **though the January 1990 massacre in Pueblo Bello was organized and perpetrated by members of a paramilitary group, it could not have been carried out if there had been effective protection for the civilian population in a dangerous situation that was reasonably foreseeable by the members of the Armed Forces or State security forces.**

It is true that there is no evidence before the Court to show that the State was directly involved in the perpetration of the massacre or that there was a connection between the members of the Army and the paramilitary groups or a delegation of public functions from the Army to such groups. However, **the responsibility for the acts of the members of the paramilitary group in this case in particular can be attributed to the State, to the extent that the latter did not adopt diligently the necessary measures to protect the civilian population in function of the circumstances that have been described.** [...] the Court concludes that the State did not comply with its obligation to ensure the human rights embodied in Articles 4, 5 and 7 of the Convention, because it did not comply with its prevention and protection obligations to the detriment of those who disappeared and were deprived of life in this case (emphases added).⁴³

In this case, as stated above, the Court found that although the massacre was committed by non-State paramilitary actors, it would not have occurred *but for* the State’s failure to prevent it. Thus, applying the Court’s reasoning in the *Pueblo Bello* case, it is clear the State’s compliance with the *positive obligations of prevention and protection* can be used as the criteria for determining whether a human rights violation committed by a non-State actor can be indirectly attributed to the State.⁴⁴

42 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 139.

43 I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 140.

44 In their judgment in the *Case of the Pueblo Bello Massacre v. Colombia*, the Court referred to the European Court of Human Rights’ use of the criterion of established risk – that is, whether State authorities are aware or should be aware of a risk to the life of an identified individual or individuals from the acts of a non-State private party – when determining the existence of a positive State obligation to prevent human rights violations by non-State actors (see

In the *Case of Vereda La Esperanza v. Colombia*, the Court also attributed international responsibility to the State for enforced disappearance by establishing that members of the security forces had supported and acquiesced to the paramilitary group. In this judgment, the Court stated the following in relation to the attribution of international responsibility to the State for the acts of private parties:

(...) it is important to recall that, according to the case law of this Court, a general situation of collaboration and acquiescence is not enough to establish State responsibility for a breach of its duty of respect with the actions of third parties; rather, there must be clear evidence of State acquiescence or collaboration in the specific circumstances.⁴⁵

Based on the evidence in the case file, the Court found that the events “took place within the framework of a collaborative relationship between the military forces in the area, under the direction of the La Piñuela military base and the ACMM,”⁴⁶ and concluded that the enforced disappearances that occurred in Vereda La Esperanza

are attributable to the State due to the State security agents’ support for and acquiescence to the actions of this paramilitary group, which facilitated the incursions into Vereda la Esperanza and encouraged or permitted the commission of these acts in breach of an international obligation, thus constituting the international crime of enforced disappearance.⁴⁷

European Court of Human Rights, *Osman v. United Kingdom* judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, paras. 115 and 116).

45 I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 152. In the footnote to this paragraph, footnote 194, the Court cited its own decisions in several cases from Colombia: “See *Case of Yarce et al. v. Colombia*, para. 180. In the *Case of the 19 Merchants v. Colombia*, the Court found Colombia responsible based on its collaboration in the acts prior to the third parties’ unlawful act, the State’s acquiescence to the third parties’ meeting at which the act was planned, and the State’s active collaboration in carrying out the third parties’ unlawful acts (*Case of the 19 Merchants v. Colombia*, para. 135). Regarding the *Case of the Mapiripán Massacre v. Colombia*, the Court determined Colombia’s responsibility based on the coordination of acts and omissions between State agents and private individuals in furtherance of the commission of the massacre, and on the grounds that—although it was perpetrated by paramilitary groups—it could not have been carried out without the assistance of the Armed Forces of the State (*Case of the Mapiripán Massacre v. Colombia*, para. 123). In the *Case of the Ituango Massacres v. Colombia*, the Court found responsibility based on the Army’s acquiescence or tolerance of the acts perpetrated by the paramilitaries (*Case of the Ituango Massacres v. Colombia*, paras. 132, 150, 153, 166, 197, 219). Similarly, in the *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, the Court found State acquiescence in the commission of the unlawful act on the basis of a ‘causality test,’ according to which it regarded as untenable a theory that the unlawful act could have been carried out without State assistance (*Case of the Ituango Massacres v. Colombia*, paras. 132, 150, 153, 166, 197, 219). Similarly, in the *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 280.”

46 I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 166.

47 I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 168.



Photo: AP Foto/Fernando Vergara

6. IN A CONTEXT OF TIES BETWEEN STATE AGENTS AND NON-STATE ACTORS, THE AUTHORITIES, IN THEIR CAPACITY AS GUARANTORS, FAILED TO ENSURE THE SAFETY AND PROTECTION OF THE DISAPPEARED PERSON

In the *Case of Isaza Uribe et al. v. Colombia*, Víctor Manuel Isaza Uribe was the victim of enforced disappearance while in pretrial detention at the municipal jail in Puerto Nare. Here, the Court referred generally to the collaboration between members of the security forces and paramilitary groups in that region and at that time, and to the State's encouragement of the creation of "self-defense groups" among the civilian population at the time of the events.⁴⁸ Furthermore, given that the disappeared person had been taken from the jail by a group of armed individuals, some in civilian clothes and others in military garb, the Court noted that:

If the State had a duty of care with respect to Victor Manuel Isaza Uribe, it is precisely because he was in the custody of the agents who were supposed to guard the jail. It makes no sense to argue that State agents were not involved in his disappearance, since—under the most benign theory—those agents participated by omission when they failed to effectively ensure his safety and protection when some individuals came in and abducted him.⁴⁹

The Court found that:

[w]hen the State holds a special position as guarantor, and regardless of the individual responsibilities that must be attributed to the authorities within their respective areas of competence, it is possible to establish types of enforced disappearance by omission within the framework of the State's international responsibility. Thus, under the American Convention, this

48 I/A Court H.R., *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para. 45: "In several cases before this Court, it has been possible to prove, at different times and in different geographical contexts, ties between members of the security forces and the Armed Forces of Colombia and paramilitary groups, reportedly consisting of: (a) specific acts of support or collaboration, or (b) omissions that allowed or facilitated the commission of serious crimes by non-state actors. The 'legitimacy' of these paramilitary groups in the region was publicly declared and promoted by senior members of the Armed Forces, and these links have also been disclosed in statements made by members of the paramilitary forces."

49 I/A Court H.R., *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para. 91.

international crime can occur in cases of the disappearance of persons deprived of their liberty, based on the participation by omission of State agents responsible for guaranteeing their rights, whether or not there is also evidence of direct participation or other forms of acquiescence.⁵⁰

The Court further found that the State's investigative response did not constitute an explanation of what happened to the victim who disappeared while in its custody, and, consequently, the State had failed to rebut the presumption of its responsibility.⁵¹

⁵⁰ I/A Court H.R., *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para. 92.

⁵¹ Cf. I/A Court H.R., *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 20, 2018. Series C No. 363, para. 95.



Photo: AP Foto/Fernando Vergara

7. IN A CONTEXT OF JOINT ACTS BY AGENTS OF THE STATE AND PRIVATE INDIVIDUALS, THE DETENTION MAY HAVE BEEN CARRIED OUT BY PRIVATE INDIVIDUALS ACTING WITH THE ACQUIESCENCE OF STATE AGENTS

In the *Case of Chitay Nech et al. v. Guatemala*, the Court referred to the context in Guatemala of enforced disappearances committed with the participation of the military and civilians targeting, among others, indigenous leaders.⁵² The Court did not establish in the facts of the case that Chitay Nech had been deprived of his liberty by agents of the State. It noted:

On April 1, 1981, Mr. Chitay Nech left his residence in Guatemala City to buy firewood, accompanied by his son Estermerio Chitay. In front of the firewood store, a group of armed men got out of a vehicle, said the name of Florencio Chitay Nech and tried to get him in the vehicle with the use of force, hitting him in the head. One of the men took the kid [by] the arm and pointed his gun at him, so Mr. Chitay Nech stopped resisting and got in the vehicle. Later, Estermerio ran to his house and told his family what had happened.⁵³

Based on the circumstances in Guatemala at the time of the incident and the context prior to the incident, the Court found it “sufficiently proven that Florencio Chitay Nech was detained by agents of the State or by private individuals acting with its acquiescence.”⁵⁴ The Court further noted that the arrest and subsequent disappearance of Chitay Nech

was concealed by the authorities, to the extent that they failed to launch a serious and effective investigation into his disappearance, omitting their duty to guarantee the rights that were violated and, to this day, failing to provide a response as to the whereabouts of Mr. Chitay Nech.⁵⁵

52 I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 64-67, 73.

53 I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 75.

54 I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 91.

55 I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs.

The Court concluded that the State was responsible for the enforced disappearance of Florencio Chitay:

since he was unlawfully deprived of his freedom by State agents or by private individuals with the acquiescence of the State, and to this date his whereabouts remain unknown. This occurred in a context of systematic and selective enforced disappearances in Guatemala, directed against indigenous leaders, among others, with the aim of dismantling all forms of political representation through terror and thus stifling any popular participation that was contrary to the policies of the State.⁵⁶

Judgment of May 25, 2010. Series C No. 212, para. 93.

⁵⁶ I/A Court H.R., *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, para. 121.

CONCLUSION

One of the pressing challenges facing international human rights law is how to address the phenomenon of non-State actors as perpetrators of human rights violations. In general, it can be argued that international human rights law has progressively incorporated the issue of non-State actors into developments on international state responsibility. This is particularly the case with respect to insurgent or guerrilla groups, and individuals who commit international crimes falling within the scope of the International Criminal Court. However, the attribution of State responsibility has not been as common when it comes to human rights violations perpetrated by organized crime syndicates or criminal armed groups. In contexts such as present-day Mexico and probably El Salvador and Honduras, where organized crime is deeply enmeshed with the State and both State and non-State actors participate in human rights violations – including the ongoing epidemic of disappearances – it will be critical to establish precedents that might help more effectively confront this landscape of violence and hold perpetrators accountable.

The Inter-American Court has addressed, in several judgments, cases of disappearances committed by non-State actors who act while maintaining an informal or de facto link with the State, using due diligence arguments, especially in cases where it has been proven that the State was aware of the facts and did not take action to prevent the violations from occurring. However, the Inter-American Court has not dealt with cases of forced disappearances committed by non-State actors that do not maintain any link with the State, which continues to be a controversial but urgent issue to be addressed in the future.

