STATE RESPONSIBILITY IN RESPECT OF INTERNATIONAL WRONGFUL ACTS OF THIRD PERSONS: THE THEORY OF CONTROL

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Introduction

At its first session (1949) the International Law Commission (ILC) adopted a provisional list of topics which included “State Responsibility”.1 In 1953 the General Assembly (UNGA) adopted a resolution requesting the ILC “to undertake the codification of the principles of international law governing State responsibility.”2 However, it was not until 1955 that the ILC appointed its first Special Rapporteur, F.V. Garcia Amador, to address the subject.

In 1960, the UNGA criticized the ILC Report produced during the ILC’s twelfth session, which included a review Special Rapporteur Garcia’s fifth Report.3 The UNGA then decided that to survey Member States on the entire field of international law to prepare a new list of topics for the codification and progressive development of international law.4 Having surveyed the state of international law, the UNGA recommended that the ILC continue its work in the field of State responsibility.5

The ILC decided to create a sub-commission of ten members, under the presidency of Roberto Ago to deal with this topic. This body recommended that the Commission define the general rules of State responsibility and suggested a list of the main points which

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2 GA, A/Res. 799 (VIII).
4 GA Res. 1505 (XV).
5 GA Res. 1686 (XVI).
could serve as a guide to a new rapporteur.\textsuperscript{6} In that list appeared the item “State responsibility in respect of acts of private persons. Question of the real origin of international responsibility in such cases.”\textsuperscript{7}

Ago’s Report is the real starting point of an evolution aimed at the codification of the international law on State responsibility. The latest Report on the matter is James Crawford’s Report of 2001.\textsuperscript{8}

It is well known that ICJ jurisdiction refers only to States. Article 34.1 of the ICJ Statute says that “[o]nly states may be parties in cases before the Court”, and Article 36.1 circumscribes the competence to the “cases which the parties refer to it.” According to Article 36.2, the Court’s jurisdiction entails “questions of [public] international law and those related to international responsibility and reparations.”

The jurisdiction of the UN international ad-hoc tribunals for the former Yugoslavia (ICTY) and Rwanda is limited to the prosecution of “persons responsible for serious violations of international humanitarian law.”\textsuperscript{9}

Consequently, it is necessary to keep in mind that, when comparing the jurisprudence of the ICJ and of the ICTY, these bodies have a very different competence.

The Nicaragua Case\textsuperscript{10}

In its Judgment of 27 June 1986 in the case concerning Military and Paramilitary Activities in and against Nicaragua\textsuperscript{11} (“the Nicaragua case”), the ICJ dealt with the following issue: was the “contra” force a de jure or de facto organ of the United States acting in and against Nicaragua?

In this case the Court said that “[i]n the light of the evidence and material available to it, the Court is not satisfied that all the operations launched by the contra force, at every stage of the conflict, reflected strategy and tactics wholly devised by the United States. However, it is in the Court's view established that the support of the United States authorities for the activities of the contras took various forms over the years, such as logistic support, the supply of information on the location and movements of the Sandinista troops, the use of sophisticated methods of communication, the deployment of field broadcasting networks, radar coverage, etc. The Court finds it clear that a number of military and paramilitary operations by this force were decided and planned, if not actually by United States advisers, then at least in close collaboration with them, and on the basis of

\begin{thebibliography}{11}
\bibitem{7} Ago’s First Report on State Responsibility, para. 91.
\bibitem{9} Art. 1, ICTY Statute.
\bibitem{11} Nicaragua v. United States of America (Merits), Judgment, I.C.J. Reports 1986.
\end{thebibliography}
the intelligence and logistic support which the United States was able to offer, particularly
the supply aircraft provided to the contras by the United States.”

However, “[t]he Court [took] the view that United States participation, even if
preponderant or decisive, in the financing, organizing, training, supplying and equipping of
the contras, the selection of its military or paramilitary targets, and the planning of the
whole of its operation, is still insufficient in itself, on the basis of the evidence in the
possession of the Court, for the purpose of attributing to the United States the acts
committed by the contras in the course of their military or paramilitary operations in
Nicaragua. All the forms of United States participation mentioned above, and even the
general control by the respondent State over a force with a high degree of dependency on it,
would not in themselves mean, without further evidence, that the United States directed or
enforced the perpetration of the acts contrary to human rights and humanitarian law alleged
by the applicant State. Such acts could well be committed by members of the contras
without the control of the United States. For this conduct to give rise to legal responsibility
of the United States, it would in principle have to be proved that that State had effective
control of the military or paramilitary operations in the course of which the alleged
violations were committed.” The Court found, however, that certain acts were directly
attributable to the United States, such as some attacks on Nicaraguan ports, oil installations
and naval bases and the laying of mines in the internal or territorial waters of Nicaragua.

In this case, “after having rejected the argument that the contras were to be equated
with organs of the United States because they were ‘completely dependent’ on it, [the ICJ]
added that the responsibility of the Respondent could still arise if it were proved that it had
itself ‘directed or enforced the perpetration of the acts contrary to human rights and
humanitarian law alleged by the applicant State’; this led to the following significant
conclusion: “For this conduct to give rise to legal responsibility of the United States, it
would in principle have to be proved that that State had effective control of the military or
paramilitary operations in the course of which the alleged violations were committed.”

Thus according to the ICJ’s reasoning, the “contras” could only be deemed as an organ
acting on behalf of the United States Government if the degree of control exercised by the
latter was so extreme that the “contras” were totally dependent on the United States.

The Srebenica Case

Based on the Krstić and on the Blagojević Trial Chamber Judgments, the ICJ found
that Bosnian Serb forces killed over 7,000 Bosnian Muslim men following the takeover of

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12 Id. at para. 106.
13 Id. at para. 115.
14 Id. at para. 115. Footnote of the original. “In the text of article 8, the three terms ‘instructions’, ‘direction’
and ‘control’ are disjunctive; it is sufficient to establish any one of them. At the same time it is made clear
that the instructions, direction or control must relate to the conduct which is said to have amounted to an
15 The Nicaragua case, para. 399.
16 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and
Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43. See, in general, Nieto-Navia,
R., “State responsibility in cases of genocide: The ICJ Judgment in the Bosnia-Herzegovina vs. Yugoslavia
case,” cit.supra, pp. 135-158.
17 The ICTY has discussed the massacre at Srebrenica in two main cases: Prosecutor v. Radislav Krstić
"Srebrenica-Drina Corps", case IT-98-33, in which Judgments were delivered by the Trial Chamber on 2
Srebrenica in July 1995, that the *actus reus* of killings in Article II (a) of the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) was satisfied and that the specific intent (*dolus specialis*) was also established.\(^{18}\) Based on “the persuasiveness of the ICTY’s findings of facts and its evaluation of them”, the Court found that the protected group had been identified as the Bosnian Muslims of Srebrenica, or the Bosnian Muslims of Eastern Bosnia\(^ {19}\) and concluded “that the acts committed at Srebrenica falling within Article II (a) and (b) of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide, committed by members of the VRS [Vojska Republike Srpske, the Army of the Srpska Republic, Bosnian-Serb Army] in and around Srebrenica from about 13 July 1995.”\(^ {20}\)

“The Court […] concluded […] that, save in the case of Srebrenica, the Applicant [Bosnia-Herzegovina] ha[d] not established that any of the widespread and serious atrocities, complained of as constituting violations of Article II, paragraphs (a) to (e), of the Genocide Convention, were accompanied by the necessary specific intent (*dolus specialis*) on the part of the perpetrators. It also f[ound] that the Applicant ha[d] not established the existence of that intent on the part of the respondent, either on the basis of a concerted plan, or on the basis that the events reviewed above reveal a consistent pattern of conduct which could only point to the existence of such intent.”\(^ {21}\)

The ICJ considered then whether the acts committed at Srebrenica in July 1995, involving operations led by members of the VRS in Bosnia-Herzegovina which the ICJ had already found constituted the crime of genocide, were attributable to the Federal Republic of Yugoslavia (FRY), called afterwards Serbia. Three issues were considered for this purpose: whether the acts of genocide could be attributed to Serbia under the rules of customary international law of State responsibility; whether acts of the kind referred to in Article III of the Genocide Convention, other than genocide itself, *e.g.*, complicity in genocide, were committed by persons or organs whose conduct could be attributable to Serbia under the same rules of State responsibility; and whether Serbia complied with its twofold obligation to prevent and punish genocide.\(^ {22}\)

It was then necessary for the Court to decide whether the genocide at Srebenica was attributable to Serbia because it was committed by its organs or, if not, if the persons who

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\(^{19}\) *Id*, at para. 296.

\(^{20}\) *Id* at para. 297.

\(^{21}\) *Id* at para. 376.

\(^{22}\) *Idat* paras. 379 and 384.
committed the massacres did act on the instructions or under the direction or control of Serbia. The ICJ considered, for this purpose, certain ILC Articles on State Responsibility, giving them the character of customary international law and, hence, applicable in the case under consideration. Although reference is made to other articles, the following are the ones quoted by the ICJ:

**Article 4**

*Conduct of organs of a State*

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

**Article 8**

*Conduct directed or controlled by a State*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.

**Article 14**

*Extension in time of the breach of an international obligation*

[...]

3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

**Article 16**

*Aid or assistance in the commission of an internationally wrongful act*

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.

According to these principles, a State is responsible for the illegal acts committed by any of its organs and also for the acts of those groups or persons which are not its organs but on which it exercises such a degree of control that those groups or persons can be considered totally dependent on the State. In cases other than this, the responsibility cannot be attributed to the State.

In *Tadić*, the ICTY Appeals Chamber held that

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23 Id., at para. 384.
25 The ILC says that this paragraph “clearly reflect[s] the rule of international law in the matter”. 2001 ILC Report, p.85.
26 “The attribution to the State of conduct in fact authorized by it is widely accepted in international jurisprudence,” 2001 ILC Report, p. 104.
27 As a general rule “a State is not bound by obligations of another State vis-à-vis third States. This basic principle is also embodied in articles 34 and 35 of the Vienna Convention on the Law of Treaties”, 2001 ILC Report, p. 157.
“[t]he requirement of international law for the attribution to States of acts performed by private individuals is that the State exercises control over the individuals. The degree of control may, however, vary according to the factual circumstances of each case. The Appeals Chamber fails to see why in each and every circumstance international law should require a high threshold for the test of control.”  

“One should distinguish the situation of individuals acting on behalf of a State without specific instructions, from that of individuals making up an organised and hierarchically structured group, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels. Plainly, an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority. Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group. Consequently, for the attribution to a State of acts of these groups it is sufficient to require that the group as a whole be under the overall control of the State.”  

“[I]nternational rules do not require that such control should extend to the issuance of specific orders or instructions relating to single military actions, whether or not such actions were contrary to international humanitarian law.”

The ILC commented on this decision, stating that

“[i]n the course of their reasoning, the majority considered it necessary to disapprove the International Court’s approach in Military and Paramilitary activities. But the legal issues and the factual situation in that case were different from those facing the International Court in Military and Paramilitary activities. The Tribunal’s mandate is directed to issues of individual criminal responsibility, not State responsibility, and the question in that case concerned not responsibility but the applicable rules of international humanitarian law. In any event it is a matter for appreciation in each case whether particular conduct was or was not carried out under the control of a State, to such an extent that the conduct controlled should be attributed to it.”

In the same vein, the ICJ opined that:

“[t]he Court has given careful consideration to the [ICTY] Appeals Chamber’s reasoning in support of the foregoing conclusion, but finds itself unable to subscribe to the Chamber’s view. First, the Court observes that the ICTY was not called upon in the Tadić case, nor is it in general called upon, to rule on questions of State responsibility, since its jurisdiction is criminal and extends over persons only. Thus, in that Judgment the Tribunal addressed an issue which was not indispensable for the exercise of its jurisdiction. As stated above, the Court attaches the utmost importance to the factual and legal findings made by the ICTY in ruling on the criminal liability of the accused before it and, in the present case, the Court takes fullest account of the ICTY’s trial and appellate judgments dealing with the events underlying the dispute. The situation is not the same for positions adopted by the ICTY on issues of general international law which do not lie within the specific purview of its jurisdiction and, moreover, the resolution of which is not always necessary for deciding the criminal cases before it.

“This is the case of the doctrine laid down in the Tadić Judgment. Insofar as the ‘overall control’ test is employed to determine whether or not an armed conflict is international,

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29Id. at para. 120 (emphasis in the original).
30Id. at para. 145.
which was the sole question which the Appeals Chamber was called upon to decide, it may well be that the test is applicable and suitable; the Court does not however think it appropriate to take a position on the point in the present case, as there is no need to resolve it for purposes of the present Judgment. On the other hand, the ICTY presented the ‘overall control’ test as equally applicable under the law of State responsibility for the purpose of determining -- as the Court is required to do in the present case-- when a State is responsible for acts committed by paramilitary units, armed forces which are not among its official organs. In this context, the argument in favour of that test is unpersuasive.”

Hence, the ICJ relied on its “settled jurisprudence [to] determine whether the Respondent ha[d] incurred responsibility under the rule of customary international law set out in Article 8 of the ILC Articles on State Responsibility” and not having found any evidence proving that instructions were issued by the FRY to kill the adult male population of the Muslim community in Srebrenica and still less that any such instructions were given with the specific intent (dolus specialis) characterizing the crime of genocide, the ICJ rejected the application to attribute the acts of those who committed genocide at Srebrenica to the FRY.

The Perišić Case

According to the ICTY Prosecutor’s Indictment, the VRS perpetrated war crimes and crimes against humanity in Sarajevo and Srebrenica (Bosnia-Herzegovina), and the Army of Serbian Krajina (SVK) attacked civilians during the shelling of Zagreb (Croatia) between 1993 and 1995. The FRY and the Yugoslav Army (VJ) provided logistical support (which included infantry and artillery ammunition, fuel, spare parts, training and technical assistance) and personnel assistance (a number of VRS and SVK officers were drawn from the ranks of the Yugoslav Army). These officers officially remained members of the VJ even as they were fighting in Bosnia and Croatia under the banners of the VRS and SVK. The Prosecutor considered that under articles 7(1) and 7(3) of the ICTY Statute, Momčilo Perišić, who was the top military officer of the VJ, headquartered in Belgrade (Serbia), a position he held from August 1993 until November 1998 was personally

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33 Id. at para. 407.
34 Id. at paras. 413 and 415.
35 Prosecutor v. Momčilo Perišić, Case No. IT-04-81-T, Trial Chamber Judgement, 6 September 2011 (the Perišić case). This judgement can be downloaded from http://www.icty.org/x/cases/perisic/tjug/en/110906_judgement.pdf
39 The Perišić case. para. 3.
responsible as a superior for those crimes, and for having failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The Chamber acquitted the Accused of all charges in the Sarajevo and Srebrenica cases.\textsuperscript{40} The argument was that the Trial Chamber could not find beyond a reasonable doubt that Perišić had effective control over perpetrators of the crimes committed in Sarajevo and Srebrenica and that a superior-subordinate relationship existed between them at the time of their commission. However, recalling that a superior is bound to take ‘necessary and reasonable measures’ to ensure that the perpetrators of the crimes in question are brought to justice but that the evidence did not show any meaningful attempts by Perišić to punish the perpetrators of the crimes committed by the shelling of Zagreb on 2 and 3 May 1995, a majority of the Chamber found that Perišić failed to take the reasonable and necessary steps to punish his subordinates serving in the SVK for the crimes they committed through the shelling of Zagreb on 2 and 3 May 1995 and considered him responsible for failing to punish the perpetrators of crimes committed in Zagreb on 2 and 3 May 1995.\textsuperscript{41} In the same vein, the Majority found the Accused guilty as a superior for failing to prevent and/or punish his alleged subordinates\textsuperscript{42} and guilty as an aider and abettor\textsuperscript{43} in relation to the Zagreb case.

The president of the Chamber, Judge Moloto, dissented from the Majority, providing a detailed analysis of the salient legal issues raised in the Judgement.

Judge Moloto explained that:

“[T]he Prosecution must prove beyond a reasonable doubt that the logistical and personnel assistance provided by Perišić was specifically directed at providing practical assistance to the perpetration of the crimes and that it had a substantial effect on the perpetration of the crimes […]”\textsuperscript{44}

“It is […] imperative at this point to recall a fundamental principle of national and international criminal law – namely that individual criminal liability is based on personal guilt, not state responsibility.”\textsuperscript{45}

“I underscore the novelty of this case in the context of the application of aiding and abetting. It is true that ‘[n]ever before have a commander and the Chief of Staff of General Staff of one army been criminally responsible for the crimes committed by members of the armed forces of another state or entity’.\textsuperscript{46} […] Many foreign armies are dependent, to various degrees, upon such assistance to function […] If we are to accept the Majority’s conclusion based solely on the finding of dependence, as it is in casu, without requiring that such assistance be specifically directed to the assistance of crimes, then all military and political leaders, who on

\textsuperscript{40} Id. at para. 1837.
\textsuperscript{41} The Perišić case, paras. 1781-1784.
\textsuperscript{42} Id. at para. 1839.
\textsuperscript{43} Id. at para. 1838.
\textsuperscript{44} Moloto’s dissenting opinion, paras. 24, 27 and 30.
\textsuperscript{45} Id. at para. 27.
\textsuperscript{46} Momčilo Perišić T. 426 (included in Perišić’s statement pursuant to Rule 84 bis of the Rules). Footnote of the original.
the basis of circumstantial evidence are found to provide logistical assistance to a foreign army dependent on such assistance, can meet the objective element of aiding and abetting. I respectfully hold that such an approach is manifestly inconsistent with the law.47

Regarding the incident of the shelling of Zagreb, Judge Moloto stated:

“...I respectfully dissent from the Majority’s finding as to Momčilo Perišić’s individual criminal responsibility pursuant to Article 7(3) of the Statute in relation to [the Zagreb shelling]. In particular, I cannot agree with the Majority’s finding that Momčilo Perišić exercised effective control over the perpetrators of the crimes committed by the shelling of Zagreb in May 1995. 87 [...] Perišić did not consider himself to be the superior officer of the members of the 40th PC and the latter did not view themselves as his subordinates. Rather, the evidence paints a picture in which the members of the 40th PC were re-subordinated to the SVK and therefore, acted solely within its chain of command. The fact that their salaries, as well as other benefits, were still paid by the VJ remains, in my view, fully compatible with this notion of re-subordination [...] It bears noting that the existence of a parallel chain of command in an army that professes unity of command is, per se, indicative of lack of effective control. The fact that Čeleketić disregarded Perišić’s warning to stop shelling Zagreb and followed Martić’s order is a clear demonstration of the unworkability of a system of parallel chain of command in a unity-of-command army[...]. I note that the record does not demonstrate that the superior gave orders; the order must be obeyed.”51

“The Prosecution bears the burden of proving beyond a reasonable doubt that Momčilo Perišić exercised effective control over the members of the 40th PC who shelled Zagreb on 2 and 3 May 1995. In my view, based on the above analysis of the evidence, the Prosecution failed to adduce sufficient evidence to prove that Perišić had effective control over members of the 40th PC who perpetrated the crimes charged. Consequently, I respectfully disagree with the Majority’s finding that Perišić is individually criminally responsible for those crimes.”53

Neither the judgement nor the dissenting opinion mention the two decisions of the International Court of Justice (ICJ) related to the issue of control over foreign troops. But the ICTY Majority probably took into account the ICJ Decision on the Bosnia-Herzegovina vs. Serbia case, in which the ICJ said that the responsibility of the FRY in the Srebenica case has not been proven and, consequently, that the genocide could not be attributed to the FRY, to declare that Perišić was not responsible for related acts. However, as there was not

47 Id. at paras. 31-33.
48 One of the commanders of the SVK.
50 One of the “orders” given by Perišić to SKV officers, according to the Majority.
51 Moloto’s dissenting opinion, paras. 86-87, 92 and 95.
52 Emphasis added.
53 Id. at para. 116.
a similar decision on the Zagreb bombing, the Majority of the Trial Chamber, conveniently ignoring that the parameters were probably the same, declared Perisić responsible.

It bears to recall that the ICTY was dealing with individual, not State, criminal responsibility. But it is necessary to recall as well that Perisić was the commander in chief of the VIJ, the army of FRY, and not of the VRS and SVK. Although the jurisdiction of the ICTY does not extend to consider if the FRY had any responsibility on these crimes, it is difficult to avoid considering that if Perisić, an officer indubitably under the control of the FRY, is found responsible for crimes committed in another State, some kind of responsibility attaches to the FRY.

**Conclusion**

The ICTY theory of the “overall control”54 differs substantially of the one proposed by the ICJ (the “effective control”). The first probably works while it stays within the limits of the conflict in Bosnia-Herzegovina, even if it is considered as an international conflict. But it creates a lot of problems when it is extended out of the borders of that limited conflict.

**Addendum: The Inter-American Court of Human Rights**

Human rights treaties deserve special consideration because they are *lex specialis* and consequently the customary law on State Responsibility cannot be fully applicable. The treaties themselves determine how the responsibility is attributable to the State in cases of violations of human rights.

In the American Convention on Human Rights,55 the States Parties undertake to respect the rights and freedoms recognized in the Convention and to ensure the free and full exercise of those rights and freedoms, without any discrimination (Article 1), for all persons subject to their jurisdiction. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt such legislative or other measures as may be necessary to give effect to those rights or freedoms (Article 2).

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (IACourt) have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to the Convention (Article 23).

The jurisdiction of the IACourt comprises all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it by the States having recognized such jurisdiction (Article 62.3).

If the Court finds that there has been a violation of a right or freedom protected by the Convention, the Court must rule that the injured party be ensured by the responsible State the enjoyment of the violated right or freedom and if appropriate that the consequences be remedied and fair compensation be paid to the injured party (Article 63.1). As previously mentioned, only the States are responsible in these cases. The Convention does not have provisions about third parties’ wrongful acts that can trigger State responsibility. Consequently, it is necessary to apply common international law in such instances involving the actions of third parties.

These customary rules are applicable in particular when there is an insurrectional movement against a government that has committed violations of human rights. The “control theory” becomes then fully applicable, be it the more restricted view of the ICJ or the more lenient one of the ICTY.

According to the ILC, no government can be held responsible for the conduct of rebellious groups committed in violation of its authority, where it is itself guilty of no breach of good faith, or of no negligence in suppressing insurrection. This is a “well-established principle of international law”, supported in arbitral jurisprudence (mixed claims commissions and arbitral bodies) because normally the structures and organization of the movement are and remain independent of those of the State.

Let us suppose that in those cases the applicable theory is the “overall control”, i.e., that for the attribution to a State of acts of these groups it is sufficient that the group as a whole be under the overall control of the State.

However, the IACourt has developed a new theory according to which, as the State is obliged to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms, any violation of human rights is attributable to the State or one of its agents. It is presumed that there is always negligence by the State in suppressing insurrection for attributing responsibility to it. If an agent of the State has the responsibility of protecting the population and fails—for example, the rebellious group attacks the civilian population and the army as an “institutional guarantor” is unable to avoid the human rights violations—b, the State is responsible.

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56 ILC Report, p.50.
57 The Tadić Appeals Chamber Decision on Jurisdiction at para. 120.
In one of its decisions, the IACourt stated the following: “Ciertamente no existen pruebas documentales ante este Tribunal que demuestren que el Estado dirigiera directamente la ejecución de la masacre o que existiese una relación de dependencia entre el Ejército y los grupos paramilitares o una delegación de funciones públicas de aquél a éstos. No obstante, al analizar los hechos reconocidos por el Estado, surge claramente que tanto las conductas de sus propios agentes como las de los miembros de grupos paramilitares son atribuibles a Colombia en la medida en que éstos actuaron de hecho en una situación y en zonas que estaban bajo el control del Estado.”

As can be easily seen, independently of what the State said or could have said before the IACourt, this theory goes far beyond the more “progressive” theory of the objective responsibility of the State and, of course, of the powers conferred by the States to the IACourt.

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58 Corte IDH, Caso de la Masacre de Mapiripán vs. Colombia. Sentencia de 15 de septiembre de 2005. Serie C No. 134 at para. 120. “Certainly there is no documentary evidence before the Court to show that the State directly ordered the execution of the slaughter or that there was a dependency relationship between the army and paramilitary groups or that the latter were acting as delegates of the State. However, when analyzing the facts acknowledged by the State, it is clear that both the behavior of their own agents and members of paramilitary groups are attributable to Colombia to the extent that they in fact acted in a situation and in areas that were under State control.” Unofficial translation. Italics are added.