The Colombian Peace Agreement of 24 November 2016 and International Law: Some Preliminary Remarks

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Introduction

On 24 November 2016, after four years of negotiations, representatives of the Government of Colombia and the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) signed the Final Agreement for Ending Conflict and Building a Stable and Long-Lasting Peace ('Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera', hereafter 'Agreement' or 'Peace Agreement'). This Agreement replaces the one of 24 August 2016[1] that was rejected in a referendum but, like the previous one, has a twofold purpose. On the one hand, it aims to address the causes of the fifty-year long armed conflict between the parties and, on the other, to remedy the consequences of the conflict.[2] In short, it is a peace agreement terminating the non-international armed conflict between the government of Colombia and the FARC-EP.[3]

The Agreement is very complex and articulated. It consists of six distinct agreements, signed by the parties at different times, and reflecting the six items of the initial agenda, namely rural development, political participation, end of the conflict (including the ceasefire, disarmament and the FARC-EL re-incorporation provisions), illicit drugs, victims of the conflict, and lastly implementation and verification mechanisms. The variety of the issues addressed as well as the degree of precision attained in all the six agreements, making it the longest peace-agreement ending a non-international armed conflict,[4] reflect the strenuous hurdles haunting the entire peace process. The Agreement was approved by both branches of the Parliament and entered into force on 1 December 2016.[5]

The role the Agreement attributes to international law is central. International law permeates all the six distinct sectorial agreements, even those, such as the one on rural reform or illicit

[1] For a comparison of the old and new Agreement, shown on a side-by-side display, see https://draftable.com/compare /JjypTOknafBktqvc. The Agreement of 24 August 2016 had initially been replaced by a draft of 12 November 2016, that has been definitely superseded by the Agreement of 24 November 2016. The Peace Agreement is available at https://www.mesadeconversaciones.com.co.

[2] The two purposes are spelt out in the Agreement on the Victims of the Conflict, where it is stated that the no repetition of the conflict requires implementation of those preceding agreements that, in the government's view, 'contribute to reverse the effects of the conflict and change the conditions that have facilitated the persistence of the violence' and, in the view of the FARC-EP, 'contribute to solve the historical causes of the conflict', p. 187 of the Peace Agreement.

[3] For details on the features of this conflict see D. Riccardi and J. Agudelo Taborda, 'Il cammino della Colombia verso la pace', in this on-line review at http://peaceprocesses.it/images/pdf/d._riccardi_e_j._agudelo_taborda_-_il_cammino_della_colombia_verso_la_pace.pdf

[4] The Peace Agreement consists of 310 pages. On the length and style of the Agreement see C. Bell, 'Lex Pacificatoria Colombiana: Colombia's Peace Accord in Comparative Perspective', in *AJIL Unbound*, November 2016, p. 166, available at https://www.asil.org/sites/default/files/Bell%2C%20Lex%20Pacificatoria%20Colombiana.pdf

[5] See UN doc. S/2016/1063, Letter dated 14 December 2016 from the Secretary-General addressed to the President of the Security Council, 15 December 2016.

drugs, where the link with this *corpus iuris* may appear tenuous. This paper addresses three questions concerning the way in which international law is used in the Agreement. Firstly, the meaning of the qualification of the Agreement as a *special agreement* in the terms of article 3 common to the four Geneva Conventions of 1949; secondly, the role of third states in the elaboration and implementation of the Agreement; and, lastly, the meaning and scope of the referral that the Agreement makes to three branches of international law, i.e. International Human Rights Law (IHRL), International Humanitarian Law (IHL) and International Criminal Law (ICL).

I. Qualification of the Peace Agreement as a *special agreement* under article 3 common to the 1949 Geneva Conventions

The qualification of the Peace Agreement as a *special agreement* under article 3 common to the 1949 Geneva Conventions is repeatedly affirmed in different parts of the document[6] and deserves attention because common article 3 seems to refer to IHL agreements concluded in the course of the hostilities rather than to agreements terminating an armed conflict. As a matter of fact, common article 3 encourages the parties to a conflict to make applicable to a non-international armed conflict all or some of the provisions of the Geneva Conventions concerning international armed conflicts.[7] A literal interpretation of common article 3 does not exclude the possibility that an agreement terminating a non-international armed conflict be grounded in that provision; in this case, the only condition is that the *special agreement* contains IHL provisions. As specified in the 2016 Commentary of the International Committee of the Red Cross (ICRC) to common article 3:

> 'A peace agreement, ceasefire or other accord may also constitute a special agreement for the purposes of common Article 3 […] if it contains clauses that bring into existence further obligations drawn from the Geneva Conventions and/or their Additional Protocols […] such as the granting of an amnesty for fighters who have carried out their operations in accordance with the laws and customs of war, the release of all captured persons, or a commitment to search for the missing. **…** Likewise, an agreement may contain obligations drawn from human rights law and help to implement humanitarian law. For instance, it may aim to make the obligation to conduct fair trials more precise or may draw on IHRL in another way.'[8]

The Colombian Peace Agreement does contain clauses relating to IHL and IHRL, in particular with respect to amnesty for the persons that have given up arms and the prosecution for war crimes. However in our opinion this reference to IHL should not be taken as determinative of the legal status of the Agreement.[9] The Agreement regulates matters of an internal, rather than international nature, namely rural reform, the disarmament and incorporation of the members of the armed opposition group, the fight against illicit drugs and the reparation due to the victims

[6] Preamble, p. 201 and p. 277 of the Peace Agreement.

[7] Common article 3 reads as follows: 'The Parties to the conflict should … endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention'.

[8] ICRC, *Commentary to the four Geneva Conventions of 1949* (2016), paras 850-851, available at https://ihl-databases.icrc.org. At p. 277 the Peace Agreement cites to this part of the ICRC Commentary in order to support the qualification within the meaning of article 3 common to the Geneva Conventions.

[9] Specifically on the question of the legal status of the Agreement under analysis see L. Betancour Restrepo, 'The Legal Status of the Colombian Peace Agreement', in *AJIL Unbound*, November 2016, p. 188, available at https://www.asil.org/blogs/symposium-colombian-peace-talks-and-international-law-legal-status-colombian-peace-agreement.

of the non-international armed conflict. This indicates that the legal framework within which the Agreement is conceived is the national legal order and not international law (more specifically, article 3 common to the Geneva Conventions). Hence the most logical conclusion is that the Peace Agreement is an act governed by Colombian law.

In any case, one may accept that parts of the Agreement – chiefly those relating to amnesty and prosecution for war crimes – are a way to implement the Geneva Conventions and, as such, those parts may be considered as being drafted in accordance with common article 3.[10] This occurs through recourse to a legal technique, the referral between legal orders, that will be analysed in paragraph III.

This said**,** the question remains of the meaning of the explicit qualification of the Peace Agreement in its entirety as an article 3 *special agreement*, also in light of the fact that this qualification is contained in a substantive provision of great import, the one concerning the beginning of the implementation of the document. By virtue of this qualification, the Parties have established that the Agreement be deposited with the Swiss Federal Council in Berne, that is the depository of the four Geneva Conventions of 1949.

Originally, the reason underling this qualification was a purely legal one. Thanks to the doctrine of the 'constitutional block', international law is generally incorporated into the Colombian Constitution.[11] Grounding the Agreement in the Geneva Conventions implied that the former had constitutional status and this represented a guarantee that the parties, in particular the government, would comply with their commitments. Failure to do so could be ruled as a violation of the Constitution. That provision has been deleted from the revised Agreement for fear of losing democratic control over the implementation of the negotiated text. As a matter of fact, the Agreement has approved by the Parliament.

If the reason for putting the Agreement under the umbrella of common article 3 of the Geneva Conventions was the one just outlined, why keeping reference to this article in the new version of the Agreement where the possibility of constitutional control has been discarded? In Colombia, the Geneva Conventions have often been referred to by political and judicial authorities with a view to induce humanization of the decade-long conflict that has ravaged the country.[12] Their embodiment of universal values protecting the human being that go beyond the diverse aspirations of each party to the conflict has also been made explicit in the preamble of the Agreement through reference to the well-known Martens clause, in the following terms:

> 'the rules of international customary law continue to govern the questions relating to fundamental rights not mentioned in the new Final Agreement, including the imperative rule whereby "on cases not covered by current law, the human person remains under the protection of the principles of humanity and the dictates of public conscience"'. [13]

[10] L. Vierucci, 'Applicability of the Conventions by Means of Ad Hoc Agreements', in A. Clapham, P. Gaeta, and M. Sassòli (eds), *The 1949 Geneva Conventions – A Commentary*, Oxford University Press (2015), pp. 515-517.

[11] Betancour Restrepo, op. cit., at 191.

[12] See the Sentencia de Constitucionalidad n. 225/95 of the Colombian Constitutional Court, 18 May 1995, paragraph 7.

[13] The phrasing is slightly different from the one contained in article 1, paragraph 2, of the 1977 II Additional Protocol to the Geneva Conventions, that provides as follows: 'In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience'.

Hence referring to the Geneva Conventions in the Agreement terminating the conflict aims to highlight the *humanitarian nature* of the document. This is viewed by the parties as an element capable of reinforcing the political significance of the Agreement and enhancing its acceptability to the whole country.

The above does not explain, however, the link between the Peace Agreement, common article 3 and the deposit with the Swiss Federal Council. In our view, the Agreement's reference to the Geneva Conventions and the entry into force in a way similar to the latter is considered as a form of guarantee that the parties will proceed, in good faith, to implement the agreed commitments.[14] In other words, an article 3 grounding for the Agreement is seen as a way to increase the sense of responsibility of the parties with respect to the observance of the negotiated text.

This is not a minor effect that the parties have intended to achieve. While traditionally national law has been viewed as a means to implement international law, the Colombian Peace Agreement reverses this approach by taking international law as a way to guarantee compliance with a legal act regulated by national law.

II. The role of third states and international organizations in the elaboration and implementation of the Peace Agreement

Cuba and Norway are qualified in the Peace Agreement as 'guarantor states'.[15] They have played a central role as mediators all along the peace process and had actually signed as 'guarantors' the Agreement of 24 August 2016, while the signature is not present in the new Peace Agreement. Arguably the lack of the signature does not change the role that the two countries will play in the implementation of the Agreement.[16] The matters dealt with in the Agreement, accruing to issues of an internal nature, suggest that the guarantor states are, in principle, not the addressees of the obligations set out in the negotiated document. Nonetheless, the Agreement contains a few provisions directed at the guarantor states, namely the inclusion of one representative for each state in the Follow-up Commission entrusted to monitor the parties' application of the Agreement and the request that they act as facilitators of dispute settlement within that Commission.

Even lacking the signature, it is difficult to deny that the acknowledgment of the role of the guarantor states in the Agreement indicates a principled willingness to behave in the way requested by the parties.[17] However, one may be more conclusive as to other effects of a legal nature that the role of the 'guarantors' brings about, especially when they have formally affixed

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[14] Betancur Retrepo, op. cit., p. 188.

[15] In the preamble of the Agreement, at p. 1, Cuba and Norway are referred to as guarantor countries ('países garantes') as well as witnesses ('testigos'). They are so indicated also in other parts of the document.

[16] P. 201 of the Peace Agreement.

[17] This interpretation is corroborated by the declaration that the Norwegian Ministry of Foreign Affairs has released on 1 December 2016, where it stated that 'Together with the parties to the conflict, we will participate in the follow-up commission that will ensure that the agreement is implemented'.

their signature. In the first place, the signature as guarantor may certify that the third parties believe that the Agreement satisfies the conditions necessary to perform the monitoring function that is required by them. In the second place, the signature has an estoppel effect, i.e. if the guarantors put in place the requested conduct, the parties to the Agreement cannot make any demand in relation to the lack of right of the guarantor to act in that way (e.g. in relation to the principle of non-interference in internal affairs).

Besides, several non-legal effects may be attributed to the signature as 'guarantor'. Firstly, this signature shows recognition of the political importance that both the parties and the international community – as represented by the guarantors - place in the Agreement. Secondly, it certifies the correctness of the procedure followed in the drafting of the Agreement and of the parties' commitment to abide in good faith by the obligations they have undersigned. Thirdly, it gives increased notoriety of the Agreement both within the country and abroad. Lastly, it is evidence of the commitment, of a purely political nature, aimed at fostering the implementation of the text by the parties to it and, in addition, the commitment by the guarantors to abstain from putting in place a conduct that could hamper the achievement of the objectives pursued in the Agreement.

The Agreement attributes a role also to other states and international organizations, as well as private entities and non-governmental organizations. For example, Chile and Venezuela are referred to as 'partner states' ('países acompañantes') in various sections of the Agreement, while other states and several international organizations are labelled in the same way but mentioned only in the part of the Agreement dealing with implementation.[18] Among the latter, a prominent role is bestowed upon the United Nations. The request of support that the parties address to this organization is split in two phases: initially, the United Nations are asked to monitor the implementation of the agreement on ceasefire and cessation of hostilities; once that phase has been accomplished, the United Nations will set up a mission charged with the task of monitoring the reincorporation of the FARC-EP members into civil life and the measures relating to human security.[19] The UN Secretary General has endorsed the Peace Agreement and disposed to act in compliance with the requests of the parties to the Agreement in the terms set out in Security Council resolutions 2261 (2016) and 2307 (2016).[20]

III. Referral to International Human Rights Law (IHRL), International Humanitarian Law (IHL) and International Criminal Law (ICL)

The Peace Agreement contains an impressive number of explicit references to international law. The referral between different legal orders (also known as 'renvoi'),[21] including between national and international law, is quite widespread in agreements concluded between a government and an armed opposition group.[22] In the Colombian Peace Agreement referrals to

[18] Pp. 215-216 of the Peace Agreement.
[19] P. 214-215 of the Peace Agreement.
[20] See UN doc. S/2016/1063, op. cit. supra ftn 5.
[21] F.A Mann, 'The Law Governing State Contract', *BYIL* (1944) p. 23 and P. Gautier, *Essai sur la définition des traités entre Etats: La pratique de la Belgique aux confins du droit des traités,* Bruylant, p. 457.
[22] L. Vierucci, 'International humanitarian law and human rights rules in agreements regulating or terminating an internal armed conflict', in R. Kolb and G. Gaggioli (eds*), Research Handbook on Human Rights and International Humanitarian Law*, E. Elgar (2013) pp. 416-438.

IHRL and IHL is pervasive throughout the text but prevalent in the Agreement concerning the End of the Conflict[23] and the Agreement on the Victims of the Conflict.[24] Noteworthy is also the explicit and repeated reference to ICL.

Two are the features of the technique as used in the Agreement that deserve examination: (i) the modalities in which the referral takes place; and (ii) the type of substantive international law rules to which the referral is made.

The modalities of the the referral used in the Agreement may take two forms: simple referral to international law or reiteration, on the part of the government, of the commitment to respect the international treaties to which the state is a party. Simple referral consists in the adoption of IHRL, IHL and ICL as the framework within which the freedom of the state to set up the special jurisdiction for peace can yield its effects.[25] For example, the Agreement on the Victims of the Conflict specifies that the state may set up special jurisdictions aimed at achieving peace 'provided the framework established by international law, in particular with respect to human rights guarantees, is complied with'.[26] In other words, international law is viewed as a *limit* to the state's discretion to mete out justice in relation to the armed conflict.

This form of referral is to be welcome because it is of a broad scope and constitutes evidence that also the non-state party to the Agreement intends to abide by the rules referred to.[27] However, it does not help to comprehend what are the *specific* rules of international law that are called into question in the Agreement. Only occasionally does the Agreement make express reference to a particular international law rule, for example, article 6(5) of the 1977 Additional Protocol II to the Geneva Conventions is cited to in relation to the granting of amnesty as a reconciliation means following the end of the conflict.[28]

The other modality of referral, i.e. the reiteration of the obligations accruing to the state under international law, is quite significant because it materializes in the government's commitment to make 'effective' within the country the relevant human rights treaties ratified by the state.[29] In addition, the Agreement clarifies that the state is not relieved of its obligation to 'respect and guarantee the full enjoyment of the rights stemming both from international human rights and IHL rules' even if some of the beneficiaries of the truth and justice system set out in the Agreement were found to be responsible.[30]

Turning to (ii) the referral to substantive law, the Agreement often refers to IHRL and IHL together, and rightly so given that the Agreement puts an end to an armed conflict of a non-

[23] In particular in Sub-section 3.4 concerning security guarantees and fight against criminal organizations.
[24] In particular in Sub-section 5.1.2. dealing with the justice element of the integral system of truth, justice, reparation and non-repetition (Sistema Integral de Verdad, Justicia, Reparación y No Repetición) and Sub-section 5.2. spelling out the Commitment for the promotion, respect and guarantee of human rights (Compromiso con la promoción, el respeto y la garantía de los derechos humanos).
[25] P. 144, par. 4, of the part of the Agreement on the Victims of the Conflict that concerns the Basic Principles of the justice element of the integral system of truth, justice, reparation and non-repetition.
[26] P. 144, par. 5, of the Peace Agreement.
[27] With respect to human rights rules, the FARC-EP have expressly 'reiterated their unrestricted commitment to human rights', ib., p. 188.
[28] Ib., p. 147.
[29] Ib., p. 190.
[30] Ib., p. 146. This clause seems to underline the separation between the responsibility of the state and the responsibility of the single individual.

international character. In particular, IHRL and IHL[31] are the 'main legal framework' of the work of the Special Jurisdiction for Peace, though the actual legal qualification of a certain fact may also be based on ICL and/or the Colombian Penal Code. All the above rules have to be applied in compliance with the principle of *favor rei* ('favorabilidad').[32]

The circumstance that the Special Jurisdiction for Peace[33] may apply international law is considerable particularly with respect to ICL.[34] The relevant provision of the Agreement appears to allow direct application of ICL when the Special Jurisdiction for Peace will legally qualify a specific conduct.[35] It is submitted that a more precise wording, for example reference to specific rules of the Statute of the International Criminal Court, would have been more in line with the principle of legal certainty in criminal matters. This omission is quite surprising also considering that the principle of legal certainty is expressly taken into consideration in the Agreement's provisions relating to amnesty.[36]

Of particular relevance is the fact that the Agreement hints to a criterion to identify the 'serious breaches' ('grave infracciones') to IHL and 'serious violations' ('graves violaciones') of human rights committed during the conflict, which are the core of the Integral System of Truth, Justice, Reparation and No-Repetition. Accordingly, the gravity of the violation hinges upon the 'gravity of the harm' inflicted and the 'long-term harm to the life project of the victim'.[37] These violations are deemed to be more serious when committed against women or persons belonging to vulnerable groups that are subject to special protection, such as indigenous peoples, internally displaced persons and refugees, minors, LGBTI, elderly people, etc.[38] Though the precise scope of these criteria remains to be established by the Special Jurisdiction, the attempt of the parties to provide guidelines in this matter is praiseworthy. Lastly, with respect to these serious breaches and violations, also the obligation to investigate, prosecute

[31] Most of the references to IHL concern the Special Jurisdiction for Peace and amnesty provisions. For example, the faculty of the Colombian state to grant the 'broadest possible' amnesty is expressly anchored to art. 6, par. 5, of the 1977 Additional Protocol II to the Geneva Conventions.

[32] P. 147 of the Peace Agreement.

[33] For details on this special jurisdiction see H. Olasolo, 'The Special Jurisdiction for Peace in Colombia and the Cautious Optimism of the Prosecutor of the International Criminal Court', available in this on-line review at http://peaceprocesses.it/images/pdf/h._olasolo_-_the_special_jurisdiction_for_peace_in_colombia.pdf.

[34] The draft Agreement of 12 November 2016 (see supra, ftn 1) reserved greater room to ICL, in particular to the 1998 Statute of the International Criminal Court. When dealing with the issue of command responsibility, the draft Agreement specified that the criterion of 'effective control' over the conduct had to be interpreted in line with art. 28 of the Statute of the International Criminal Court (p. 152 and p. 164 of the draft Agreement). In the Final Agreement, the reference to the Rome Statute with respect to the responsibility of state agents has been deleted and not replaced by any reference to international law (p. 152 of the Peace Agreement), whereas with respect to the responsibility of the FARC-EP members it has been replaced by a general reference to international law (p. 164 of the Peace Agreement).

[35] P. 147, par. 19, of the Peace Agreement reads as follows: 'Para efectos del SIVJRNR, los marcos jurídicos de referencia incluyen principalmente el Derecho Internacional en materia de Derechos Humanos (DIDH) y el Derecho Internacional Humanitario (DIH). Las secciones del Tribunal para la Paz, las Salas y la Unidad de Investigación y Acusación, al adoptar sus resoluciones o sentencias harán una calificación jurídica propia del Sistema respecto a las conductas objeto del mismo, calificación que se basará en el Código Penal colombiano y/o en las normas de Derecho Internacional en materia de Derechos Humanos (DIDH), Derecho Internacional Humanitario (DIH) o Derecho Penal Internacional (DPI), siempre con aplicación del principio de favorabilidad.'

[36] Ib., p. 148.

[37] Ib., p. 144, par. 6.

[38] Ib., p. 144, par. 7.

and compensate stemming from international law and incumbent upon the state is explicitly referred to.[39]

It is important to note that the crimes set out in the Statute of the International Criminal Court, namely genocide, crimes against humanity and war crimes, cannot be subject to amnesty or pardon. In this respect the Agreement follows a consolidated trend in international law whereby international crimes cannot be subjected to amnesty provisions. However, the establishment of a gravity threshold for the war crimes excluded from amnesty may be cause of concern.[40] The only possible justification of this limitation lies in art. 8, par. 1, of the International Criminal Court Statute that gives the Court jurisdiction over war crimes 'in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes'. This explanation is not persuasive since the motive underlying the Statute's provision, namely the need to limit the Court's jurisdiction to the most heinous crimes, is not necessarily present in the Colombian reality. At the same time, a residual clause of the Agreement recognizes application of the principle of *favor rei* for those conducts for which international law does not prohibit amnesty or pardon.[41]

More attention deserves to be paid to the crimes committed during the armed conflict that are subject to amnesty. Actually the Agreement qualifies as a 'political crime', hence amenable to amnesty, 'the killing in combat compatible with IHL'.[42] This provision has the noteworthy effect of granting prisoner of war treatment to those persons that have killed people in conformity with IHL, for example in application of the IHL principle of proportionality. This is to say that, though under IHL prisoner of war status does not exist in a non-international armed conflict such as the Colombian one, the Agreement recognizes a treatment similar to that accruing to prisoners of war in an international armed conflict since that treatment entails immunity from jurisdiction for lawful acts of war. This provision, which is common in peace agreements,[43] was probably one of the conditions put forward by the non-state party in order to sit at the negotiating table.

Concerning the referral to IHRL, it is not an overstatement to say that this branch of international law pervades the vast majority of the Agreement. It is referred to both in a punctual way, e.g. by recognizing the right to property or the freedom of expression, and in more general and abstract terms. For example, human rights are defined as 'those rights that are inherent equally in all human beings, meaning that they belong to a human being for the mere fact of existing, and as a consequence their recognition is not a concession, they are universal, indivisible and interdependent. They have to be considered globally and in a just and equitable way'.[44] Also the way the right to peace is taken into consideration in the Agreement is remarkable. Accordingly, 'peace as a product of a negotiation is a morally and politically superior alternative to peace as a product of the annihilation of the enemy'.[45] Furthermore,

[39] Ib., p. 147.
[40] The Agreement excludes from amnesty of only the 'IHL breaches committed in a systematic way or as a part of a plan or policy', ib. p. 148 (as specified at p. 151).
[41] Ib.
[42] Ib., p. 150, par. 38.
[43] Vierucci, in Gaggioli and Kolb (eds), op. cit. at 427.
[44] P. 125 of the Peace Agreement.
[45] Ib., p. 143. This definition of the right to peace is taken from the concurring opinion of judge Diego Garcia-Sayán in the Caso Masacre de El Mozote y lugares Aledaños vs El Salvador, Inter-American Court of Human Rights, judgment of 25 October 2012, par. 37.

'international law should consider the right to peace as a right and the state should consider its achievement as an obligation'.[46] The Agreement further declares that 'peace as a fundamental right of all citizens is a necessary condition for the exercise and enjoyment of all the other rights'.[47]

The way the right to peace is dealt with in the Agreement deserves commenting also in light of its content. The above provisions on this right included in the Agreement are in line with the approach taken by the Colombian Constitution, according to which '[p]eace is a right and a duty of which compliance is mandatory' (art. 22). This provision is closely linked to art. 95, par. 6, of the Constitution providing that it is a duty of the individual 'to strive toward achieving and maintaining peace'.

The wording of the Peace Agreement echoes the 18 May 2006 judgment of the Colombian Constitutional Court that has clarified the scope of the right and duty to peace in the following terms:

> 'Peace constitutes (i) a fundamental purpose of International Law; (ii) a fundamental end of the Colombian state; (iii) a collective right of Humanity, included in the third generation of rights; (iv) a subjective right of every single human being; (v) a legal duty of every Colombian citizen, that has to strive to achieve and maintain it'.[48]

By contrast, from an international law perspective, the provisions on the right to peace contained in the Agreement seem quite far-fetched especially if read in conjunction with the assertion whereby 'States are under the obligation … to prevent new acts of violence and to achieve peace in an armed conflict through the means at its disposal'.[49] As it is well known, no treaty provision sets out a right to peace in international relations, let alone a right to peace unfolding its effects within the domestic jurisdiction of states. Discussion on this right is quite recent in international law[50] and only a few days ago has the UN General Assembly adopted a Declaration on the Right to Peace.[51]

The last element of the Agreement that is worth mentioning concerns the sensitivity to sexual orientation. Belonging to the lesbian, gay, bisexual or transgender population is listed among the grounds, alongside sex, age, religious belief, opinions and ethnical identity, upon which no discrimination can be made. While this approach is undoubtedly in line with current international law, the assessment of the notion of gender used in some parts of the Agreement does not lead to the same positive conclusions. In fact the Agreement often uses the term 'gender' as a synonym for 'woman',[52] thus restricting to a great extent the scope of the term.[53]

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[46] P. 143 of the Peace Agreement.

[47] Ib. p. 189. On the effectivity of the enjoyment of human rights see also p. 125.

[48] Judgment C-370 of 18 May 2006, p. 281, available at http://www.corteconstitucional.gov.co/relatoria/2014/C-370-14.htm.

[49] P. 143, par. 1, of the Peace Agreement. Though not expressly provided for in the text, reference to 'violence' seems to be interpreted as 'internal' and not 'international' use of force.

[50] See the Declaration on the Right of Peoples to Peace adopted by the UN General Assembly on 12 November 1984.

[51] UN General Assembly, Declaration on the Right to Peace, 19 December 2016. The Draft Declaration was submitted to the General Assembly by the Human Rights Council (see A/HRC/32/L.18, 24 June 2016).

[52] For example, the gender approach envisaged as a founding principle of the agrarian reform consists only in the 'recognition of women as autonomous citizens', p. 12 of the Peace Agreement.

[53] Only recently has the notion of gender been equated with socially constructed roles, hence not only with the rights of women but also of lesbian, gay, bisexual or transgender persons, see UN Human Rights Council, res.

Concluding remarks

The Final Agreement for Ending Conflict and Building a Stable and Long-Lasting Peace signed by the Colombian Government and the FARC-EP on 24 November 2016 is a composite and comprehensive text. The six agreements on specific issues such as rural reform, reparation to the victim of the conflict and cessation of hostilities, as well as the numerous annexes that it is composed of, all negotiated over a period of four years, reflect the complexity of the long-lasting armed conflict and the difficulties of the peace process. The intricacy of the historical problems underling the relationship between the parties did not prevent the use of detailed regulation and precise language, often articulated in lofty style, such as the provision defining the very concept of human rights or specifying the scope of right to peace.

The Agreement protects primarily a collective interest: peace. This means that it aims not only to address the causes of the armed conflict but also redress the consequences of it. Both these aspects entail preventing and repressing gross violations of human rights that are of concern of the international community as a whole. For this reason the international community, especially via the guarantor states, Cuba and Norway, and the United Nations fully supports the Agreement through a variety of measures, ranging from membership in the commission monitoring the implementation of the document to symbolic acts such as making statues out of the guns handed over by the FARC-EP.

Though the Agreement is grounded in the Colombian legal order, international law plays a substantial role. By and large, international law is used as a form of guarantee of the implementation of the Agreement. The qualification of the latter as a *special agreement* in the terms of art. 3 common to the 1949 Geneva Conventions is the best evidence of this, but also the fact that IHRL and, when relevant IHL, are the general legal framework within which the Agreement has to yield its effects is a landmark feature of the document. In the part of the Agreement concerning the victims of the conflict, also ICL is taken into consideration especially in order to prohibit amnesty for conducts amounting to the crimes over which the International Criminal Court has jurisdiction.

The challenge of the implementation of this multifaceted Peace Agreement rests primarily with the two parties, the government of Colombia and the FARC-EP. Nevertheless, the contribution that both third states and international organizations can give is momentous if not decisive in view of the collective interest that the Agreement embodies.

17/19 on Human rights, sexual orientation and gender identity, 14 July 2011. The 2011 Convention on Violence against Women and Domestic Violence is the first treaty to contain a definition of gender by providing as follows: '"Gender" shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men' (art. 3(c)). For details on the impact of the gender debate on the rejection of the Colombian peace agreement of 24 August 2016 see L. M. Céspedes-Báez, 'Gender Panic and the Failure of a Peace Agreement', in *AJIL Unbound*, November 2016, pp. 227-233, available at https://www.asil.org/blogs/symposium-colombian-peace-talks-and-international-law-gender-panic-and-failure-peace-agreement.