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Interview with Roberto Carlos Vidal López

President of the Special Jurisdiction for Peace in Colombia*

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In addition to his work as a Professor, Judge Vidal López has been a Lecturer at the Universidad del Rosario and a Visiting Researcher at the University of Essex in the United Kingdom. He has worked for the Ideas for Peace Foundation, the United Nations in Colombia, the International Association for the Study of Forced Migration, the University Network for Peace, the Ombudsman's Office of Colombia and the Brookings Institution, a major Washington-based think tank. He has also produced thirty publications, including Truth-Telling and Internal Displacement in Colombia *(2012),* The Participation of Internally Displaced People in Peace Processes in Colombia

* Online interview conducted on 24 September 2024 by Anton Camen, Editor at the *Review*, and Angie Rodriguez, Deputy Coordinator of the Legal Department at the ICRC's delegation in Colombia.

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(2007) and Derecho global y desplazamiento interno: Creación, uso y desaparición del desplazamiento forzado por la violencia en el derecho contemporáneo *(2007)*.

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Establishing the Special Jurisdiction for Peace [Jurisdicción Especial para la Paz, JEP] has been a key component of the efforts to build peace in Colombia. To introduce the topic, and thinking about the readers of the Review around the world who are not necessarily familiar with the structure and work of the JEP, could you explain briefly what its mandate is, how it works and what objectives it was set up to meet? What makes the JEP different from the ordinary justice system?

The JEP is a court that was set up alongside two other institutions as part of the 2016 Peace Agreement reached between the Revolutionary Armed Forces of Colombia – People's Army [Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, FARC-EP] guerrilla group and the Colombian government. The Agreement created a Truth Commission, which sat for just over three years and which published its final report two years ago, and a Search Unit for Missing Persons. Forced disappearance was one of the most common crimes in Colombia's armed conflict. There are 110,000 people on the official register of people who were forcibly disappeared.

In legal terms, the JEP is trying to make use of two possibilities that are available to Colombia under international law. The first is the possibility under IHL of offering the broadest possible amnesty in the search for peace. The other is the State's obligations under the Rome Statute of the International Criminal Court [ICC] to prosecute and punish the worst crimes that took place during the conflict.

Moreover, I would have to say that this is a "state-of-the-art" court. It was created almost entirely out of international law. This means that we can turn directly to IHL, international human rights law and international criminal law, in addition to the constitutional and legal rules that apply in Colombia.

That is more or less the framework and our jurisdiction to investigate around fifty years of conflict, involving one of the largest guerrilla groups, one which has lasted the longest on the continent and was, perhaps, the most powerful. The FARC-EP was perhaps also the last of the leftist communist guerrilla groups of the guerrilla movements that arose in the Americas in the 1950s.

The other particularity of the court to take into account is that, after very difficult negotiations, it was decided in the Peace Agreement that we would have the jurisdiction to judge not only the activities of the former FARC-EP but also the crimes committed by the security forces – that is to say, Colombia's army and other armed forces. Members of the FARC-EP and the security forces, if summoned, have to come before the court. In addition, we have the jurisdiction to try State officials

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who are not members of the security forces, as well as civilian third parties. But these last two groups can choose to come before the court or not – we cannot force them to come.

That, in very general terms, is the jurisdiction and scope of the court – a court that is, moreover, a temporary court. It is designed to last fifteen years, but its jurisdiction can be extended for five more years to ensure compliance with rulings made. We have already done seven of the fifteen years. We're more or less halfway through the court's scheduled lifespan.

What have been the JEP's main achievements in terms of IHL? What have been the biggest challenges to overcome – in particular, for people who have suffered IHL violations, with regard to their taking part in proceedings, clarifying the truth or obtaining reparations?

I think the achievements are interesting because of the very nature of the court. The court has made a lot of innovations with regard to trials, investigations, rulings and punishments. One innovation that is central, and that has been at the heart of many of the court's achievements and problems, is the fact that in the Peace Agreement they decided to link the court's work, as a court of international criminal law, with transitional restorative justice.

In Colombia, restorative justice had traditionally been linked to less serious crimes, such as family crimes, drug use, juvenile delinquency and so on. But at the JEP, restorative justice takes place during the investigation, ruling and punishment of the most serious and widespread, and the most difficult and complex, crimes. It is one of the most fundamental characteristics of our jurisdiction, because it produces a court that is completely distinct from anywhere else.

The JEP is the second court to be created in the country for transitional justice. The first, in 2005, was created within the ordinary justice system, as the result of negotiations with paramilitary groups. To be more specific, specialized courts of peace and justice were set up to judge the actions of the paramilitary groups. They are courts of first instance [i.e., trial courts]; the court of second instance is the Supreme Court of Justice. These courts have been judging paramilitaries for seventeen years and are still going today.

The JEP was different and distinct from the outset in how it was conceived. We have the status of a higher court, similar to the Supreme Court of Justice, the Constitutional Court or the Council of State, but we are not part of the judicial branch; we are independent. In what we do, we're like a complete, self-contained system of justice. We have our own public prosecutor's office, the Investigation and Prosecution Unit. We have chambers of first and second instance where trials take place. We have investigating judges. We also have an Appeals Division. The complete legal proceedings can be carried out under our jurisdiction. We never turn to the ordinary justice system for anything. The whole process of administering justice is done internally.

The JEP also has an Executive Secretariat that provides a number of services for the purposes of restorative justice, which we understand as a principled process

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that places the victims at the centre. All our proceedings and interventions do that, in accordance with the ideas of transitional restorative justice. We have offices in the field where we give advice to victims, teach them about the JEP, and offer psychological support. We have social workers who work with victims' organizations. We also provide lawyers. That makes a very big difference – when you provide lawyers, you facilitate access to justice enormously. We offer this to both victims and perpetrators, the latter of which are known in the JEP system as "appearing parties". An appearing party is someone who is subject to the court's jurisdiction and whom we are judging. So, we offer legal representation and psychosocial support to both victims and perpetrators, and we use the methodologies of transitional restorative justice.

Victims are heavily involved in proceedings at our court, unlike in traditional criminal proceedings, whether in national or international courts. Proceedings at the JEP allow victims to know all the information, all the evidence. They can intervene in all the proceedings. They can ask questions, attend with their lawyers. They can tell their stories. It really is a highly participative procedure, with great emphasis put on the victims being at the centre. Alongside their lawyers, the victims can take part in proceedings and are also consulted about punishments.

This is another feature that comes from restorative transitional justice. What we are trying to do is make sure that the appearing parties we are judging have an obligation to provide an exhaustive and detailed account of what happened in the conflict. The JEP has fulfilled some of the functions of the Truth Commission, because as the parties are under an obligation to tell the truth, we have learned many facts about the conflict that were not previously known. There have been very important statements. But the parties also have the right to recognize, or not recognize, their responsibility. If they recognize their responsibility and provide the truth, they may – and this is the greatest benefit the court can grant – receive a reduced sentence. Sentences in the ordinary justice system in Colombia are up to sixty years in prison. In the JEP, people who acknowledge their responsibility for serious crimes receive a maximum sentence of eight years, and during these eight years they are outside working on projects as a form of redress for the victims. They are monitored by us, under the supervision of the JEP, but they are working on projects for the victims and with the victims. If they do not recognize their responsibility, they have an adversarial trial, similar to trials held in international or domestic courts. In such a trial, they can be sentenced to up to twenty years in prison.

All of this gives you an overview of what we do. That is how the JEP works. I should also point out that the JEP has two tools which, as a result of Colombia's experience, have gradually become an accepted part of international law. The first tool, which I will not discuss in detail here, is selection, whereby we focus on only the highest-ranking commanders, of both the FARC and armed forces, who are most responsible for the most serious crimes.

The second tool is prioritization. In such a prolonged conflict, our temporal jurisdiction goes back more than fifty years. It is absolutely impossible to investigate all the crimes. What the prioritization tool gives us is the ability to focus on identifying the crimes that are the most serious and representative of the conflict, and to concentrate only on those crimes. The process of identifying what these

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crimes were took us four years. We consulted a lot with civil society actors, who presented documents that showed us, in their opinion, what the most serious and representative crimes were. They presented a thousand reports. With these reports, plus the information available from the State and all the institutions, we created a large database – it already has 20 million entries. Using the database, we worked with a team of about 150 people – social scientists, analysts, historians, anthropologists, statesmen, mathematicians – to carry out qualitative and, above all, quantitative research. The database enabled us to see the whole of the conflict and to establish what acts were repeated the most, and where, and when. From there, we built up what we at the JEP call "macro cases". Macro cases are not investigations of a single act or a single incident; rather, they are investigations of patterns that were repeated over the fifty years. They were extremely serious, and we know where they happened the most. From this participatory process and research, we built our eleven macro cases two years ago.

The prioritization process helped us decide what to investigate. That is how we decided that the JEP should investigate eleven macro cases. We will not open any more cases; that process is now over, so the macro cases are of enormous importance. We have some types of macro cases that concern certain kinds of acts – for example, Case 01 is an investigation into kidnappings committed by the FARC-EP over ten years, a period in which the group ordered the kidnapping of at least 21,000 civilians. A single investigation was carried out into the kidnappings by the FARC-EP and a single accusation made against the organization for having ordered all those kidnappings. The leaders of the organization, the seven who are still alive, jointly acknowledged their responsibility for international crimes against humanity and war crimes that had been committed in relation to these kidnappings.

With regard to the army and the security forces, we also find cases of murders and forced disappearances of people who were falsely presented as killed in combat but who were in reality civilians. For these situations, we have a preliminary figure of 6,402 victims across the country, just for the period 2002–08. In different regions, the JEP has so far charged high-ranking commanders, generals and colonels of the Army of the Republic with these crimes against humanity and war crimes, 90% of whom have acknowledged their responsibility.

The other macro cases have to do with forced recruitment, sexual violence, environmental crimes, etc. – there is a debate about political genocide. It is a wide spectrum, but what we investigate are macro cases, macro-criminal patterns, and not incident by incident.

So, when you ask me what we have achieved, I think we have managed to innovate proceedings – they are tremendously participatory, more participatory than any domestic or international proceedings – with the focus on the victims and with support for victims that is unprecedented. Around 400,000 victims and their organizations are participating in the JEP's macro cases. We have been able to cover these patterns that range over time, that have thousands of acts, hundreds and sometimes thousands of perpetrators, hundreds of thousands of victims. We no longer look with a microscope but take a macro view at the conflict within the terms of our jurisdiction. There have been some very important successes, because with these tools of

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selection and prioritization it has been possible to make up for the lack of prosecutions of mass war crimes. No court can judge everything; it is estimated that there were 5 million war crimes committed over the fifty years of the conflict. No court can handle that. But we are also not talking about judging just two massacres or a single act committed here or there; rather, we were able to cover massive numbers of crimes, which showed what the effects of war are.

What is your opinion about a possible link between respect for IHL and peace? What function do you think IHL has in peace processes or transitional justice?

That is a very recurrent theme here. The first thing I would have to tell you is that there is a distinction between *jus in bello* and *jus ad bellum* – between the just war debate and the war crimes debate. That is important. At the JEP, we are increasingly aware that the issue of whether the war was just is one of the issues that comes up in relation to the political negotiations that occured between the government and the former FARC-EP. Our trials do not concern that. When a person comes to trial, he usually tends to present a defence in terms of *jus ad bellum*. He will say that he was taking part in a just war. He will be the military man who says that he was defending the rule of law, or the guerrilla who says he was a revolutionary trying to change an unjust regime. They all say they do not know why they are before a court, that they didn't do anything. And then, almost always, we begin by telling them that we are not trying them for that. We are not trying you for having been a guerrilla, and even less for having been a soldier in the army. You have every right to be. We are trying you under *jus in bello*. It is because you, during the conduct of hostilities, committed crimes. I am not trying you as a guerrilla: I am trying you as a war criminal.

I remember having studied that distinction a lot during my education in IHL. Here it is an issue every day. We have to talk about these crimes because that is what affected people. Our work is about uncovering the truth and arriving at the profoundness of IHL and human rights violations.

And here I should add something. We have come to realize that combatants often do not understand the gravity of what they are doing. To a certain extent, they have in their heads the motives for the war. The motive is to show hostility – that is, to gain a position. It is like the position of doctors. I have friends who are doctors who work in intensive care. Five people die in intensive care every day. The doctors are already desensitized towards death; they even make jokes about it, because they live with death every day. That is what happens to soldiers or combatants. When they say, "I don't understand why they are putting me on trial", it is because they do not understand the seriousness of what happened when they committed those crimes. They only understand the seriousness of their actions during a trial, a trial in ordinary courts. But we go deeper with transitional restorative justice at the JEP, by having them meet the victims.

Sometimes a guerrilla says that he kidnapped a man who was paying money to the army, who were his enemy, so that's why he kidnapped him. Then suddenly he meets that man's family, and the family tells him that he was a civilian, that he was a

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father; they say what happened to them because of that kidnapping, how they experienced it, how futures were destroyed, how lives were destroyed. Before a trial begins, we usually have up to fifty meetings between victims and perpetrators where we talk about the seriousness of the acts, teach them not to use re-victimizing language. The perpetrators change when they start to put faces to their victims, faces the victims did not have before. When they see the faces of the victims and their families, they start to realize the seriousness of what took place.

Also, something beautiful comes out of the process – we are very aware of it – and that is that we realize how relevant IHL is. When we peel away the layers of politics, we realize that what is at stake in IHL is the deepest sense of humanity. A particular atrocity is often hidden by its scale, by the numbers, even by the very language of what is permitted in IHL. But when you dig into the crime, into the violation of the rules, into the minimum protection of human beings during a conflict that is set out in IHL, you see the importance of these rules. They are the only thing we have in such a complex situation.

So this is a contribution to peace, because they can no longer live in denial when we get to that place – when the truth comes out, when it becomes public, when our hearings are shown on television, and in those hearings there is not just a judge, but some victims telling their stories for hours, people following it on the radio; when a perpetrator comes out with, "I did it and what I did is terrible", "Now I am aware of it, and I ask for forgiveness", "I don't know if they are going to forgive me, but what happened is terrible". And we see that the perpetrators are caught up in the drama of the war themselves. They have their own suffering to bear.

All of this massively contributes to peace, because it generates an awareness among the public of the horror of war and the need for peace. When you don't do that, when you don't have trials, when you don't talk about what happened, when you don't explore the horror of the crimes, people don't value peace, or it seems to them that war and peace are just possible alternatives. This happens to all of us who live in cities and are not on the battlefield – but these trials bring the battlefield into people's daily lives. They make them live through other people's horror and undoubtedly contribute to a collective awareness of the need for peace, which is the basis for building a solid society.

What does the future hold for the JEP? Is there anything that it could do better?

The JEP has many innovations. When innovating, the only tool you have is trial and error – sometimes it works, sometimes it doesn't. However, at this point, we are very happy with what we have achieved, even if there are many things that could have been done better.

The JEP was designed by high-quality lawyers, so it is a bit intricate. Our procedures are excessive. That has cost us a lot in terms of time, as has dealing with so many innovations. There are things now that have a more fluid procedure, but it took a long time to understand them.

The main problem is the lack of speed. We have made a lot of progress in the investigations, but the trials have been much slower than we expected. There is a lot

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of complaining about the fact that we have not yet handed down our first sentence. The trials are open. We have five or six trials going on, with sentences due in the next six to eight months. It would have been better to have bigger results on that count.

In addition, the task of giving the widest possible amnesty, in accordance with IHL, meant we had to deal with 14,000 amnesties. It has been complex. At times, the idea of meeting the highest international standards has led us to develop very complex proceedings. Ensuring the participation of victims throughout the process leads to delays, as do our exhaustive efforts to get to the truth, and trying to reply to all the victims as much as we can. It all takes a lot of time.

There are many issues to be fixed and that could be improved at the JEP. We are trying to improve them. I don't think we've done anything badly, but we can certainly be much better. In terms of your particular area of interest, there have been some very interesting developments for international law.

IHL is for us an everyday issue. We have tried people for all the crimes covered by the Rome Statute. All of them. We have had discussions in which we have frequently turned to the International Committee of the Red Cross [ICRC] for advice on limits, on what is allowed and what is not allowed in war. This is an area where the law of war is alive, with all its benefits and all its contradictions. That expertise is very important. Our greatest contribution is in innovation. We are setting new horizons that may be useful for negotiations in the future. We have been mentioned a lot in the UN Security Council, and we often have people visit us who want to know about what we do. This is a court with big ideas.

We are very much aware that any solution for transitional situations must be tailor-made – that is to say, it is not something that can be simply repeated. It has to be tailored to each country. There is no single formula, but there are ideas. Here at the JEP, there are ideas that people can use to carry out their work in other parts of the world.

***Any final thoughts that you would like to share with readers of the* Review?**

One concern we had was about understanding the court as an international law actor. That is why we opened an office of the ICC here at the end of the year for technical discussions on questions of international law. Fortunately, we have many experts working here. We have very young colleagues who were interns or lawyers at the ICRC in Geneva. Some came from Costa Rica or New York or The Hague. There is a lot of expertise in international law here, which we have been able to put to use. But at a time when multilateralism seems to be out of fashion, a time when it seems that international tools are useless for dealing with wars, our experience is showing that these are the tools we have to deal with conflicts, and we must defend that, we must develop it. This is the way to face problems as serious as those of our country, where international law has made an enormous contribution. That is why this discussion that we are having is very important to us.

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