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*“Deprivation of liberty and armed conflicts: exploring  
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### **Ensuring humanitarian treatment and conditions during the initial stage of detention: the Colombian case study**

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#### **Background**

The deprivation of liberty is a concrete fact that happens within armed conflicts, regardless of whether the actor is a State or non-state armed group or individual, and on whom the action falls, be it military or civilians (Maurer, 2015). While it is true that international humanitarian law does not prohibit the exercise of deprivation of liberty by any parties involved in the conflict, there are regulations in place aimed at mitigating the suffering that accompanies such a situation, and attempting to ensure that the human cost will be limited. Of course, Colombia has not been alien to this reality, especially when, less than a century ago, the country was involved in an armed conflict of a non-international character, where the National Army played a very important role.

In this context, according to Article 217 of the Political Constitution of Colombia of 1991, the members of the National Army, as guarantors of the inalienable and proper duties of the State, have been assigned the function of defending sovereignty, independence and integrity of the territory and constitutional order (Colombia, National Constituent Assembly, 1991). But this mission goes so much further; it is not just about ensuring the security and defense of the national territory and those who inhabit it, but it also

ensures that the actions aimed at achieving this goal are developed within the framework of respect for human rights and the freedom of citizens under the members' protection. In other words, each soldier must ensure that his or her constitutional obligation is fulfilled under the full observance of the norms of international humanitarian law and the international law of human rights.

The Army recognizes individual freedom as a right and basic principle of every individual, cataloged as the primary instrument for life in society of the human being. Likewise, it recognizes: freedom as being a fundamental and inherent right to the human person and an essential part of their dignity guaranteeing their integral development; the primary right to the enjoyment and full exercise of the other rights and of legal protection, enshrined in different legal systems. However, the Army also knows that this right does not simply have a character, and that, in specific cases and as established by law, it is allowed to set limits on the individual liberty of a person, as long as that person's actions result in an attack on or the violation of other citizens' rights.

For the National Army, as a competent authority and under this assumption, it is a duty to detain individuals as allowed by law and within the principle of humane treatment and respect due to human dignity, in order to avoid the occurrence of illegalities or engage in undue actions to the detriment of the rights which protect persons deprived of their freedom. In this manner, the present document, using the Colombian case study, has its purpose: to expose the mechanisms adopted by the National Army in order to guarantee humanitarian treatment and conditions to individuals undergoing the initial stage of the detention process; and using a review and analysis of the rules and jurisprudence applied by the members of the institution to carry out this type of procedure.

### **Under the protection of international humanitarian norms**

In Colombia, the precepts of international law of human rights and international humanitarian law have been linked to the Colombian internal order through the so-called "constitutional block", which consists of those "provisions, principles or materially constitutional values, outside of the documentary Constitution" (Olano García, 2005, page 231). The Constitutional Court of Colombia has estimated in its pronouncements that these provisions have a normative rank superior to ordinary laws, even though, on determined occasions, they do not enjoy constitutional status

and have been integrated into the national norms by various means and by express command of the Charter. In that way, the constitutional block mentioned is not only formed by the matter in it, but by international treaties, organic laws and statutory laws.

In this order of ideas, there are four provisions contained in the Constitution (Colombia, National Constituent Assembly, 1991) that are far-reaching, on the one hand, Article 93 says, "international treaties and conventions, ratified by the Congress of the Republic, which recognize human rights and prohibit their limitation in states of exception, prevail in the internal order"; and on the other, Article 94 says, "The enunciation of the rights and guarantees contained in the Constitution and in the international conventions in force, should not be understood as a denial of others, being inherent to the human person, although they are not expressly included in them". In the third instance, Article 101 states, "The limits indicated in the manner provided for by this Constitution may only be modified by virtue of treaties approved by Congress". And, finally, Article 214 mentions that: "Human rights and fundamental freedoms cannot be suspended. In any case, the rules of international humanitarian law will be respected".

In this way, the importance of international treaties that recognize human rights and prohibit their limitation in cases of exception on the internal order is ratified. This principle is harmonized with the traditional constitutional imperative that erects the highest political charter within the national legal order (Claim of unconstitutionality against article 21 [partial] of Law 734 of 2002, New Unique Disciplinary Code, 2003). This set of rules allows the retreat of international law, ensuring the consistency of domestic legislation with the external commitments acquired by the State, serving as a complement to the guarantee of human rights and international humanitarian law in the country.

According to the constitutional mission, the Army is, among other things, a defender of the order established by the Magna. Therefore, its greatest interest and concern is to comply with treaties, conventions, and other international instruments, signed by the country, safeguarding human rights in times of peace and war. In a particular sense, and because of the theme convened on this occasion, the actions of the men belonging to the military corps, are subject, at the moment of the arrest, to the respect of the freedom of the human person and to the care that must be given to the person when deprived from the same right, advocating for the preservation of each and every one of their rights as a human being.

These rights are enshrined in the Universal Declaration of Human Rights (United Nations Organization, General Assembly, 1948), the content of which speaks about the protection of life, liberty, security and equality before the law and warns against torture, punishment, or cruel, inhumane or degrading treatment and arbitrary detention. Such rights have likewise been reaffirmed in other legal instruments such as the American Declaration of the Rights and Duties of Man (Organization of American States, 1948), which recalls the need to undertake an arrest only in those cases and in the manner indicated by the law, and the need to give a humane treatment to the detainee.

Such a group of norms include: the International Covenant on Civil and Political Rights (United Nations, General Assembly, 1966); the American Convention on Human Rights or the Pact of San José (Organization of American States, 1969); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations, General Assembly, 1988); the Code of Conduct for Law Enforcement Officials (United Nations, General Assembly, 1979) which affirms the use of force by authorities only when strictly necessary and to the extent required; and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, General Assembly, 1984).

Here, it is pertinent to make a particular note regarding the rights of children. As has been pointed out by instances of both the internal order (National Historical Memory Center, 2018) and international order (Human Rights Watch, 2004), in the course of the Colombian armed conflict there has been evidence of the recurrent practice of recruitment of minors by armed groups organized outside the State. This becomes a warning sign for the military in those situations where minors should be detained, understanding that Law 1098 of 2008 (Colombia, National Congress, 2006), the Code of Childhood and Adolescence, contemplates this possibility in people over 14 years old and under 18 years old, which comes as a pedagogical measure, as long as it is ordered by a judicial authority.

In this regard, the Convention on the Rights of the Child (United Nations, General Assembly, 1989) stipulates measures to guarantee the right to life, survival, development, and freedom; to protect against all forms of physical or mental harm or abuse, neglect or negligent treatment, mistreatment, sexual abuse, submission to torture, cruel, inhumane or degrading treatment or punishment, and unlawful or arbitrary deprivation of liberty; and to enjoy humane and dignified treatment, inherent in the

human person when he is deprived of freedom. Another instrument that promotes the monitoring of these rights is the Minimum Rules for the Protection of Children Deprived of Liberty (United Nations, General Assembly, 1990), which strengthens the idea of deprivation of liberty in accordance with the principles and procedures established by law.

The Inter-American Court of Human Rights, in its jurisprudence, has also recognized the rights of people when they are in a situation of deprivation of liberty. In "Street Children" v. Guatemala (1999), the Court considered the violation of the right to freedom as a result of the arbitrary and illegitimate detention of the victims by agents of the National Police. In the case of *Manfredo Velásquez v. Peru* (1988), the Court determined the existence of the transgression of the right to protection against arbitrary detention, considering that the victim had been detained without foundation in legal cases and without being brought before a competent judge or court. In *Bayarri v. Argentina* (2008), for example, the Court pointed out that the deprivation of liberty as a means to violate the right to life, a legal procedure in detention and against torture; the same conclusion is found in *La Cantuta v. Peru* (2006).

However, international humanitarian law, to limit to a minimum damage against those who do not participate in confrontations or who no longer have a share in them, has set a series of rules to respect in the case of persons deprived of their liberty in the context of armed conflicts of a non-international nature. In Article 3 common to all four Geneva Conventions (International Committee of the Red Cross, 1949), Protocol II (International Committee of the Red Cross, 1977), International Customary Law (Henckaerts & Doswald-Beck, 2007), and the Statute of the International Criminal Court (United Nations, General Assembly, 1999) clearly prohibit attacks against life and physical integrity (homicide, mutilation, cruel treatment and torture), personal integrity (humiliating and degrading treatment), convictions and executions without prior trial before a legitimately constituted court, arbitrary deprivation of liberty, and prolongation of detention.

Given that this paper is focused on the initial stage of detention, compliance with the aforementioned guidelines would suffice. But, as will be seen below, in Colombia, there are conditions of manner, time, and place that may require obedience by the military to other types of rules regarding the norms designated to persons deprived of their liberty. Examples of these rules, are included in Additional Protocol II to the Geneva Conventions (International Committee of the Red Cross, 1977): the treatment of the wounded and sick; the provision of food and drinking

water; the enjoyment of health and hygiene guarantees; protection against the rigors of climate and the dangers of the armed conflict; the granting of individual and collective relief; and the safeguarding of the rights of minors, whether or not those minors are directly participating in hostilities.

### **Through the concepts of Operational Law**

For the Colombian Army, it is of great importance to have a set of obligations, measures and maxims to regulate the individual and collective action of its members when carrying out an arrest and to achieve a total balance between the efficiency and effectiveness of this respect for the rights that assist people deprived of their liberty. For this reason, there has been a great effort in recent years to develop a compendium in the internal order where national, international and customary legal rules converge, as well as internal and external jurisprudence on the conditions and humane treatment of detainees, applied to planning, driving, evaluation and monitoring of operations and procedures carried out in order to deprive an individual of their freedom. This initiative has been reflected in the group of rules contained in the manuals of Operational Law of the Military Forces and Procedure of the National Army.

The Operational Law Manual (Colombia, General Command of the Armed Forces, 2015) defines capture as an action by means of which the right to freedom of a person is restricted, through his or her physical apprehension, when apprehension is part of a criminal investigation, and a Prosecutor should be made available immediately. This is in accordance with Article 296 of the Code of Criminal Procedure (Colombia, Congress of the Republic, 2004), which states:

Personal freedom may be affected within the action when necessary to avoid obstruction of justice, or to ensure the appearance of the accused in the process, the protection of the community and the victims, or for the fulfilment of the penalty.

To execute said action, the arrest or detention order will be issued, and once it has been done, the detainee will be handed over to the Judicial Police. If there is no Judicial Police in the place where the operation takes place, the delivery of the detainee will be made to the Surveillance Police, who will then assume the functions of the Judicial Police and will continue with the subsequent procedures, as ordered by law. It is worth clarifying that Army personnel can only proceed with the deprivation of liberty of a

person under three specific situations: the first, when there is a court order. According to Sentence C-1024/02 (Control of Constitutionality Legislative Decree No. 2002 of 2002 "by which measures are adopted for the control of public order and the zones of rehabilitation and consolidation are defined", 2002), the military can carry out captures as long as there is an order issued by the competent authority.

The latter means that members of the Army are authorized to conduct a capture when there is a written order issued by a judge controlling guarantees, knowledge or execution of sentences, with legal formalities, and for reasons previously defined by law (Colombia, Congress of the Republic, 2004, Colombia, General Command of the Military Forces, 2015). In the second instance, cases of flagrancy are found, that is, when "one or more persons are surprised at the moment of committing a crime or immediately afterwards, whether it is executed in the presence of persons or that it is perceived through any means technical" (Colombia, General Command of the Armed Forces, 2015, page 69). According to the provisions of the Code of Criminal Procedure (Colombia, Congress of the Republic, 2004) in this regard, the term *in flagrante* is used when:

1. The person is surprised and apprehended during the commission of the crime;
2. The person can be individualized during the commission of the crime and apprehended immediately after prosecution or when the victim or another person identifies the author or accomplice of the crime immediately after it has been committed;
3. The person is surprised and captured in possession of an object, instruments or fingerprints which indicate he has just committed a crime or participated in it;
4. The person is surprised or identified in the commission of a crime in a place open to the public through the recording of a video device and apprehended immediately afterwards;
5. The same rule will apply if the recording of the video device is made in a private place with the consent of the person or persons residing therein;
6. The person is in a vehicle used moments after to flee from the place where a crime was committed, unless it appears that the subject has no knowledge of the punishable conduct.

Third, there are those exceptional arrests by order of the Prosecutor's Office. These correspond to preventive detentions ordered by the Attorney General of the Nation or by his delegate, when there is no judge who can

order them, provided that there is certainty about probative material elements, physical evidence, or information through which it can be inferred that the one indicated is the perpetrator or participates in the investigated conduct. Likewise, when it is foreseen that there is an imminent risk of the person hiding, escaping or being absent from the place where the investigation is carried out; there is a well-founded probability of altering proof and the suspect is a danger to the security of the community or the victim in that, if the capture is not carried out, the suspect could carry out a punishable offence against them (Colombia, Congress of the Republic, 2004, Colombia, General Command of the Armed Forces, 2015).

In the three aforementioned circumstances, the military acts as the First Respondent, consistent with its obligation to collaborate with judicial authorities in judicial proceedings when it is required during the investigation and prosecution process. So, to materialize the capture, the Operational Law Manual, urges the military to:

1. Identify him/herself while properly uniformed
2. Address and immobilize the person to prevent him/her from fleeing
3. Provide humane and dignified treatment to the detainee
4. Identify the person apprehended and verify that he/she corresponds to the person whose capture is intended
5. Immediately inform the captured, verbally and in writing, of the following rights:
  - a. To be informed of the criminal charge that he/she has been attributed and the reason for his/her capture, the official who ordered it, or the conditions of fragrancancy in which he/she was found;
  - b. To indicate a person to whom his/her arrest must be communicated, leaving the corresponding proof that the communication was supplied; the official responsible for the captured person will immediately inform the person indicated above of the retention;
  - c. To remain silent in case the statements made are used against the suspected and that he/she is not obliged to testify against him/herself, spouse, permanent companion or relative of the fourth degree of consanguinity;
  - d. To designate and have an interview with a trusted lawyer in the shortest possible time. If this is not possible the National Public Defender System will provide his/her defense; In no event may the detainee be interrogated or interviewed without his/her consent and the presence of his/her defender;

6. Fill out the form "Format of rights of the captured";
7. Perform medical assessment, if possible ;
8. In cases of blatancy, to take the apprehended immediately or at soon as possible, before the Attorney General's Office;
9. In the case of arrest by court order, a judge should be available to the arrested person no later than 36 hours after arrest;
10. In the case of exceptional arrest by the Office of the Attorney General of the Nation, the arrested person should be delivered to the Office of the Prosecutor immediately or as soon as possible so that the appropriate legalization can be carried out;
11. Immediately inform the hierarchical superior, who must establish immediate communication with the Judicial Police;
12. The military man, who carries out the arrest *in flagrante*, will accompany the Judicial Police to formalize all necessary procedures for the respective legalization;
13. Make available to the competent authority the weapon and the elements that have been found in the possession of the arrested person at the time of their arrest along with the information obtained, recorded in the format of action of the first respondent.

As it has been noted in previous paragraphs, due to the link between minors and internal armed conflict in Colombia by armed groups organized outside the law, the Manual indicates that their capture must proceed in accordance with what is stated by the Code of Childhood and Adolescence (Colombia, National Congress, 2006), which establishes a difference between children under 14 and adolescents between 14 and 18 years of age. In virtue of this and of articles 142, 145 *et seq.*, minors under 18 years of age must be left immediately or as soon as possible at the disposal of the Childhood and Adolescence Police, without deprivation of liberty (Colombia, General Command of the Armed Forces, 2015), which will take care of bringing them before specialized bodies for the reintegration of their rights.

The Manual of Procedure of the Army (Colombia, Armed Forces, Army, 2015) sets a series of parameters for the capture of people, in terms declared by law, in different operational scenarios: for example, during territorial control operations in urban areas, in cases of capture *in flagrante* or by judicial order by Military Police units. It is recommended by human rights and international humanitarian law, that the detainee is read his/her rights; that mistreatment of work or word of the captured is not allowed and that the life of the captured is respected; and that arbitrary or illegal detentions must not be carried out for any reason,. When dealing with

personnel apprehended in the area of operations, those norms provide for the respect of the rights of the arrested, not to interview them and to verify the status of the vehicles in which they will be transported. The First Respondent must respond for the life and physical integrity of the detainee, respect his/her honor and dignity and make them available to the Judicial Police.

Regarding the capture of criminals during anti-kidnapping and anti-extortion operations, military personnel must take into account the principles of human rights and international humanitarian law and transfer the arrested to the GAULA facilities with a competent authority made available. In cases where a search is being carried out in a rural area and a capture is necessary, a flagrant arrest is made. The capture must be reported immediately and the captured person must be placed at the disposal of the competent authority.

Once the capture is made upon execution of an ambush, land interdiction or attack, the Unit Commander orders a ceasefire and organizes security by perimeters. Those captured will be inside the internal perimeter, and their safety will be under the responsibility of the assault team, who will reach the limit of progress (Colombia, *Fuerzas Militares, Ejército*, 2015).

### **Integral Policy on human rights and international humanitarian law**

The Integral Policy on human rights and international humanitarian law was issued in 2008 by the Ministry of National Defense to describe guidelines, establish objectives and establish programs that, in the area of human rights and international humanitarian law, the Army should know and develop so it becomes a roadmap defining the behavior of the military in the development of operations. In that sense, this policy was reoriented to be taught in human rights and international humanitarian law; the methodology of instruction in human rights and IHL was adapted to the needs of the Force depending on the context; and, finally, the policy was integrated within the institutional capabilities available to the Force to ensure compliance with obligations to human rights and international humanitarian law. One of the greatest challenges was to increase the level of professionalization of the members of the Force in relation to human rights and international humanitarian law, supporting the idea of legitimacy as the cornerstone for all actions of the military (Colombia, Ministry of National Defense, 2017 ).

Several lines of action were drawn up to achieve this purpose, only three of which will be mentioned here, as they are of greater relevance to the content of this paper. The first line focused on the transformation of the educational system in order to provide the soldier with a solid base of knowledge and training and so enabling him/her to make the right decisions in any of the soldier's activities, aiming to impart values and institutional principles, while strengthening ethical behavior and military discipline; integrating the norms of human rights and IHL to the parties at all hierarchical levels of education and training according to the degree of responsibility; improving the development of military operations and reducing complaints of alleged violations of human rights and IHL; and unifying the learning criteria and strengthening the pedagogical tools in human rights and IHL, through the creation of teaching cycles (Colombia, Ministry of National Defense, 2017).

Likewise, the creation of training groups for regional scenarios were introduced as a mechanism of practical instruction under the method of "learn by doing" together with: the construction of practical training tracks in human rights and IHL where experiential simulations of scenarios are carried out, such as those operations where people are captured according to the different modalities indicated by the law, facilitating instruction through experiences and lessons learned in human rights and IHL; collection of common knowledge and experiences, derived from the historical study of military training, exercises and operations of mission and support processes; and the development of short-term training workshops as a didactic tool to reinforce the Army's instruction in human rights and international humanitarian law in accordance with the needs of the context, including issues such as gender equity, prevention of gender-based violence against children and adolescents and prevention of illicit recruitment (Colombia, Ministry of National Defense, 2017).

Furthermore, the first line of action also included holding short-term and extra-curricular training events according to the needs of the Force, with the support and technical knowledge of the International Committee of the Red Cross; development of human rights education programs with an interactive educational focus, developing daily life and the use of skills methodologies in order to "know how to be", to "know how to do" and to "know how to live together"; the creation of a School of Human Rights and International Humanitarian Law, the first school in Latin America created by the military for the promotion, dissemination and instruction in human rights and international humanitarian law (Colombia, *Ejército Nacional*, s.f.); and finally, the creation of a technology program in the promotion and

application of IHL and human rights in the military context by the Military School of Non-Commissioned Officers since 2011 (Colombia, *Ejército Nacional*, s.f.). These are some examples of the application and promotion of human rights and IHL norms.

The progress made in the implementation of this line of instruction has allowed the Integral Policy 2017-2020 to present a restructuring of this approach, converting it into an Education Line, especially aligned with the World Program for Education in Rights of the United Nations (2004), strengthening its strategies and including the stimulation of research in the field of human rights and international humanitarian law within education, culture and training in the field, projecting the mainstreaming of human rights and international humanitarian law in military training and seeking to develop a public policy on education in human rights and IHL for the Defense Sector to facilitate a positive transformation through personal and professional development as part of a culture in human rights (Colombia, Ministry of National Defense, 2017).

The second line of action was oriented towards the consolidation of operational discipline in two ways: first, through the provision of adequate legal advice to guide operations and the implementation of institutional and judicial controls to ensure respect for human rights and compliance with IHL rules. In this sense, a National Operational Right was developed that was embodied in the Operational Law Manual, the Operational Law Primer for the Commander, the book on human rights and IHL, "Protecting Rights", the Protocol of Cooperation between the Defense Sector and the Ombudsman's Office, the Permanent Directive 2015-21 updating the rules for the use of force, the quarterly issuance of information bulletins on human rights and IHL issues; and also the incorporation of the figure of the legal advisor in the Army as an adviser to the Brigade Commanders in matters of human rights, international humanitarian law and operational law in the process of planning, execution and evaluation of operations (Colombia, Ministry of National Defense, 2017), all demonstrate the way that the Force is being involved in the application of human rights and IHL norms as a consequence of their duty.

In the same way, the order of operations was strengthened as a reflection of a detailed, planned, continuous and demanding process in the final decision making, the content of which must be in accordance with the course of action of the organized armed groups, organized criminal groups, (Colombia, Ministry of National Defense, 2017), and other agents that generate violence; thus the implementation of a "Zero Tolerance" policy in the face of behavior that violates the norms of human rights and IHL; the

adoption of operational and tactical levels of practices for the use of due force; the establishment of procedures for the authorization of the use of force and the staggering of it; the strengthening of the functions of disciplinary offices; also the disciplinary procedure and the job of the inspectors who are delegated to the Military Forces, who are responsible for examining and directly evaluating the management of the major, minor, and tactical operating units when there is a situation in which human rights and IHL appear to have been violated according to the Operational Law (Colombia, Ministry of National Defense, 2017).

The third line was conceived to strengthen existing relationships with government entities, other countries, national and international organizations, and representatives of civil society to favor the development of the pillars and fundamental elements of the Integral Policy, in order to promote, guarantee respect and protection of human rights and IHL. In this regard, the coordinated and harmonious action developed between the Army and the Attorney General's Office, as well as among the Army, the Judicial Police and judicial personnel as first responders and specialized justice in the cases of arrest, problems of public order; and the creation of specialized judicial support structures to strengthen the judiciary process against members of the Organized Armed Groups and Organized Crime Groups, for crimes against the oil industry, are some of the efforts to fight this situation (Colombia, Ministry of National Defense, 2017).

Mention should be made of: the establishment of networks of support against terrorism including the Private Enterprise that allows for the improvement of the investigative capacity in the fight against Organized Armed Groups and for the generation of tools for the formulation of criminal policy in the regions; technical advice from the Office of the United Nations High Commissioner for Human Rights in Colombia in workshops and joint working groups to fully comply with recommendations derived from its reports; and the reception by the International Committee of the Red Cross of technical advice and guidance for better compliance with the commitments acquired under the signed agreements, recommendations derived from its mission in Colombian territory, especially in the area of monitoring the situation of those deprived of liberty and their conditions of detention and confidential reports to confirm the fulfillment of the objectives of the Integral Policy, allowing for the implementation of necessary corrective measures in compliance with its constitutional mission not only for the Military Forces as their duty but also to the all branches of power (Colombia, Ministry of National Defense, 2017).

## **Transformation of the Army in the face of the new operational environment**

In 2011, the Army began its journey towards change. The institution had a responsibility to the country to respond properly to future security challenges, and the type of operations and doctrine being enforced at that time did not fully comply with all the necessary requirements. Filling this responsibility entailed its transformation into a versatile, modern, flexible, and adaptable force in the face of any threat or opportunity (Colombia, *Fuerzas Militares*, 2015). In other words, the aim was to convert the Army into:

[...] an integral institution, with qualified men and women, trained and updated, strengthened in joint, coordinated, inter-agent and combined work. Modern equipment and technology, with dissuasive, interoperable and successful capacity in more than one scenario simultaneously; contributing with its capabilities to the nation's growth and being international referents in the maintenance of global peace .  
(Colombia, General Command of the Armed Forces, 2015, page 18)

This transformation included breaking paradigms, rethinking, redesigning and constructing with a positive attitude, projecting the institution towards the future, avoiding the repetition of situations such as those that had allowed the growth and expansion of groups outside the law in national territory (*Redacción Semana*, 2016). From that same year, work began on the design of this new structure in the short, medium, and long term. All this work had to be condensed into a strategic plan, a navigational chart to guide the functioning of the Army, in the field of security and national defense, during the following years. It was necessary to assemble teams made up of experts to carry out prospective exercises broadening the outlook from the present to the future, using a methodology of cause and effect (Colombia, General Command of the Armed Forces, 2015).

These exercises allowed us to consider a series of future scenarios that made us envision a transformation not only focused on defining the necessary means for a specific type of threat or the fulfilment of a certain objective, but also aimed at something more general to obtain the capabilities with which any persistent or future threat could be addressed. Capabilities are understood as a series of factors such as weapons systems, infrastructure, personnel, and logistical support means, whose fundamental

basis are doctrinal principles and procedures through which it is possible to achieve a specific military effect at a strategic, tactical or operational level, to fulfill the assigned missions (García Sieiro, 2006).

When talking about capabilities, we were not referring to a single factor but to several of them, all with the same importance in achieving the desired effect. The capacity planning methodology implemented would bring significant contributions towards the objectives of the transformation of the Army because it had been chosen strategically for its adaptability, modularity and sustainability over time:

Capacity planning is defined as a methodological process that seeks to identify the country's security and defense needs, based on an analysis of the mission areas and the capacity systems required to effectively face the challenges of the future. This process defines an efficient combination of force structures within the security and defense system, to respond to present and future challenges, so that the strategic objectives of the defense sector can be met with the existing institutional and financial constraints. In this sense, the ultimate goal is to achieve an interoperable, adaptable, flexible and sustainable force structure (Colombia, *Fuerzas Militares*, 2015, page 4).

In that order of ideas, the constitutional mission of the Army, in its function of carrying out the process of strategic planning by capabilities, was divided into eight mission areas in order to facilitate the identification of gaps, prioritization of needs and delimitation of missionary roles, among which was the coexistence and citizen security understood by those actions aimed at guaranteeing rights, freedoms, social development and human projection, in conjunction with coordinated efforts between the political-administrative authorities, so as to satisfy the needs of the inhabitants (Colombia, 2015, page 6). In this way, in 2015, the Military Strategic Plan 2030 was consolidated and general and specific objectives were defined to cover the following 14 years, including the strengthening of the Force's protection mechanisms in respect of human rights and international humanitarian law.

The idea was to achieve an Army composed of motivated, qualified, trained, updated and respectful personnel of human rights and international humanitarian law. Here, it is important to highlight the concern to strengthen the protection mechanisms to grant the safeguard and institutional benefits required and expected by the military corps, in order to freely and quietly perform their constitutional functions. In this order of ideas, it was proposed to review the military doctrine with emphasis on the definition of the force structure, and to create procedures, standards,

protocols, manuals, rules of engagement, among others, to face the new challenges stemming from the strategic context, and to promote the revision and updating of legislature to establish a solid legal framework, relevant to the context in which laws support the actions of the institution and its members, in order to sustain success in military operations.

Within the framework of the transformation process of the Army, the restructuring of the doctrine is one of the priorities for the Force. As a consequence, the Damascus Plan 1.0 has been developed, which determines a new hierarchy, norms, and update of the current doctrine. Colombia has suffered from internal armed conflict for several decades, and there was a gap in the doctrine. A strong public force in doctrine, discipline, and operational capabilities will be the main and most important guarantee in overcoming conflict and building a stable and lasting peace. For this reason, it is necessary to generate, review and adapt our manuals and regulations, so that they are consistent with the national situation, the regional environment and the international sphere (Colombia, Ministry of National Defense, 2017).

The new Damascus Doctrine is a tenet adjusted to Operational Law, understood as the integration of Treaties, Conventions ratified by Colombia, Customary Law, International Jurisprudence, national legislation, and jurisprudence within the framework of the IHRL and IHL and is applied to the planning, execution, and monitoring of operations and procedures of the Public Force, which regulates the conduct of hostilities and other military missions in times of war, transition, and stabilization of peace. This legal order must be constructed with provisions of different origins (IHRL and IHL), with the adaptation of a hierarchical doctrine body that is modern and feasible, and guides the actions of individuals and organizations for the faithful and effective compliance of constitutional mission law (Colombia, National Army, 2017).

## **Conclusions**

As it has been noted that the actions of the military in cases of deprivation of liberty of persons are delimited by the monitoring of international humanitarian guidelines, the provisions of the constitution and the rules of Operational Law developed internally and are intended to prevent arbitrary arrests or the compromise of the rights of the detainee. The legality of the actions of the members of the Army in this type of situation is of vital importance for an institution that is at the service of the

State, whose main task is to ensure the well-being of its citizens. It has become clear that the Army, in accordance with its constitutional mission and in situations allowed by law, is the first respondent and, as such, guarantor of the security, life and personal integrity of those captured during the first hours of detention.

This duty implies guaranteeing a humane and dignified treatment until such time as the captured person is placed at the disposal of a competent judicial authority, either within the distance between the place of capture and the office of the judicial authority or within the legal term of 36 hours. Colombian Operational Law establishes the rules and specific instructions to ensure that all members of the institution provide basic needs, care, and security to detainees from the moment of capture until the moment of delivery to a competent judicial authority. Thereafter, the Judicial Authorities and Judicial Police are responsible for the long term rights of the detainee. The fulfillment of these obligations has been evidenced through cases in which there have been difficulties in the delivery of the detainees within maximum 36 hours established by law.

Colombian geography is quite diverse and, therefore, there are territories with difficult access and mobility. There are sectors where transport in vehicles is impossible where one has to walk several hours and cross rivers, mountains and jungle in order to reach an urban center before the expiration of the estimated 36-hour window for the delivery of the captured individual. Moreover, there is a problem of difficult climatic conditions, particularly in jungle environments. Often, the exit of these territories is only achieved by means of air or naval support, and having such support takes time. If it is not possible to reach the final destination within the established hours, the detainee must be released; otherwise, the crime of illegal detention would be incurred, since he/she has been deprived of his/her liberty for much longer than is supposed by law.

In the same way, the captured must be released in situations of hostilities and in places where it has not been possible to have communication via satellite or mobile telephone, to guarantee the detainee the right to communicate their capture to their relatives or to their lawyer, in the event that they have one, or to the hierarchical superior, or the ICRC, not the judicial authority, within the term of the law,. With all of the above, it can be proven, in fact, that in the case of the National Army, in spite of operational challenges due to difficulties in practice and the legal challenges according to the normative framework of application in the cases of humane treatment and conditions of detention both in the battlefield and in other scenarios, in the case of an internal armed conflict,

the actions of the soldiers have been in line with international standards on human rights and international humanitarian law.

Added to this, the effort by both the Ministry of Defense and the institution itself, to develop various kinds of initiatives as a way to advance further training and comprehensive specialization in human rights and international humanitarian law in order to fulfil the duty to promote, disseminate, respect and strengthen humanitarian practices in the framework of the internal armed conflict, in concordance with the obligations acquired through international instruments and as demonstration of the legitimacy that defines the actions of all members of the Colombian Army.

Finally, mention should be made to the development of processes for the improvement of operations in aspects related to the application of human rights and international humanitarian law and the linking of specialized personnel to legally accompany the decision making of the Commanders of different units; as well as the establishment of cooperative relations with different institutions to execute the due process of capture and dignified and humane treatment of detainees.

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