I. Introduction

Recent international case-law in the domain of human rights protection has brought to the fore the recurrent theme of the complementarity between the international responsibility of the State and the international criminal responsibility of the individual. The subject at issue has gained momentum in the light of recent developments in the law on the international responsibility of the State as well as in International Criminal Law. The co-existence and complementarity of the international responsibility of States and the international criminal responsibility of individuals is related to the current trend towards the criminalization of grave violations of human rights, as well as the relationship between State responsibility and the struggle against impunity and the endeavours towards the realization of justice. The conceptualization of the crime of State, its configuration and the relationship of that notion with the superior interests of the international community, deserve closer attention from contemporary international legal doctrine, as much as the juridical consequences of the crime of State, and the principle of universal jurisdiction.

II. The International Responsibility of the State and of the Individual: Recent Developments

The complementarity of the international responsibility of the State and of the individual for grave violations of human rights has clearly ensued from successive cases of massacres recently lodged with the Inter-American Court of Human Rights [IACtHR], – such as the cases of Myrna Mack Chang (2003) and of the Massacre of Plan de Sánchez (2004) concerning Guatemala, of the 19 Tradesmen (2004) and of the Massacre of Mapiripán (2005) concerning Colombia, and of the Moiwana Community versus Suriname (2005). Such cases cannot pass unnoticed in the examination of the theme of the co-existence and complementarity of the international responsibility of States and the international criminal responsibility of individuals.

In its Judgment on the merits and reparations in the case of Myrna Mack Chang versus Guatemala, of 25 November 2003, the IACtHR established that the
violation of the right to life of Myrna Mack Chang occurred in aggravating circumstances, as it resulted from “a covered-up operation of military intelligence undertaken by the Presidencial Office (Estado Mayor) and tolerated by several authorities and institutions”, amidst “a pattern of selective extrajudicial executions launched and tolerated by the State itself”, and a “climate of impunity”. Moreover, the Court established that the aforementioned operation of military intelligence of the Presidencial Office (Estado Mayor) “sought the hiding of the facts and the impunity of those responsible for them, and, to that end, under the tolerance of the State, resorted to all types of measures, among which were found hostilities, threats and murders of those who collaborated with justice”, affecting the independence of the Judiciary.

In the case of the Massacre of Plan de Sánchez (2004), the IACtHR established Guatemala’s responsibility for grave human rights violations under the American Convention on Human Rights. As demonstrated in the case, the crimes committed in the course of the execution, by military operations, of a State policy of “tierra arrasada”, including the massacre of Plan de Sánchez perpetrated on 18 July 1982, were intended to destroy wholly or in part the members of indigenous Maya communities. The respondent State accepted its international responsibility under the American Convention for the grave human rights violations resulting from the massacre of Plan de Sánchez.

In its Judgment on the merits of the case, of 29 April 2004, the IACtHR determined that those violations “gravely affected the members of the maya-achi people in their identity and values”, and, insofar as they occurred within a “pattern of massacres”, they had “an aggravated impact” in the establishment of the international responsibility of the State. In turn, earlier on, the Guatemalan Commission for the Historical Clarification, in its report Guatemala – Memoria del Silencio, had established the occurrence of 626 massacres committed by the forces of the State during the armed conflict, mainly the Army, supported by paramilitary structures. In the view of the Guatemalan Truth Commission, the

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1 Paragraphs 138-139, 150, 154 and 157 of the Judgment.
2 Paragraph 215 of the Judgment.
3 Cf. pars. 174-181 of the Judgment; and cf. also, on the matter, CEH, Guatemala, Memoria del Silencio – Informe de la Comisión para el Esclarecimiento Histórico, vol. VI, Annex I, Guatemala, 1999, pp. 242 and 244.
4 Paragraph 51 of the Judgment.
5 95% of them had been perpetrated between 1978 and 1984 (with violence intensified in 1981-1983), and in this period 90% had been executed in areas inhabited predominantly by the Maya people. The acts of extreme violence, in the assessment of that Commission, disclosed the characteristics of “acts of genocide”, – specifically against members of the peoples maya-ixil, maya-achi, maya-k’iche’, maya-chuj and maya-q’anjob’al, in four regions of the country; Comisión para el Esclarecimiento