VIOLATION OF POPULAR SOVEREIGNTY? A CASE STUDY ON THE PLEBISCITE OF OCTOBER 2, 2016, AND THE IMPLEMENTATION OF THE PEACE AGREEMENT WITH THE FARC-EP

¿VIOLACIÓN DE LA SOBERANÍA POPULAR? UN ESTUDIO DE CASO SOBRE EL PLEBISCITO DEL 2 DE OCTUBRE DE 2016 Y LA IMPLEMENTACIÓN DEL ACUERDO DE PAZ CON LAS FARC-EP

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ABSTRACT

The text is concerned to clarify if the popular sovereignty of Colombian people was violated by the decision of the Executive and Legislative branch of implementing a Peace Process with the guerrilla FARC-EP despite the negative results of the plebiscite of 2nd October 2016. To answer this query, the text is divided into five parts. The first one provides the background regarding the call for a plebiscite made by the Colombian Government in 2016 to endorse the Peace Agree-

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ment held with the FARC-EP guerrilla group. The second one describes the conceptual evolution of both, sovereignty, and popular sovereignty, firstly, from a philosophical perspective, and secondly, from the Colombian legal and jurisprudential perspective. The third part explains how international public law have become a limitation to the concept of popular sovereignty. On the one hand, it explains how popular sovereignty is limited within the Colombian legal framework. On the other hand, it also presents three scenarios of possible violation of popular sovereignty according to the Colombian constitutional jurisprudence. The fourth part is devoted to answer the main query regarding the selected case, discussing if the plebiscite of October 2, 2016, was a real threat to popular sovereignty. The fifth part presents the conclusions from a normative and philosophical perspective.

Keywords: Sovereignty, Popular Sovereignty, Limits of Popular Sovereignty, Peace Agreement, Right to Peace, Colombia.

RESUMEN

El texto se preocupa por esclarecer si la soberanía popular del pueblo colombiano fue vulnerada por la decisión de la rama Ejecutiva y Legislativa de implementar un Proceso de Paz con la guerrilla FARC-EP a pesar de los resultados negativos del plebiscito del 2 de octubre de 2016. Para responder a esta pregunta, el texto se divide en cinco partes. En la primera parte se exponen los antecedentes relativos a la convocatoria de plebiscito realizada por el Gobierno colombiano en 2016 para refrendar el Acuerdo de Paz celebrado con la guerrilla de las FARC-EP. La segunda parte describe la evolución conceptual tanto de la soberanía, como de la soberanía popular, primero, desde una perspectiva filosófica, y segundo, desde la perspectiva legal y jurisprudencial colombiana. La tercera parte explica cómo el derecho internacional público se erige como limitante de la soberanía popular. Adicionalmente, se explica, por un lado, cómo la soberanía popular está limitada dentro del marco jurídico colombiano. Por otro lado, también se presentan tres escenarios de posible violación de la soberanía popular según lo definido por la jurisprudencia constitucional colombiana. La cuarta parte está dedicada a responder la pregunta principal sobre el caso seleccionado, discutiendo si el plebiscito del 2 de octubre de 2016 vulneró realmente a la soberanía popular del pueblo colombiano. La quinta parte concluye desde una perspectiva normativa y filosófica.

Palabras Clave: *Soberanía, Soberanía Popular, Límites de la Soberanía Popular, Acuerdo de Paz, Derecho a la Paz, Colombia.*

1. INTRODUCTION

On the 24th of August 2016, the former president Juan Manuel Santos took one of the most important and controversial political decision of Colombian modern history, when he announced his call for a plebiscite after years of negotiations with the FARC-EP[2] guerrilla group. This arrangement was meant to finish one of the largest armed conflicts in Latin America, where six non-international armed conflicts were reported by 2022 (ICRC, 2022). The parties finished their conflict through a binding document titled the *"General Agreement between the Colombian government and the guerrilla FARC-EP for the termination of the conflict and the construction of a Stable and Lasting Peace"* (Oficina del Alto Comisionado para la Paz, 2016), onwards the "Final Agreement". The latter included a whole new legal framework denominated *"Integral System of Truth, Justice, Reparation and Non-Repetition"*, characterized for having judicial and extra-judicial components based on a holistic and comprehensive conception of justice in order to materialize and guarantee the rights of the victims of the conflict (Tarapués, 2017).

Apparently, the plebiscite was selected as endorsement mechanism because it allows the President to confirm people's (dis)approval of a decision made by the executive branch (Article 7 of Law 134 of 1994). According to articles 38.B and 41.A of Law 1757 of 2015, the plebiscite stands out among other mechanisms of citizen participation thanks to: (i) its closed question structure implying "yes" or "no" answers and; (ii) its requirement of participation of at least 50% of the electoral census. Even if the last requirement is expected to be applied under normal circumstances, for the analyzed case, the percentage of electoral census was reduced from 50% to 13% based on a proposal made by the former President, Juan Manuel Santos. His main argument in support was the enormous electoral abstentionism that characterizes Colombian elections. In this sense, the Colombian Constitutional Court (2016) revised his proposal declaring the constitutionality of the Statutory Law that would regulate the call to a plebiscite to endorse the Peace Agreement in its *Case Law C-379 of 2016,* while complying with its mandate of the constitutional control.

Even if a fraction of the doctrine considered that the plebiscite was not *legally necessary*, it was crucial from a democratic perspective (Tarapués, 2016) *to achieve a democratically legitimated transition* from war to peace (Uprimny et al, 2006). For this reason, and to obtain a larger legitimacy from the sovereign people, Juan Manuel Santos called Colombians to a plebiscite where they could endorse or deny the General Agreement. Surprisingly, 50.21 % of voters answered "NO"[3] to the question *"Do you support the Final Agreement for the end of the conflict and the construction of a stable and lasting peace?"* (National Registry of the Civil Status, 2016). This counterproductive situation brought a sensation of insecurity among the victims, the guerrilla FARC-EP, and the Colombian government, which was hardly criticized.

2. Abbreviation for "Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo FARC-EP" – "Revolutionary Armed Forces of Colombia - People's Army FARC-EP".

3. Those results are tightly related to the manipulation campaign and fake news spread by the opposers to the Peace Process, principally based on the "thread of *castrochavismo*" as main discursive tool.

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On the one hand, the criticism came from those who thought that such a matter should have never been consulted to the people, because it could have been directly decided following article 189 of the Colombian Constitution (El Espectador, 2016). Such opinion was also supported by the FARC-EP (Deutsche Welle, 2016). On the other hand, the hardest criticism came from the opposers to the Peace Agreement —headed by the ex-president Alvaro Uribe Velez—. To them, the illegitimacy was based on two aspects: (i) the alleged impunity from which ex-guerrilla fighters would benefit thanks to the Peace Process and; (ii) the exception applied to the endorsement mechanism by which the electoral census was reduced from 50% to 13% (El País, 2016A).

The primary query that arises would be: if the decision taken by the people through a plebiscite is binding for the executive branch, then why did Juan Manuel Santos decided to implement the Peace Agreement anyway? The latter question is causally linked to the purpose of this research, which is to clarify, from a normative perspective, if the *popular sovereignty* of Colombian people was violated by the decision of the executive branch of implementing a Peace Process with the guerrilla FARC-EP despite the negative results of the plebiscite of 2nd October 2016.

Such interrogations require to surpass the main assumptions on the concept of *popular sovereignty* to analyze it within a globalized context strongly influenced by the international law —a framework which has clearly set limits to its exercise—. To do so, this research is guided by a normative political approach due to its capacity to reveal arguments and values employed in political decisions and to recall philosophical discussions (Bauböck, 2008). Thus, this text focuses on the latter task in the fourth chapter, where the necessity of certain political decisions over others is discussed from a Rawlsian approach, in which social justice is considered as a procedural arrangement of distribution of fundamental rights, duties, social advantages, and burdens (Rawls, 1971; 2001).

According to Rawls (1971; 2001), a distribution is just, if it respects the principles of justice that society defined at the initial point. In this sense, the initial point can be, e.g., the Constitutional Assembly, where people designate their representatives for them to settle the principles of justice. Nevertheless, according to the principle of difference of this theory of justice, a liberty's violation is only admissible when with it, a worse violation can be avoided, and it guarantees a larger benefit for the less advantaged ones.

2. THE EVOLUTION OF THE CONCEPT OF POPULAR SOVEREIGNTY

Popular sovereignty has been an evergreen topic. Since middle age, the sub-

jective elements and the definition itself has evolved over time. Besides being a crucial topic for political science, popular sovereignty has surprisingly "received so little attention from democratic theorists, even those who have become centrally preoccupied with the politics of peoplehood and dilemmas associated with popular constituent power" (Frank, 2019, p.72). This section is devoted to track the conceptual development of popular sovereignty to provide adequate notional grounds for the case analysis: the paradox provoked by the plebiscite of the 2nd of October 2016, and the supposedly violation of popular sovereignty that arose after the Peace Agreement despite the plebiscite negative results. To do so, we conceptualize the terms *sovereignty* and *popular sovereignty separately. Subsequently*, the concept of *popular sovereignty* is analyzed following the Colombian Constitutional framework.

2.1 Sovereignty

Some authors agree on the fact that the first person to develop a well-structured idea of sovereignty was the French jurist and political philosopher Jean Bodin (Grimm, 2019; Walker, 2019). About this, Grimm (2019) narrates the development of this concept, highlighting that its origins are marked by the religious civil wars of the sixteenth and seventeenth centuries and Luther's Reformation —an indisputable event that destroyed the consensus about God's will and with it, the medieval world order—. At that moment of existential threat, a group of French theoreticians, called pejoratively les politiques, opted for a political solution to the problem of instability to ensure security over truth, to end the civil war and to enable peaceful coexistence (Grimm, 2019).

According to Grimm (2019), among them, Jean Bodin outstands with his book *Six livres de la République*, where he developed the concept of sovereignty as a response to the adversities posed to the medieval social order and provoked by the religious disputes (Grimm, 2019). Bodin assumed that wars could be finished and internal peace could be achieved if there was a superior power capable of demilitarizing the parties to the civil war (Grimm, 2019). To achieve this purpose, something capable of gathering all of these dispersed powers was required. With this in mind, sovereignty emerges as a conceptual solution capable of concentrating multiple powers into a singular one (Grimm, 2019).

Sovereignty was understood by Bodin as the combination of "the monopoly of public authority and an original power to create law" (Grimm, 2019, p.18). He retained the concept of the highest authority while changing the idea of a divine origin, leading to the monarch as the only possible successor of its exercise thanks to his prominent place on the feudal pyramid (Grimm, 2019). In fact, what Bodin achieved with this definition was the unification and concentration of public power into a singular person capable of avoiding external pressure (Grimm, 2019). To this effect, Bodin's proposed solution was then to unify the power into one single person: the monarch or ruler, who therefore turned into the exclusive sovereign (Grimm, 2019).

Even if Bodin exalted the monarchy, he did not defend royal absolutism while defending the *sovereignty* headed by the king (Walker, 2019). He rather "emphasized the importance of the French Parliaments – judicial offices held independently of the King and responsive to local populations, as a legitimate if the secondary level of government" (Walker, 2019, p.32). This turns Bodin's work into something highly valuable for political science

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since he discreetly introduces the idea of responsiveness as a means of legitimation before its servants. Nevertheless, he exposes most remarkably the cruciality of the separation between and the independence of the three traditional branches of public power —the main axis of modern democracies—.

Sovereignty became then indivisible without excluding authorized persons by the ruler to exercise the public power within the set limits (Grimm, 2019), introducing in this way, the concept of the delegation of power. In places where this idea was applied, a new form of political rule arose: the state (Grimm, 2019). Later philosophers like Locke and Montesquieu have reaffirmed the latter idea while exalting the supremacy of individual liberty. The first of them conceived the delegation of power as the core of representative democracy (Locke quoted in Cortés Rodas, 2010). Locke, specifically, draws from a contractualistic foundation wherein a society grants a rule-making organization the political power arising from the natural law in order to maintain security and order (Locke quoted in Cortés Rodas, 2010). Nevertheless, Locke emphasizes that political power is inherent to society and when the delegation of power finishes, the power returns to its granter (Locke quoted in Cortés Rodas, 2010). In contrast, Montesquieu, draws from the premise wherein the abuse of power results from its exercise and thus, requires a priori limitation (Díaz Bravo, 2012). In any case, the concept of delegation of power is strongly linked to sovereignty since the first one has been set to avoid tyranny.

Sovereignty is conceived as an indispensable condition for the establishment of a state (Grimm, 2019), because "where a ruler succeeded in becoming sovereign, the territory was transformed into a state" (Grimm, 2019, p.19). Hence, Bodin's concept gathers the first crucial characteristics of sovereignty: the exclusivity and the indivisibility of power headed by a regent or exerciser, who shall be capable of creating law, avoiding external coercion, setting limits, and delegating the exercise of the power according to his terms. Nevertheless, in confronting this idea with our current globalized context, Grimm (2019) asseverates that "he who identifies sovereignty with the classical concept of Bodin must conclude that sovereignty has disappeared" (p.26). This is because of the power that exists beyond the state, and which implies a division of public powers rather than a division of sovereignty itself (Grimm, 2019).

The fall of the *ancien regime* did not destroy the state or *sovereignty*. It rather complemented them through the elimination of *intermediate powers* while allocating them into a single regent thee (Grimm, 2019). Consequently, the subject of sovereignty changed because the revolutionaries —based on the natural law— "assumed that legitimate rule must emanate from a consensus of all" (Grimm,

2019, p.21), linking in that way the concepts of *sovereignty and legitimacy* as the basis for the attribution of this faculty to its new exerciser: the people. Once this subjective interchange takes place, the idea of *popular sovereignty* is subsequently introduced into the collective imagery. Last but not least, sovereignty is viewed from the standpoint of public international law as one of the factors that constitute the state as a subject of international law, together with geographical integrity and political independence —regardless of the kind of government— (Kaiser, 2010).

2.2 Popular sovereignty

The concept of *popular sovereignty* is formed by adding the adjective "*popular*" to the traditional concept of sovereignty, to direct allude to people, one of its attributed exercisers besides the nation. In this concern, Bashkina (2019) adds that within the French tradition of contemporary liberal constitutionalism –to which the Colombian state belongs to– it has been rarely appreciated the relevance of distinguishing between nation and people as subjective components of sovereignty. It is clear that the adjective popular traces a hint towards the subjective component of the ideality of *sovereignty* (Bashkina, 2019), which within the logic of modern states is required for obtaining legitimation and representation (Hegel in Bashkina, 2019). In that sense, Bashkina (2019) illustrates that the modern understanding of sovereignty is based on the shift from personal power to a more abstract omen that represents the unity of order, "where in the name of the separation of powers, sovereignty is refused to a ruler, an office of government, or even to the people as a concrete entity" (Bashkina, 2019, p.161). She (2019) also expresses that this subjective distinction between *popular and national sovereignty is only a conceptual interchange that epitomizes* "the process of sovereignty's modernization from concrete power to abstract legal framework" (Bashkina, 2019, p.162), an idea that perfectly fits with the necessity of a limited exercise of sovereignty regardless of its subject.

In this matter, Bashkina (2019) also specifies that this shift happened when Carré de Malberg replaced the conception of *popular sovereignty* formulated by Jean Jacques Rousseau, who —just as Hobbes— understood it as an embodiment of the democratic principle (Walker, 2019), based in turn on their contractualistic idea of popular sovereignty "as an act of collective self-authorship" (Walker, 2019, p.49). Even though Carré de Malberg was

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not the pioneer in describing the opposition between "people" and "nation", he was the most refined narrator (Bashkina, 2019). Carré de Malberg contemplated *popular sovereignty* as something impersonal due to the separation of powers among the three branches of the state, remarkably like the modern state conceptions (Bashkina, 2019). According to Bashkina (2019), Carré de Malberg based his conception on his systematic critics to Rousseau's oeuvre, turning the concept of popular *sovereignty*, on the one hand, into the amalgam of citizen's sovereignty and, on the other hand, as something that embodied an inner contradiction between the individual and the plurality, because for him, individual *sovereignty* could hardly be combined with the general will of the plurality (Bashkina, 2019). After that, Abbé Sieyès proposed to trespass the custody of *sovereignty to the nation*, because for him it was the symbol of the community (Bashkina, 2019). In turn, Hobbes (as cited in Walker 2019) did also follow the path of a subject-centered conception of sovereignty, highlighting instead the people instead of nation and understanding it "as an artificial construct, self-formed through a mutually binding social contract – a construct which could itself lay claim to the mantle of sovereignty" (Hobbes, as cited in Walker, 2019, p.32-33). Likewise, to refer to popular sovereignty, Geenens (2019) explains from a philosophical perspective that "rather than pointing to a factual entity endowed with absolute powers, the term "sovereignty" now indicates a specific perspective adopted by the members of a political community" (p.95).

Geenens (2019) as well emphasizes that a community can only be sovereign if it recognizes itself as such. This idea implies then to relay the idea of *popular sovereignty* on the "collective 'self-image' or collective 'self-understanding'" (Geenens, 2019, p.93). This occurs because Geenens (2019) understands popular sovereignty "in terms of collective autonomy" (p.93), and he (2019) bases his conception on the Kantian description of individual autonomy. The latter one is, in turn, understood as the subordination to moral laws of our own authorship (Geenens, 2019). All of this leads then to an understanding of *popular sovereignty* in terms of freedom or self-determination, which for authors like Walker (2019) implies a society's stirring capacity.

On this point, Walker (2019) uses the 'metaphor of the stirring' (p.48) to refer to what he calls *"the four 'R's"* (p.48), which are: (i) "The *Reassembling* of sovereignty [as the] ways in which more elaborate and inclusive procedures that go beyond the normal menu of constitutional amendment techniques are being used to bring about constitutional settlement or galvanize constitutional change" (Walker, 2019, p.48). (ii) "The *Raising* of sovereignty [as the] making of new claims or the resurrection of old claims by those who dispute the present pattern of sovereign authority" (Walker, 2019, p.49). (iii) "The *Rationing* of sovereignty [as the] most radically, to the process by which certain entities seek to split the sovereignty atom [being] understood as something to be shared and balanced out" (Walker, 2019, p.49). And lastly, (iv) "the *Reassertion* of sovereignty [as the] restatement and reaffirmation of an existing sovereign claim, often in response to the challenges associated with reassembling, raising, and rationing" (Walker, 2019, p.49).

In explaining his conception of *popular sovereignty*, Geenens (2019) based his thoughts on the Habermasian ideal of *popular sovereignty*. The latter is, in turn, based on the reconstruction of Rousseau's intuition (Geenens, 2019), namely,

the "self-authorship of the law" (Geenens, 2019, p.98). To develop his position, Geenens (2019) clarifies that according to Habermas (as cited in Geenens, 2019), there are only two requirements for the autonomous exercise of *sovereignty*: (i) the existence of "deliberative procedures for collective decision-making" (p.98) that must be "stabilized in solid institutions that are constitutionally entrenched" (p.99); and (ii) the protection "by an adequate system of rights" (p.98). On this detail, Habermas (as cited in Geenens, 2019) emphasizes those elements because in the lack of them, "the sovereign cannot properly process reasons and arguments, hence has no coherent will, and hence does not exist" (p.100).

Contrario sensu to Habermas, Geenens (2019) explains that there is indeed a third essential element for that autonomous exercise of *popular sovereignty*: "a conscious image of society as unit" (p.100) or "collective 'selfhood'" (p.100). Geenens (2019) adds to this matter, that the requirement of this last component is based on the necessity of a permanent stability where citizens can identify themselves with this collective selfhood in order to be and feel subjected to their own collectively produced laws (Geenens, 2019). This author finally remarks on three essential elements for the existence of collective autonomy and, which in his words are (Geenens, 2019):

> "(1) If a collectivity is to see itself as capable of acting based on reasons, it needs to have the capacity to process reasons in a collective manner. This requires deliberative procedures and the adequate protection of participants. (2) This capacity cannot be uncoupled from a conscious awareness, on the side of citizens, that they are part of a larger unity. (3) Citizens also need to be aware that this unit is an agent of intentional action. This awareness can be activated by political conflict, which confronts us with the openness of our future and thus with the possibility of (and the need for) collective decisions" (Geenens, 2019, p.105).

In other words, to Geenens (2019), *popular sovereignty* exists as long as a community adopts a rational "consciousness of one's political community as unity" (p.101). This must allow them to act collectively in accordance with "a duty to act responsibly" (p.101) and "in the right way" (p.102). All of this, within a political pluralist context equipped with "deliberative procedures and adequate protection of participants" (Geenens, 2019, p.105). In sum, there will be *popular so-*

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vereignty if its autonomous exercise is secured to its exerciser, and this can only be guaranteed through an effective legal system that protects people from aggressions against their right to actively engage in political matters.

2.3 The concept of popular sovereignty according to the Colombian legal framework

To provide a holistic perspective of the concept of *popular sovereignty*, the term is further (re)analyzed from a legal and jurisprudential approach. Anyhow, it must be clarified that in this section, the focus on *popular sovereignty* is preferred over the one of national sovereignty due to the Colombian state model: the social rule of law. This state model is characterized for limiting the exercise of public power and, in turn, imposing the constitutional obligation of guarantee a worthy and appropriate life to every person under its jurisdiction in compensation of the expected compliance of the obligations of its citizens (Colombian Constitutional Court, Case Law SU-747 of 1998). This is highly relevant because this state model implies the transition from national sovereignty to popular sovereignty as the axis of a democratic system that is based in human dignity, following article 1 of the Colombia Constitution. Therefore, this section is devoted to explaining the jurisprudential evolution of the concept of *popular sovereignty* in Colombian Constitutional framework.

Colombian constitutional law is strongly related to the concept of *popular sovereignty.* First, because the current Colombian Constitution of 1991 emerged precisely as the result of the exercise of the *popular constituent power* achieved thanks to the movement of the *seventh ballot* (Colombian Constitutional Court, Case Law C-644 of 2004; Pardo, 2020). This movement —headed by law students and the media—, promoted the addition of a non-official ballot convening to a Constitutional Assembly during the elections of March 11, 1990 (Pardo, 2020). Thanks to it, people could vote and convene a Constitutional Assembly that succeed in changing the institutional order by adopting since then democracy as a political regime (Colombian Constitutional Court, Case Law C-644 of 2004). Second, due to this arranged transition from the *rule of law to a social rule* of law state model which includes in its constitutional system the framework of international humanitarian law and human rights through the figure of the *block of constitutionality.*

More precisely, the *block of constitutionality* allows examining the compatibility between any law and the constitution, including in turn, any treaty on human rights and international humanitarian law signed and ratified by the Colombian state (Co-

lombian Constitution of 1991, article 93). This figure permits to directly demand any right or obligation that emanates from any treaty signed by the Colombian state regarding all these matters, because every state's institution is legally subordinated to them. The relevance of the legal figure of the *block of constitutionality* is simple unarguable because it commands to declare the unconstitutionality and inapplicability of any norm that contradicts any international treaties and conventions ratified by Congress, which recognize human rights and prohibit their limitation in states of emergency, since they prevail in the domestic order and are an unabridged part of the constitution (Colombian Constitution of 1991, article 93).

In this sense, the *block of constitutionality* provides a larger guarantee-based legal framework for a state that still experiences a non-international armed conflict and, therefore, requires of two frameworks: the one of international humanitarian law and, the one of human rights. On the one hand, the first framework is applicable to (inter)national armed conflicts with the aim to humanize the war through the application of the principles of humanity, proportionality of the use of force, military necessity, and distinction between civilians and combatants and, civilian and military objects (ICRC, 2023). On the other hand, the second legal framework is applicable permanently (ICRC, 2010).

The third reason Colombian constitutional law is strongly related to the concept of *popular sovereignty* is based on the explicit designation of the people as the supreme sovereign (Colombian Constitution of 1991, article 3). The latter norm textually expresses that "Sovereignty resides exclusively in the people, from whom the public power emanates. The people exercise it directly or through their representatives, in the terms established by the Constitution" (Colombian Constitution of 1991, article 3). All of this has indisputably helped on the strength of the democracy in the country and suits perfectly the idea defended by Geenens (2019), which expresses that "sovereignty as autonomy remains practicable in today's multilevel constellation and is normatively compatible with the rule of law" (p.93). This serves, as well, to present the Colombian Constitution as a perfect example of an explicit recognition and integration of the principle of *popular sovereignty* within its own constitution and in harmony with a globalized context.

For a better understanding, it is necessary to turn the attention to the jurisprudential and hermeneutical development of *popular sovereignty*. On this matter, the concept of *popular sovereignty* had its first mise en scène in the Case Law C-245 of 1996[4] taken by the Colombian Constitutional Court (1996). In that decision, the High Court expressed that popular sovereignty has as purpose to broaden the spaces for democratic popular participation in the decision-making processes that impact the national, regional, or local level (Colombian Constitutional Court, *Case Law* C-245 of 1996). This Court also expressed that the explicit introduction of the concept of popular sovereignty made by the Constitutional Assembly in the third article of the new Constitution of 1991, was made to increase the control on the exercise of public power made by the elected representatives (Colombian

4. In fact, the Case Law including the "C" before its numeric sequence, e.g., (C-644-04) are related to the constitutional analysis of a norm performed by the Colombian Constitutional Court. Such Case Law possess *erga omnes* effects.

"(...) the High Court distinguished between the *constituent power and the derived constituent power. This last one is understood as the reforming power* **(Colombian Constitutional Court,** *Case Law C-551 of 2003***), which contrary to the** *constituent power***, is in fact limited by the constitution because it is a power established by the constitution (...)"**

Constitutional Court, Case Law C-245 of 1996). In this sequence, one year later, this term was defined by the Colombian Constitutional Court in its Case Law C-347 of 1997 in the following terms:

> "The exercise of popular sovereignty (Political Constitution art. 3), means, above all, the exclusive capacity of the Colombian people, either directly, or through the constitutionally authorized bodies for it, to make and apply the law, because in this way the power of superordination inherent to the condition of the sovereign is exercised. However, if the constitutional model is maintained, such power of command is exercised through the mechanisms of direct and indirect participation that the constituent has designed and, in the latter event, it is delegated to the bodies that make up the public power, to that they exercise it in the terms established by the Constitution" (Colombian Constitutional Court, Case Law C-347 of 1997, p.22).

What is to be observed in the latter definition is, on the one hand, a direct allusion to the idea of a *more participatory democracy* exercised through the mechanism of citizen participation —vote as a general clause to exercise the right to be heard either in a normal context, e.g., in the regular ballots or, in a special ones, like the plebiscite, the referendum, inter alia—. On the other hand, a direct allusion to the concept of *representative democracy* is to be found, once the right to vote is exercised and the candidates have been elected to fulfill their supporter's expectations.

In this sense, six years later, the Colombian Constitutional Court defined the idea of *constituent power* in its *Case Law C-551 of 2003* as the primary power that resides on people, who have and preserve for itself the faculty to create a new constitution. Particularly, the High Court distinguished between the *constituent power and the derived constituent power. This last one is understood as the reforming power* (Colombian Constitutional Court, *Case Law C-551 of 2003*), which contrary to the *constituent power*, is in fact limited by the constitution because it is a power established by the constitution and it can only be exercised under the conditions defined by the constitution itself (Colombian Constitutional Court, Case Law C-551 of 2003).

One year later, the Colombian Constitutional Court dept again into the concept of *sovereignty* in its Case Law C-644 of 2004. In the sentence, it was specified that sovereignty implies "the imposition of state power over other coexisting powers" (p.26), following Bodin's path and his proposition of the primary characteristic of a state: the concentration of power into one ruler. On this point, the same Tribunal also defined the concept of political independence as a component of sovereignty from an internationalist perspective, expressing that it supposes the acceptance of the fact that the state power is at the same level of any recognized and legitimized international actor (Colombian Constitutional Court, Case Law C-644 of 2004).

In the same decision, that is, the Case Law C-644 of 2004, the High Court also explained that political independence implies the state capacity to autonomous decide about its internal and external matters, reaffirming once again a traditional conception of national sovereignty. Nevertheless, the Court was emphatic to highlight the fact that this faculty does not mean the right to act out of the framework of customary international law and its principles, because "they consist in the normative limit towards international relations" (Colombian Constitutional Court, Case Law C-644 of 2004, p.26). The Court made, in that sense, an allusion to the customary principle of par in parem non habet imperium to refer to the idea of a limited sovereignty in favor of an equal and peaceful coexistence between states. And, such a peaceful harmony is possible thanks to the public international law framework that tries to prevent arbitrariness of more powerful states over weaker ones.

This historical development of the concept of popular sovereignty in the jurisprudence of the Colombian Constitutional Court finalizes with the Case Law C-141 of 2010. In the latter decision, the court inclined itself towards a conception of popular sovereignty as a fractioned power that resides in every citizen (Colombian Constitutional Court, Case Law C-141 of 2010). More precisely, the Court said the citizen is observed as the titleholder of sovereignty, following the idea of an amalgam of citizen's sovereignty proposed by Carré de Malberg. In this respect, the High Tribunal also clarified, from a more representative point of view, that popular sovereignty was in consequence directly exercised when a citizen let himself be represented by another, because he or she annulets itself as sovereign by delegating this exercise to another person, who "must act in strict compliance with a mandate agreed in advance and essentially revocable if his action is not subject to the terms in which it was conferred" (Colombian Constitutional Court, Case Law C-141 of 2010). Finally, the Colombian Constitutional Court (2010) highlighted the relevance of the normative and procedural nature of the democratic model in relation to the principle of popular sovereignty, to the extent of even superimpose the constitutional limits of popular sovereignty over the popular will, as it was presented in the Case Law C-141 of 2010, and reaffirmed in the Case Law C-379 of 2016 in the following terms:

> "It is concluded then that the rule of the majority and the popular will does not have a higher value than the procedures designed to allow them to manifest. This idea is based on the fact that a democratic system essentially involves the combination of different elements that allow valid decision-making. In effect, the system is made up of (i) a set of

"In brief, the conception of *popular sovereignty* within the Colombian constitutional framework is understood as the axiological basis for every mechanism of citizenship participation, where every individual holds a fragmented part of the power to create or reform the Constitution, either by a direct form or through the binding decisions taken by the elected representantives (...)"

rules that guarantee both (ii) the effective participation of citizens in decisions, and (iii) the adoption of a majority decision at the end of the process. Democracy is both the teleological component (popular participation and decision adopted by the majority) and the means used to achieve it (the procedure and procedural rules previously designed and known by the participants). For the above reason, the Court has indicated that the Constitution is unknown[5] when it seeks to defend majority positions regardless of the procedures established in the Constitution and the existing constitutional limits" (Colombian Constitutional Court, 2016, p.178).

In brief, the conception of *popular sovereignty* within the Colombian constitutional framework is understood as the axiological basis for every mechanism of citizenship participation, where every individual holds a fragmented part of the power to create or reform the Constitution, either by a direct form or through the binding decisions taken by the elected representantives. Nevertheless, according to the Colombian constitutional and legal framework, the international law plays indisputably a prominent role, to the point of even being settled as a parameter of validity of any other norm or state decision due to the figure of the *block of constitutionality*¸ which is capable of limiting the exercise of certain rights if the norms or political actions are not in accordance with the international law.

3. THE IMPACT OF INTERNATIONAL LAW ON THE CONCEPT OF POPULAR SOVEREIGNTY: LIMITS AND POSSIBLE SCENARIOS OF A VIOLATION.

The most prominent effect of international law on the concept of *popular sovereignty* is indisputably the idea of a limitation based on the principle of *pacta sunt servanda* stipulated in the Vienna Convention on the Law of Treaties (1969). According to this general treaty of public international law: (i) "every treaty in force is binding upon the parties to it and must be performed by them in good faith" (Vienna Convention on the Law of Treaties, 1969,

5. In the sense of being ignored, not applied, or even violated.

article 26); and (ii) every state party is unable to "invoke the provisions of its internal law as justification for its failure to perform a treaty" (Vienna Convention on the Law of Treaties, 1969, article 27). These two basic rules accompanied by the customary principles of *par in parem non habet imperium* and the one of *universal jurisdiction*, applicable everywhere to prosecute the most horrible acts against humanity, redefine the concept of *sovereignty*.

Particularly, after the Holocaust and the unsuccessful extermination of the Jewish people —based on the claims of supremacy and sovereignty of the German people manipulated by the rhetoric and populist discourse of Nazi's regime—human rights and international humanitarian law framework build the most important limit to *national* and *popular sovereignty*. After this moment, as Grimm (2019) expressed, "unlimited self-determination no longer exists [because] [s]elf-determination is valid only within the limits of international law" (p.27).

In a more accurate sense, international treaties such as the American Convention on Human Rights (1969) and the Rome Statute (1998) —in which Colombia remains as a state party— reflect specific and binding tasks for each party. These two treaties stipulate the general state obligations of preventing, investigating, judging, and sanctioning the worst violations against human rights, humanitarian law and the worst crimes. On the other hand, where an obligation exists, there must be, in consequence, the right of somebody. And in this respect, what we refer here to is the right to obtain a compensation from the state. This right includes beside the economical compensation, the right to know the truth about the factual circumstances in which such violations were committed. Both compensatory aspects belong to the core of the international human rights framework and are crucial aspects to understanding the necessity of a *limited popular sovereignty*.

To provide a deeper understanding of both international legal systems applicable to the Colombian state, each of them are immediately presented. The first presented scenario is the one of the *human rights framework*. Within it, the regional legal system is defined by the American Convention on Human Rights (1969). The latter Convention disposes of in its first article the obligation "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise" (American Convention on human rights, 1969, article 1). This international mandate embodied on the principle of control of conventionality requires the whole state capacity for guaranteeing every human right defined in the American Convention (Vio Grossi, 2018), and, in this sense, applies to every state branch due to its nature of "internal law of an international source" (Ferrer Mac-Gregor & Pelayo, 2019, p.40). In this regard, its breach implies negative consequences for the states which attempt to ignore their international commitments, receiving in that case, an international case law in which it may be ordered to stop the violation, if it is an ongoing one, and, or, to repair the violation, under article 63 of the American Convention (1969) —since the Inter-American Court of Human Rights is the supranational entity authorized to issue condemnatory judgments against States parties to the Inter-American Convention on Human Rights—.

The second scenario is the one relative to *international criminal law framework.* This is a more complex context due to the relevance and material competence

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of the this framework, which is exclusively focused on the prosecution of the most severe criminal offences committed by any natural person: genocide, crimes against humanity, war crimes and crimes of aggression between states, following articles 5 to 8 of Rome Statute (1998). Another relevant reason is its implications face to the international reputation of a state. This is due to the fact that the *complementary competence* of the International Criminal Court would operate de facto only if there is total impunity of the alleged criminal situations in a state party on the Rome Statute. More exceptionally, if this competence is exercised through the scope of the customary principle of universal jurisdiction (Philippe, 2006). It is worth to mention that the latter one does not even require the signature of adhesion to the Rome Statute (1998) for its exercise, remaining as one of the main tools for preventing and criminally punishing the worst violations perpetrated against international humanitarian law (ICRC, 2017).

Within this international law framework, authors like Walker (2019) would probably assume —based on what he could call *rationing sovereignty*— that *sovereignty* is reduced in favor of the interests of every member of the international community, because "what we see is a tendency towards the curtailment of the previous comprehensive sovereign authority of the states in the name of a larger collective goal" (Walker, 2019, p.57). On the contrary, authors like Grimm (2019), would clarify that the international order —far from meaning a threat to sovereignty— only implies a transference of public powers to supranational entities, e.g., European Union, United Nations, International Criminal Court, American Court of Human Rights. This last idea is also shared by the authors of this paper, because thanks to the international law system and the principle of *par in parem non habet imperium and pacta sunt servanda* every state is free to sign, adhere or withdraw any treaty, having in turn the right to be protected from arbitrariness of any other state.

In this detail, Pasquino (2019) clarifies that *popular sovereignty* as "constituent power of the people, rather than transporting onto the subject "people" the idea of the absolute power of a monocratic institution (Kingship), is instead the foundational of the framework of limited power typical of the contemporary cons-

titutional state" (p.144). With this idea in mind, the limits of popular sovereignty within a globalized context and permeated by international law is presented in the next sub-chapter. Now, following this international public law based thesis, even though there are limits for popular sovereignty, based on human rights and international criminal law frameworks, sovereignty has not delegated to supranational organizations, simply because (i) none of them have emerged through self-constitution process like a state (Grimm, 2019) and, (ii) because all of them have been created by states, from which they have received their legal order (Grimm, 2019). This far from being something negative, it is something that leads to a new concept of sovereignty in which the traditional one proposed by Bodin no longer exists. In this new conception the states voluntarily transferred their competence to supranational organizations dividing in that way their own public powers and not their sovereignty (Grimm, 2019) in order to obtain larger international security.

In addition to this, it is highly remarkable that even though states are the liable parts on international treaties, following the principle of *pacta sunt servanda,* among them also exist the possibility to withdraw the treaties to eliminate the transferred competition to the international organization following the article 78 of the American Convention (1969) and the article 127 of Rome Statute (1998) —following the two previous contextualized examples—. Nevertheless, as long as a state remains as a party to such treaties, its obligations will also remain, unless the factual assumptions for the activation of the *universal competence* occur, in case of being perpetrated by any natural person of a state which is not a party into the Rome Statute, regardless of any national or ad hoc framework devoted to prosecuting the crimes of war and against humanity. Hence, it is possible to conclude that, in fact, international public law has impacted the concept of *popular sovereignty* by limiting it in favor of the defense and prevention of violations to human rights and international humanitarian law and, in consequence, in favor of global peace.

3.1 The limits of popular sovereignty within the Colombian constitutional framework

Once this general international law framework is settled, to properly analyze the Colombian paradox caused by the plebiscite of October 2, 2016, it is necessary to briefly explain which are the limits to popular sovereignty within the Colombian constitutional framework. In this respect, based on the Colombian constitutional jurisprudence, there

"(...) it is possible to conclude that, in fact, international public law has impacted the concept of *popular sovereignty* by limiting it in favor of the defense and prevention of violations to human rights and international humanitarian law and, in consequence, in favor of global peace"

"(...) the Colombian Constitutional Court (2009; 2010) defined in its *Case Law C-588 of 2009* and *C-141 of 2010* two hypotheses of popular sovereignty violation: (i) the destruction of the constitution and (ii) the replacement of the constitution (...)"

are three limits to the exercise of popular sovereignty following the Case Law C-141 of 2010 (Colombian Constitutional Court, 2010). The first one is the *popular sovereignty* theory itself. This is since this constitutional theory divides popular power into two categories: (i) the *primary constituent power*, capable of creating a new constitution and which is out of the jurisdictional control and, (ii) the derived or *secondary constituent power*, capable of reforming the constitution through the competent entities for this matter and by the defined means to this purpose (Colombian Constitutional Court, 2010).

The second limit to *popular sovereignty* is the Constitution itself, because the latter one establishes in its article 374 that "the Political Constitution may be amended by the Congress, by a Constituent Assembly or by the people through referendum". And the third limit *is the block of constitutionality* stipulated in article 93 of the Colombian Constitution, because it integrates into the constitutional and domestic legal system every treaty on human rights and international humanitarian law. This figure turns these international treaties into enforceable norms that protect the people from arbitrariness and from human rights violations. This figure is key in introducing the limits already exposed in the first part of this chapter relative to the impact of the international law on the concept of *popular sovereignty* and which presented it as a mechanism to guarantee a larger security and justice within a globalized context.

3.2 Some scenarios of violation of popular sovereignty within the Colombian constitutional framework

After having exposed the theoretical grounds on *sovereignty* and *popular sovereignty*, this part is devoted to describing what does a violation of popular sovereignty consists of under the Colombian constitutional framework. On this detail, the Colombian Constitutional Court (2009; 2010) defined in its *Case Law C-588 of 2009* and *C-141 of 2010* two hypotheses of popular sovereignty violation: (i) the destruction of the constitution and (ii) the replacement of the constitution. In the first scenario, that is, that of constitutional destruction, the total suppression of the constitution and the constituent power that gave rise to it is required (Colombian Constitutional Court, 2009; 2010). This implies an alteration of the legal continuity and, consequently, the violation of popular sovereignty itself (Colombian Constitutional Court, 2009; 2010). In the second scenario, that is, one of a *partial or transitory constitutional substitution*, the primary *constituent power* subsists even if an alteration of legal continuity is observed (Colombian Constitutional Court, 2009; 2010).

Another hypothesis is the one presented by Higuera (2017): the "*constitutional suspension"* (p.108). According to this author

(2017), the constitutional suspension is produced, e.g., by a constitutional reform under a *state of exception*, which provides exceptional and transitory powers for reforming the constitution. These special circumstances could, in turn, lead to a threat against *popular sovereignty* because the suspension of the constitution itself implies the suspension of the *constituent power.* In sum, the previous examples represent a descendant intensity of popular sovereignty violation, in which the constitutional destruction is the most intense scenario and the *constitutional suspension* the least aggressive one, due to the transitory lapse of its effects, based on a limited temporal framework subjected to the state of exception.

4. THE PLEBISCITE OF 2ND OCTOBER 2016: A REAL THREAT TO POPULAR SOVEREIGNTY?

This section is dedicated to answering the question of whether, despite the negative results of the plebiscite of 2 October 2016, the decision of the Executive and Legislative branch of implementing a peace process with the FARC-EP guerrillas has violated the *popular sovereignty* of the Colombian people. To do so, we answer this question in a deductive and argumentative way. Based on the normative approach, the latter question can be answered from three perspectives: a) the *procedural perspective*, b) the *normative-philosophical* perspective and c) the *context-based perspective*.

From a *procedural perspective*, the answer to this question is negative, because there has not been any kind of infringement of popular sovereignty. This is due to the fact that the plebiscite of October 2nd, 2016, is not called to configure any of the hypotheses describing any violation of popular sovereignty: (i) the *constitutional destruction*, (ii) the *constitutional replacement* or, (iii) the *constitutional suspension* during a state of exception. This is because the plebiscite, unlike the referendum, aims to consult the people about a desired decision of the executive branch and it has not the aim to reform the constitution. This, since the exclusive accepted means for that purpose are: the referendum, the Constituent Assembly proposed by the people and, the legislative act proposed by the Congress, following article 374 of Colombian Constitution.

From a *normative-philosophical perspective,* the answer to the query is also negative because of the nature of the agreement reached with the FARC-EP, since the latter was dedicated to guaranteeing highly relevant matters, such as peace, justice, truth, and reparation for the victims of the conflict, rights that can be catalogued as part of the sphere of the undecidable for the majorities, when seen from a substantive perspective of democracy (Ferrajoli, 2014, p.23-25). In other words, this set of rights belongs to the core of the l*imitation of popular sovereignty.* This is due to the implicit and explicit limits set by the Colombian Constitution, which, on the one hand, incorporates into national law any treaty or convention on human rights and international humanitarian law —which cannot be limited under any state of exception — through the figure of the block of constitutionality, and; on the other hand, which obliges the President to comply with the Constitution and the law in order to guarantee the rights and freedoms of the Colombian people, following Article 188 of the Colombian Constitution and Article 1 and 2 of the American Convention on Human Rights (1969). On this point, when asked about the binding force of the results of the plebiscite, Professor Luigi Ferrajoli (2016) explained that, in Colombia,

peace, asides from being a supreme political value that stands as a precondition for civil coexistence, is a fundamental right that is constitutionalized. Therefore, the authorities did not need a majority consensus to guarantee this right, since its implementation is the primary task of the state (Ferrajoli, 2016).

From a *context-based perspective*, there are two facts that must be highlighted: the impact of the *castrochavismo discourse* on the results of the plebiscite of 2nd October 2016 and the further deliberative processes headed by the Colombian Government and the FARC-EP with the opposers to the Peace Agreement and different social actors. On the one hand, the *castrochavismo discourse* played a determinant role in the negative results of the plebiscite of 2nd October 2016, because this political campaigned was mainly built on fake news around the Peace Process and its implications. The main arguments —rather fallacies— used by the opposers to the peace process were focused on three axes: (i) the direct allusion to the Castro and Chavez regimes in Cuba and Venezuela, which serve as a referent of dictatorships in Latin America (Cable Noticias, 2013); (ii) the alleged impunity of the crimes committed by the ex-combatants of the FARC-EP provoked by the supposed future inobservance of the Peace Tribunal (Cable Noticias, 2013) and; (iii) the alleged destruction of the traditional values of the family provoked by the feminist and intersectional perspective contained in the Final Agreement (González, 2016).

Regarding the first argument, the opponents lied when they argued that the Peace Agreement was tantamount to handing over power to the threat of *castrochavismo* embodied in the supposedly imminent dictatorship of the FARC-EP. This was because they were given and agreed to the possibility of laying down their arms and forming a political party —where they could argue instead of fighting—. Despite the fake news surrounding this particular point of the agreement, the opponents ignored the fact that, in a democratic context, the *Commons Party*[6] must be defeated in the elections. However, it must also be recognized that such discourse stemmed from the fact that the latter political party was guaranteed five seats in the Upper Chamber of the Congress of the Republic[7] (which has a total of 108 senators) and another five seats in the Lower Chamber of the Congress of the Republic[8] (which has a total of 188 representatives), during the 2018-2022 and 2022-2026 legislative periods, even if such party did not reach the minimum number of votes required for this purpose. Furthermore, within their strategy, the opponents omitted to specify that the seats guaranteed to the new Communes Party do not exceed 5% of the total number of senators, nor 3% of the representatives to the Chamber, which is a tiny figure with respect to the level of representation of the majority political forces. Likewise, those who were not satisfied with the Peace Agreement forgot to mention that it did not include reforms in the economic model, nor in the system of checks and balances between the branches of public power.

In relation to the second argument, the opponents to the Peace Agreement used

6. Comunes (Commons) is the political party created in 2017 by the former guerilla FARC-EP.
7. Cámara Alta (Upper Chamber): Senado de la República de Colombia.
8. Cámara Baja (Lower Chamber): Cámara de Representantes.

the idea of impunity as their main discursive tool, ignoring the fact, that the original agreement proposed a Tribunal composed by international judges to guarantee larger impartiality. Another ignored fact was that the General Agreement came as a result of almost four years of discussions with the support of the two guarantor states, namely, Norway and Cuba. Finally, the most ignored fact regarding the second argument was the one related to the ontology and deontology of the whole *System of Truth, Justice, Reparation and not Repetition* designed by the Peace Agreement. In this sense, that system was created in order to comply with the international obligations contained in the Rome Statute (1998) of investigating and prosecuting the worst criminal acts committed during the Colombian armed conflict. All of this, with the aim of avoiding the activation of the complementary competence of the International Criminal Court.

With regard to the last argument, the opponents used the values of a very conservative society to present lies as truth. They claimed that an intersectional approach, which had been introduced with the intention of providing a more adequate concept of justice compatible with feminist and LGTBQ+ approaches (González, 2016), would be taught in schools in order to influence children's sexuality. More explicit, opponents suggested that this intersectional approach would turn children into homosexuals. This statement is nothing but a *non sequitur* and a *straw man fallacy*, where the conclusion drawn simply has no bearing on the preceding premises. Nevertheless, thanks to all these combined factors, this discredit campaign accomplished what its manager wanted: "to provoke people to vote with anger" (El País, 2016B, p.1) in order to obtain such results. It is thus quite plausible to say that to a certain extent the Colombian people were manipulated by this campaign.

From a *normative perspective*, this campaign of manipulation can be interpreted as the factual basis for the lack of consent of the Colombian people, who voted on the basis of a false idea of the consequences of the plebiscite. This explains the narrow margin of 0.79% with which the negative option prevailed over the positive one. An impressive fact is that, according to the result, the areas affected by the conflict voted in favor of the plebiscite, while the unaffected areas voted against it (National Civil Registry, 2016). The last argument that must be kept in mind in relation to this paradox is the deliberati-

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"(...) despite the shameful demagogic campaign and even if the people answered "NO" in the plebiscite for a truly minor difference of 0,79% (National Registry of the Civil status, 2016), thanks to this last moment deliberative process after the ballots, the Final Agreement was doted on more legitimacy from a democratic and pluralistic perspective (...)"

ve process headed between the defenders and opposers to the Peace Process, immediately taken after the negative response of the plebiscite of the 2nd of October 2016. This last fact is crucial to contradict the alleged lack of legitimacy that the opposers —even nowadays— attribute to the peace process, because due to this renegotiation, some modifications were introduced into the original agreement, e.g., the elimination of international judges as members of the Peace Tribunal, among others. This issue was analyzed in detail by the Constitutional Court (2017), in *Case Law C-160 of 2017*, in which it was concluded that after the plebiscite:

(i) There were broad scenarios of citizen participation (direct, broad and democratic) and renegotiation of the Peace Agreement, such as exercises of the right to public assembly and demonstration (e.g. the protests that took place on October 5, 12 and 20, 2016), and good governance practices materialized in different meetings between promoters of the initiatives against and in favor of the Peace Agreement, as well as meetings with religious communities, visits of civil society delegations to the negotiating table, political control debates in the Congress of the Republic with the participation of civil society sectors of both tendencies, declarations of support for the Peace Agreement by 17 departmental assemblies and 16 municipal councils;

(ii) Substantial modifications were made to the Peace Agreement, based on the adoption of some observations and objections from the promoters of the initiative against the Peace Agreement, the victims, social movements and organizations, which demonstrated respect and interpretation in bona fides of the results of the plebiscite (such as the restraint of different references to the gender approach and the LGBTQ+ community in the text), precisions to the temporal limit of operation of the Special Jurisdiction for Peace and the exclusion of foreign Magistrates, variations around those aspects of the Peace Agreement that integrate the *block of constitutionality* and its binding force) and;

(iii) The open and democratic process of endorsement culminated with a broad debate in the Congress of the Republic, as an organ of popular representation, which issued Legislative Act 01 of 2016 for these purposes.

In sum, despite the shameful demagogic campaign and even if the people answered "NO" in the plebiscite for a truly minor difference of 0,79% (National Registry of the Civil status, 2016), thanks to this last moment deliberative process after the ballots, the Final Agreement was doted on more legitimacy from a democratic and pluralistic perspective, because it integrated every possible position regarding this topic: the one of the FARC-EP Group, the victims of the conflict, the opposers to the peace process and naturally, the Colombian state. Despite of these facts, the decision of implementing the Peace Agreement regardless of this negative answer in the plebiscite should be positively highlighted. Even though it is considered that the National Government and its coalition in the Congress of the Republic underestimated the risks of submitting the implementation of the Peace Agreement to a plebiscite, what happened after the unexpected negative results, allowed and promoted rapprochements with sectors of the civil society that were strongly opposed to the peace negotiations enabling to endorse a new Final Agreement that materialized the right to peace.

5. CONCLUSIONS

From a normative perspective, it can be concluded that international law has impacted the traditional concept of popular sovereignty, limiting it to protect and guarantee human rights and prevent violations against them and against international humanitarian law. Regarding the case analysis, it can be concluded that due to the legal nature of the plebiscite, which was unable of reforming or altering the constitution, there was no violation of popular sovereignty, for Colombians did not face a destruction, a substitution, nor a suspension of the constitution.

From a philosophical perspective, it can be concluded that the decision of implementing the Final Agreement despite the negative results on the plebiscite was the only acceptable decision, because even if its implementation seemed to interfere or collapse with other liberties (e.g., right to vote and its binding effects), the apparent violation of this liberty was admissible, first, because the latter one does not belong to sovereignty's core; and second, because with it, a worse violation of rights could be avoided while guaranteeing a larger benefit for the less advantaged ones: the victims of the armed conflict. Hence, implementing the peace process was the only possible path to guarantee international and constitutional compliance and larger benefits and rights to the Colombian society itself.

In this sense, it is worth to mention that the Final Agreement, far from affecting popular sovereignty, thanks to the new provided spaces of participation, indeed, succeeded in gathering and compacting multiple perspectives on the main concerns discussed with the FARC-EP. This re-negotiated Agreement was the one to be politically endorsed by the competent authority: The Congress of the Republic of Colombia. Nevertheless, it is also worth mentioning that even without this re-discussion after the negative results of the plebiscite, the Final Agreement achieved between the Colombian Government and the FARC-EP was and still an instrument to materializing the constitutional right to peace (Colombian Constitution of 1991, article 22). Therefore, the legislature and the executive were constitutionally authorized and legitimized to implement the agreement because it would guarantee other rights that were outside the decision-making spectrum of the electoral majorities, namely the rights of the victims. ◆

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