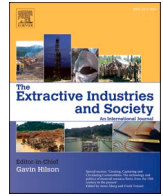




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Original article

Measures of *bad faith* in Latin America: Governments and multinational extractive companies 1982-2020

Guillermo Andrés Duque^{a,*}, Diana Marcela Pérez^b, Cristina Del Prado^c^a King Juan Carlos University, Calle Salitre 28, 1-7, ZIP Code: 28012, Madrid, Spain^b King Juan Carlos University, Calle Amparo 10, 1-7, ZIP Code: 28012, Madrid, Spain^c King Juan Carlos University, Paseo de Los Artilleros s/n, URJC Vicálvaro Campus, Office 090, ZIP Code: 28028, Madrid, Spain

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ABSTRACT

This paper analyzed a possible 'Ethics of freedom' in the relations between extractive companies and Latin American states. The research supports an original theory on the origin of global injustices that focuses on developing countries as ethically responsible ontological units. The empirical case studies of the relations between Multinational Companies and the Latin American States are taken from a qualitative methodology that analyzes fifteen instances of injustice judged by the Inter-American Court of Human Rights between 1980 and 2020. Does the article ask: How have ethic concepts such as bad faith, L'angoisse de la liberté, selfawareness, Being-in-itself, and Being-for-itself been applied in relations between Latin American companies and governments? The authors take, hypothetically, States, companies, and international organizations as ontological units of a "global society." While other research tends to focus on the responsibilities of extractive companies, this article concludes that distortions in the Ethics of States, such as the bad faith of governments in developing countries, largely explain situations of injustice. Accordingly, the article concludes that it is possible to argue new criminalities of bad faith given that Latin American Governments are morally responsible for crimes prior to and during the establishment of extractive companies between 1982 and 2020.

1. Introduction

The present paper is the result of a research project that sought to investigate how to define basic ethics in today's relations between States and Multinational corporations, taking Latin America as a 'social laboratory' and Human Rights as a legitimate moral benchmark for these agents. In order to do this, we are going to use an existential approach to ethics to analytically describe the basis of actions of States and other international agents and how, from this ethics, the actual globalized arena of hierarchical international relations may be understood. Another approach to an ethics of states may be developed, which is the goal of this article.

In the present article, it is pointed out that the interdependence brought about by globalization causes States, corporations, and international agencies to become locked in a kind of 'finger trap,' in such a way that the more one tries to free itself from another, employing sanctions, aggression and hostility, the tighter the link between those international actors become, binding them even closer together; this

leads to the need for ethical agreements between the parties involved to share decision-making criteria in order to avoid mutual harm. States, corporations, and international agencies in Latin America today are not isolated entities fighting for their own interests but actors whose mutual needs generate ethical agreements that we would like to elucidate.

The hypothesis assumes that, under the current conditions of interdependence brought about by globalization, an ethics of freedom could be developed from relations between international agents, offering an alternative horizon for emancipation, for example, of Latin America. Fig. 1 and Tables 1 and 2.

Methodologically, the article resulted from three years of philosophical documentary review, in which the libertarian tenets of Jean-Paul Sartre were placed in the context of a hypothetical dialogue with contemporary authors such as Jürgen Habermas (2010), Cristina Lafont (2019), Thomas Pogge (2005), Slavoj Žižek (2015) and David Harvey (2020). By systematizing and correlating different proposals, the arguments of Existentialist philosopher Jean-Paul Sartre were brought up to date.

Abbreviation: IACHR, Inter-American Court of Human Rights.

* Corresponding author.

E-mail addresses: guillermo.duque@urjc.es (G.A. Duque), dianamarcela.perez@urjc.es (D.M. Pérez), cristina.delprado@urjc.es (C. Del Prado).

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In the following pages, the reasoning strategies of Sartre, as applied by the French thinker to explain the freedom of the individual are adapted to construe the details of an ethics between States in the 21st century¹. Using the concept of the State, as adapted from Sartre's concept of man, a subsequent explanation of the State's freedom of interaction with other States will allow us to describe how 'intersubjectivity' functions in international relations. For Sartre, international relations rest ontologically on two premises, the data are material facts that make up the foreign policy of States, namely, international disputes, diplomacy, treaties, etc., and also in the manner in which they interact with other international agents, by placing themselves somewhere between two fundamental extremes: that of agents whose responses are based almost entirely on 'interest' or *prudence*. It is inside these parameters of choice that a contemporary ethics of international relations is going to be proposed.

On this basis, an ethics of international relations would include three main characteristics: first, a concept of the State as an essentially free ontological unit; secondly, the recognition that each actor enjoys the freedom of choice as regards its actions in the world and its interaction with others; and third, the acceptance of the fact that the freedom of each actor is restricted by the permanent scrutiny of other States and their agencies and corporations, as independent social actors.

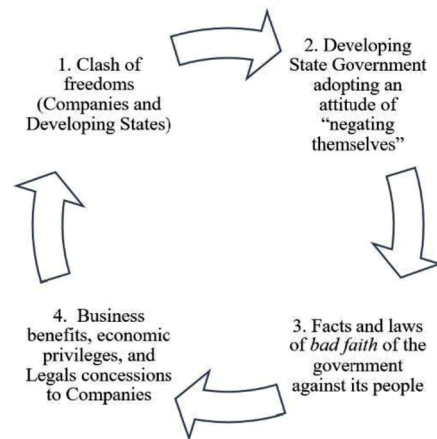
However, this investigation correlates existential theoretical developments with empirical evidence to prove its premises and reach a conclusion that may be helpful to describe real-life scenarios in contemporary international relations. The empirical evidence of our investigation focuses on the application of the concept of *bad faith* in sixteen specific instances in Latin America, on four types of international crimes against human rights brought before the Inter-American Court of Human Rights, IACHR². Although this is an article on Sartrean philosophy, the juridical evidence is the most significant contribution of this research: we demonstrate with empirical data the applications of Sartrean '*bad faith*' in international relations that have shaped globalization, in specific cases.

Our methodological approach is directed to the most critical cases to make visible the sensitive points to be transformed for the construction of an ethics international relations of interdependence based on freedom. The fifteen cases analyzed, consequently, are selected using two principles:

- 1) Cases studied are exclusively those where facts in which the deviation of the conduct of the rulers of Latin American States for the benefit of extractive business projects was proven through an exhaustive judicial investigation at the international level.

¹ We implemented a qualitative dialogue methodology between Jean-Paul Sartre and contemporary authors to construct a conceptual framework: freedom/sovereignty and its possible relationship with the global ethics of interdependence.

² We analyzed sixteen binding judgments of the Inter-American Court (1993-2014), in addition to an extensive bibliography of context (secondary sources and press) on the facts that bind multinational companies in each case. The classification and study of data explored the correlation between the theoretical framework of '*bad faith*' and twelve instances of the crimes proven by the Inter-American Court (See Table I). In the final of the research, we studied four more judgments (1993-2020) to verify possible reparations or 'legal corrections' of the bad faith (See Table II). The scope of the empirical research is limited to juridical evidence involving Human rights; it doesn't involve the environmental or political impacts of extractivism *per se*. Neither is the subject of the article to evidence the influence of industrialized countries in Latin American countries' sovereignty; the conclusion of the article runs against this idea. The article focuses on the construction of an ethics of international relations, which includes Latin America as a "Social laboratory," so the economic interest of Latin American nations is not at stake, but their general ethical behavior towards their population and international agents. Human rights are what is at stake, not natural capital.



Author: 2022

Fig. 1. The process of global injustice through Bad Faith. Author: 2022

- 2) The cases were selected because they share these three elements: a) extractive companies. b) natural resources, primarily minerals. c) indigenous populations living in the territories where extractive projects would be developed and in which it was judicially proven that their human rights had been violated.

The period analyzed corresponds to the beginning of the functions of the Inter-American Court, officially on July 18, 1978. The year 1980 refers to the first antecedent of the first case investigated in which the two previous factors converge. For its part, the closing date, the year 2020, to the last legal action taken by the Inter-American Court in the last case in which the two previous factors are also configured.

The research proposed to support the need for ethics in relations between States and extractive companies through a study of anomalous cases where deviations in the moral conduct of Latin American governments concerning the obligation to be consistent with their sovereign interests are proven. The premise that guides the selection of cases indicates that an analysis of moral anomalies, such as behaviors of '*bad faith*', allows us to accurately identify the specific points to build an ethic of freedom in international relations.

This does not mean that international relations are characterized, in general, by the immoral behaviors that we analyze here. Therefore, the selection of the anomalous cases does not intend to generalize or determine the nature of the ethical relations between companies and States.³ What is sought with this analysis of extreme cases is to affirm the possibility of the emergence of an interrelated set of norms represented by human rights, that is, to confirm a set of rules that prevent these situations from recurring.

The results of this analysis of an ethics of international relations are divided into three sections. The first introduces elements that make up the notion of 'global society', presenting an analytical description of the world stage as a space for intersubjective encounters between States,

³ We can recognize multiple cases in which relations between extractive companies, for example, mining companies, have contributed to the development of infrastructure and the progressiveness of human rights. This idea is demonstrated, for example, by the study by Juana Kuramoto, published by CLACSO, which highlights how companies such as Newmont, Noranda, Anglo American, Doe Run, Cyprus Amax, and BHP (Kuramoto, 1999 p. 5) have undertaken conversion actions towards cleaner technologies with a positive impact on local communities in Peru (Kuramoto, 1999, 30). This paradigmatic study on the positive impacts of mining portrays the case of Minera Yanacocha S.A, located in Cajamarca, a department located in the country's northern highlands (Kuramoto, 1999, 39).

Table 1
Cycle of injustice and Bath Faith in Latin America.

#	Extractive company and Country of majority capital	Natural Resource	Proven facts of <i>bad faith</i> of the government against its own people					Business and economic privileges to companies		
			Judged guilty	Years of the illicit	Rulers' decisions based on <i>bad faith</i>	Number of Victims	Victim Community	Years of the benefit	Legal concession	Hectares
1	Suralco-Alcoa (United States)	Bauxite	Government of Suriname	1987-1988	Arbitrary detention and torture Massacre Death sentence without reason Being forced to dig their own pit	20 7	Atjoni and Tjongalangapassi Maroons peoples	1990-1999	Suralco and BHP Billiton building on the north bank of the Suriname River of the Atjoni jetty at the Brokopondo Reservoir.	170 km2
2	SOLCARSA S.A of Kumk Yung Co (South Korea)	Wood	Government of Nicaragua	1995	Violation of the right to prior consultation with indigenous community Pressure to sell and give up demand Concession of indigenous lands to private companies	300 / 400	Mayagna Community (Sumo) village of Awas Tingni	1996	Concession to exploit Roundwood in favor of the company Sol del Caribe S.A. in the ancestral forests of the indigenous people Awas Tingni	62,000 hectares
3	LAMI Consortium: Lahmeyer Int., International Engineering and Motor Columbus (Germany, United States and Switzerland)	Energy	Government of Guatemala	1982 1987	Grenade attack by members of the army Abuse, rape and murder of children and women Massacre Disappearance of bodies in 22 graves Harassment of survivors by state agents	268 317	Aldea Plan Sánchez Municipality of Rabinal	1983 1985	The flooding of the Chixoy Hydroelectric Dam begins, destroying ten villages in the north of Rabinal that had to be relocated. The resources received from the Inter-American Development Bank, US\$3.8 million, for land purchases were spent on infrastructure contracts (Tunnel Repair)	14,000 hectares
4	Florida Agricultural Corporation (United States) Livestock Capital Group Inc. (United States) Agricultural Development Inc. (United States)	Livestock	Government of the Paraguay	1986	Sexual exploitation Servitude status Forced displacement Inaccessible to health services, water and sufficient food Concession of indigenous lands to private enterprise	319	Yakye Axa Indigenous Community	1998	Declaration of "non-expropriation property" to the Ranches Loma Verde and Maroma for the benefit of the three U.S. companies, in turn, was rented to Torocay S.A.	18.189 Hectares
5	Kansol and Roswell Company S.A. (Germany)	Cattle/ Petroleum	Government of the Paraguay	1936-1991 1991	Condition of servitude and forced displacement Delay sub judice	407	Sawhoyamaxa Indigenous Community	1998	Declaration of "non-expropriation property" of the estates No. 16786 and 16784 of the german businessman Heribert Roedel	14,404 hectares
6	Jin Lin Wood Industries Ji Sheng/ NV Lumprex. Lumprex and Tacoba/ Fine Style (China) Golden Star Resources (Canada)	Roundwood	Government of Suriname	1960 1996	Forced displacement by construction of Afobaka dam Inaccessible to health services, water and sufficient food in transmigration villages	(>300)	Saramaka Village	1997-2003 1996-2004	Concession of ancestral territory to Chinese company NV Lumprex and Tacoba since 1997 Title of mining operations in Brokopondo since 1996 to Golden Star Resources (Canada) since 2004 transferred the	150,000 hectares 170 km2

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Table 1 (continued)

#	Extractive company and Country of majority capital	Natural Resource	Proven facts of <i>bad faith</i> of the government against its own people					Business and economic privileges to companies		
			Judged guilty	Years of the illicit	Rulers' decisions based on <i>bad faith</i>	Number of Victims	Victim Community	Years of the benefit	Legal concession	Hectares
					Timber and mining concessions to private companies in Matjau territory				concession of Rosebel mine to Imgold (Canada) from the south of Paramaribo to the reserve of Brokopondo, including Matjau territory	
7	Eaton and CIA (United States)	Livestock	Government of Paraguay	1991	Militarization and inability of the Community to access your territory	268	Indigenous Community Xákmok Kásek	2000	Recognition of the private title for Roberto Carlos Eaton Kent and guarantee of "non-expropriation property" to the Salazar Livestock Ranch in Xákmok Kásek Indigenous Territory	10,700 hectares
					Nutritional, medical and medical vulnerability Health			2002	Sale of part of the land claimed by the indigenous community to Mennonite Cooperative Chortitzer Komitee.	3,293 hectares
					Condition of servitude and forced displacement			2008	Rights of private administration to the Estancia Salazar to be declared a Nature Reserve	
				2008	Act No. 11.804 was issued on January 31, 2008, declaring the ancestral lands of the Indigenous Community Xákmok Kásek as a protected wilderness area of private management					
8	Compañía General de Combustible, CGC (Argentina) Petrolera Argentina San Jorge S.A (Argentina)	Petroleum	Government of Ecuador	1999	Refusal to carry out prior consultation with the Kichwa community to start oil operations	1200	Kichwa First People of Sarayaku	1996-1999	Exploration and exploitation contract for 20 years oil without prior consultation, free and informed between Petroecuador, CGC, and Petrolera Argentina San Jorge S.A, in the territory of the Sarayaku, Jatun Molino, Pacayaku, Canelos, Shaimi, and Uyuimi indigenous peoples.	200.000 Hectares
				2000	Bribes pressure on Sarayaku's Kichwa community by CGC proxy				The company opened seismic trails in primary forests enabled seven heliports, destroyed caves, water fountains, and underground rivers in Sarayaku territory. In 1999 Chevron Burlington, bought	200 km
				2001	False negotiation of Daymi Service S.A (Social Workers) with indigenous leaders to allow the entry of CGC			1996-2002		

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Table 1 (continued)

#	Extractive company and Country of majority capital	Natural Resource	Proven facts of <i>bad faith</i> of the government against its own people					Business and economic privileges to companies			
			Judged guilty	Years of the illicit	Rulers' decisions based on <i>bad faith</i>	Number of Victims	Victim Community	Years of the benefit	Legal concession	Hectares	
				2001	Agreement on Military Security Cooperation which made it impossible for the Community to accede to your territory				2002	the Argentine Oil Company San Jorge Progress of 25% in the seismic prospection of the CGC in Block 23 destruction of primary forests, affecting the community's water consumption; felled trees and plants of significant environmental and cultural value and subsistence food.	633,425 km
				2003	Illegal and arbitrary detention of indigenous Kichwa Attack with machetes and stones by march of Kichwa Indians against the concession to the CGC and Chevron Burlington	5 120			2003	An advance of 29% into the territory of Sarayaku, the company CGC loaded 467 wells with approximately 1433 kilograms of explosive "pentolite."	
9	Lahmeyer (Germany), Motor Colombus (Switzerland) International Engineering Col. (United States) Nelloiter (United States) QUASIM (Italy) Lamarre Valois Int. Limitee (Canada)	Energy	Government of Guatemala	1980	Massacre in the chapel of Río Negro Extrajudicial execution	9 2	Achi Maya villages and other communities of Rabinal	1980	First installation work of the reservoir in Rabinal. The resettlement scheme submitted by Guatemala to the World Bank in 1977 was circumvented with the costs involved.	14,000 hectares	
					Exodus of the survivor to Colonia Pacux in unsanitary conditions	17 families		1981	The Inter-American Development Bank and Guatemala sign a contract for 3.8 million to purchase and relocate land.		
				1982	Xococs Village Massacre Rapture of children and servitude Forced displacement	68 17 295		1982	Guatemala receives US\$ 72 million in financing from the World Bank, requiring proven land ownership. The survivors of the massacre in the village of Xococ were displaced to the Pacux colony created with IDB and W.B. resources.		
				1982	Looting and accusation of subversion Pacoxom Hill Massacre of women's Massacre in Cerro de Pacoxom children and babies Rape of under-age	192 70 107		1983	Guatemala receives a second credit from the Inter-American Development Bank for US\$ 45 million, partially for the purchase and relocation of land.		
				1982	Massacre in "Los Encuentros" with previous torture on fire	79		1983	Flooding of the Chixoy hydroelectric dam it devastates Rio		

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Table 1 (continued)

#	Extractive company and Country of majority capital	Natural Resource	Proven facts of <i>bad faith</i> of the government against its own people					Business and economic privileges to companies		
			Judged guilty	Years of the illicit	Rulers' decisions based on <i>bad faith</i>	Number of Victims	Victim Community	Years of the benefit	Legal concession	Hectares
					Enforced disappearance	15			Negro and Encuentros, Agua Fría, and eight other villages burned by the massacres that made the purchase and relocation of land unnecessary. The formal start of work of the Chixoy Hydroelectric Plant	
				1982	Massacre in "Agua Fría" Grouped in a house that the army shoots and sets on fire	92		1985		
10	Endesa (Spain)	Hydroelectric	Government of Chile	2001	Arrests and convictions for illicit terrorist association of activists of NGOs defending the Mapuche	5	Mapuche people	2001	Endesa's individual agreement for 10 million Chilean pesos with Mapuche leaders Nicolasa and Berta Quintremán. The structure of the Ralco del Alto Bio-Bio Hydroelectric Power Plant reaches 40%	3,500 hectares
				2001	Arrest of <i>Lonkos</i> Mapuche indigenous authorities on charges of terrorism	2		2002	Final concession to Endesa for the Ralco del Alto Bio-Bio Hydroelectric Power Plant ratified by the Supreme Court Public bankruptcy of the alliance between leaders and NGOs. Negotiations and final agreements were signed with the autochthonous people in resistance under a "voluntary agreement" scheme.	
				2002	<i>Werkén</i> Mapuche indigenous authority convicted on charges of terrorism	1		2003		
				2002	Violation of the right of defence of the eight detainees to questioning secret witnesses					
				2010	Amendment to Law 18.314 (Law Anti-terrorist) eliminating the presumption of innocence to "legalize" captures.	8		2004	Filling and the formal start of the Ralco Hydroelectric Plant	
11	BG Group plc (United Kingdom)	Petroleum	Government of Honduras	2007	Murder of indigenous leader who complains of land encroachers	1	Garífuna Community of Punta Piedra in Iriona, Department of Colón	2008	Start the dam hydroelectric "Los Chorros" on the Sico River and exploitation contract for Korea Electric Power Corporation.	800 hectares
				2010	Threats and usurpation of indigenous land Garífuna Community as denounced by Paulino Vega					
				2014	Violation of the right to prior consultation with Communities Punta Piedra and Cosuna for mining exploration	6000				

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Table 1 (continued)

#	Extractive company and Country of majority capital	Natural Resource	Proven facts of <i>bad faith</i> of the government against its own people					Business and economic privileges to companies			
			Judged guilty	Years of the illicit	Rulers' decisions based on <i>bad faith</i>	Number of Victims	Victim Community	Years of the benefit	Legal concession	Hectares	
				2011	Creation of nature reserve National Park "Sierra Rio Tinto" agreement 007-2011 of the National Institute of Forest Conservation and Development	5000			2013	Start of works road to "El Río Tinto Negro" on land usurped to Paulino Vega in Punta Piedra Community Garifuna Exploration contract to B.G. Group transferred in 2017 to Azipetrol and CarbiX (U.K.) on indigenous lands of the Garifuna Community of Punta Piedra and the maritime area of Mosquitia.	
									2014	Start of B.G. Group's oil explorations. The Mining Corporation CAXINA S.A. received the mining right of exploration No. 105/12/2014 to develop activities in the mining concession "Punta Piedra II." Concession for the construction of hydroelectric plant "Los Chorros" awarded to the Mercantile Company "Corporación HG."	
12	BHP Billiton (Australia) Suralco (United States)	Bauxite	Suriname	1975-1980	Subdivision of indigenous territory and sale of titles to third parties within the framework of the tourism project "Tuinstad Albina"	2026	Kaliña and Lokono peoples	1997-2009	Start of mining activity in Wane Kreek to extract Bauxite by Suralco – BHP Billiton based on a concession granted on January 28, 1958, and due in 2033. In 2009, Bauxite was considered depleted on granted land.	100 and 144 hectares	
				1986	Declaration of Wane Kreek Nature Reserve in indigenous territory to prohibit economic activities of the Kaliña and Lokono Peoples	1300			1999	Completed road construction to access the mine and transport bauxite, timber, poaching, sand mining, gravel, and kaolin.	
									2000-2009	Concession of titles to third companies for the building of holiday homes in the territory of the Kaliña and Lokoño autochthonous peoples.	
				2006	The State and the Suralco Company distributed the area and prohibited the passage of native communities in the	1300			2007	Start of installation in Pierrekondre of a gas station and a shopping mall	
									2008	Construction (unfinished) of	

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Table 1 (continued)

#	Extractive company and Country of majority capital	Natural Resource	Proven facts of <i>bad faith</i> of the government against its own people					Business and economic privileges to companies		
			Judged guilty	Years of the illicit	Rulers' decisions based on <i>bad faith</i>	Number of Victims	Victim Community	Years of the benefit	Legal concession	Hectares
					so-called "Wane 1 and Wane 2 sections"					Marijkedorp (Wan Shi Sha) in of an aircraft hangar and a hotel/casino

Sources: Inter-American Court of Human Rights (1993; 2004; 2005a; 2006; 2007; 2010b; 2012a; 2012b; 2014; 2015a; 2015b). Authors 2022

extractive corporations and juridical agencies. The second section refers to the elements that define the logic of self-restraint in terms of what is understood as the 'regulated anarchy' of the international scene⁴. In the guise of '*bad faith*', the last section presents one of the most recurrent moral anomalies in the ethical performance between States. The concept of Bad faith will allow us to propose a shift in the paradigm of responsibility for the commission of crimes against human rights, from rich and powerful countries to some Latin-American States. This last section uses the concept of '*bad faith*' as a 'reverse ethical principle' in international relations.

This theoretical reversal opens up multiple practical possibilities, given that if we assume that rich states could not be legally punished for imposing their interests in the context of a struggle between freedoms or conflict of sovereignties; it is possible, instead, that governments of poor States could be sanctioned for providing legislation as a means to achieve the goals of those rich States and Companies, against their sovereignty. A government can be condemned to exploit its citizens through administrative measures and laws promoting inequality or impunity in the face of violent acts such as the massive displacement of populations, extrajudicial executions, and massacres.

Even in the face of all this, we will demonstrate that the practice of freedom at all levels can produce a globalized State ethic based on their commitment to the sovereign interests of the peoples. To achieve this we will explain that, even while no type of blame justifies repressive legal actions towards rich nations for generating a system that responds to their interests, the 'burden of proof' may shift to the governments of poor states. Since, in their anxiety to satisfy particular interests, they alter with 'false legal shortcuts' the welfare of their fellow citizens against the normative benchmark that human rights represent.

2. An 'existentialist' ethic of states?

Jean-Paul Sartre did not devise a systematic, finished theory of ethics, much less one applied to international relations. However, at the end of *Being and Nothingness* he announced a future work on the subject, but that was never forthcoming (Arias, 2006). At the core of his philosophical, literary and drama oeuvre is to be found the problem of man and his freedom, as well as the individual's choice in relating to other subjects, i.e., intersubjectivity; and that is an evident ethical concern.

What leads us to Sartre is the possibility of understanding his Existentialist approach to ethics against the backdrop of issues having to do with death, freedom and interdependency, and applying such an approach to today's international relations, that can be equated with the social scheme envisioned by Sartre when he developed his theoretical notions. Inter-State ethics, based on Sartre's thought on the individual,

⁴ In the theoretical framework of international relations, we are influenced by neo-realist authors such as Kenneth Waltz (2018) and Susan Strange (2015). Like these authors, we consider that an international regime that governs all fields of activity is not possible; we try to go beyond that 'regime topic' to analyze the facts of *bad faith* as an ethical anomaly of the states as ontological units.

Table 2

Exemplary collective reparations Inter-American Court of Human Rights 1993-2020.

Year	Case	Transformative Repair	Costs imposed for reparation US\$
1993	<i>Aloeboetoe v. Aloeboetoe Suriname</i>	Education	\$453,102.00
2001	<i>Awes Tingni v. Nicaragua</i>	Educational infrastructure, health, and land restitution	\$50,000.00
2004	<i>Massacre de Plan Sanchez v. Guatemala</i>	Health, housing and education, life project	\$11,204,530.00
2005	<i>Yakye Axa Indigenous Community v. Paraguay</i>	Health, food, water	\$1,010,000.00
2005	<i>Moiwana v. Suriname Community</i>	Culture, health, housing, and education	\$2,935,000.00
2006	<i>Sawhoyamaya v. Paraguay Indigenous Community</i>	Education, housing, agricultural projects, health and water	\$1,385,000.00
2007	<i>Saramaka v. Saramaka Suriname</i>	Education, housing, health, water, and electricity	\$765,000.00
2010	<i>Chitay Nech and Others v. Guatemala</i>	Culture, participation, and political representation	\$386,000.00
2010	<i>Xákmok Kásek v. Paraguay Indigenous Community</i>	Land restitution, culture, education, and water supply	\$985,000.00
2012	<i>Kichwa Native People of Sarayaku v. Ecuador</i>	Environmental rights and culture	\$1,308,000.00
2012	<i>Río Negro v. Guatemala Masacres</i>	Culture Health and education infrastructure	\$6,595,000.00
2012	<i>Massacres of El Mozote and Lugares aledaños v. El Salvador</i>	Health, education, electricity and water infrastructure	\$17,700,000.00
2015	<i>Garifuna Community of Punta Piedra and its members v. Honduras</i>	Environmental rights and culture	\$1,510,000.00
2015	<i>Case of Kalina Peoples and Lokono v. Suriname</i>	Right to collective property and participation in public affairs	\$1,033,141.65
2020	<i>Lhaka Honhat v. Argentina</i>	Right to water	\$2,000,000.00
Total			\$49,319,773.70
		exemplary collective repairs	

Author: 2022.

would be made up of three fundamental elements: first, the concept of the State, as adapted from Sartre's concept of man; second, a subsequent explanation of the State's freedom of choice to act in the world, and interact with other States; and third, a description of how 'intersubjectivity' functions within States, taken as interdependent social agents.

To be able to talk about the concept of man, we must start with Sartre's considerations on consciousness. When Sartre refers to the individual's consciousness, his starting point is not, as in the case of Descartes, the notion of reflective consciousness, but a pre-reflective *cogito*. He thus avoids the pitfall of solipsism since pre-reflective consciousness is 'transcendent', in the sense that its object is beyond it, and this object is in fact, the thing at which it aims (Sartre, 1989). He explains it as follows: "All consciousness, as Husserl has shown, is a consciousness of something. This means that there is no consciousness that does not occupy the place of a transcendent object, or – to put it differently – that consciousness has no *content*" (Sommerlattertre, 2020).

The same level of consciousness can be attributed to the destiny that individuals choose for themselves and in the place, they accept to occupy in their relations with others. Just like individuals, States may choose to place themselves in the international arena by favoring their *interests*, with a clear warlike disposition, and assume war as their 'manifest destiny'; while other States may choose to see themselves as huge business corporations; others yet, as nothing more than 'tax-haven States'; and there are even those whose *prudent* consciousness is that of 'larder States', reserves for raw materials, or 'narco- States', among many other forms.

As individuals, peoples and States are at liberty to choose what they want to be; their consciousness is, strictly speaking, empty, but at each turn of the road in history, every time they are called upon to set up a system of governance, their consciousness must take up the content of that objective they have freely chosen for themselves.

The international order and its power relations create a situation where some States, the few most powerful ones, usually choose goals for themselves based on 'interest', while the majority of the remaining States do so based on *prudence*. Though the objective fact of war being chosen as 'manifest destiny' in the foreign policy of a given State is not an inherent feature of that nation's behavior, at least in the 21st century, war is not there in the form of fixed, unchangeable content. War is simply one of the possible behaviours that a State can exhibit; it responds to specific interests and fits into a particular project. This means, in the first place, that the relation between the State's consciousness of war and war itself shall depend on that State's interests or intentions. Secondly, the consciousness of a given State, in terms of its intentions, will always find expression in some external object, so contemporarily war transcends the ethics of the State that has chosen it as its destiny, and is not an intrinsic part of that ethic. In other words: what makes the relations between States particularly different in the 21st century is that the idea of an 'inevitable destiny', in a State's international projection on the world stage has been left behind; the external object of the State's consciousness – war – is transcendent, and it exists, but it is not the sole intention and interest of peoples and States forever more⁵.

As previously specified, the consciousness of States is always the

consciousness of something different from itself and, therefore transcendent. It should be made clear that the ethics of States must not be construed in a Kantian sense, that is to say, sublimated in the form of phenomenological objects, as are international disputes, diplomacy, agreements or treaties between States; in this sense, the ethics of States do not reflect an underlying reality of permanent war or world peace and is not linked to some absolute truth in which the essence of international relations is contained: the convulsive, erratic nature of international relations does not reflect essentially peaceful or bellicose stances embedded in the ethics of States (Sartre, 1989, 16). These objects and data pertaining to international relations are entirely indicative of nothing but themselves, and do not correspond to any reality outside of themselves.

For Sartre, international relations rest upon two ontological levels. The first includes the data and the material facts that make up the foreign policy of States. Facts found on this level cannot be reduced to any moral theory that sums them up: they are unalterably the result of intersubjective relations, a scattered mixture of peaceful and bellicose occurrences. On the second ontological level is to be found the consciousness of States, which as basic units are obliged to ground their behavior and reflect upon how they shall interact with other States by placing themselves somewhere between two fundamental extremes: that of States whose responses are based almost entirely on 'interest', and that of States whose response normally favors *prudence*. This range of choice, within which the potential seed of ethics in international relations would grow, is the area we wish to investigate before appraising our findings in inter-American relations.

The consciousness of something means, in terms of the global scene, that an ethic of States always requires the uncontainable reality of international relations in order to become State consciousness. Nevertheless, State consciousness must be something different from the concrete facts of international conflict, diplomacy, agreements, alliances, servility or imperialism; State consciousness must be the non-being of all those expressions. Thus, the ethic of States emerges due to the denial or nihilisation of the concrete facts that make up the convulsive reality of inter-State relations. In a Sartrean sense, the very nature of a State's ethics lies in its distancing itself, or separating itself, from the conception of war or peace as an objective reality of international relations. It may be said, therefore, that the ethic of States results from a denial of an objective international reality and that its activity is a process of nihilisation.

When a State resorts to its ethic after becoming aware of the existence of a war, for example, it distances itself from the fact and denies that its ethic demands the inevitability of 'making war' *per se*; it paints war as a phenomenon that stands out against its own subjective backdrop, and denies that the war may be anything else, likewise with all other phenomena involved in the relations between States. It would otherwise make as little sense to speak of freedom in war or adduce notions such as *ius ad bellum* or – much less – *ius in bello*, as it would to refer to other forms of relations between States since war is part of the first ontological dimension of States – it simply is and cannot be reduced to a moral theory.

This contemporary understanding was not the case under the Westphalian paradigm of the modern world order, in which international relations took the form of a Hobbesian state of nature beyond the realm of State consciousness. Such an interpretation made it useless to contemplate any criteria of global justice (Stanton, 2011, 164): there was considered to be no difference between what happened in the context of international relations, taken as objective facts, and the consciousness of States in the face of such facts. In contrast, States today can justify or back up what they do because their actions can be viewed as something separate from international relations themselves; their sovereign consciousness is not determined and is therefore essentially free.

⁵ Recognizing that the practice of freedom at all levels, from the individual to the State, can produce a certain ethic in international relations is not the same as affirming that it is an international regime that constrains, up to down, the States and other political subjects. Although there are complex relationships of interdependence, the relationships in global regulated anarchy leave a margin of discretion to decide how to act: between prudence or interest. I consider that the commitment of States to make human rights effective can restrain the expression of national interests and induce a certain balance among prudent decisions. At least when the State in question has ratified said commitment through international treaties and has recognized a contentious supra-state jurisdiction. Human rights are today a field of activity that offers a moral reference point for the International Community.

3. States that are thrown into the world – Sovereignities that are condemned to freedom

Sartre quotes Fyodor Dostoevsky when he writes: ‘If God did not exist, everything would be permitted.’ This, according to Sartre, is the starting point for the godless philosophy of Existentialism that he advocates and for its ethics (Millán, 2017). Indeed, everything must be permitted if God does not exist. This means that man has been abandoned, ‘thrown into’ the world, with nothing and nobody to hold onto for justification. If States, like man, are presumed to be in fully responsible command of their actions – on the grounds of ‘national sovereignty’ (Ferrajoli, 2020), ‘reasons of State’ (Nosetto, 2020), or ‘Public Reason’ (Rawls, 1994) – then in a certain sense they also find themselves ‘thrown into the world’. Peoples and States are the makers of their destiny and of the goals that guide them towards it, not only at the specific time of choosing their rulers but in the daily exercise of the power that allows them, as *demos*, to manage their affairs.

In this respect, a 21st century ethics of States cannot seek refuge beneath any kind of overarching international carapace. Contemporarily, the consciousness of States is a function of the very fact that there is no God to govern international relations. It may be said that States are held in place by the nonexistence of any set of morals outside of their ruling principles. This world without foundations is paradoxically what gives States their foundation and makes them free to put their sovereignty into effect since they are under no obligation to any world government but only to themselves and to their commitments to their population.

Freedom, therefore, is fundamental to States. There is no difference between a State’s being and its freedom; States may only be inasmuch as they are free, that is to say, inasmuch as they are sovereign; a State that is not sovereign ceases to be a State. In fact, the actions of States define them as the free ontological unit *par excellence*, more so – to challenge Sartre – than man himself. In a word, the very essence of States lies in unfolding their pure unhindered subjective activity on the world stage.

The key feature of States is their ability to act, States are nothing more than the sum total of their actions: those actions, in particular, that involve other States and other international actors, such as corporations; however, those that have to do with their citizenry, understood as an inherent element of the State belongs to the sphere of the subjectivity of that very State. The freedom of a State demands that it be, together with man himself, the only ontological unit that can conceive of itself as the accurate projection of its actions. Therein lies the importance of choosing one’s acts for the ethics of States that we are attempting to decipher.

While in the concrete world of international relations, the first dimension of the State’s ontology, the real cannot be reduced to a framework of regulations, in the inner realm of States – that is, in their administrative agencies of deliberation and control, in their high courts of justice, in their parliaments and governments – resides the faculty of reflecting upon the facts of States as free entities. This means that the motives behind sovereign acts and their aim are predetermined based on what it has chosen itself to be.

If the Government of a State has already chosen itself to be cowardly or servile in the international arena and to place ‘prudence’ before the defence of its ‘interest’, it will invariably find reasons and rationalizations to abstain from intervening in any given situation that puts its citizens in danger; a justification for not acting valiantly shall in such cases always be found. This idea of freedom implies that circumstances – the given or the real – do not determine or condition the choices made by States in the 21st century. This idea of freedom serves to reject the paradigm of war as the natural state of international affairs. In the paradigm that we are defending, the character of a State, whatever its nature, is always a result of the choices made by its governments, whom it behaves to choose themselves gallant or pusillanimous, and their only moral commitment is to be consistent with the mandate of the people they represent.

In this sense, the freedom of States lies in their sovereign ability to project themselves towards an end, to choose to exist within the pursuit of that end, and to commit to the resulting project in each and every one of their actions at home and abroad. It is impossible for States not to experience their freedom since they cannot ‘abstain from choice’; the very act of refusing to choose – as a thorough analysis of the problems reveals – is in itself a form of choice⁶. In this respect, if Sartre’s argument regarding the individual is taken one step further, it becomes plain that States are also condemned to freedom. The only freedom States do not have is ceasing to be free; in other words, the freedom of States, as sovereign entities, is limited by nothing but itself.

Freedom, in this case, precedes the essence of States and makes it possible. Only peoples and States who are free can choose their destiny and act following it, in a process that gradually makes up their essence, since it is their acts that will define it. Nevertheless, it should not be assumed that the original choice does away with that freedom. On the contrary, a fundamental choice regarding the nature of a State opens up a range of possibilities for freedom is also expressed in the fact that it is always possible to question or endorse the original project of a State, through electoral change in its governing bodies or administrations, based on whatever priorities have been defined in governance agendas. This means, as it does in the case of the individual, that the original project of a State is not necessarily definite or immutable.⁷

Such absolute freedom of States may appear, in certain regards, difficult to believe. It could be argued that a whole series of external and internal factors restrict the freedom of States and place limits on their self-determined sovereignty: structural factors such as international economic divides, foreign debt, differences in armed power, wealth concentration, and geographical conditions, among other things. However, many of the imponderables that emerge before peoples and States in the process of achieving their fundamental destiny can be interpreted and accepted as insurmountable obstacles for the State or viewed as unique opportunities; in the end, that will depend entirely on the choice each State makes. Since there is no objective international reality, the possibility of having multiple perspectives on a fact is the

⁶ An example of a ‘default decision’ is provided by Slavoj in his criticism of the EU’s openness to Syrian immigration in response to the 2015 refugee crisis. According to Žižek (2016), refusing to decide about the origin of the migration (which was the bombing of civilian populations in Syria) has also been a cowardly and easy way of ‘deciding.’

⁷ In this article, we propose new ideas about the role of *bad faith* as a category to evaluate the actions of a government towards its society. Although it may seem that governments are understood strictly as individuals according to the ideas of Being and Nothingness, this should not lead to confusion regarding the comparison between individuals and governments since governments are certainly not unitary beings, but complex entities formed by conflicting forces, antagonisms and social classes with disparate interests and projects, as Sartre precisely understood in his later work. Therefore, by being heterogeneous entities, the government of a society does not operate here as a free unit as an individual conscience that lies to itself, but (especially) to a part of its citizens whose interests it should listen to and represent. In other words, the bad thing here consists of lying by a government that sells the idea of representing the interests of citizenry when it is fostering the interest foreign to them by means of legislation. Furthermore, *Bad faith* here operates through the deliberate denial of a government before its citizens of the negative consequences that, for society in general and for itself in the long run, its bad decisions bring. An example of this bad faith of governments lying to themselves is the movie “Do not Look Up” plot—gratitude to John Gillespie of Ulster University, an expert on Sartre, for this example. A way to exemplify the actions of governments that lie to themselves and their people by offering a “tranquillity message” when everything is going to wrong, the moral benchmark of human rights enforced by the IACHR governments is the standard which judges that governments lose themselves in their own traps of bad faith due to their blind faith in technical progress. Although this article highlights the characteristics of this attitude and its perverse consequences in Latin America this strategy could apply to any region or country.

epistemological expression of the ontological freedom of States.

The seeming inevitability of war, for example, or the devastation connected with economic dependency or a public debt that appears to be unredeemable, may be seen as an obstacle by some States. In contrast, other States may view the very same circumstances as an opportunity to devise a 'new original project.'⁸ It is certainly true that States cannot modify or control some external factors, which cannot be altered or avoided, because the arena of international relations is the result of intersubjective actions. Nonetheless, the significance of such factors depends entirely on the States themselves, since every State must choose how to address them, whether or not it knows how to do so or acknowledges the fact.

Similarly, States cannot alter the past since a Government is unable to unmake decisions that were taken long ago or to undo the actions of its predecessors. This is because these facts of the past are unalterable. What a people and its Government can do, however, is change the significance they choose to attach to their past. Therefore, a State's ethics becomes a permanent flight from what its peoples were to what its peoples shall be; in other words, it is a projection into the future.

4. 'Interest' or 'prudence': why is hell other sovereignties?

Freedom – as it has been proposed in this particular reorientation of Sartre's gaze in the direction of international relations – demands that States not only be bound by duty to what they are individually but bear the responsibility of what their actions involve for other States. When States make a choice, for example, regarding their foreign-policy strategy, they are choosing themselves and all other States simultaneously. In other words, everything that happens in international relations is attributable to the freedom and responsibility of each State's sovereign choices. There are, of course, other actors and other circumstances that lie beyond the reach of sovereignty, such as the influence of corporations and financial conglomerates, the dependence on international credit funds like the IMF and the WB, and the actions of multilateral agencies like the WTO and the WHO, all of which must be considered before a State makes decisions regarding its place on the international stage; much deliberation is needed before arriving at what Habermas has called the "world domestic policy of States." (Habermas, 2010). This deep responsibility, this commitment that State administrators, whenever they act, owe to their citizens and other States and international agencies at the same time, causes rulers to experience what in Sartrean terms may be called *L'angoisse de la liberté* (Sartre, 1989, 32).

The State that commits to choosing itself as motivated by *interest* or *prudence* becomes a legislator for the whole of civilization as well, since it chooses all humanity and cannot, therefore, escape from a sense of total and profound responsibility. Anxiety, as defined by Sartre, is a kind of reflective consciousness of freedom, i.e., a reflective process where consciousness takes up itself as consciousness. This concept becomes even more evident in States than in man: it follows from Sartre's reasoning that the undesirable consequences and the harm to self and others that may result from State decisions are much more palpable than those that are brought about by individual decisions, which remain less apparent; a decision regarding international relations can come to affect humanity as a whole, since its potential to lead to consequences in the world is all too real. Thus, freedom is revealed to the governments of States through the anxiety involved in the complex reflection of choosing their foreign-policy actions, which entail the risk of harming other States or their citizenry, and sometimes in the fact of having to choose which of the two parties must be harmed, in order to save the other.

In general, however, States attain consciousness of their freedom through the anxiety of their governments in choosing themselves as motivated by prudence or interest. Sartre explains that anxiety is like

vertigo experienced by someone on the edge of a precipice, not for fear of falling but for fear of being tempted to jump into the void. Indeed, fear is different from anxiety in that in fear, a subjective stance in reflection is posed, but anxiety refers to an objective position towards oneself in reflection. In such an extreme situation, one may fear the possibility of plunging over the edge, perhaps due to stepping on a pebble or some such imponderable. Something similar occurs when armed conflict erupts, or when a new trade agreement is signed, or when elections are held in key countries like the United States or Russia: the rulers of each State see themselves on the brink of objective, transcendent facts; they may become just another object, with no control over its destiny, and must run the risk of falling prey to other projects. The choice of either recognizing themselves as transcendent or merely as "an object among objects" (Verdú, 2006, 131), a cold fact of war – for example – makes it necessary to reflect upon the possible ways of preventing a fall into the void. In other words, if States recognize that their integrity is in danger, by fear they will attempt to exercise care and act with 'prudence' to wield as much control as possible over the situation and thereby remove themselves from potential threats to their integrity. However, such attempts to shield themselves may be futile since the integrity of States does not only come under threat from the objects in the world or from other States, but also from themselves, who become the potential source of their own harm, because of anxiety a State fails to reflect all sides of an event, and results in considering itself as an object to be used by other freedoms. Even though this bias can be attributed to the complexity of intersubjective international relationships, States are responsible for their actions, and may therefore be the cause of their fall from the cliff and this fact is the source, not of their fear, but of their anxiety.

Strictly applied to international relations, the above reveals itself as even more apparent in the 21st century, when inter-State dependence is perhaps higher than ever before. We have seen, for instance, that the hostility between Germany and other EU countries and Russia has been qualified by the anxiety of losing Gazprom's gas supplies in large areas of Central and Eastern Europe and that, as a result, sanctions against Russia, however, justified they might have seemed, have been withdrawn (Alon and Dwyer, 2012). Similarly, the possibility of armed intervention in Venezuela fades out of view after considering the objective fact that 70% of the supply of crude oil in the Western hemisphere comes from that nation, the second largest oil producer in the world (Ewel, 1996). We have recently observed, too, that a potential trade blockade of China, in the wake of the diplomatic crisis unleashed by COVID-19, would bring about repercussions in countries all over the world (Harvey, 2020, 93), in the same way, that is refusing to pay or to acknowledge the debt to financial institutions like the IMF or the WB would cause any nation with average levels of income to be plunged into a crisis as painful as the "fall from the precipice" (Sartre, 1989, 34)⁹ described by Sartre. The full range of potential options open to States includes not only the adoption of whatever measures of security and prudence are necessary to avoid doing themselves harm – precautions such as being "well aware of where they tread" (Sartre, 1989, 34) when it comes to devising international-policy strategies, for instance – but the possibility, as well, of following courses of action that run counter to their welfare.

In their anxiety, governments may therefore choose to stop "looking where they tread" (Sartre, 1989, 237), and may even decide to leap over the edge of the precipice. In Sartrean ethics, these latter decisions are known as *bad faith*. We shall see how this ethical anomaly of *bad faith* has applied, in many different contexts, in Latin American countries.

5. Bad faith: Governments that lie to themselves

Anxiety, brought about by ever more complex reflection, frequently causes the governments of States to adopt an attitude of "negating themselves" (Sartre, 1989, 188); this, in Sartrean language, is called *bad faith*. It is one of the ways in which a State takes a negative stance

⁸ Xi Jinping's 'revolution to revolution' in China and his *One Belt, One Road* as an example of a 'new blueprint' according to Karl Yan (2021).

⁹ Sartre, *Being and Nothingness*, 34.

towards itself and acts against itself to the detriment of its own people. *Bad faith* is commonly equated with lying, but it is not the same thing. For Sartre, *Bad faith* is lying to oneself, which must be distinguished from common lying, since in *bad faith* there is no separation between the liar and the deceived; there is only a consciousness of affecting oneself. When a government, as the mouthpiece of the State, acts in *bad faith*, it makes decisions that involve lying to itself and believing its lie; it masks an unpleasant truth and presents it as a pleasant fabrication in the guise of a fact. Thus, the main characteristic of *bad faith* is that it involves the unity of consciousness; the liar and the deceived are one and the same subject. To demonstrate the existence of an anti-principle, an immoral act, or a crime of *bad faith*, the present investigation has gone beyond the theoretical adaptation of the concept to the sphere of international relations and sought to identify specific instances of the former in the behavior of governments towards their peoples, i.e., towards themselves.

As examples of *bad faith*, we need only recall how, in 2004, the Chilean Government modified its laws regarding the protection of the indigenous territories of the Mapuche people in order to authorize hydrological concessions on their land, thereby making it possible for the Spanish company Endesa to develop its "Ralco" hydroelectric project (Riquelme and Samaniego, 2020); or the internal measures and arguments used by the Brazilian Government, in 2009, to deflect the course of a river and grant part of Sepetiba Bay to the German company Thyssen Krupp, who built a steel-production plant on the land they were allowed to rent from the Government; this inflicted subsequent environmental and social damage on the State's citizens, caused by lead and arsenic pollution in the Bay (Ferreria and Puggian, 2020). Another example of *bad faith* was the modification of Colombian laws to extend the concession of one of the most important nickel mines in the world, Cerro Matoso, which had expired in 2012 and was due to be returned to the Colombian nation. That same year, the Colombian Government amended its legislation – which had formerly prohibited extensions on concessions to foreign private companies beyond thirty years – with the sole purpose of renewing Australian company BHP Billiton's rights to the mine until 2044. The company, a major partner in the operation, had originally been bound to return the land, with its installed capacity, to the Colombian State in 2012. However, the 0.13% of the enterprise's active value that Colombia charges the company every month is such a paltry amount that BHP Billiton is able to pay three decades' worth of exploitation rights with its net earnings of the first six years.

In this case, our hermeneutical strategy has involved a review of the sentences that the Inter-American Court of Human Rights (IACHR) has passed in Latin America against governments that have 'lied' to themselves or their peoples by resorting to laws, actions or omissions that violated human rights in order to benefit corporations. Human rights are understood in our existential approach as a normative result of the intersubjective nature of contemporary international relations, belonging to the data that make up the foreign policy of States.

The above review has identified 12 events in which the Latin American States acted in *bad faith* in collusion with multinational corporations. The table below includes a list of the countries involved in severe *bad faith* behavior, the foreign companies that took part in the process of interference with the freedom of each State, and the governments that decided to elude their duty to act in accordance with the *demos* they represented.

The cases we analyze are emblematic of the period 1980-2014¹⁰. These are facts proven through investigations by the Inter-American Court of Human Rights against seven States. The total number of victims calculated in the sentences exceeds 20,000 people. In most cases, the violent actions were accompanied by laws that sought to legitimize them. The economic benefits, in all cases, impacted the granting of land for the convenience of the companies.

¹⁰ See the 15 judicial decisions we analyze in the *Jurisprudence List* after the Reference.

Unfortunately, as the table reveals, the examples of States engaging in this kind of *bad faith* behavior are many and go so far as to involve massacres. Based on the logic we have proposed, three main requirements suffice for a crime of *bad faith* to have taken place: the involvement of multinational corporations with interest in natural resources; the complicity of local governments, who justify their failure to honor their mandate of defending State sovereignty by resorting to *bad faith* arguments (of which the most recurrent, according to the reviewed IACHR sentences, were 'the superior interest of progress' or 'the need to guarantee private property rights'); and the harm caused to communities as a result of legislative action, direct repression, or the failure on the part of governments to uphold the law, by allowing events to take place with impunity¹¹.

Different expedients are employed to put these actions of bad faith into practice. In the studied cases, massacres prevailed over other methods, such as the enforced disappearance of people and acts of repression under laws that criminalize social protest.

These cases are important because they allow us to bring into focus the ethical horizon of State action and its associated distortions, using Latin American countries as a kind of vanishing point. It is an indisputable fact that the governments of Latin American nations may be characterized as exhibiting different degrees of bad faith. Such self-deceiving behaviour arises when a State deviates from its ethics allowing other ontological units to exercise their freedom on them. Many of the States in Latin America, for example, are prepared to accept the cost of slaughtering or displacing entire populations of peasants or indigenous peoples as the only way to advance progress, even though these actions may have the consequence of perpetuating their competitive disadvantage with regard to other States.

Thanks to the interdependence of the international arena and the potential exposure of today's governmental affairs, any initiative based on bad faith must result in failure sooner or later. Therefore, governments that hide from their peoples the unpleasant truth can only fail in their intent to show a pleasant masquerade in legal 'recipes', because they have to be imposed employing repression and on behalf of goals foreign to their moral commitment to their constituents.

The victims of bad faith actions we have examined in Latin America also vary. In our investigation, indigenous communities were identified as the most frequently harmed by *bad faith*, and the most commonly singled out for reparations in the sentences of the IACHR. The following table shows how inquiries made into bad faith as a moral prop for State crimes in Latin America have resulted in specific reparations that have transformed the conditions of indigenous peoples. In a sense, IACHR sentences have caused States to reverse their bad faith behavior and use the consciousness of their freedom to offer reparations that have brought about profound transformations in the quality of life of indigenous peoples. In certain instances, for example, the IACHR mandated the construction of hospitals and educational infrastructure and the setting up of funds for social and community development as a means of reinstating the life projects of communities and peoples¹².

¹¹ We tried to show a general understanding of what a State as involved in the 21st century setting of international relations can be. The article did not look to address states in their particularity but according to the standards set by Sartrean theory, which in turn, allowed an analytical interpretation of real-life scenarios in international relations. Therefore, States are judged as ontological free units in general, even if the particularities of each government lead to take into consideration diverse elements, they can be summarized as 'bad faith' decisions by the way governmental action negate its own freedom and its essential component, their constituents.

¹² The global calculation ordered on reparations judgments of the Inter-American Court (1993 - 2020) in cases in which a 'Transformative Reparation' is ordered amounts to US\$ 49,319,773.70. Included funds for community development programs, reparation to indigenous members and other victims, survivors, families, and litigation costs. Returned land and its estimated value are not included. See footnote no. 8

In summary, we may say that, when acting in *bad faith*, governments refuse to transcend their facticity by resorting to artifacts that generate the illusion that they can evade their responsibility towards their own freedom. Nevertheless, the anxiety associated with the freedom of States, and their responsibility, however much it is covered up, must emerge. Since there is no segregation between the liar and the deceived, the enterprise of *bad faith* is destined to fail and may finally be revealed, denounced, and – as we have seen – punished as a crime of State.

Our theoretical proposal has demonstrated with empirical evidence that responsibility in the face of global injustices does not come exclusively from an omission in the actors of the richest and most powerful States but from damage to human rights that the governments of poor countries exercise against their citizenship. This option results from a deviation in the ethical responsibility of governments to assume freedom with all its consequences, i.e., with *bad faith*.

While it is not legally sustainable to make binding redistributive decisions from the international plane against rich States, in our view, it is possible to justify legal sanctions that, ultimately, would affect the unequal order of the economy; without having to wait for consent in the richest countries or devise complex structures of any world pseudo-government. This change does not come from a literal distribution but from transformative actions and decisions (See Table II) that create "the conditions for the possibility of action" (Fugo, 2019).

6. Conclusion

As we have explained, the choices a State makes with regard to itself result from an intersubjective process of collision or struggle with other States, and with international powers like corporations. Globalization sets the scene for a conflict of sovereignties; some of the latter reassert themselves by defending their original project, while others cede ground in their decisions by giving in to the demands of the 'Other'. These options qualify the variables of 'prudence' and 'interest' in the vital thrust that underlies the behavior of States.

Based on what has so far been expounded, an alternative ethics of international relations would include three main characteristics: firstly, a concept of the State as an essentially free ontological unit; secondly, the recognition that each State enjoys freedom of choice as regards its actions in the world, and its interaction with other States and with transnational players, such as large corporations (and therefore the assumption that all peoples, including but not limited to the Latin American countries we have discussed, are responsible for their destiny, and for their freedom to act in the world); and thirdly, the acceptance of the fact that the freedom of each State is restricted by the permanent scrutiny of other States and their agencies and corporations, as independent social actors.

Bad faith is identified as an ethical anomaly of States. Such behavior entails the conscious attempt by governments to evade their responsibility to act following the sovereign interest of protecting their people. *Bad faith* is the basis for State crimes to cause harm to the perpetrators themselves. In the Latin American context, actions carried out in bad faith – and justified in the name of progress – have been shown to violate the human rights of communities and peoples, leading to atrocities such as massacres and the enforced displacement of populations¹³.

¹³ Although contextual factors may have affected decision-making, the article shows a general understanding of what a state can be. The article does not look to address states in their particularity but according to the standards set by Sartrean theory which, in turn, allows an analytical interpretation of real-life scenarios in international relations with the aid of empirical evidence that was of a juridical nature. Even if each government's particularities lead to diverse contextual elements, they can be summarized as *bad faith* decisions by how the governmental action negates its freedom and its essential component, its constituents.

All rulers of a State, from its Prime Minister down to its humblest civil servants, may ultimately be likened to a set of data that should be susceptible to public supervision, with the aid of the control of supra-national governance agencies like the IACHR. Thanks to the interdependence and the potential for exposure to today's affairs, any initiative based on *bad faith* must result in failure sooner or later.

In this article, we have shown that the practice of freedom at all levels, including the relations between States, can produce a global ethic based on the commitment to the sovereign interest of the peoples. We have explained that, while no type of blame justifies repressive legal actions towards rich nations for generating a system that responds to their interests, the 'burden of proof' may shift to the governments of poor states. Whenever in their anxiety to satisfy particular interests, they alter with 'false shortcuts' the welfare of their fellow citizens against the normative benchmark that human rights represent. After all: the signs of deprivation of the development alternatives are sealed with a local hand.

We may conclude by stating that the 21st century brings an ethics of freedom in international relations. This has an important implication in terms of the philosophy of law, which should be addressed in future investigations since it poses the question of whether it is possible to classify the crime of bad faith in international law. We believe, on the basis of what has been described in the present paper, that the crime of bad faith may indeed be classified as a new form of legally punishable offense on the part of States when it is perpetrated by governments that thereby violate the human rights of peoples in the name of progress or economic development.

That is why this research offers an alternative understanding to the question of the responsibilities of States that generate poverty in the world because it pays attention to the instruments or means that produce unfairness. The novel characteristic consists in analyzing the participation of the governments of the poor States in the relations that precisely generate poverty. Unlike other perspectives about global justice, such as that of Thomas Pogge, Ulrich Beck, and Jürgen Habermas, this approach investigates local governments' decisions against their people's future. The *bad faith* of the political elites of poor governments drafts the last link in the chain of injustice that has led ten million people to live in absolute poverty.

More specifically, this approach has highlighted the responsibility that the governments of the developing countries would have, which in the last years have led the same peoples to occupy the last places in terms of distribution of wealth and the first places in inequality. It may be true that correcting the asymmetries in these countries does not solve the general ethical disaster situation that globalization has caused. However, this examination of the bad faith in governments, such as that shortcut that allows them to avoid the responsibility that accompanies the exercise of freedom, constitutes a good starting point to building a fairer world.

Jurisprudence List

1. Inter-American Court of Human Rights, *Aloeboetoe y otros v. Surinam Merits, Reparations and Costs*, Judgment on September 10, 1993 (Washington D.C: OEA, 1993)
2. Inter-American Court of Human Rights, *Massacre Plan de Sánchez v. Guatemala, Reparations*, Judgment on November 19, 2004 (Washington D.C: OEA, 2004)
3. Inter-American Court of Human Rights. (2005a). *Indigenous Communities Yakye Axa v. Paraguay, Merits, Reparations and Costs*, Judgment on June 17, 2005, (Washington D.C: OEA, 2005a)
4. Inter-American Court of Human Rights, *Community Moiwana v. Suriname, Preliminary Objections, Merits, Reparations and Costs*, Judgment on June 15, 2005, (Washington D.C: OEA, 2005b)

5. Inter-American Court of Human Rights, Indigenous Communities Sawhoyamaya Vs. Paraguay, Merits, Reparations and Costs, Judgment on March 29, 2006 (Washington D.C: OEA, 2006)
6. Inter-American Court of Human Rights, Saramaka v. Surinam, Preliminary Objections, Merits, Reparations and Costs, Judgment on November 28, 2007 (Washington D.C: OEA, 2007)
7. Inter-American Court of Human Rights, Chitay Nech and Others v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment on May 25, 2010, (Washington D.C: OEA, 2010).
8. Inter-American Court of Human Rights, Indigenous Communities Xákmok Kásek v. Paraguay, Merits, Reparations and Costs, Judgment on August 24, 2010, (Washington D.C: OEA, 2010b)
9. Inter-American Court of Human Rights, Sarayaku v. Ecuador, Merits and Reparations Judgment on June 27, 2012. (Washington D.C: OEA, 2012a).
10. Inter-American Court of Human Rights, Massacres of Río Negro v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment on September 4, 2012, (Washington D.C: OEA, 2012b).
11. Inter-American Court of Human Rights, El Mozote y nearby places v. El Salvador, Preliminary Objections, Merits, Reparations and Costs, Judgment on October 25, 2012, (Washington D.C: OEA, 2012c).
12. Inter-American Court of Human Rights, Norín Catrimán and Others v. Chile, Merits, Reparations and Costs, Judgment on May 29, 2014, (Washington D.C: OEA, 2014).
13. Inter-American Court of Human Rights, Communities Garífuna de Punta Piedra and Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, Judgment on October 8, 2015, (Washington D.C: OEA, 2015b)
14. Inter-American Court of Human Rights, People Kaliña y Lokono v. Surinam, Merits, Reparations and Costs, Judgment on November 25, 2015, (Washington D.C: OEA, 2015b)
15. Inter-American Court of Human Rights, Indigenous Communities of Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina. Merits, Reparations and Costs, Judgment on February 6, 2020, (Washington D.C: OEA, 2020)

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