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INTRODUCTORY TEXT: In 2016 the Colombian FARC concluded a peace agreement with the government (See ICRC Casebook, *Colombia Peace Agreement* ^[1]). In August 2019, senior former commanders of the FARC announced their return to arms. In Colombia there are currently three separate groups which go by the name of FARC: the political party; the ‘FARC dissidents’, a group that refused to join the peace agreement and continued to fight the government; and the new rebel guerrilla led by ‘Iván Márquez’. This case assesses the temporal scope of IHL and seeks to determine whether this announcement represents a continuation of the previous armed conflict or is, instead, a new situation requiring classification.

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N.B. As per the disclaimer ^[2], **neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published

for didactic purposes.

A. COLOMBIA'S SENIOR FARC DISSIDENTS ANNOUNCE THEIR "RETURN TO ARMS" (29 AUGUST 2019)

[Source: The City Paper Bogotá, Colombia's senior FARC dissidents announce their "return to arms", 29 August 2019, available at <https://thecitypaperbogota.com/news/breaking-news-colombias-farc-dissidents-announce-a-return-to-arms/22660> ^[3]]

[1] In a statement released via Youtube on Thursday, four senior former commanders of the Revolutionary Armed Forces of Colombia (FARC) [Fuerzas Armadas Revolucionarias de Colombia] guerrilla, including three former peace negotiators, confirmed their "return to arms" and appear in the video carrying rifles and dressed in military fatigues.

[2] In the video, the former chief negotiator of FARC, Luciano Marín – alias Iván Márquez – "announces to the world the start of the second Marquetalia," and a direct reference to the township in the department of Tolima where the Marxist insurgency was founded back on May 27, 1964.

[3] Accompanied at his side by fugitives "Santrich", "Romaña" and "El Paisa," Márquez said that the return to arms was in response to the Colombian government's "betrayal" of the peace agreement signed with FARC in 2016. "We announce that the second Marquetalia has begun [...] for the protection of the universal rights of the peoples of the world to rise in arms against oppression."

[...]

[4] In the 30-minute video, Márquez added that the call to arms is the “continuation of the guerrilla struggle” despite the demobilization of 7,700 FARC combatants in 2017. “The unilateral modification of the text of the final agreement, the breach of the commitments by the State [...] has forced us to return to the mountains,” remarked the senior commander.

[...]

[5] FARC’s former chief commander Rodrigo Londoño, [...] was among the first to publicly denounce the creation of the “second Marquetalia” and call to arms by his former peace negotiators. “Our commitment more than ever today, as a majority, as a political party, as a country, is peace and compliance with the accords,” remarked Londoño on social media. [Londoño] ratified the peace agreement with President Juan Manuel Santos during a ceremony in Bogotá in 2016 and reiterated that despite the “call to arms” by Márquez, Romaña, Santrich and El Paisa, more than 90% of former combatants remain committed to the peace process and return to civilian life. [...]

[...]

[6] [...] [A]ccording to authorities, FARC dissidents could amount to 1,500. During the height of the Colombian internal conflict when former President Andrés Pastrana opened peace talks with FARC in a demilitarized zone of the Caquetá department, the Marxist guerrilla had a fighting force of some 12,000 men and women.

[...]

B. THE THREE FARC: THE PARTY, THE DISSIDENTS AND THE REARMED GUERRILLAS (11 OCTOBER 2019)

[Source: Colombia Reports, 'The three FARC: the party, the dissidents and the rearmed guerrillas, 11 October 2019, available at <https://colombiareports.com/the-three-farc-the-party-the-dissidents-and-the-rearmed-guerrillas/> ^[4]]

[1] Colombia's former FARC ^[5] guerrilla group has essentially split into three different categories: the party, the dissidents and the rearmed guerrillas.

[2] The FARC party and the demobilized members loyal to their former commanders are by far the most significant group.

[3] The original dissidents and "the new guerrilla group" are considerably less powerful, but because they are armed and could unite, they pose the biggest challenge to the peace process and peace in Colombia in general.

FARC #1: THE PARTY

[4] The political party of the FARC and the former guerrillas who are taking part in the peace process are essentially what used to be Colombia's largest rebel group.

[5] Despite the major difficulties that have arisen in the peace process, the FARC leaders that now make up the political leadership continue to count on the loyalty of the vast majority of the group's former fighters.

[6] According to the UN, 3,100 former FARC fighters and their families are currently living in the 24 reintegration sites that were erected after the 2016 peace deals.

[7] Another 8,000 registered FARC members are living outside these camps and taking part

in the peace process. These former guerrillas and militia members are most vulnerable to violence and recruitment.

FARC #2: THE DISSIDENTS

[8] Before the FARC signed peace, six of the FARC's approximately 60 fronts dissented and were expelled from the organization.

[9] Five of these groups belonged to the now-defunct Eastern Bloc of the FARC and quickly joined forces. While operating independently, former FARC commanders "Ivan Mordisco" and "Gentil Duarte" have emerged as these groups' most influential leaders.

[10] These dissidents have maintained control over abandoned FARC territory and criminal rackets, which has allowed them to maintain their original military strength to a certain extent.

[11] These groups have been a destabilizing force since the beginning, especially in the east and the southeast of the country. These groups continue to call themselves FARC-EP [Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo], but have abandoned political ambitions and have generally become an organized crime group.

[12] The 64th Front from Cauca also refused to demobilize, but is no longer using their original name.

[...]

FARC #3: THE REARMED GUERRILAS

[...]

[13] Since 2017, FARC members who had little confidence in the process to begin with or lost confidence in the course of the process have rearmed, sometimes trying to reorganize the front they used to belong to.

[14] The April 2018 arrest of “Jesus Santrich” on apparently bogus drug trafficking charges boosted the rearmament of guerrillas.

[15] Some of the approximately 2,000 guerrillas who abandoned the peace process have formed their own groups or have aligned with the original FARC dissidents.

[16] The announcement in August of Santrich and “Ivan Marquez” that they were forming “the new guerrilla group” sought to unite these groups and reorganize the FARC’s former national organization.

[...]

[17] First of all, Mordisco and Duarte have been actively incorporating rearming former FARC guerrillas. So far, the original dissident leaders have had no interest in submitting to their former bosses and have shown no interest in politics. In fact, the original dissidents and the new FARC are rivals.

[18] Additionally, groups like the ELN ^[6] [Ejército de Liberación Nacional] and AGC ^[7] [Autodefensas Gaitanistas de *Colombia*] have taken control of many criminal rackets that used to finance the FARC, which has made it difficult for all rearming guerrillas to regain power in the regions where they used to reign.

[19] So far, only the 18th front, which rearmed in late 2017 and is active in the north of Antioquia ^[8], has pledged allegiance to Marquez and his group.

[...]

DISCUSSION

I. Classification of the Situation and the Temporal Scope of IHL

1.(*Document A, para. [3]*) What was the classification of the conflict in Colombia before the 2016 peace agreement (See ICRC Casebook, *Colombia Peace Agreement* ^[1])? What was the applicable law at the time? (GC I-IV, Art 3 ^[9]; P II, Art 1 ^[10])

2.What are the requirements for the existence of a non-international armed conflict (NIAC)? (See ICTY, *The Prosecutor v. Tadi?*, A. ICTY, *The Prosecutor v. Tadi?*, Appeals Chamber, Jurisdiction ^[11], para. 70; ICTY, *The Prosecutor v. Tadi?*, E. ICTY, *The Prosecutor v. Ramush Haradinaj et al* ^[11], paras 49-50, 60)

3. (*Document A, para. [3]*)

a. What is the temporal scope of application of IHL of NIACs? And of international armed conflicts (IACs)? Do “peaceful settlements represent the conclusion of NIACs? What do we mean by “general conclusion of peace” in the context of IACs? (See ICTY, *The Prosecutor v. Tadi?*, Appeals Chamber, Decision, 1995 ^[11], para. 70)

b. Can a NIAC continue even after the thresholds for intensity and organisation are

no longer met? (See ICTY, *The Prosecutor v. Tadić*, A. ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction [11], para. 70; ICTY, *The Prosecutor v. Tadić*, E. ICTY, *The Prosecutor v. Ramush Haradinaj et al* [11], para. 100)

c. Do any IHL provisions continue to apply after the end of the conflict? (P II, Arts 2 [12] and 19 [13]; GC I, Arts 5 [14], 47 [15] and 48 [16]; GC II, Arts 48 [17] and 49 [18]; GC III, Arts 5, [19] 127 [20] and 128; [21] GC IV, Arts 6 [22], 144 [23] and 145 [24]; P I, Arts 3 [25] and 83 [26])

4. (*Document A, para. [3]*) What is the impact of the 2016 peace agreement between the FARC and the Colombian Government? Did it represent the end of the NIAC between the two parties? (See ICRC Casebook, *Colombia Peace Agreement* [1])

5. (*Document A, paras [1], [3]-[4]*) According to Marquez and the other ex FARC senior commanders who made the announcement in August 2019, the “return to arms” represented the resumption of the original “Marquetalia”. Does IHL foresee the possibility of a conflict resuming after a peace agreement? Or does IHL treat the resurgence of hostilities as a new and separate conflict?

II. The fractioning of the FARC

6. (*Document A, para. [5]; Document B, paras [1]; [4]-[5]*)

a. Does IHL say anything about who within the armed group should be the one in charge of the peace agreement? Does the fact that it was four senior commanders of the FARC who announced the “return to arms” impact the assessment of whether this is a continuation of the previous NIAC or not?

b. Is the condemnation of the action by one of the leaders of the FARC political party a sign that the new rebels cannot be seen as continuing the original FARC's mission? Is the current three-way split within the original FARC determinative as to whether a possible ongoing armed conflict is a continuation of the previous one?

c. Is the fact that the FARC party is supposedly the most powerful of the current three FARC branches an element which must be taken into account when assessing whether the original conflict has resumed?

d. Does IHL say anything about the possibility of armed groups fractioning? If an organised armed group splits, do the criteria of intensity and organisation need to be met with respect to each of the resulting groups in order to establish the existence of one or more armed conflicts?

7. (*Document A, para. [6]; Document B, paras [8]-[12]; [17]*)

a. Who are the FARC dissidents? Can they be considered as belonging to the original FARC? Does the fact that they maintain some degree of territorial control over previous FARC territories impact this assessment?

b. Does the fact that the FARC dissidents have abandoned the original political objectives of the FARC point towards them still being an armed group for the purposes of IHL? Could their labelling as an "organised crime group" mean that law enforcement should be applied to them irrespective of whether there is an ongoing armed conflict or not? Can criminal groups become a party to an armed conflict? (See ICRC Casebook, Mexico, The "War on Drugs" ^[271])

8. (*Document B, paras [13]-[19]*)

a. Does the rearming of former FARC members automatically mean that the original armed group is forming again? Or should Marquez and the rebels who are joining him be regarded as a separate entity from the original FARC? Does this make a difference for the applicability of IHL or for the scope of its application?

b. Would such determination have any impact on the attribution of responsibility for violations of IHL? Could the leaders of the original FARC be held responsible for the violations of IHL (if this were indeed applicable to the facts) committed by Marquez's guerrillas?

c. Could the attempts by people such as Marquez to rearm be FARC be sufficient to undermine the peace process in Colombia, to the effect that the original armed conflict may be said to be resumed?

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[5] <https://colombiareports.com/farc/>

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