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Colombia's Peace Process: The Continuous Search for Peace

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COLOMBIA'S PEACE PROCESS: THE CONTINUOUS SEARCH FOR PEACE

*Maria Cristina Cardenas**

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* I dedicate this Note to my parents for everything they have done and continue to do. I am forever indebted.

I. INTRODUCTION

Colombia has long been a misunderstood country. Representations of Colombia and its recorded history have been limited to accounts of drugs, violence, and human rights abuses. However, the unrecorded history of Colombia reflects a constant struggle against such problems. Colombia is currently fighting a war on two fronts. On one side, Colombia has been fighting its own internal war against subversion, common crime, national impunity, paramilitaries, narco-terrorism,¹ corruption, and institutionalized violence.² On the other side, Colombia is currently dealing with many external pressures related to fighting a drug war that has international implications.³ Fighting these two fronts has left Colombia in a weak and disintegrated state.

This Article examines the Colombian peace process, including an analysis of the historical context in which it takes place, and the process by which the current peace process took shape. This Article also explores factors that affect the Colombian peace process, such as the war on drugs and the increasing involvement of the United States in that war. Additionally, the conflict in Colombia has had devastating effects on the human rights situation in Colombia. The growing number of human rights violations suggest an inadequacy of legal protections afforded to those who are involved in the conflict in Colombia. This Article also analyzes the role of international humanitarian law in the internal conflict in Colombia. In this respect, this Article looks at how the internationalization of the Colombian conflict has affected the peace process.

1. CARLOS ARRIETA ET AL., *NARCOTRAFICO EN COLOMBIA* 132 (Tercer Mundo Editores, 1990) (discussing how the drug cartels are one of the principle actors involved in Colombia's violence). Drug cartels use violence to pressure the Colombian government to consent to their demands. This narco-terrorism is one of the many factors that serve to destabilize Colombia. *Id.*

2. *Id.*

3. See LIBARDO OREJUELA DÍAZ, *NARCOTRAFICO & EXTRADICION* 189 (Dario Villamizar ed., 1997).

II. BACKGROUND

A. History of the Violence

Violence in Colombia is deeply rooted in its history.⁴ For the better part of the Nineteenth and Twentieth Centuries, Colombia was awash in violence because of party factionalism.⁵ The fight between liberals and conservatives struggling for power came to a head in 1948 following the assassination of liberal leader Jorge Eliecer Gaitan by conservative forces during an episode of mass rioting known as *El Bogotazo*.⁶ *El Bogotazo* was the beginning of *La Violencia* in Colombia.⁷ *La Violencia* was a period in Colombian history of mass violence, rioting, and generalized war between liberal and conservative forces.⁸

After a brief dictatorship by General Rojas Pinilla (1953-1957), liberal and conservative forces responded to *La Violencia* by forming a coalition government called the "National Front."⁹ The National Front was an arrangement by which both the liberal and conservative parties would share power and alternate control of the presidency.¹⁰ This arrangement formally lasted until 1973.¹¹

The National Front did help stop the violence between the liberals and conservatives. However, the political exclusion caused by the alternating governments was one reason for the emergence of rebel groups.¹² Armed insurgency groups emerged in the areas most affected by *La Violencia*.¹³

4. DUVARDO PIEDRAHITA CARDONA, COLOMBIA: ENTRE GUERRA SUCIA Y EXTRADICION 19 (Carlos Arturo Bello ed., 1990).

5. Laura Garces, *The Dynamics of Violence*, available at <http://www.cnn.com/SPECIALS/2000/Colombia.noframes/story/essays/garces/> (last visited Feb. 11, 2002). This violence was caused by a fight for power between liberal and conservative forces, in combination with the neglect of social issues by those in power. The social unrest and fight for power led to a civil war in 1946. See also Jorge L. Esquirol, *Can International Law Help? An Analysis of the Colombian Peace Process*, 16 CON. J. INT'L L. 23, 27 (2000). After losing on the battlefield against conservative forces, the Liberals turned to guerrilla warfare, thus starting the tendency of Colombian conflict to be solved by violent actions. *Id.*

6. See Esquirol, *supra* note 5, at 28. Bogota is the Colombian city where the riots occurred. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Esquirol, *supra* note 5, at 28.

12. *Id.*

13. *Id.* at 29.

Colombia was once again divided by political ideology. On the right of the spectrum were the political actors that were included in the National Front, and, therefore, stood to gain from the coalition.¹⁴ On the left were groups of rebels excluded from the political process and affected by rural strife.¹⁵ As a result, the ideology they espoused was affected by Cold War rhetoric and leaned towards Marxism.¹⁶

B. The Major Players

1. The Revolutionary Armed Forces of Colombia

Today, there exist two major guerrilla groups in Colombia. The largest of these groups is the Revolutionary Armed Forces of Colombia (FARC). The FARC emerged in response to an attack by the Colombian government in 1964 on a rural cooperative with communist ideology calling itself the "independent republic of Marquetalia."¹⁷ Led by Manuel Marulanda, the FARC today are estimated to have approximately eighteen thousand full time combatants spread throughout Colombia's mountain ranges.¹⁸ The FARC once held control of about forty-two thousand square kilometers of land given to them by the Colombian government as a gesture of goodwill to bring the FARC to the peace table.¹⁹ Today, however, the demilitarized zone of the FARC has disintegrated as the Colombian military has retaken control of this area, and pushed the FARC further into southern Colombia.²⁰

14. *Id.*

15. *Id.*

16. Esquirol, *supra* note 5, at 29.

17. Center for International Policy's Colombia Project: Information About the Combatants (FARC), available at <http://www.ciponline.org/colombia/infocombat.htm> (last visited Feb. 1, 2002) [hereinafter Information About the Combatants]. According to the FARC, the American sponsored attack on Marquetalia launched sixteen thousand Colombian soldiers against a small and mostly unarmed minority. Those who survived the raid became the founders of the FARC. *Id.*

18. *Id.*

19. Esquirol, *supra* note 5, at 30. However, today this figure is subject to change following the break of the peace process negotiations and the Colombian governments push into the demilitarized zones in Southern Colombia.

20. Interview with Fernando Cárdenas, retired Major of the Colombian Police and international lawyer (Mar. 28, 2002) (on file with author).

The FARC are self-identified Marxists.²¹ Their political agenda includes increased social equality,²² political legitimacy,²³ and centralized state control over the economy.²⁴ The FARC oppose American involvement in Colombia because they view American interests as counter to their view of a new Colombia.²⁵ Consequently, the FARC rejects the Colombian government because of its subservience to the American government.²⁶

Over the last several years, the FARC has drifted away from its political ideology. Today, the FARC finance themselves mostly through kidnappings,²⁷ extortion,²⁸ and the drug trade.²⁹ The involvement of the guerilla in the drug trade of Colombia is a lucrative business. The

21. See Center For International Policy's Colombia Project, *Peace on the Table: FARC*, available at <http://www.ciponline.org/colombia/pot-farc.htm> (last visited Feb. 1, 2002) [hereinafter *Peace on the Table*] (generally stating the FARC'S proposals and agenda).

22. *Id.* § IA. Explaining their position as victims of a "merciless policy," the FARC state that

We have been the victims of the large landed estate owners' and the military's fury, because here, in this part of Colombia, the interests that prevail are those of the powerful land barons and those of this country's darkest reactionary forces. Therefore, we have had to suffer in flesh and spirit all the brutality of a rotten regime which springs out of the financial monopolies linked to imperialism.

Id.

23. *Id.* § I(B)(1). The FARC state that part of the criteria for negotiation includes "political legitimacy, security, and participation." *Id.*

24. *Id.* § II(D). With respect to the socioeconomic aspects of their agenda, the FARC state that

Development and economic modernization of the country shall be paired to social justice . . . The economic policy shall be primarily focused on broadening the internal market, a self-sufficiency of food supply, permanently fostering production and the promotion of small, middle, and large private industry, self-management, micro-companies and an economy with solidarity.

Id.

25. Esquirol, *supra* note 5, at 30.

26. *Id.*

27. Information About the Combatants, *supra* note 17, § I(A) (stating that the FARC is responsible for a majority of the kidnappings committed in Colombia today).

28. *Id.* (indicating that an example of the FARC's extortion techniques is a tax they levy on all Colombian's whose assets are over one million U.S. dollars); see also U.S. Department of State, *Patterns of Global Terrorism 2000 — Latin American Overview*, available at <http://www.usinfo.state.gov/regional/ar/terror/2000.htm> (last visited Feb. 25, 2002).

29. Information About the Combatants, *supra* note 17, § I(A).

Colombian Armed Forces estimate that half of the income of the FARC is generated by drug money, amounting to between \$200 million and \$400 million per year.³⁰ "Taxing" those who grow the coca crop generates the bulk of this income.³¹ However, the connection FARC has to the drug trade has even greater links, including drug transportation, storage, and protection.³²

2. The National Liberation Army

Another major guerrilla group in Colombia is the National Liberation Army (ELN). The ELN emerged as an outgrowth of the Cuban revolution.³³ Inspired by the Cuban model for rural revolution, the ELN was comprised mostly of young students or ex-catholic priests.³⁴ Today, the ELN is comprised of about five thousand combatants.³⁵ They fund themselves mostly through kidnappings³⁶ and extortion.³⁷

Unlike the FARC who target the Colombian army directly, the ELN more often target local police stations and municipal governments.³⁸ As a result of controlling these local municipalities, the ELN control local political offices and local funds.³⁹ Though smaller in number than the FARC, the ELN wield a large amount of power in many Colombian municipalities.

30. *Id.*

31. *Id.*

32. *Id.* Drug Enforcement Agency (DEA) Administrator Donnie Marshall testified that "Some FARC units in Southern Colombia are indeed involved in drug trafficking activities, such as controlling local cocaine base markets. Some insurgent units have assisted drug trafficking groups in transporting and storing cocaine and marijuana within Colombia. In particular, some insurgent units protect clandestine airstrips in southern Colombia." *Id.*

33. *Id.* § I(B) (stating that the ELN founding group was mostly university students who had been trained in Cuba after the Cuban revolution).

34. Esquirol, *supra* note 5, at 30. One of the most revered ELN leaders was Manuel Perez (el Cura Perez), an ex-catholic priest from an upper-middle class family, who died of natural causes in 1998. *Id.*

35. *Id.*

36. *Id.* at 31; Information About the Combatants, *supra* note 17, § I(B).

37. Information About the Combatants, *supra* note 17, § I(B). The ELN frequently targets oil pipelines, which symbolize foreign interests and investments in Colombia. *Id.*; see also U.S. Department of State, *supra* note 28 (stating that in the year 2000, the ELN has attacked Colombia's largest oil pipeline, Caño Limón, 152 times).

38. Esquirol, *supra* note 5, at 31.

39. *Id.*

3. Paramilitary Groups

Paramilitary groups emerged in the 1980s as the drug trade began to expand in Colombia. Paramilitary groups are small armed groups that are mostly financed by wealthy landowners.⁴⁰ These self-defense groups were formed in response to the guerillas, who used kidnappings and extortion of wealthy landowners or private armies for drug traffickers.⁴¹ As a result, these groups have a very extreme right-wing political ideology, mostly representing the views of wealthy landowners towards the guerrillas.⁴²

Since the beginning of the 1990s, paramilitary groups have expanded in large numbers, and are now estimated to have over eight thousand members.⁴³ It is also estimated that paramilitary groups can be linked with over eighty percent of the human rights abuses related to the Colombian conflict.⁴⁴ Paramilitary groups have been associated with massacres, forced displacement of whole towns, and assassinations.⁴⁵ Despite these statistics, many observers of the Colombian conflict have viewed paramilitary groups as allies of the Colombian government, especially at the local level.⁴⁶ Because of these allegations, guerrilla groups have refused in the

40. Information About the Combatants, *supra* note 17, § II.

41. *Id.* Drug Enforcement Agency (DEA) Administrator Donnie Marshall explained the connection between the drug trafficker and paramilitary groups by stating that

Several paramilitary groups also raise funds through extortion, or by protecting laboratory operations in northern and central Colombia. The Carlos Castaño organization, and possibly other paramilitary groups, appears to be directly involved in processing cocaine. At least one of these paramilitary groups appears to be involved in exporting cocaine from Colombia.

Id.

42. *Id.*

43. *Id.*

44. *Id.*; see also Esquirol, *supra* note 5, at 34. Paramilitaries have also been linked with different types of social cleansing. Armed bands have undertaken to rid Colombia of its "undesirables," such as street urchins and prostitutes. *Id.*

45. Information About the Combatants, *supra* note 17, § II.

46. See Esquirol, *supra* note 5, at 34. Despite these allegations, the Colombian government has not given paramilitary groups "political status." As a result, there will be no negotiation with paramilitary groups, except for the terms of their disarmament.

past to negotiate if paramilitary groups are present at the same negotiating table.⁴⁷ However, official government policy views paramilitary groups as a "threat to be confronted."⁴⁸

III. ANALYSIS

A. *The Current Peace Process*

Soon after taking office, former Colombian President Andres Pastrana opened the way for peace talks by granting, in a gesture of good faith, forty-two thousand square kilometers as a demilitarized zone to the FARC.⁴⁹ The creation of this clearance zone required that the army vacate the municipalities of Vistahermosa, La Macarena, Uribe, Mesetas, and San Vicente del Caguan in southern Colombia.⁵⁰ However, despite this concession by the Colombian government, the FARC never fully cooperated with the peace process since its inception on January 7, 1999.⁵¹ Throughout the negotiations, the FARC continued their practice of kidnapping citizens and committing acts of violence.⁵² The FARC finally

47. *Id.* The guerrillas' argument is that as government allies, paramilitary group's interests are sufficiently represented, and therefore, do not need to be present at the negotiating table. *Id.*

48. Information About the Combatants, *supra* note 17, § II (stating that the armed forces viewed paramilitary groups as an increasing threat to the Colombian government).

49. Esquirol, *supra* note 5, at 38. As a result of the President granting this land to the FARC, the armed forces were withdrawn from five municipalities. This caused a great deal of controversy both inside and outside of Colombia. Many commentators questioned the validity of granting an insurgency group such a vast amount of land and the amount of freedom given to the guerrilla groups within that land. Others criticized the zone because it essentially gave guerrilla groups free access to come in and out of neighboring countries, such as Venezuela. The American government was against the zone because of the FARC's connections with the drug trade, and its belief that the zone would be used for drug related activities. *Id.*

50. Center For International Policy's Colombia Project, Dialogues With the FARC Timeline, available at <http://www.ciponline.org/colombia/farc.htm> (last visited Jan. 30, 2002) [hereinafter International Policy Timeline].

51. *The FARC's Moment Of Truth*, ECONOMIST, Jan. 19, 2002. The FARC's lack of cooperation was evidenced from the beginning when their leader, Manuel Marulanda, failed to appear for the opening ceremony for the peace talks, leaving President Pastrana sitting alone at the table. *Id.*; see also Information About the Combatants, *supra* note 17 (stating that the FARC claims that Marulanda's failure to appear for the peace talks is due to threats of assassination).

52. Information About the Combatants, *supra* note 17, § I(A); see also International Policy Timeline, *supra* note 50. On February 25, 1999, three American indigenous rights activists were kidnapped by the FARC in the Northeastern state of Arauca. Their bodies were found on March 6.

pushed the Colombian government too far by kidnapping the Colombian Senator Jorge Eduardo Gechem Turbay from a commercial airplane flight.⁵³

As a result of the kidnapping of Senator Turbay and the failure to implement negotiated criteria, the Colombian government finally announced a formal suspension to the peace talks with the FARC and ordered the armed forces to be sent back into the demilitarized zone that had previously been granted to the FARC.⁵⁴ This disintegration occurred despite negotiating efforts by foreign diplomats from "friendly nations"⁵⁵ and Catholic Church representatives.⁵⁶

B. *The Failure of the Peace Process*

Some observers of the Colombian conflict have argued that the failed peace process can be attributed to the lack of agreement on several key issues. The first issue is the role of the drug war in Colombia's armed conflict.⁵⁷ Some observers have argued, including the United States, that winning the drug war in Colombia is an indispensable element to defeating the guerrillas, who are primarily supported by drug money.⁵⁸ In essence, to win the drug war is to win the war against the guerrillas.

On September 24, 2000 the FARC called for an "armed strike" in the department of Putumayo where a U.S. Plan Colombia anti-drug offensive was to take place. The strike prohibited all vehicle traffic in this area, leaving the Putumayo region with insufficient food, gas, and water. On December 29, 2000, Colombian legislator and head of a Peace Committee, Diego Turbay, was assassinated with his mother and five other people by the FARC. On June 28, 2001, FARC leader Jorge Briceño (El Mono Joyjoy) declared that "we have to grab people from the Senate, from Congress, judges and ministers, from all the three powers, and we will see how they squeal." *Id.* On June 29, 2001, the vice president of the Colombian Soccer Federation, Hermán Mejía Campuzano, was kidnapped, making the relocation of the Copa America soccer tournament to another country a likely possibility. *Id.*

53. *A Slide Back to War*, ECONOMIST, Feb. 22, 2002.

54. *Id.*

55. *La Tercera*, SEMANA, Feb. 21, 2002, available at <http://www.semana.com> (last visited Feb. 21, 2002) (stating that the "friendly nations" involved in helping to reinstate the Colombian peace process involved Canada, Cuba, Spain, France, Italy, Mexico, Norway, Sweden, Switzerland, and Venezuela).

56. *Id.*

57. Rafael Nieto Loaiza, *Proceso de Paz: Mas Preguntas que Respuestas*, SEMANA, available at <http://www.semana.com> (last visited Jan. 21, 2002).

58. *Id.*

Other observers, however, have pointed out that focusing on the drug war is a mistaken approach.⁵⁹ The war on drugs is an important factor in the Colombian peace process, but it is neither the cause nor the root of Colombian violence.⁶⁰ Social inequality and poverty generates the swelling numbers of the guerrillas.⁶¹ Those who live in absolute poverty and have no possibility of an education or of bettering their lives are drawn to the guerrilla ranks to try to gain a voice in a society that generally excludes them. Only dialoguing, treating, and fighting the drug problem, leaves unanswered the root problems of social inequality and injustice.⁶² In essence, as long as there are no socio-economic transformations in Colombian society, there will continue to be an armed conflict to destabilize any effort to fight the drug war.⁶³

A second point of great contention among observers is the nature of the relationship between Colombia and the paramilitary groups.⁶⁴ Although there is a fairly uniform consensus that the existence of paramilitary groups destabilizes and de-legitimizes the Colombian government, there is no consensus as to what role they should play in the Colombian peace process.⁶⁵ Although some commentators argue that there should be no negotiation with the paramilitary groups,⁶⁶ other commentators view negotiation with them as a precondition for peace.⁶⁷

In essence, the Colombian government is in a difficult position. In order to maintain its legitimacy, the Colombian government cannot allow Colombian citizens to defend themselves illegally. However, the key question left unanswered by the peace process is how citizens should

59. Antonio Caballero, *Lo Barato Sale Caro*, SEMANA, available at <http://www.semana.com/archivo/articulosView.jsp?id=21471> (last visited Nov. 26, 2002).

60. *Id.* This view sees the Colombian drug problem as a symptom of Colombia's cancer, but not its cause. To attack only a symptom will not get rid of the illness of social injustice. In fact, it is forgetting the origin of the FARC and the reason they took up arms against the Colombian government. This view is strengthened by the fact that for the last fifty years, and the past fourteen presidents, the Colombian government has waged war against insurgent groups and has been unsuccessful in defeating the insurgency movement. Furthermore, the FARC are not afraid of total war because it works in their favor. War only results in pushing more people, such as those displaced from their homes by the violence, into the arms of subversive groups. *Id.*

61. See Interview with Fernando Cárdenas, *supra* note 20.

62. See *id.*

63. See *id.*

64. See Loaiza, *supra* note 57.

65. See *id.*

66. See *id.*; see also Information About the Combatants, *supra* note 17, § I(C).

67. See Loaiza, *supra* note 57.

defend themselves when the government is unable to defend them.⁶⁸ The Colombian Ministry of Defense has stated that in the last three years the Colombian police force has been reduced by thirty percent, and twenty percent of all Colombian municipalities have no police force available for the security of its citizens.⁶⁹ So far, the Colombian government has been unable to provide for the security, justice, and administration of many of its regions.

A third point of contention is the significance of the demilitarized zone granted to the FARC by President Pastrana.⁷⁰ Prior to beginning negotiations with the Colombian government, the FARC demanded the Colombian army retreat from approximately forty-two thousand square kilometers of land.⁷¹ This land was to serve as a safe haven from which the peace talks would be conducted. One of the key issues with respect to the demilitarized zone was how the Colombian government would retain sufficient control over the land to satisfy American interests, while quieting commentators who argued that the granting of the land would bring the guerrillas one step closer to recognition as belligerents.⁷²

The decision by the former president Andres Pastrana was greeted with criticism from many sides. Both external and internal arguments against the zones followed the decision by Pastrana. The main argument of the U.S. government against the zone was that it was going to be freely used by the guerrillas as a staging zone for drug trafficking.⁷³ Many within Colombia viewed the zone as a challenge to the sovereignty and legitimacy of the country, which had been so staunchly defended in the past.⁷⁴

The demilitarized zone is an attempt to balance the prerequisites for negotiating with the guerrillas, while retaining sufficient control of the zone to quiet both external and internal criticisms.⁷⁵ However, the conflict over the demilitarized zone created more tension and instability within

68. *See id.*

69. *See id.* (stating that in the past three years, the police force has been reduced from 130 thousand to 100 thousand, and close to 200 Colombian municipalities have no police force available).

70. *See infra* Parts III.A, III.D.1.

71. *See* Peace on the Table, *supra* note 21, § I(B)(1)(b).

72. *See* Esquirol, *supra* note 5, at 54.

73. *Id.*

74. *Id.*

75. *See id.* Pastrana withdrew Colombian troops from the land, but, in theory, retained control of the land. This was based on the argument that voluntary withdrawal emphasized the states control over the land. *Id.*

Colombia. As a result of the wide range of criticisms, both Pastrana and the peace process lost a great deal of political legitimacy.⁷⁶ Additionally, the zone has helped to fuel internal war in Colombia by granting a safe-zone from which the guerrillas have conducted attacks and reinforced their drug related activities.⁷⁷

C. Internationalization of the Colombian Conflict Through Increased U.S. Involvement

1. The War On Drugs

The official position of the United States focuses U.S. aid to Colombia on the drug war, while not getting involved in the internal war of Colombia.⁷⁸ This aid was formalized in Plan Colombia, enacted during the last year of the Clinton administration.⁷⁹ Plan Colombia appropriates approximately \$1.28 billion U.S. dollars in aid for the Colombian military, police, and air force for 2000, 2001, and 2002.⁸⁰ U.S. funding also supported a new counter-narcotics brigade whose objective is to create secure conditions in Southern Colombia.⁸¹

Despite the official position of the United States, the main security threat in this region is the FARC, who help in the cultivation of drug crops and protection of the processing plants.⁸² Consequently, counter-narcotics battalions from the United States will be used against the insurgency groups in the area.⁸³ The campaign will send Colombian troops who are

76. See *id.* at 55 (stating that Pastrana's granting of the zone to the guerrillas almost caused his complete rejection as a leader, and came very close to a revolt by the armed forces).

77. See Esquirol, *supra* note 5, at 55.

78. Kenneth S. Sharpe & William Spencer, *Refueling a Doomed War On Drugs: Flawed Policy Feeds Growing Conflict*, NACLA REP. ON THE AMERICAS, Nov.—Dec. 2001, at 26.

79. See K. Larry Stors & Nina M. Serafino, CRS REPORT FOR CONGRESS, ANDEAN REGIONAL INITIATIVE (ARI): FY2002 ASSISTANCE FOR COLOMBIA AND NEIGHBORS 1 (2002).

80. Kate Doyle & Adam Isacson, *A new World Order? U.S. Military Mission Grows in Latin America*, NACLA REP. ON THE AMERICAS, Nov.—Dec. 2001, at 17 (stating that the aid dedicated to Colombia goes towards weapons, training, military advice, and communication equipment).

81. See *id.* at 18.

82. *Id.*

83. See Sharpe & Spencer, *supra* note 78, at 26. The FARC in the area of Southern Colombia will continue to be a threat to U.S. drug policy in the region. Thus, "the very structure of the policy itself will generate mounting pressure for dragging the United States more deeply into a full-scale counterinsurgency war." *Id.*

trained, armed, and supported by the United States into land that is controlled by the FARC.⁸⁴ As a result, many commentators have expressed their fears that the United States will become involved in "a Vietnam-style quagmire."⁸⁵

This concern with the drug war has overshadowed every other aspect of violence in Colombia.⁸⁶ Although a long history of political violence is readily acknowledged, the current rise of violence in Colombia is attributed primarily to the increasing influx of drug money which is used to support groups such as the FARC.⁸⁷ Furthermore, many have argued that the prospect of Colombia becoming a failed state is a direct threat to U.S. security interests.⁸⁸ Therefore, the United States has placed conditions that must be met for Colombia to continue receiving monetary aid. Some of these conditions include the enforcement of the Colombian extradition treaty with the United States,⁸⁹ and the strengthening of the military forces in Colombia.⁹⁰

Many of these conditions have been aimed at fighting the drug war, and have been counterproductive with respect to the internal war in Colombia. For example, in the 1990s, drug traffickers directly attacked the Colombian government through a wave of violence in response to the implementation of the extradition treaty between Colombia and the United

84. Doyle & Isacson, *supra* note 80, at 18; see also Carol Clark, *Plan Colombia: Is the U.S. Addicted to Military Fixes*, available at <http://www.cnn.com/SPECIALS/2000/colombia.noframes/story/essays/clark> (last visited Aug. 16, 2002) (quoting drug trafficking and security expert Bruce Bagley as stating that Plan Colombia is "moving very hard on the military side and very weakly on the development side, leaving the peasantry with no real alternatives.").

85. Clark, *supra* note 84.

86. Esquirol, *supra* note 5, at 84.

87. *Id.*

88. *Id.* at 85. The U.S. response to President Pastrana granting the FARC a demilitarized zone demonstrates this point. The United States was clearly against the demilitarized zones because of the fear that it would increase the level of drug cultivation. The U.S. position was more concerned with a drug interdiction program rather than the prospect of facilitating a negotiated peace. *Id.*

89. See Joshua Warmund, *Removing Drug Lords and Street Pushers: The Extradition Treaty of Nationals in Colombia and the Dominican Republic*, 22 *FORDHAM INT'L L.J.* 2373, 2419 (1999). In 1997, Colombian extradition law was changed to allow the extradition of Colombian nationals to the United States. President Ernesto Samper pushed through this law under immense pressure from the United States. *Id.*; see also E-Mail from Michael C. Kenney, Ph.D. Candidate, University of Florida, Department of Political Science, to author (Oct. 26, 2001, 10:03 EST) (on file with author). Much of the pressure placed on Colombia for the change in its extradition law arose at a time when the Samper presidency was under immense pressure from the United States for its supposed links to the Cali Cartel. *Id.*

90. Esquirol, *supra* note 5, at 88. A central part of the American aid to Colombia is focused on strengthening the Colombian military to make the drug policy more effective. *Id.*

States.⁹¹ This left Colombia in a weak and disintegrated position. By helping destabilize the country, the response to the extradition treaty has helped strengthen the connection between drug traffickers and the guerrillas.⁹² Therefore, the focus on implementing U.S. policy goals helped to increase, rather than decrease, the violence associated with narco-terrorism.⁹³ It also helped make the drug war more difficult to combat. In essence, many of the conditions set by the United States challenge the sovereignty of Colombia and its internal struggle by placing drug policy goals over the search for peace in Colombia.

2. The Colombian Guerrillas as International Terrorists

Following the terrorist attacks of September 11, 2001,⁹⁴ the United States has increased its focus and emphasis on Colombia.⁹⁵ As the United States turns its focus to fighting the "War on Terror," it has turned its attention to fighting the insurgency movements in Colombia. In fact, three Colombian groups are deemed terrorist groups by the U.S. State Department.⁹⁶ The FARC is also identified by the State Department as "the most dangerous international terrorist group based in this hemisphere."⁹⁷

91. Sandy R. Murphy, *Drug Diplomacy and the Supply Side Strategy: A Survey of the United States Practice*, 43 VAND. L. REV. 1259, 1305 (1990) (discussing the effects of a supply-side focus on the drug war in Colombia).

92. *Id.*

93. ARRIETA ET AL., *supra* note 1, at 25.

94. On September 11, 2001 the United States was attacked by the al-Qaeda terrorist group, starting the "War on Terror."

95. Doyle & Isacson, *supra* note 80, at 19.

96. *Id.* Explaining the U.S. decision to treat Colombian guerrilla groups as terrorist groups, Secretary of State Colin Powell stated that

Quite a few [terrorist groups] will go after our interests in the regions that they are located in and right here at home. And so we have to treat all of them as potentially having the capacity to affect us in a global way. . . For example, we have designated three groups in Colombia alone as being terrorist organizations, and we are working with the Colombian government to protect their democracy against the threat provided or presented by these terrorist organizations.

Id.

97. International Policy Timeline, *supra* note 50, Oct. 15. While calling the FARC "the most dangerous international terrorist group in this hemisphere," the U.S. Department of State also said that in order to fight terrorism, the United States will use "all the elements of our national power as well as the elements of the national power of all the countries in our region." *Id.*

In this respect, Anne Patterson, U.S. Ambassador to Colombia, has compared the FARC to the al-Qaeda terrorist group of Osama bin Laden.⁹⁸

It remains a point of contention whether the guerrilla groups in Colombia are indeed international terrorists. The United States points to the continued kidnapping of U.S. and foreign citizens, as well as the extortion of U.S. businesses in Colombia.⁹⁹ The United States also cites the efforts of FARC and ELN to reach out to other international terrorists, such as the Irish Republican Army (IRA),¹⁰⁰ as well as the continuing practice of targeting security forces within Colombia.¹⁰¹

Other commentators, however, argue that the situation in Colombia is a purely internal conflict.¹⁰² They argue that it is not even a civil war because the Colombian conflict is within a polarized society that involves just a few actors of society.¹⁰³ It is these actors resorting to violence in order to resolve their differences that constitutes the violence in Colombia today.¹⁰⁴ Furthermore, in the wake of September 11, there is a growing

98. *Id.* Oct. 24-25. Patterson has also stated that "[m]y government is concerned by the use of the [FARC] demilitarized zone as a base for terrorist acts." *Id.* She also affirmed the U.S. view that Plan Colombia as the best way to combat terrorism in Colombia. *Id.*; see also U.S. Department of State Counter-Terrorism Office, available at <http://www.state.gov/s/ct/> (last visited July 18, 2002) (stating that the U.S. official counter-terrorism policy makes no concessions to terrorist groups, brings terrorists to justice, and increases the counter-terrorism capabilities of the United States to allies which require U.S. aid).

99. See U.S. Department of State, *supra* note 28, Colombia. An example of the extortion of American firms is the continued attacks by the FARC on the American firm Drummond's coal interests. These attacks by the FARC were the result of Drummond's refusal to pay millions of dollars in tax to the FARC. This tax is "imposed" by the FARC on all people or businesses that are valued at over one million dollars. *Id.*; see also International Policy Timeline, *supra* note 50, July 15-16. The FARC has also been responsible for numerous kidnappings that have caught the attention of the international community. One such kidnapping was the kidnapping of Meta's former governor Alan Jara while traveling in a U.N. vehicle on July 15, 2001. *Id.*

100. International Policy Timeline, *supra* note 50, Aug. 13 (stating that Colombian officials arrested members of the IRA in Colombia after having supposedly spent several weeks training FARC members in the use of terrorist tactics).

101. See *id.* June 28.

102. Loaiza, *supra* note 57.

103. *Id.* The view of Colombia not having a civil conflict may seem misguided to some, considering the extent of the violence that exists in Colombia, and the impact on the lives of Colombian citizens.

104. See *id.*

need to distinguish one armed group from another.¹⁰⁵ In the war against terrorism, the term terrorist has been reduced to mean any armed group that attacks civilians.¹⁰⁶

D. Human Rights Violations

Political violence has resulted in massive human rights abuses in Colombia. The internal conflict in Colombia causes the civilian population to suffer the most.¹⁰⁷ Every day in Colombia, ten civilians are killed as a result of violence between different armed groups.¹⁰⁸ The FARC, ELN, and paramilitary groups are all frequent violators of the international human rights law (IHL).¹⁰⁹ The Colombian army is also implicated in the violation of human rights because of their "consistent and pervasive failure or unwillingness to distinguish civilians from combatants in accordance with the laws of war."¹¹⁰ In addition, the violence in Colombia has forced entire towns and populations to become displaced from their homes.¹¹¹ In 1998, there were over one million displaced people in Colombia.¹¹² Displaced Colombians live in absolute poverty, separated from their homes and family by the violence that has engulfed Colombia.

Furthermore, the breakdown of the peace process has increased the risk of human rights violations. Colombian civilians in the demilitarized zone now face being termed "pro-guerrilla" by paramilitary groups merely for the fact that they remained in their homes while the guerrillas where in

105. See Jim Tull, *Negociar Ante Todo*, SEMANA, available at <http://www.semana.com/archivo/articulosView.jsp?id=20713> (last visited Nov. 26, 2002).

106. *Id.*

107. WOLA Colombia Program, available at <http://www.wola.org/colombiaprg.html> (last visited Feb. 11, 2002) [hereinafter WOLA].

108. *Id.*

109. See Arturo Carillo-Suarez, *Hors de Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict*, 15 AM. U. INT'L L. REV. 1, 24-28 (1999).

110. *Id.* at 27.

111. WOLA, *supra* note 107.

112. Carillo-Suarez, *supra* note 109, at 27 (stating that the principle cause for the forced displacement of Colombian citizens is the violation of human rights).

charge of the zone.¹¹³ Consequently, in a system of blind retaliation, civilians run the risk of being attacked by paramilitaries for being guerrilla sympathizers.¹¹⁴

Colombian civilians therefore had to adopt the rules imposed upon them by private armies that control the particular region they live in.¹¹⁵ This has brought on the privatization of security and collective terror.¹¹⁶ Therefore, confidence and security have been replaced by the law of silence, the law of poverty, and a general lack of confidence among Colombian civilians.¹¹⁷ It is in the midst of such conditions that a resurgence of desperate and easy solutions to establish order by the use of private groups, such as paramilitary groups, arises. This vicious cycle of violence continues in Colombia.

E. *The Role of International Law in the Colombian Conflict*

The principal source of international law applicable to Colombia is Protocol II to the Geneva Convention of 1949.¹¹⁸ Article 3 to the Geneva Convention is the central part of humanitarian law applicable to non-international armed conflicts, and Protocol II is an expansion of common

113. Human Rights Watch, *Colombia: Rupture in Peace Negotiations Endangers Civilians*, available at <http://www.hrw.org/press/2002/01/zona0110.htm> (last visited Jan. 30, 2002). Jose Miguel Vivanco, executive director of the U.S. Division of Human Rights Watch stated that "the civilians who live in the zone were never consulted before they were included in this area and they certainly weren't consulted about the decision to end talks." *Id.*

114. *Id.*

115. ALFREDO RANGEL SUAREZ, *COLOMBIA: GUERRA EN EL FIN DE SIGLO* 109 (Tercer Mundo eds., 1999).

116. *Id.*

117. *Id.* at 110.

118. See Carillo-Suarez, *supra* note 109, at 36. The Colombian Constitution states that "the rules of international humanitarian law shall in all cases be respected." Thus, IHL is binding in Colombia. *Id.*

Article 3 of the Geneva Convention¹¹⁹ Article 3 sets up a minimum standard of humane treatment applicable to non-international internal conflicts.

Many commentators criticize the applicability of Protocol II.¹²⁰ The Colombian government did not adopt Protocol II until 1994 because it believed that Protocol II would undermine the legitimacy of the Colombian state, and upgrade the status of the guerrillas.¹²¹ It was further argued that the conditions necessary for the application of Protocol II to an internal armed conflict were not present.¹²² Instead of being an armed

119. Text of Protocol Additional to the Geneva Con. of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 16 I.L.M. 1442, 1443 [hereinafter Protocol II]. Protocol II states that

This protocol, which develops and supplements Article 3 common to the Geneva conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article I of the Protocol Additional to the Geneva Conventions . . . This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature, as not being armed conflicts.

Id.; see also General Introduction to the Commentary on Protocol II, available at <http://www.icrc.org/IHL.nsf> (last visited Feb. 12, 2002) [hereinafter General Commentary on Protocol II] (stating that Protocol II of 1977 is an extension of the guidelines set forth in Article 3 of the Geneva Convention in 1949); Esquirol, *supra* note 5, at 40-41 nn.70-73 (stating that Colombia finally adopted Protocol II in 1994 as part of President Samper's peace policy).

120. See generally Esquirol, *supra* note 5, at 40. Some see belligerency status as an obsolete concept today. However, this was the main argument that served as the backdrop to arguments in favor and against the adoption of Protocol II in Colombia. Some of the criticisms advanced against the adoption of Protocol II included arguments that the Colombian conflict did not rise to that level, and that its adoption would undermine the Colombian government's international standing. *Id.*

121. Laura Lopez, *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflicts* 69 N.Y.U. L. REV. 916, 917 (1994) (stating that "by its very nature, international humanitarian law conflicts with state sovereignty by placing the rights of individuals over the rights of states"). Lopez points out that the modern trend towards civil, rather than international, conflicts makes the Geneva Convention increasingly irrelevant. *Id.*

122. See General Commentary on Protocol II, *supra* note 119, at 4339-41. A non-international armed conflict is one in which there is one state in conflict with certain groups within its borders. In addition, for there to be an armed conflict, there must be open hostilities between the state and the factions. Internal disturbances or occasional acts of violence are not sufficient for the finding of "armed conflict." *Id.*

conflict, Colombia argued that what existed in Colombia was internal disturbances with occasional acts of violence.¹²³ Therefore, it was argued that Protocol II did not apply to Colombia.¹²⁴

Recently, however, the Colombian government radically changed its position against Protocol II and international involvement to that of an unqualified adherence to Protocol II.¹²⁵ This is partly due to the revival of international law arguments as part of the peace agenda.¹²⁶ However, in Colombia there is a clear distinction between acceptance and observance of international humanitarian law.¹²⁷ Although many in Colombia are calling for increased humanitarian involvement, observance of international law remains at very low levels.¹²⁸

1. Status of the Guerrillas Under Protocol II

Perhaps one of the main reasons for reluctance in Colombia to adopt Protocol II was that its adoption may bring the Colombian government one step closer to recognizing a belligerency status of the guerrillas.¹²⁹ Many of these fears are unfounded. The international community has not recognized the Colombian guerrillas as belligerents.¹³⁰ This is mostly due to the guerrillas poor human rights record and their connection to drug trafficking and kidnapping.¹³¹

As a result of their extensive control over large tracts of land and many towns, the Colombian guerrillas are claiming the title of belligerents.¹³² Under international law, belligerency status indicates that an internal armed conflict has reached the status of an international armed conflict.¹³³

123. Protocol II, *supra* note 119, at 1443.

124. See Esquirol, *supra* note 5, at 42.

125. See Carillo-Suarez, *supra* note 109, at 125.

126. See *id.*

127. See *id.* at 122.

128. See *id.*

129. See Esquirol, *supra* note 5, at 43.

130. SUAREZ, *supra* note 115, at 98 (stating that the granting of belligerency status is a taboo topic concerning Colombia's internal war because it would grant the guerrillas an unacceptable advantage, and de-legitimize Colombian institutions).

131. See *id.* at 99.

132. Esquirol, *supra* note 5, at 25.

133. *Id.* at 45. The recognition of an insurgency group as belligerent creates certain rights under international law for all the parties involved. The government is generally able to practice a full-scale war against the insurgents and it "eschews responsibility for the acts of insurgents to third-party states and their citizens." *Id.* The belligerents, on the other hand, gain access and protection from the laws of war. *Id.*

As a result of such a status, the guerrilla groups would stand on equal ground with the Colombian government, and would have formal international standing.¹³⁴

Under this notion of belligerency, the Pastrana government had to portray itself as retaining complete control of all of its territory.¹³⁵ Some observers have argued that the government's inability to do so has helped prolong, rather than shorten, the Colombian conflict.¹³⁶ The strict notion of belligerency under which the Pastrana government acted restricted the possibilities for negotiation with the guerrillas, and the limited viable alternatives in helping to end the conflict.¹³⁷

The granting of status as a negotiating tool is not a new concept to the Colombian conflict. As a prerequisite for the peace talks, the Colombian government had to recognize the guerrillas as "political actors."¹³⁸ Despite their connection with drug trafficking and delinquency, the Colombian guerrillas do have political objectives.¹³⁹ In fact, in regions of Colombia where the power of the state does not reach, the Colombian guerrillas serve the function of a government through their control of justice, communications, and "security."¹⁴⁰ Therefore, with a view towards a peaceful Colombia in the future, granting the status of belligerency to the guerrillas may be used as an inducement to force them to stop their systematic violations of IHL, and abandon their connection to drug trafficking.¹⁴¹ Therefore, with the need to adopt new and creative ways to fight the war in Colombia, granting of belligerency status remains a viable option for the future.¹⁴²

134. *See id.* at 40 (stating that the formal title of belligerency is a first step towards being declared the official government of a country in civil war). However, the status of belligerency has been challenged by many commentators who have pointed out that insurgents have no recognized rights. Therefore, the recognition of belligerency by third-party states is only motivated by national self-interests. *Id.* at 47.

135. *Id.* at 53.

136. *See id.*

137. *See* Esquirol, *supra* note 5, at 53.

138. *Id.* at 58.

139. SUAREZ, *supra* note 115, at 99 (stating that to deny the guerrillas' political objectives would be to close the door on all possibilities for negotiation).

140. *See id.*

141. *See id.* at 100 (arguing that granting belligerency status to the guerrillas would accentuate the political aspects of their struggle, while reducing the delinquent aspects).

142. *See id.* at 102.

2. Rules of Conduct under International Humanitarian Law

A second issue that must be addressed with respect to the Colombian conflict is the rules of conduct in a non-international armed conflict, and their applicability to the Colombian conflict. The Colombian crisis and the impact it has had on the individual lives of its citizens seems to confirm the view that IHL is inapplicable and unenforceable in such conflicts.¹⁴³ Colombia is a country in which there are massive amounts of human rights violations, by all parties involved, with very few actors being held accountable for their crimes.¹⁴⁴ The level of impunity with which all of the players in the Colombian dilemma act only exacerbates the dilemma.

Under the rule of law set forth by the International Court of Justice in *Nicaragua v. United States*,¹⁴⁵ a state may be held accountable for the actions of state agents acting within the scope of their official capacity.¹⁴⁶ Similarly, an individual may be held accountable if acting on behalf of the state.¹⁴⁷ This is a generally accepted norm under international law. Therefore, as a result of the connection between some factors of the armed forces and paramilitary groups, the Colombian state may be held responsible, under both Article 3 of the Geneva Convention and Protocol II, for the actions by paramilitary groups in violation of IHL.¹⁴⁸

Paramilitary forces often receive protection and aid from state authorities, including protection from prosecution, and in many instances, complete freedom of movement in heavily militarized areas.¹⁴⁹ Not only has the Colombian state been implicated in directly aiding and training paramilitary groups, but they have also been linked to indirectly aiding these groups through acquiescence and compliance.¹⁵⁰ Thus, the Colombian state has become responsible for its failure to act against paramilitary groups and their crimes against Colombian citizens.¹⁵¹

143. Carillo-Suarez, *supra* note 109, at 122 (stating that Colombia seems to point to the view that "the increase in the intensity of the conflict has not led to a greater commitment by the parties to respecting international humanitarian law; if anything, the frank disrespect shown by all the actors towards humanitarian norms is ostensible").

144. *See id.*

145. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27).

146. *See* Carillo-Suarez, *supra* note 109, at 102.

147. *See id.*

148. *See id.* at 103.

149. *See id.* at 105.

150. *See id.* at 104.

151. *See* Carillo-Suarez, *supra* note 109, at 108. On July 15, 1997, the paramilitary group Autodefensas Campesinas de Cordoba y Uraba (AUC) moved into the town of Mapiripan and killed fourteen people who were "suspected" of being guerrilla sympathizers. Local military and police

Additionally, both Article 3 of the Geneva Convention and Protocol II encompass organized armed groups.¹⁵² The term “combatants” refers to any organized group that takes an active role in the hostilities.¹⁵³ Both the Colombian guerrilla groups and paramilitary forces clearly meet the requirements of armed forces, thus making IHL directly applicable to them as well.

It seems clear that IHL should apply to the Colombian players. However, the key question that remains unanswered is how it should be enforced. Currently, there is no procedure for sanctioning or monitoring the persistent violations of IHL in Colombia.¹⁵⁴ Additionally, states are under no obligation to prosecute those who violate IHL.¹⁵⁵ Despite the applicability of IHL to the Colombian conflict, methods for enforcement, such as the International Criminal Court, are still far away from being applied.¹⁵⁶

On the national level, IHL has indeed become more readily accepted within Colombia.¹⁵⁷ However, it has so far not been fully observed by any of the players within the conflict. Widespread massacres, kidnappings, tortures, and disappearances continue to plague Colombia, with few people actually brought to justice.¹⁵⁸ However, acceptance of IHL is an important first step leading towards the eventual observance of IHL. Compliance with international law may only be made possible through third-party involvement, such as the United Nations.¹⁵⁹

3. U.N. Involvement in Colombia

Increased U.N. involvement may be a way to enforce the guarantees that have not been met by the parties involved. As a result, third-party

authorities ignored calls for help from the citizens of Mapiripan. Commentators have stated that “many organizations and even state officials have found significant evidence that the State could have but did not stop the massacre.” *Id.*

152. *Id.* at 109 (stating that “Common Article 3 states that its provisions shall be respected ‘by each party to the conflict,’ while Protocol II expressly contemplates and encompasses the conduct of ‘organized armed groups,’ in opposition to the security forces of the State.”).

153. *Id.* at 110.

154. *Id.* at 123. Protocol II did not set up any enforcement measures. This has often been criticized by many as one of the major reasons IHL has not been readily applied in internal conflicts. *Id.*

155. Lopez, *supra* note 121, at 918.

156. *See id.*

157. *See id.*

158. Carillo-Suarez, *supra* note 109, at 122.

159. *See La Tercera, supra* note 55.

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involvement is a way for enforcing guarantees that neither side believes the other will implement.¹⁶⁰ In a study of over forty internal conflicts from around the world, international security and conflict termination expert, Barbara Walter, contends that the presence of a third- party capable of guaranteeing the terms of the negotiations between the government and rebel groups is necessary for a successful peace process.¹⁶¹ Negotiations fail because adversaries in the civil wars cannot make a credible promise to submit themselves to conditions that will place them in danger.¹⁶² This is especially relevant in Colombia, where there remains a high level of fear and mistrust by all the parties involved in the conflict.

Multilateral action enforced by a legal process, such as a resolution voting by the U.N. Security Council, acquires a level of legitimacy that a single unilateral action would not have. However, in order to act, the U.N. Security Council must determine, under Article 39 of the U.N. Charter, when there is an international breach of peace or act of aggression.¹⁶³ If it is determined that there is an international breach of peace, the United Nations may then take coercive diplomatic measures under Article 41, or military action under Article 42.¹⁶⁴ However, to reach the status of an international breach of the peace, certain criteria must be met. Some of these criteria include conditions such as the existence of refugees in neighboring countries, fighting that crosses borders, a collapsed state government, genocide, or a situation where the lives of citizens are endangered by a lack of governmental authority.¹⁶⁵ The question remains whether the conflict in Colombia has reached the point of an international civil conflict under these criteria, thus invoking international intervention.

Although human rights abuses are common to the Colombian conflict, they have not reached the level of widespread genocide or ethnic conflict found in countries such as Rwanda or the former Yugoslavia. Nor is the Colombian conflict one which crosses state borders.¹⁶⁶ Although the Colombian conflict is one that has serious human rights implications, it is not an international breach of the peace to warrant military or forcible

160. *Id.*

161. *See id.*

162. *Id.*

163. Captain Davis Brown, *The Role of Regional Organizations in Stopping Civil Wars*, 41 A.F.L. REV. 225, 273 (1997).

164. *Id.*

165. *Id.*

166. *See* Interview with Fernando Cárdenas, *supra* note 20 (explaining that the Colombian conflict is purely internal and does not affect its neighbors).

intervention under Article 39 of the U.N. Charter.¹⁶⁷ As many observers have argued, it remains a purely internal conflict.

Furthermore, military action through the United Nations is not a practical solution.¹⁶⁸ Colombia is a large country, composed mostly of mountains and jungles. Guerrilla groups like the FARC are not found in only one location. Rather, they easily move and hide within the landscape of Colombia.¹⁶⁹ As the history of Colombia proves, gaining military control is a difficult and unsuccessful proposition.¹⁷⁰ To gain military control would require a monumental and costly effort in terms of money and human lives.¹⁷¹ The root problem of the Colombian conflict is the social inequality that plagues its society.¹⁷² As long as large sectors of Colombian society do not have access to education, or political and economic systems, the fighting will continue in Colombia.¹⁷³

International involvement should instead be geared at maintaining peace through diplomacy, and not through military force.¹⁷⁴ A permanent international presence in negotiations is a way for the Colombian peace process to gain both legitimacy and a means of enforcement which it has lacked so far.¹⁷⁵ This will help establish a set of rules for a peace process that has failed in part because of a lack of rules.¹⁷⁶

Furthermore, international involvement should be aimed towards discussing, observing, and making recommendations concerning Colombian human rights violations.¹⁷⁷ Respect for human rights is an essential element for achieving a lasting peace in Colombia.¹⁷⁸ However, as stated in *Nicaragua v. United States*, the “use of force could not be the

167. *See id.*

168. *See id.*

169. *See id.*

170. *See id.*; *see also* Caballero, *supra* note 59.

171. *See* Interview with Fernando Cardenas, *supra* note 20.

172. *See id.*

173. *See id.*

174. *See id.*

175. Interview by SEMANA with Juan Gabriel Uribe, Chief Negotiator for the Colombian government (Feb. 11, 2002), *available at* www.semana.com/archivo/articulosView.jsp?id=21180 (last visited Nov. 26, 2002).

176. *See id.*

177. *See* Fernando R. Tesón, *Collective Humanitarian Intervention*, 17 MICH. J. INT'L L. 323, 325-38, 362-71 (1996) (explaining soft intervention and its applicability to human rights violations).

178. *See id.* at 330.

Cardenas: Colombia's Peace Process: The Continuous Search for Peace appropriate method to monitor or ensure such respect" for human rights.¹⁷⁹ Violence followed by more violence is not the answer to the problems in Colombia.¹⁸⁰

IV. CONCLUSION

Colombia is currently going through a phase of intensified fighting on every side of the political spectrum. The intensification has been caused by a simultaneous increase in the numbers of guerrilla and paramilitary forces, combined with a partial collapse of the Colombian state for its inability to provide security for its citizens and administer justice. However, it is important to note that the root of the Colombian problem lies inherently in the social injustices that exist within the country. Policy goals aimed at fighting the guerrilla and paramilitary war should be formed in accordance with this consideration.

The question that must be asked concerning the Colombian peace process is not "what is the solution," but rather, "what is the correct process."¹⁸¹ There are no easy solutions to the Colombian dilemma. Right now, Colombia is faced with the prospect of a costly war, both monetarily and in terms of the loss of human lives. However, a military solution does not necessarily mean an end to all confrontations, and a victory in the war does not equal peace. Rather, it exacerbates the cycle of injustice followed by more violence. It is only through continued negotiations that there is a possibility for a peaceful future. Unless there is a peaceful solution, violence will continue to be the only language that is spoken, as it has been spoken for the last century in Colombia.

179. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, 134 (June 27).

180. See Interview with Fernando Cárdenas, *supra* note 20.

181. See Tull, *supra* note 105.

