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INTRODUCTORY NOTE TO UNITED NATIONS SECURITY COUNCIL RESOLUTION 2261

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Introduction

United Nations Security Council Resolution 2261, January 16, 2016, was passed in support of the Colombian peace process conducted between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC-EP). Colombia has had various peace processes since the late 1980s, comprising, arguably, five distinct phases and involving different permutations of groups. Resolution 2261 forms an integral part of a new phase of negotiations. If successful, these negotiations will end around fifty years of conflict between the government and other paramilitary groups and the FARC-EP and mark a very significant moment on the road toward peace. The resolution establishes a role for the United Nations in the verification and implementation of a ceasefire, to be implemented upon reaching a Final Peace Accord. A Final Peace Accord was achieved on August 24, 2016.[1] However, this Accord subsequently failed to achieve majority support in a public referendum to which its implementation was linked. The context for the implementation of Resolution 2261 therefore changed, making the United Nations' involvement even more important to the peace process than had been contemplated. A revised Final Accord was subsequently negotiated and ratified by the Colombian government on December 1, 2016.[2]

Specific Context of the Resolution

The latest round of peace negotiations with the FARC-EP were commenced by the Colombian government not long after President Juan Manuel Santos came to power in August 2010. On August 26, 2012, the Colombian government and the FARC-EP reached a "General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace," which provided for the establishment of formal peace talks and an agreed agenda regarding the content of a peace agreement.[2] A process unfolded as contemplated by that agreement, addressing five main areas: an integrated agricultural development agenda; political participation; an end to the conflict; victims; and implementation, verification, and ratification of the agreement. Agreement on each issue was reached in a series of step-by-step agreements, on a "nothing is agreed until everything is agreed" basis. These specific agreements were brought together in a Final Peace Accord almost 300 pages long in August 2016.[3]

The United Nations had become structurally involved in the peace process in 2015.[4] In July 2015, the parties requested that the United Nations support the work of the Sub-Commission on End of Conflict Issues, specifically on the monitoring and verification issues related to the bilateral ceasefire. On August 13, 2015, the UN secretary-general appointed Jean Arnault as his delegate to the sub-commission. As the peace process developed, the Colombian government and the FARC-EP reached agreement in Joint Communiqué #65, January 19, 2016, on a tripartite mechanism for the verification and monitoring of the agreement regarding the ceasefire and the laying down of arms, in order to create trust and provide guarantees.[5] This mechanism was to have an international body to preside over and coordinate it, settle controversies, make recommendations, submit reports, and verify implementation—in the form of a political mission of the United Nations formed by observers from the Community of Latin American and Caribbean States (CELAC).

The parties transmitted Joint Communiqué #65 to the United Nations, together with a request to the United Nations to establish the UN mission as set out in their agreement, the request being made in identical letters from the Colombian government and the leader of the FARC-EP.[6] Resolution 2216, as it states, is the response to that request and provides for the mission according to the terms requested, setting it up expressly as part of the tripartite implementation mechanism. On March 9, 2016, the secretary-general appointed Jean Arnault as his special representative and head of the UN mission in Colombia.

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The Resolution's Importance

Peace agreements in intrastate conflicts between states and their nonarmed opponents raise particular issues of commitment and compliance.[7] Typically, a comprehensive peace settlement will involve the state maintaining (and even being able to reassert) its monopoly on the legitimate use of force, while nonstate armed groups are expected to give up military capacity in exchange for gaining access to revised state institutions. External security guarantees can be vital to reassuring both parties that their commitments will be honored by providing an independent enforcement mechanism. The tripartite mechanism under the chairmanship of the United Nations, with a UN-led international component, provides just such an independent guarantee to the Final Peace Accord, and independent modalities for ensuring compliance with its military dimensions in particular. However, the passing of the UN Security Council resolution itself played a confidence-building role in the middle of an ongoing process, not just through its provisions but because the very act of passing it internationalized the peace process in a way that reassured the FARC-EP in particular.

While framed and understood as part of a peacekeeping function, which gives it its clearest basis in the UN Charter, the resolution should also be understood as closely related to the "good offices" function of the Office of the UN Secretary-General, which has been critical to a large number of peace processes.[8] The close interlinkage of Resolution 2216 with the Peace Accord provision can be understood to give the UN mission hybrid sources of authority in the UN Charter and international law on the one hand, and in the agreement of the parties as a set of quasi-contractual commitments with a form of constitutional status on the other. These sources of authority together aim to provide for the implementation of the Accord, which couples specific ceasefire and security commitments under international supervision with broader political commitments aimed at social, political, and constitutional reform. The different legal aspects of the Accord create a complex interlocked international-domestic enforcement of the agreement, which adds to evidence of a new "lex pacificatoria" or law of the peacemakers as a practice of innovative hybrid attempts to "legalize" peace agreements.[9]

The importance of Resolution 2216 has, however, come to have a context quite different from that contemplated by the process. This new context has arguably increased its importance still further. Peace agreements, such as the Colombian one, that provide not just for ceasefires but also for wider social and political restructuring can create a legitimacy gap with regard to the wider public. In the Colombian peace process, this legitimacy gap was addressed by agreement that the Final Peace Accord would be subject to an act of public ratification in the form of a national plebiscite on the agreement.

This referendum was held on October 2, 2016, and failed by a narrow margin: 50.2 percent against and 49.8 percent in favor.[10] This failure left the Accord's implementation in doubt and the requirement for a UN mission unclear. Despite this, the government and the FARC-EP quickly reasserted their ongoing commitment to the agreement and in particular the implementation of its ceasefire provisions. Despite the uncertainty about the peace process as a whole, the United Nations agreed on October 31, 2016, to establish the UN mission, which started its monitoring and verification on November 7, 2016. With the backing of the Security Council, the UN mission is to roll out all functions previously approved in Resolution 2261 of January 25, 2016, except those related to the laying down of arms, which will be postponed until the successful conclusion of the political dialogue and the adoption of a revised Final Accord.[11] The Government of Colombia and the FARC-EP have continued to work to try to modify the most criticized elements of the Accord, which appeared to influence its failure in the plebiscite. On November 12, 2016, they reached a revised version of the Final Peace Accord, and it was agreed that rather than a referendum it would be approved by the Colombian Congress, which took place on December 1, 2017.[12]

Conclusion

In conclusion, Resolution 2261 is very important to the ongoing peace process in Colombia, but the context in which it operates is quite different from that contemplated at the time of its promulgation. Rather than implementing the Final Peace Accord as a generally accepted peace agreement package, the UN mission that it establishes is helping stabilize and move forward the elements of the Final Peace Accord that can be said to be independent of the referendum, helping stabilize the parties' commitment to it in the face of a major setback. The United Nations' involvement through Resolution 2261 enabled the parties to implement the ceasefire and to continue to renegotiate the Accord with the purpose of achieving sufficient legitimacy and support.

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ENDNOTES

1 Acuerdo Final para la Terminacíon del Conflicto y la Construcción de una Paz Estable y Duradera (Aug. 24, 2016), *at* https://www.mesadeconversaciones.com.co/documentos/documento-final (in Spanish).

2 Acuerdo Final para la Terminacíon del Conflicto y la Construcción de una Paz Estable y Duradera (Nov. 24, 2016), *at* https://www.mesadeconversaciones.com.co/sites/default/files/24-1480106030.11-1480106030.2016nuevoacuerdofinal-1480106030.pdf (in Spanish). On ratification see *Colombia's Government Formally Ratifies Revised FARC Peace Deal*, THE GUARDIAN, Dec. 1, 2016, available at https://www.theguardian.com/world/2016/dec/01/colombias-government-formally-ratifies-revised-farc-peace-deal.

3 Acuerdo General para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera (Aug. 26, 2012), *at* https://www.mesadeconversaciones.com.co/sites/default/files/AcuerdoGeneralTerminacionConflicto.pdf (in Spanish).

4 Acuerdo Final para la Terminacíon del Conflicto y la Construcción de una Paz Estable y Duradera, *supra* note 1.

5 *See* UN Mission in Columbia, Timeline, at http://colombia.unmissions.org/en/timeline-0 (visited Feb. 14, 2017).

6 *See* Joint Communiqué #65 (Jan. 19, 2016), *at* https://www.mesadeconversaciones.com.co/sites/default/files/joint-communique-65-january-19-2016-1455025799.pdf.

7 *See* Letter Dated Jan. 19, 2016, from the Permanent Representative of Colombia to the United Nations addressed to The Secretary-General and the President of the Security Council, U.N. Doc. S/2016/53 (Jan. 22, 2016), *at* http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/53. Interestingly, although the relevant document sent to the United Nations with the request mentions the request being made in the form of "identical letters" as per the commitments agreed in Joint Communiqué #65, in fact only the letter from President Juan Manual Santos Calderon is included.

8 *See* Christine Bell, *Peace Agreements: Their Nature and Legal Status*, 100 AJIL 373 (2006).

9 *See* Thomas M. Franck, *The Secretary-General's Role in Conflict Resolution: Past, Present and Pure Conjecture*, 6 EUR. J. INT'L L. 360 (1995).

10 Bell, *supra* note 8; *see also* CHRISTINE BELL, ON THE LAW OF PEACE: PEACE AGREEMENTS AND THE LEX PACIFICATORIA (2008).

11 *Colombian Referendum: Voters Reject FARC Peace Deal*, BBC NEWS (Oct. 3, 2016), *at* http://www.bbc.co.uk/news/world-latin-america-37537252.

12 *Security Council Authorizes UN Mission to Verify Ceasefire in Colombia*, UN MISSION IN COLOMBIA (Oct. 31, 2016), *at* http://colombia.unmissions.org/en/security-council-authorizes-un-mission-verify-ceasefire-colombia.

13 Acuerdo Final para la Terminacíon del Conflicto y la Construcción de una Paz Estable y Duradera, *supra* note 2.

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United Nations S/RES/2261 (2016)

Security Council

Distr.: General
25 January 2016

Resolution 2261 (2016)

Adopted by the Security Council at its 7609th meeting, on 25 January 2016

The Security Council,

Underlining its full commitment to the Peace Process in the Republic of Colombia and its support for the "General Agreement to End the Conflict and Building a Stable and Lasting Peace", signed in Havana, Cuba, on 26 August 2012, between the Government of Colombia and the Revolutionary Armed Forces of Colombia — People's Army (FARC-EP),

Welcoming the progress in the negotiation process, the commitment of the Government of Colombia and the FARC-EP to reach a swift end to the armed conflict, and the confidence-building measures implemented in order to provide the first dividends of the peace process to the Colombian people,

Acknowledging the request made by the Government of Colombia, through the letter dated 19 January 2016 from the President of Colombia addressed to the Secretary-General and the President of the Security Council of the United Nations (S/2016/53), which encloses the Joint Communiqué between the Government of Colombia and the FARC-EP,

Noting that the Government of Colombia and the FARC-EP foresee that the Final Peace Agreement will include a tripartite mechanism to monitor and verify the definitive bilateral ceasefire and cessation of hostilities, and the laying down of arms; and *recognising* the contribution that a United Nations observer mission can make in the context of the tripartite mechanism,

Recognising further that the request made through the Government of Colombia refers to the participation of the United Nations as the international component of the above-mentioned tripartite mechanism for a limited period,

Recognising further the vital role played by the Republic of Cuba and the Kingdom of Norway as guarantors, and by the Republic of Chile and the Bolivarian Republic of Venezuela as accompanying countries of the Peace Process in Colombia,

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Reaffirming the purposes and principles of the Charter of the United Nations, and *reaffirming further* the sovereignty, territorial integrity, political independence and unity of Colombia,

Recognising Colombia's ownership of the implementation of the Final Peace Agreement,

1. *Decides* to establish a political mission to participate for a period of 12 months, as the international component and coordinator of the above-mentioned tripartite mechanism (the Mission), headed by a special representative of the Secretary-General of the United Nations;

2. *Decides further* that the Mission will be a political mission of unarmed international observers, responsible for the monitoring and verification of the laying down of arms, and a part of the tripartite mechanism that will monitor and verify the definitive bilateral ceasefire and cessation of hostilities, consistent with the Joint Communiqué, beginning all monitoring and verification activities, which will commence the 12 month period, following the signing of the Final Peace Agreement between the Government of Colombia and the FARC-EP;

3. *Requests* the Secretary-General to initiate preparations now, including on the ground, and to present detailed recommendations to the Security Council for its consideration and approval regarding the size and operational aspects and mandate of the Mission, consistent with the Joint Communiqué, as soon as possible and then within 30 days of the signature of the ceasefire agreement by the Government of Colombia and the FARC-EP, in light of its provisions;

4. *Looks forward* to the contributions of Member States of the Community of Latin American and Caribbean States (CELAC) to the Mission;

5. *Further requests* the Secretary-General, based on the reporting of the special representative to the Secretary-General, to report to the Security Council on the implementation of the Mission's mandate every 90 days after the start of its monitoring and verification activities and on completion of the Mission;

6. *Expresses* its willingness to consider extending the Mission upon the joint request of the Government of Colombia and the FARC-EP.

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