

Colombia's Challenge: Convincing an Illegally Armed Organization That Following International Humanitarian Law Is the Right Thing to Do

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The observance of International Humanitarian Law (IHL) is a practice that is usually reserved for the national armies of the different countries that are signatories to the different treaties that encompass international positive law. However, today's conflicts around the world are characterized by the asymmetrical nature of its combatants and battlefields. Most of these conflicts are called non-international armed conflicts and they lack the existence of belligerents, which are parties that are signatories to the different sources of positive law. Instead of belligerents, this article dubs all non-belligerent forces Illegally Armed Organizations (IAOs). The problem with IAOs is that they do not usually observe IHL and the world has seen a rise in violations and war crimes since the times of the Cold War, in the context of non-international armed conflicts. A country that resembles this kind of conflict and this kind of violent resume is the Republic of Colombia. With this into consideration, this paper seeks to find a proposal on how to convince IAOs in Colombia to abide and respect IHL. The paper first deals with the most prevalent crimes perpetrated by IAOs in the country (mostly the terrorist group FARC), all which are codified in international positive law: violations of the principle of proportionality and distinction, the use of indiscriminate weapons, kidnapping and recruitment of child soldiers. The paper then proceeds to propose solution alternatives within the Colombian context, which are later analyzed using different case studies of conflicts in other parts of the world like Algeria, Darfur, and the Philippines. Essentially, the overarching conclusion is that the way to approach IAOs in order to convince them on the importance of IHL is a 'carrots-and-stick' alternative. The findings suggest four solutions for policymakers to convince IAOs to follow IHL: Engaging in global diplomacy through media, have active intervention of international organizations, carry out an effective military intervention, and start fair and attainable negotiations.

Throughout history, war crimes that end up as genocide and mass atrocities have been committed by states, state-sponsored groups, separatist groups and terrorist groups. Since the final days of the cold war, these crimes have been perpetrated largely by groups other than official state organizations or state-sponsored groups. Many of these groups – sometimes called terrorist, insurgents, separatists, guerrillas, etc. – have fallen into a single category which will be labeled Illegally Armed Organizations (hereinafter IAOs). The reasons why they have been categorized as such are evinced by

the insurgent actions of these groups and their legal status within the state. These factions have been known to commit inhumane crimes, mass atrocities and even genocide. Hence, the difference between IAOs – publicly branded as such – and official organizations is that insurgents are sometimes not given belligerent status (also known as combatant's privilege)¹ under

¹Belligerent status is defined by the Inter-American commission on Human Rights as "[essentially] a license to kill or wound enemy combatants and destroy other enemy military objectives." Extracted from: Inter-American commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., 22

International Humanitarian Law (hereinafter IHL) as a principle, since they do not, in most cases, “conduct their operations in accordance with the laws and customs of war.”² However, even without belligerent status these organizations can still be convinced to stop their criminal actions. It is important to formulate this distinction because it is not only the nature of the crimes but also the nature of the actors that pertains to this study. The reasoning behind this is that IAOs operate outside the law. “In international conflicts involving traditional military powers, IHL is usually followed because the belligerent parties are easier to identify and recognize the benefits of abiding by international law.” On the other hand, non-international armed conflicts may include groups such as IAOs, which do not feel obligated to comply with the rules of law that pertain to conflict. Nonetheless, it remains the duty of governments, states and leaders to act to prevent war crimes, mass atrocities and genocide, which ultimately means protecting the civilian population. The purpose of this study is to formulate guidelines to aid in the protection of civilian lives during conflict and prevent war crimes – indiscriminate attacks towards civilian population, the use of unconventional weapons, kidnapping and recruiting of minors – from happening. Specifically, this study aims at a particular case where many law of war violation flags have been raised and where the findings can provide useful input: the Colombian internal armed conflict, ongoing since the 1960s, fueled mostly by the fight against the Revolutionary

Armed Forces of Colombia (known hereinafter by their Spanish acronym, FARC).³

Ever since its more than two hundred years of history as an independent nation, the Republic of Colombia has experienced many episodes of violence and turmoil. However, in the last quarter of the 20th century, this violence has escalated and become a crisis that has gotten the world’s attention. Colombia has shown signs that raise alarm for mass atrocities and genocide within the international community. The fluctuating violence, which was increasing from the 1990’s into the first decade of the 21st century, but decreasing ever since 2002, has been conducted by three main actors: two opposing and powerful IAOs and the Colombian government. One of these IAOs in Colombia, the FARC is one of the oldest-standing IAOs in the world, which has also risen to be the “largest, wealthiest, and best-trained...force”⁴ in Latin America. What started as a Marxist guerrilla group with a socialist agenda became an all-out terrorist group responsible for massacring scores of innocent civilians, the displacement of thousands, and several other violations of the law of war, for the most part targeting the civilian population. FARC is a narcoterrorist organization with little popular support or sympathy, as it is the populace who they attack the most. In contrast, there is the recently demobilized and almost defunct Autodefensas Unidas de Colombia, which is Spanish for United Self-defense Forces of Colombia (hereinafter AUC-ACCU), an illegal paramilitary organization which opposes FARC, but is also involved in narcotrafficking and the massacring of thousands of civilians.⁵ Both FARC and AUC-ACCU fight the

Oct. 2002, para. 68, cited in Knut Dormann, “The Legal Situation of ‘Unlawful/Unprivileged Combatants,’” 85 *Int’l Rev. of the Red Cross*, 45 (March 2003).

² ICRC, Hague Convention (IV) Respecting the Laws and Customs of War on Land, appendices §1 chap. 1 art. 1, Oct. 18, 1907, 36 Stat. 2277. <http://www.icrc.org/ihl.nsf/FULL/195>.

³ Howard J. Wiarda and Harvey F. Kline, *Latin America: Politics and Development* (Philadelphia: Westview Press, 2011), 211.

⁴ *Ibid.*, 112.

⁵ Although most AUC-ACCU groups have disbanded and rejoined society, many former members of these groups have dedicated to the same criminal activity. They have been branded by the government as “emerging terrorist bands.”

government in order to protect their cash flow, since the bulk of their budget comes from illicit activities. Together, both groups have been responsible “for the majority of massacres and forced disappearances, kidnapping and terrorist attacks against towns...in addition to other crimes committed against the civilian population.”⁶ Essentially, the Colombian conflict has become an almost five decade old war in which the civilian population has been paying the highest tolls in terms of victims of violations of the law of war and human rights. Specifically, both insurgent groups have been known to violate the principles of distinction and proportionality (indiscriminate targeting of civilians and their property), to use landmines and other indiscriminate weapons, engage in kidnapping and recruit children into their ranks amongst other crimes and atrocities; all these examples will be discussed further on. Truth be told, it is widely believed that these groups “are just after power, and their ideology is merely a fig leaf,”⁷ which strongly suggests an inherent need for FARC to sell a positive image to the world in terms of justification of their actions; this particular concept will be revisited later on. Nevertheless, AUC-ACCU is in the process of disbanding and stopping its harmful practices against civilians, while FARC is still operational and one of the most important actors of the conflict. Also, although not as important as FARC, another terrorist group to be aware of is the Ejercito de Liberacion Nacional (hereinafter, ELN which is Spanish for National Liberation Army), which has also engaged in crimes and mass atrocities in the past; since the ELN has not been as critical as FARC and AUC in the conflict, it will not be given further analysis here.

⁶ Carla Ferstman, Mariana Goetz and Alan Stephens, *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* (Boston: Martinus Nijhoff Publishers, 2009), 437.

⁷ Allen D. Raymond, “Re: Research on Colombia (Unclassified),” e-mail message to author, July 30, 2010.

RESEARCH SCOPE

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It is easier to prevent genocide through requiring compliance with IHL of a legally constituted group or organization – usually acting on behalf of a state government – than of an IAO. This is because the former factions are generally law-abiding and the protection of civilians is often a top priority in their agendas. Most importantly, legally constituted or state sponsored groups operate openly and lawfully, putting them under the constant scrutiny of public opinion; meaning their acts will be easily seen and judged by the world. However, this is not an absolute law, taking into account that governments have certainly engaged in genocide and violations of the law of war in the past, Nazi Germany being a fitting example. On the other hand, groups that fall out of this category, specifically IAOs, present a different problem: outreach. It becomes a herculean task to approach these groups because, first of all, they are usually sought after by the government and, as a consequence, they live surreptitiously and illegally in a world where their leadership, ideals and internal organizations remain unseen by the rest of the world. In general, “it may be hard to convince such groups that it indeed is in their interest to protect civilians, unless they get punished for not doing so.”⁸ Demanding respect for civilians and the laws of war by illegal groups who live clandestinely is a thorny and challenging issue that must be addressed by the global community and the different organizations that protect civilians and prevent mass atrocities, war crimes and genocide. It is essential to “strip away the

⁸ Ibid.

moral outrage the behavior of these groups provoke and think very practically about what could influence them to modify and change their field behavior.”⁹ Allegorically, finding a method for the compliance of IHL by IAOs is as challenging as convincing a death row convict to behave, despite the fact that he is already being punished for crimes he has committed; essentially getting him to realize that those crimes are wrong. Additionally, the complexity of the Colombian conflict and the IAOs taking part of it will be the scope of this investigation, although it will not necessarily be limited to cases in this country; other cases will be mentioned to expand the research scope.

Most of the mass atrocities in Colombia are attributed to FARC. However, certain crimes have been quietly sponsored by a handful of people within the Colombian elites and the military who were illegally tied to AUC-ACCU paramilitaries.¹⁰ In order to raise awareness to help prevent an army from having a crooked minority engaging in relationships with illegal paramilitaries, the scope of this paper will also touch upon the duties of military leaders in this issue. The incessant effort of Human Rights non-governmental organizations and activists to investigate cases of crimes committed by paramilitaries with army sponsorship has been somewhat productive in not letting crimes go unpunished¹¹. That being said, it is a work in progress that needs improvement¹² and the amount of criticism and effort does not match the level of atrocities FARC commits. Primarily, the scope of this research is to suggest ways to convince an IAO that it is in everybody’s benefit to follow the Rules of War. The research will limit itself on how to address this issue specifically with FARC,

⁹ Robin Kirk, “Re: Research on Colombia,” e-mail message to author, July 17, 2010.

¹⁰ Wiarda, *Latin America*, 214-215.

¹¹ Alison Brysk, “Communicative Action and Human Rights in Colombia: When Words Fail,” *Revista Colombia Internacional*, no. 69 (January-June 2009): 37-38.

¹² *Ibid.*, 43.

although it is done under the assumption that the conclusions can provide effective answers on how to address the issue with any IAO.

The investigation will first address instances where FARC and other IAOs have violated the law of war and discuss how this is affecting the civilian population with the intention of studying the legal inferences, specifically the cases involving proportionality and distinction, indiscriminate weapons, kidnapping and recruiting of minors. Secondly, there will be a recount of measures and alternatives taken to address this issue with FARC and other IAOs in Colombia. Then, different historical accounts in different places and times dealing with this matter will be taken into consideration in order to analyze the historical implication of other case studies. Finally, a conclusion and a collection of final thoughts will be drawn based on the main body of research and an amalgamation of the different case studies and concepts revised. The final product will consist of a series of recommendations applicable to Colombia as well as similar conflicts.

FARC, AUC AND THE LAW OF WAR

Amongst the other IAOs in Colombia, FARC is the largest and the one that causes the most terror within the civilian population. In recent years, AUC has been the right wing nemesis of FARC in a war where civilians, not combatants, were paying with their lives. The struggle became an endless back-and-forth exchange of death that primarily had civilians as victims. Concerning this FARC-AUC phenomenon, Human Rights activist Robin Kirk describes it like this: “They mutilated bodies with chainsaws. They chained people to burning vehicles. They decapitated and rolled heads like soccer balls. They killed dozens at a time, including women and children. They buried people alive or hung them on meat hooks, carving them. Rarely were the victims uniformed...I was not aware of a single battle

between [AUC] and the FARC.”¹³ The number of innocent men, women and children killed in this absurd war has been a constant alarm that something wrong is going on with these insurgent organizations. Although these are blatant violations of human rights, from a legal standpoint, these can only be violated by states because they are the ones who sign all the existing international law sources and enter into treaties. However, certain provisions of international law deal specifically with IAOs, which apply to FARC and AUC.

APPLICABILITY IN JURISDICTION FOR IHL

The legal basis which holds IAOs accountable is found in Common Article 3 of the 1949 Geneva Conventions (hereinafter CA3)¹⁴ and the 1977 Additional Protocol to the Geneva Conventions II (hereinafter APII), which complements the earlier. Both sources of IHL deal with non-international armed conflicts like the one in Colombia. Essentially, these rules of war apply not only to the state, but to “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement [the rules of war].”¹⁵ The bulk of the rules of war applicable

to this case come from the 1977 Geneva Additional Protocol II which deals with non-international conflicts, such as the one in Colombia. Additionally, as will be seen later on, many of the crimes and atrocities committed by IAOs in Colombia are grave breaches of the Geneva Conventions. Grave breaches are a closed set of the most serious violations of the law of war¹⁶ which trigger universal jurisdiction. Universal jurisdiction establishes that “states ratifying the Geneva Conventions are obliged to enact criminal legislation that extends not only to its own nationals, but to any person who has committed a grave breach, including its enemies.”¹⁷ This jurisdiction means that whoever makes them should be searched for and tried in court regardless of where that person is in relation to where that breach was made.

PROPORTIONALITY AND DISTINCTION

Amongst the many principles of war violated by FARC and other insurgent groups, the ones that pertain to this study are: distinction, proportionality, the use of unconventional weapons, recruiting minors, forced displacement and kidnapping. The term “military target” is an essential aspect of analyzing distinction and proportionality. Both the FARC and AUC used this term to attain pseudo-legality under which they could justify any rule or decision they made. These IAOs used this term when “they were fighting for control of a region, as they sought to justify the murders of civilians who they claimed had

¹³ Robin Kirk, *More Terrible than Death: Massacres, Drugs and America's War in Colombia* (New York: Public Affairs, 2003), 144.

¹⁴ International Committee of the Red Cross, “*Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*,” Article 3, August 12, 1949. (Hereinafter GC)

CA3 addresses both parties to the conflict, high contracting party and fighters, to abide by a minimum set of provisions: “In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions.” The rest of the article enumerates the provisions that both parties have to obey. The importance of this article is the establishment of the fact that combatants and fighters, regardless of their legitimacy, must abide by the rule of war within the Colombian conflict.

¹⁵ International Committee of the Red Cross, “*Protocol Additional to the Geneva Conventions of August 12, 1949,*

and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.” part 1., art 1, §I.

¹⁶ GC, Art. 50. “Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” *It is the first found definition of a Grave Breach, although more definitions are found in the following articles GC2 Art. 51, GC3 Art. 130, GC4 Art. 147, and API 11 and 85. (The number after ‘GC’ stands for the number of the other Geneva Conventions).*

¹⁷ Jean de Preux, *Commentary: III Geneva Convention Relative to the Treatment of Prisoners of War* (Geneva: ICRC, 1960), 623.

helped their enemies.”¹⁸ These activities support the notion that FARC has an inherent need to justify its actions. One of these massacres was the one in Bojayá, Chocó where “in May 2002, a mortar shell hit a small Catholic church in the village... 117 civilians were killed in one of the worst massacres in Colombia's 40-year-old civil war.”¹⁹ This massacre was a consequence of a battle between the FARC and paramilitaries, which shows the lack of adherence to IHL of both groups. Another dreadful incident happened in Machuca, Antioquia, where insurgents blew up part of a pipeline indiscriminately and “seventy-three people were burned to cinders. Thirty-six were children.”²⁰ Yet another occurred in Bellavista, Antioquia, the same month when the Bojayá Massacre happened, when “FARC had launched a gas cylinder bomb into a church where refugees were housed in Bellavista, Antioquia. A single cylinder killed 119 people, over forty of them children.”²¹ The first Additional Protocol to the Geneva Conventions (hereinafter API) calls for parties – both insurgents and government— to respect the life and integrity of the ones not taking part in the conflict, and explicitly prohibits the attack on civilian population while directing attacks only on legitimately labeled military objectives.²² This prohibition, also declared a serious violation of the law, is documented in article 8, section (b), numeral (i) and (ii) of the Rome Statute of the International Criminal Court, 1998.²³

¹⁸ Kirk, *More Terrible than Death*, 181.

¹⁹Eric Beauchemin, “The Bojayá Massacre,” Radio Nederland Wereldomroep, 2005 <http://static.rnw.nl/migratie/www.radionetherlands.nl/humanrights/051101hr-r-redirected>.

²⁰ Kirk, *More Terrible than Death*, 198.

²¹ *Ibid.*, 68.

²² International Committee of the Red Cross, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.” Part 4. §I. Article 48.

²³ The two tenets in the Rome Statute of the International Criminal Court are the following:

“(i) *Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;*

“(ii) *Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;*” <http://untreaty.un.org/cod/icc/statute/rome.htm>; internet.

Another rising problem with IAO's lack of adherence to IHL is that not only do they target random civilians, they also target specific populations, which elicits examples of potential genocide. The African-Colombian community case specifically shows this behavior. Most of this population lives in northwestern Colombia, largely in the Chocó and Antioquia departments. Most of the massacres that result from military engagements between FARC and AUC have taken place in this region. The victims of Bojayá, Bellavista and Machuca, as well as La Mejor Esquina, El Naya and Baudó have been primarily African-Colombians. In essence, what this has done is “reaffirm the charges by African Colombians that they have been targeted for physical [...] genocide.”²⁴ It is all fitting that IAOs learn to respect the laws of war in order to prevent these types of mass atrocities – or even genocide – from happening by the non-observance of the distinction and proportionality principles.

INDISCRIMINATE WEAPONS

The use of unconventional weapons by insurgents has also been problematic. There are two types of unconventional weapons that are being utilized by FARC, besides the use of firearms: gas cylinder bombs and anti-personnel mines. These weapons are prohibited in IHL because they cause unnecessary suffering and because they cannot be controlled by their operators. The exact wording of the prohibition is included in the Rome Statute.²⁵ Not only do they

²⁴ Willie Thompson, “Genocide of African-Colombians,” *Race and History*, June 2, 2002, <http://www.raceandhistory.com/selfnews/viewnews.cgi?newsid1023007854,20280,.shtml>.

²⁵ The statute says that the following is a serious violation of the law: “(xx) *Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute,*

mercilessly kill or mutilate the victim, they do not have a way of distinguishing who their target is. The gas cylinders are turned into mortar-like launchers that have the ability to propel another cylinder of smaller dimensions. The cylinder that acts as the bomb itself is full of dynamite, propane, shrapnel, and gunpowder. What makes this weapon so dangerous is that it is very rudimentary and it cannot be aimed precisely or, sometimes, it cannot be aimed at all. Since the cylinders, an invention called 'Barrack Busters' developed by the IRA, "cannot be aimed reliably...that means that in attacks, a number of the cylinders always land on homes, stores, and offices."²⁶ This was precisely what happened in Bojayá and Bellavista: the nature of these weapons is indiscriminate since cylinders fell in places that are protected and occupied by civilians with no military value: churches, houses, hospitals and schools among many others. Thus, the usage of gas cylinders in places that are populated by civilians is clearly a violation of the rules of war. When asked by indigenous associations and NGOs to stop using this kind of weapon "FARC had always refused, replying that in war, everything is fair."²⁷ In addition to gas cylinders, the usage of anti-personnel land mines is alarming. Although used by both FARC and paramilitaries, the number of minefields in areas under the influence of FARC is distressing.²⁸ This kind of weapon is used mostly to target government troops, but takes its toll killing or mutilating many innocent civilians. Most of these civilians, including women and children, encountered

mines "while they were engaging in ordinary activities...according to government records, 151 were hurt while they were 'passing through the area,' and many others were hurt while engaging in farming, playing, doing housework, tending to cattle, hunting, or fishing."²⁹ It is hard to believe that these victims posed any threat whatsoever to any of the IAOs that used the AP mines.

KIDNAPPING

Kidnapping is a very common practice by terrorist groups throughout the world. This practice is prohibited in the law of war, shown by the APII's statement that 'all persons who do not take a direct part or who have ceased to take part in hostilities' are prohibited from being kidnapped.³⁰ Though the FARC frequently uses kidnapping for both political and economic purposes, the latter reason is more prevalent to further their financial eagerness. Justified cynically as a 'tax' that the Colombian middle class must pay to the FARC, kidnappings allegedly target members of the so called 'hated oligarchy' who deserve to be alienated from their property. The reality differs since "most of the guerrillas' victims are average Colombians."³¹ Not only are people forced to pay the FARC, failure to do so usually results in the murder of the person or a family member. There is a difference when capturing someone who is unarmed, defenseless, not taking direct or indirect part in hostilities and for all purposes innocent, over an armed or lawful combatant – who gets afforded privileges of prisoners of war. IAOs don't make a distinction between one and the other and ultimately put their hostages through the suffering of being kidnapped under the worst conditions, with the fear of being shot at anytime. In fact, shooting hostages is a deliberate decision of

by an amendment in accordance with the relevant provisions set forth in articles 121 and 123."

²⁶ Kirk, *More Terrible than Death*, 68.

²⁷ Human Rights Watch, "Maiming the People: Guerrilla Use of Antipersonnel Landmines and other Indiscriminate Weapons in Colombia" *Human Rights Watch* 19, no. 1b (July 2007): 14.

²⁸ Helen Murphy, "Colombia Land Mines Toll Tops World as FARC Sow Them in Retreat," *Bloomberg News Online*, November 21, 2008, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a9SxnVq2Tw5k>.

²⁹ Human Rights Watch, *Maiming the People*, 6.

³⁰ ICRC, *Geneva Conventions APII*, Part 2, Article 4, §1-2.

³¹ Kirk, *More Terrible than Death*, 68.

groups like FARC who purposely “issued a communiqué that stated they would execute prisoners in the event of a rescue operation.”³² Kidnapping, regardless of the nature of it being carried out, is wrong. Nevertheless it remains another frequent practice by IAOs in Colombia, especially FARC.

RECRUITING OF MINORS

In recent years, the world has taken a huge turn in the way child combatants are seen. Since the time of World War II and before, children waging wars was not a hot issue if barely an issue at all. The lack of awareness and of available means

In recent years, the world has taken a huge turn in the way child combatants are seen. Since the time of World War II and before, children waging wars was not a hot issue if barely an issue at all. The lack of awareness and of available means to help people understand how wrong it was to have children fighting in combat contributed to the fact that not many people cared about this issue throughout the world.³³ Recently, however, a growing awareness of children’s rights and their protection has become a top priority for governments around the globe led by organizations like UNICEF. Sadly, however, there are still many organizations, especially insurgencies, who still recruit minors to fill their ranks – Colombian IAOs are some of those organizations. Regarding the recruitment of minors, the AP II to the Geneva Conventions dedicates Part 2, article 4, section 3 to children during time of conflict. Overall, it prohibits the forced recruitment or taking part in hostilities of children under the

³² Marc Gonsalves, Keith Stansell, and Tom Howes, *Out of Captivity: Surviving 1967 Days in the Colombian Jungle*, 1st ed. (New York: William Morrow/ HarperCollins, 2009), 193.

³³ Peter W. Singer, “The New Children of War,” *Air and Space Power Journal Online*, Spanish Edition, First Trimester: March 2008, <http://www.airpower.maxwell.af.mil/apjinternational/apjs/2008/1tri08/singereng.htm#Singer>.

age of 15, while also making sure that children are provided the adequate care and aid they require.³⁴ Children under the age of fifteen are frequently recruited with complete disregard of the law by IAOs, who do not afford them their rights as children to be kept out of the conflict. Also, Article 8.2.26 of the Rome Statute,³⁵ and The United Nations Convention on the Rights of the Child, Article 38, (1989),³⁶ both make the same prohibition about use of children under-age and condemn child recruitment. Nevertheless, Colombia has a very high number of child combatants, all of whom belong to ELN, AUC and FARC. The latter holds the majority of these child soldiers. A report from Human Rights Watch mentions the fact that “[a]pproximately 80 percent of child combatants in Colombia belong to one of the two left-wing guerrilla groups, the FARC or ELN. The remainder fights in paramilitary ranks.”³⁷ Hence, it is also important for IAOs to observe the legal rules regarding child recruitment as well as the ones prohibiting the rest of the crimes that are rampant in Colombia.

SOLUTION ALTERNATIVES

Throughout the last two decades, different organizations like Human Rights Watch, Amnesty International, Colombians for Peace and the International Committee of the Red Cross (hereinafter ICRC) have tried approaching the FARC directly. They have sought them out in order to convince and propose to these individuals that the mass

³⁴ ICRC, *Geneva Conventions APII*, Part 2, Article 4, §3.

³⁵ The exact rule reads as follows: “(xxvi) *Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.*”

³⁶ United Nations General Assembly, U.N. Doc. A/RES/44/25, *Convention on the Rights of the Child*, <http://www.un.org/documents/ga/res/44/a44r025.htm>.

³⁷ Human Rights Watch, “Colombia: Armed Groups Send Children to War,” *Human Rights Watch*, February 21, 2005, <http://www.hrw.org/english/docs/2005/02/22/colomb10202.htm>.

atrocities and crimes against the civilian population must stop. In their effort, several NGO's and even the ICRC have fallen into very naïve attitudes. These organizations believed that FARC and AUC/ACCU could be taught right from wrong, but the FARC and others took advantage of their gestures for peace. For example, during the government of President Andres Pastrana, more than 40,000 square kilometers were demilitarized in order to provide a safe zone for FARC and the government to engage in peace negotiations. Throughout this entire process, "despite repeated initiatives by the government, reciprocal gestures from the FARC were conspicuously absent."³⁸ The government exerted every effort to comply with FARC's terms, whereas FARC blatantly used this demilitarized retreat to build up their military machine and enhance their drugs operations.

Another alternative was talking directly through NGO's and international organizations to IAOs. This direct approach of talking with IAOs is "often a necessary first step toward defeating them or reaching an acceptable compromise."³⁹ However, there are some issues with approaching insurgents directly. First of all, the government prohibits direct communication with guerrillas, which means that trying to contact them directly is out of the question. But, secondly, if some contact was able to occur by indirect intermediaries, there would be nothing the NGO's or human rights activists could do. For example, Robin Kirk interviewed and met guerrillas. In these interviews, IAOs promised to "stop abuses and issue orders that would protect the innocent."⁴⁰ Afterwards, reports unfortunately showed that nothing had

changed and civilians were still active targets. Peace Brigades International (PBI) was one of the few organizations who tried the 'talking approach.' However, the state set a lot of legal hurdles about PBI sustaining a presence in the country and also prohibited communication with guerrillas.⁴¹ In the end, due to these circumstances, "PBI did not employ a proactive diplomatic strategy of direct communication with the FARC or ELN."⁴² With the AUC, it was a somewhat different story. The blame for the actions of the paramilitaries weighed on the Colombian Army's shoulder more than anyone else. While some of the public opinion and NGO representatives were busy witch-hunting the military in search of a culprit – although many people went to trial and eventually some of them were found guilty – not a lot of them approached the AUC directly. As a matter of fact, apart from Ms. Kirk and the ICRC, "the only non-Colombians to request a meeting with Castaño [head of the AUC] had been a European group that was attempting to get him to stop attacking civilians."⁴³ On the other hand, the positive outcome is that the presence of PBI, Human Rights Watch and other international organizations volunteers out in the field led to accidental encounters with IAOs. Ultimately, this twist of fate gave room for a new channel of communications with these groups that would prove somewhat effective: physical presence.

The presence of foreign activists and volunteers in the different areas had a strong impact on the different organizations. Being where "the rubber meets the road" inadvertently gave the international organizations a system of checks on the IAOs that operated in the area.⁴⁴ National groups and activists are a completely different story,

³⁸ Cynthia J. Arnson and others "The Peace Process in Colombia and U.S. Policy," Latin American Program, Woodrow Wilson International Center for Scholars. May 2000. <http://www.wilsoncenter.org/topics/docs/ACF362.pdf>.

³⁹ Daniel Byman, "Talking with Insurgents: A Guide for the Perplexed", *The Washington Quarterly*, April 2009, 125. http://www.twq.com/09april/docs/09apr_Byman.pdf.

⁴⁰ Kirk, *More Terrible than Death*, 69.

⁴¹ Lizzie Brock, "Protection through Diplomacy in Colombia," in *Humanitarian Diplomacy: Practitioners and Their Craft*, ed. Larry Minear and Hazel Smith (New York: United Nations University Press, 2007), 337.

⁴² *Ibid.*, 337.

⁴³ Kirk, *More Terrible than Death*, 143.

⁴⁴ Brock, "Protection through Diplomacy," 341.

because their outcry cannot be heard outside the borders of Colombia, so many of them were murdered mercilessly. Nevertheless, international groups' presence provided a shield against IAOs, a dissuasive power which affected the conflict positively more than any part would know. During their encounters somewhere in the vast mountains and jungles of Colombia, the "typical foot soldier might not have had a strategic analysis about the different international actors, but the hierarchy of the [IAOs] certainly had some concern about the international opinion."⁴⁵ It is inferred that international NGOs and actors transmit their impartial and usually unbiased concept about IAOs to the outside world. Better yet, neither FARC nor AUC would touch or harm any of these activists, fearing that this could be frowned upon and condemned by the international community.⁴⁶ Fortunately, NGO's and activists figured this out and took advantage of this situation to protect the civilian population. Carlos Castaño, the head of the AUC, was afraid of being captured or prosecuted before the international criminal court for war crimes.⁴⁷ Hence, he became worried about [the AUC's] international image. The way this worked was due to the optimization of the NGO's communication systems. Physically, they carried cell-phones, handheld radios and even satellite phones. So IAOs' illicit activities were closely monitored by the human rights activists who, in turn, would notify the authorities in a timely manner. This dissuasive tactic helps in the protection of the civilian population and keeps the government and IAOs in check. Essentially, it relies on international NGO's to "accompany and collaborate with local activists in outlying rural areas, visit multiple embassies in the capital, keep in touch with international human rights contacts and keep close

logistical and diplomatic tabs on the local military."⁴⁸ The main goal of the tactic is to give IAOs the message that "the world is watching," granted, of course, that they care enough about their international public reputation. Nonetheless, reaching out to international public opinion as an alternative solution has not only happened with the effort of the NGO's and human rights activists. The local population has also taken a very active role in contacting the media to reach the national and international public opinion. In Colombia, for example, "some victims have the satisfaction of seeing hundreds or thousands of protesters take to the streets in response to the abuse of their human rights."⁴⁹ In 2008, Colombian nationals poured by the millions to the streets in every major Colombian city and other cities abroad in an attempt to create awareness of the crimes committed by FARC in Colombia. This took an immense toll in FARC's already tarnished image, as well as the rest of the IAOs in Colombia.

Finally, in order to have IAOs stop hostilities against the civilian population, it is also necessary to keep up constant military pressure and, if possible, the threat of military intervention from a powerful army. Additionally, potential international military presence and intervention – in addition to the national military's efforts already taking place – should be legitimized by the observance of IHL by the IAOs. Nobody can expect that this problem is only going to end by just talking, especially when it has already been proven by groups like FARC who will actually gain momentum by faking peace talks and taking advantage of the lack of military operations against them. By keeping steady and strong military pressure, IAOs "are more likely to negotiate if they believe they have little

⁴⁵ Ibid., 337.

⁴⁶ Brock, "Protection through Diplomacy," 340

⁴⁷ Ibid., 337

⁴⁸ Ibid., 339.

⁴⁹ Lisa Schirch, "Linking Human Rights and Conflict Transformation: A Peacebuilding Framework," in *Human Rights and Conflict: Exploring the Links between Rights, Law, and Peacebuilding*, ed. Julie A. Mertus and Jeffrey W. Helsing (Washington, D.C.: United States Institute of Peace Press, 2006), 76.

chance of success on the battlefield.”⁵⁰ On the other hand, the alternative is not just to keep military pressure, but to use the coercion it creates to leave the IAOs with no alternative than to talk and stop the violence, at least against the civilians if nobody else. In Colombia, the lack of military intervention during the 1999-2002 peace talks under president Pastrana gave the FARC a much-needed breather and reinforcement. On the contrary, the overwhelming display of military pressure in the years that followed brought enormous blows to the military and political capabilities of FARC. This is because “threats of military force can help deter systematic atrocities before they occur. Military measures can help stop ongoing atrocities by, for example, interposing forces between conflict factions.”⁵¹ It is also important to mention that the military offensive also included an aggressive display of psychological operations, which intend to bring mission success using elements other than firepower. Furthermore, “there is a wide range of military strategies that can be employed in support of diplomatic and political efforts, up to and inclusive of military operations to halt violence against civilians.”⁵² The military was not only effective in the line of fire, but they were also successful in approaching and helping the civilian population, and also conducting operations in order to bring IAOs to set down their weapons and surrender to the government. By harassing IAOs with flyers and radio transmissions, dissuasion from harming civilians becomes easier. In fact, “the army now uses rural radio stations,

broadcasts from helicopters and drops leaflets over the jungle to counter the FARC's message.”⁵³ However, the caveat to military intervention is that it has to serve as a deterrent for IAOs to stop committing the aforementioned war crimes, although the intent is not for them to stop attacking the government. If IAOs followed strict rules of war – like using uniforms and operating openly – then they would be easily defeated. Realistically, it is very hard to convince an IAO to let themselves be defeated, so military pressure is focused more on the protection of civilians and the threat to IAOs that not following IHL will bring about more military force, primarily from a foreign power, that could potentially defeat them on the battlefield. More importantly, military presence throughout the territory also helps guarantee the freedom and safety of the civilian population. But FARC and AUC are not the only examples of alternative solutions. There have been many other instances in the contemporary world where it has been possible to convince IAOs to follow the rules of war, or at least dissuade them from targeting and harming the civilian population.

CASE STUDIES

The solutions to the present research question do not only come from Colombia's past. There have been cases that corroborate what could be done to be successful with this issue that have taken place in other nations and other conflicts. Amongst the many examples, Algeria, Darfur and the Philippines are significant in portraying positive outcomes. A very brief overview of each of these will provide enough evidence attesting to the matter at hand.

⁵⁰ Byman, 126.

⁵¹ Matthew C. Waxman, “Intervention to Stop Genocide and Mass Atrocities International Norms and U.S. Policy,” *Council on Foreign Relations: International Institutions and Global Governance Program*, Council Special Report No. 49 (October 2009): 7.

⁵² Madeleine K. Albright and William S. Cohen, “Preventing Genocide: A Blueprint for U.S. Policymakers,” (USA: United States Holocaust Memorial Museum, The American Academy of Diplomacy, and the Endowment of the United States Institute of Peace, 2008), 73.

⁵³ Patrick Markey, “Colombia's FARC deserters sap rebel army,” *Kuwait Times Website*, October 30, 2008, http://www.kuwaittimes.net/read_news.php?newsid=MTE3MMDM0NjgyMA==.

ALGERIA'S SEPARATIST CONFLICT

In 1962, Algeria gained its independence from France after more than eight years of a very bloody conflict. Many groups took part in the conflict, but the main belligerents were the French government and the Front de Liberation Nationale (National Liberation Front, NLF), an Algerian insurgent group who sought the independence of Algeria. As part of its insurgent tactics, the NLF introduced the indiscriminate targeting of civilians, a tactic that today gives the impression of an act of terrorism or mass atrocities – depending on the number of civilians and nature of the crime – or both. During the high tide of the war, President Charles de Gaulle returned to power creating the Fifth French Republic. To engage the problem in Algeria, and to stop the violence against civilians, the government made a series of declarations “promising considerable concessions.”⁵⁴ Ultimately, Algeria got its independence, the movement succeeded and civilians were harmed no more. The takeaway point is not the success of an independence movement – notwithstanding, it was still very violent – but the successful negotiations and deals with the IAOs, which advocated for the protection of civilians. The NLF was in dire need of popular support, and reacting positively to the government’s statements, which were naturally a proposal to respect the lives of civilians, was a great strategy to gain this support. Abiding by IHL proved to be a very helpful tool for the NLF, but also the desired end state where the lives of civilians were not indiscriminately taken by insurgents. For this to take place, the government of De Gaulle did not directly talk to the NLF, but rather had officials “granting interviews or otherwise encouraging media reports to convey their message on the conditions for negotiations.”⁵⁵ This is an

important consideration, as some governments might find peace talks as a legitimizing tool for insurgent groups. Although the legitimization of IAOs might be a desired outcome for some and possibly the correct course of action, some will assert that direct peace talks give IAOs a level of recognition that counterbalances the same effort that the government is putting to defeat such organizations, since that would legitimize the existence of an IAO. Hence, public and general statements from the government – as seen in Algeria – provide a very useful tool to ‘talk without talking’ to IAOs.

THE DARFUR GENOCIDE

Despite being the 21st century, assuming a higher degree of civilization and hard learned lessons from the history of mankind, there are still many places around the world where exorbitant levels of mass atrocities occur. To the world’s dissatisfaction, the latest case of genocide – or at least a humanitarian disaster – has been going on in the Darfur region of Sudan. Here, the international community was dealing with different issues to stop mass atrocities in the region. One of the many problems they were having with the insurgents was the recruiting of child soldiers by the Justice and Equality Movement who, along with the Sudan Liberation Army, have been fighting the government backed up by its militia, the Janjaweed. The war began in early 2003 when these insurgents rebelled against the Sudanese government, which they accused of favoring Arabs while oppressing non-Arab black people (a racial war). Very recently, however, international organizations have approached the rebels in an attempt to ease the conflict, since Darfur has been declared one of the worst humanitarian crises ever. Surprisingly enough, the efforts have not been in vain. The United Nations has led a tremendous effort in getting the belligerents

⁵⁴ Byman, 126.

⁵⁵ Ibid., 126.

to stop involving children in the conflict through its Children's Fund (UNICEF). Specifically, UNICEF and an NGO called Coalition to Stop the Use of Child Soldiers "have developed [a] Guide [...] on the involvement of children in armed conflict as a contribution to the campaign to prevent and end the use of child soldiers."⁵⁶ The positive outcome of this case is that "rebels vowed to stop the recruitment and use of child soldiers, including in noncombatant or supportive roles...They also plan to end their killing, maiming and sexual violence of children."⁵⁷ Hopefully, the rebels will comply with their promise, but what is important is that an international organization managed to approach them and convince them to follow the law of war. It is difficult to know whether or not the rebels will actually stick to their promise, however, the fact that they agreed is an assurance that they will be more careful when it comes to recruiting child soldiers. Also, UNICEF officials "hoped it would be an incentive for other rebels in the region to protect minors."⁵⁸ The positive aspect would be to spread the word of this case throughout the rest of the region and other places around the world. This is a case where insurgents learn from the actions of other insurgents for a better good: to protect civilians. It becomes very evident that the power of international organizations is stronger than it would seem. Unlike many domestic government or non-government organizations, international organizations have the ability to reach public media around the globe as fast as actions are happening in a specific country. The Janjaweed are very aware of the powers they are dealing with and, in this case, took the right step towards abiding by the law of war,

at least more than they did before. Initially, many could and probably will criticize this deal since there are no guarantees that the recruitment of minors is going to stop. However, this case study proves that it is possible to approach an IAO through international organizations to be potentially convinced to change its actions and encourage it to abide by the international legislation and customary laws regarding humane treatment and war. Moreover, even if this initial deal between UNICEF and the Janjaweed does not bear the desired outcomes, it will have been a first step towards achieving a near future end state – no recruiting of minors – and a stepping stone to achieve the peace in Darfur. If anything, this is at least an unofficial version of an aspirational treaty that seeks to promote the law of war.

THE PHILIPPINE INSURGENCY AND JASIG

The Philippines has been in internal conflict since the late 1960s. The fighting has been between the National Democratic Front of the Philippines (NDFP) and the government, in what the NDFP calls "the people's democratic war,"⁵⁹ which is a conflict fueled by communist and separatist ideas. As the conflict kept growing, former president Corazon Aquino's government started the first peace talks which the NDFP – which was also allied with the Communist Party of the Philippines (CPP) and the New People's Army (NPA) – in order to agree to a cease fire. Insurgent groups, in addition to Islamic radical and fundamentalist groups, were plundering the country with excessive violence. Amidst the violence of the civil war during the mid-1990s, then president of the country Fidel V. Ramos encouraged the advancement of peace through direct

⁵⁶United Nations, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict* (New York: The United Nations Children's Fund (UNICEF), 2003), 4.

⁵⁷ Faith Karimi, "Darfur Rebels Sign Deal with the UN to Protect the Children," CNN, July 22, 2010, http://edition.cnn.com/2010/WORLD/africa/07/22/sudan.rebels.children.deal/#fbid=JFU2wO_rDWo&wom=false.

⁵⁸ Ibid.

⁵⁹ Rene V. Sarmiento, "Facilitating dialogue with armed insurgents in the Philippines," *Conciliation Resources*, 2005, <http://www.c-r.org/our-work/accord/engaging-groups/facilitating-dialogue-philippines.php>.

negotiations with the different IAOs, since he claimed that “without political stability, social reform and economic progress could not move forward.”⁶⁰ For more than two years the government engaged in peace talks with these insurgents until, on 24 February 1995, both parties agreed on the final draft of a document that they called the Joint Agreement on Safety and Immunities Guarantees (JASIG). This document became the corner stone of all the efforts and negotiations to achieve peace in the Philippines. The document called for political recognition for the NDFP and certain immunities that would facilitate the pursuit of peace in the country. It gave belligerent status and political immunity to the insurgents, while at the same time provided for the legitimacy of the government and the republic. The treaty was written with the utmost care and “much creative language engineered to protect [government] sovereignty and territorial integrity while respecting NDF’s organizational dignity.”⁶¹ With the document in action, the road has been cleared to engage in peace negotiations and facilitate talks between both parties. Furthermore, it has allowed foreign governments, specifically from Western Europe, to intervene and mediate between the parties. However, in 2005 the treaty was suspended because of the failure of both parties to achieve peace. It seemed that the impervious status that insurgents had was being used as a bad faith gesture by the NDFP to gain leverage and momentum, rather than to actively seek peace. The existence of JASIG as a case study leaves three important lessons. Firstly, the recognition of IAOs as belligerents and giving them political status is a valid tactic in order to bring these groups to negotiate. Secondly, after a group is granted the status that the NDFP attained, the government must use every opportunity and negotiation to promote the respect for IHL, including LOAC and the

respect for civilian population. Third and finally, the concession of immunity and recognition of the NDFP by the Philippine government created a precedent which would and will grant the parties more leverage for negotiation and solution alternatives, since they now have a legal document which could aid in the future revival of efforts.

FINDINGS

After having analyzed the situation in Colombia with FARC, AUC and ELN, there are several findings that are relevant to this research project. By going through these brief case studies more credibility has been gained to indicate that the previously formulated alternative solutions are, indeed, effective. First and foremost, it is important to assert that there are ways to convince IAOs that compliance with the specific aspects of the law mentioned throughout – practicing distinction, stop kidnapping, stop child recruiting, and ceasing the use of indiscriminate weapons— is the right thing to do. Most importantly, it is hard to find one approved solution appropriate to all cases. The possible alternative solutions to this problem are integral and complimentary to one another. The solution that lies beneath is a combination of different concepts which ultimately make up a carrot and stick strategy to approach the problem.

1. Global Diplomacy through Media

Including Colombia, Algeria, Darfur and Philippines, it is safe to say that IAOs have an international image to maintain because they appeal to public opinion for justifying their crimes. Therefore, an IAO must be convinced that a positive image and, possibly, support for their cause, can be gained by showing the international public acts of good faith. Specifically, this means that the spotlight of the media should highlight IAO’s actions – good or bad – to remind them that the world is always watching. This posture, however, may not be completely favorable for a government seeking to protect

⁶⁰ Ibid.

⁶¹ Ibid.

civilians, such as the case with Colombia. If IAOs in Colombia are trying to behave well for the media, then it is a good outcome, since the lives of civilians are most likely respected and IHL is functional. Although this is ultimately good because of the protection of civilians, the IAOs covered by the media might gain political and international leverage for their own cause, proving to be disastrous for the government's purpose of defeating that IAO. On the other hand, if IAOs are committing atrocities, disrespecting IHL and LOAC and specifically targeting civilians, the media will portray a negative perception of them to the world, which is something IAOs do not want. This in turn will lead to global condemnation and possibly to elimination of that IAO, whether it is FARC, ELN or AUC. Additionally, it is a very subtle way a government – aided by media sources – can attack IAOs. Media is fast and has a global reach, meaning the eyes of the world are set upon those who violate the rules of war. The diplomatic effect of this measure is that there is no aggressive stance by the government and any existent bias is outweighed by the leverage that the actions of the IAOs have on the world's public opinion. The media provides carrot and stick to the IAOs by portraying their actions through domestic and international media, however, whatever they get depends solely on the IAO's actions.

2. Intervention of International Organizations

Although this may be closely related to a diplomatic approach through media, the intervention of international organizations is essential in convincing IAOs to change their ways. Logically, this solution resembles the media diplomacy solution in that international organizations have close ties to global media. For example, it is easier for the UN or Human Rights Watch to contact CNN or BBC, rather than it would be for national organizations to do the same. So this solution simply gives an expanded focus on how to use

media effectively through international government and non-government organizations. The strategic value of this alternative lies in the respect and, somewhat, fear that IAOs like FARC have toward international organizations. First, international organizations have easy and fast access to media and it has already been established how effective this is. Second, attacking foreigners is a complete drawback since it results in some sort of repercussions from a foreign government. This not only brings about a new enemy for that IAO, but also means possibly more hurdles to overcome. Moreover, Colombian criminals are terrified of US criminal and military repercussions, both very likely to happen if a violation of IHL takes place. For example, DEA Administrator Karen Tandy said that “the only consequence traffickers fear [is] extradition to the United States.”⁶² Thus, “the physical presence of a visible international witness with a threatened activist...allies with the will and ability to respond when notified...a potential aggressor aware of [the previously mentioned] points and calculating the possible costs of action.”⁶³ The PBI intervention in Colombia is a great example of how NGOs can act as a safeguard for civilians and help prevent mass atrocities. Therefore, taking this into consideration, foreign government or non-government presence in the country provides a hurdle for IAOs to overcome and has a shield effect that protects civilians from these IAOs. As was seen in the Colombian case, this shielding effect usually means actual physical presence and escorting of civilians in high danger areas. Additionally, NGOs can have the ability to induce and advocate for certain behaviors from IAOs. This means that NGOs play a decisive role in obtaining reciprocity of

⁶² U.S. Department of Justice, “High-ranking member of Colombian farc narco-terrorist organization extradited to U.S. on terrorism, drug charges,” Wednesday, December 31, 2004, <http://www.fas.org/irp/world/para/farc123104.html>.

⁶³ Brock, “Protection through Diplomacy,” 332.

IHL from the IAOs. Assuming that a state actor complies with IHL expecting reciprocity from an IAO is not correct because, as mentioned earlier, it would put the IAO in a significant military disadvantage which, potentially, is not a feasible scenario. However, there are NGOs like “Geneva Call” whose mission statement⁶⁴ seeks for compliance with specifics of IHL by IAOs, in this case the prohibition on the use of land mines and child recruiting – which happens to be one of the biggest IHL violations made by IAOs. Amazingly, Geneva Call has been able to convince more than thirty IAOs in Asia and Africa to desist the use of landmines through a Deed of commitment.⁶⁵ The Geneva Call case shows strong evidence that the intervention of international NGOs is feasible in an attempt to convince IAOs to abide by IHL. This solution, more than providing carrot or stick, will provide direct protection to those who are most affected by the conflict and decrease the violations of IHL.

3. Effective Military Intervention

Military intervention as part of the alternative is feasible. However, one must be very careful when it comes to using military pressure. The justification of war to reach a political goal – the achievement of peace in Colombia – is very well defined by Carl von Clausewitz who said that “the political object is the goal, war is the means of reaching it, and means can never be considered in

isolation from their purpose.”⁶⁶ The goal of Colombia, as it should be the goal of every government, is to dissuade IAOs from targeting civilians and follow IHL. Military intervention has been proven to have a positive impact in dealing with this issue. When military intervention is effective, IAOs find themselves in a conflict they cannot win and eventually turn to other alternatives such as abiding by the rule of law in order to gain legitimacy; the most desirable outcome. Colombia has fought with FARC for more than 50 years but, lately, the tide of the war has turned positively towards the National Army which has hit FARC more than ever. The FARC has shown to be “resilient, but recently has suffered the worst blows in its history. By conservative estimates, its membership is half the size of five years ago.”⁶⁷ But military intervention is not an idea that comes out of the blue; scholars have crafted specific plans directed to military forces on how to act in a situation where civilians are in danger or a possible humanitarian crisis could be expected. An example of this is the crafting of a Mass Atrocity Response Operation (MARO), as developed by scholars using military consultants. A MARO is a textbook military operation that results when “authorities direct forces to halt the violence against civilians.”⁶⁸ Whether based on MARO or simply military pressure, this strategy blocks an IAO’s intentions to wrongfully use force. Additionally, military presence has two important benefits; it has a shielding effect that benefits civilians by the mere presence of government troops (which also gives a sense of security), and it is the center axis for the

⁶⁴ Taken from their website, the mission statement of Geneva Call reads: “*Geneva Call is a neutral and impartial humanitarian organization dedicated to engaging armed non-State actors (NSAs) towards compliance with the norms of international humanitarian law (IHL) and human rights law (IHRL). The organization focuses on NSAs that operate outside effective State control.*” For these purposes IAO will replace the term NSA. <http://www.genevacall.org/>.

⁶⁵ Rene Provost, “Asymmetrical Reciprocity and Compliance with the Laws of War,” *Social Science Research Network*, 14 January, 2010, <http://ssrn.com/abstract=1427437>.

⁶⁶ Michael Howard, “On War,” in *History of the Military Art*, ed. Eugenia C. Kiesling (New York: Longman, 2010), 9.

⁶⁷ Luis Fernando Medina, “Ending The Endless War: Will Colombia’s democracy survive the violence?” *Boston Review Online*, May/June 2010, <http://bostonreview.net/BR35.3/medina.php>.

⁶⁸ Sara Sewall and others, *MARO – Mass Atrocity Response Operations: A Military Planning Handbook* (Boston: Harvard College, 2010), 21.

execution of psychological warfare in which the enemy is indirectly approached to change or, better yet, surrender. Psychological means of warfare include radio announcements, flyers, speaker announcements, signs and many other ways to attack the enemy silently but surely. For this case, psychological operations are a good tool to reach remote areas where IAOs are potentially hiding. However, military intervention would be more effective if it comes from a foreign power, such as the United States. Recurrent violations of IHL and an increasing illegal drug market is “an indicator that the United States is going to be supporting a military approach.”⁶⁹ An international coalition in order to militarily defeat FARC is a deterrent for them to stop violating IHL. A simple military intervention would not suffice, since it is because the military has not intervened yet that the conflict escalates and affects civilians the most. Effective military intervention must be a large scale effort that not only seeks the defeat of the enemy through overwhelming combat power,⁷⁰ but also makes presence where civilians need it the most in order to protect them from IAOs. Also, this entails that the military must have a more preventive role rather than a reactive role. This is also where a technologically advanced military power can play an important role, since military assets can aid in the identification of risk factors and technical battlefield intelligence. For example, United States military capabilities range from “data collection, satellite surveillance, communications interceptions, knowledge of countries and leadership, and experience with terrain and belligerent strategies [and] risk

assessment for local security.”⁷¹ All of these elements, if well-planned and executed, will provide effective military intervention and the overall objective, convincing IAOs to stop violating IHL, can be more easily achieved. Essentially, this kind of effective military intervention provides a proverbial stick for IAOs.

4. Fair and Attainable Negotiations

The final element that has been proven very effective to convince IAOs is to actually have a plan with feasible alternatives of economic and social reintegration for the members of those IAOs. This would be the carrot that balances out with the military intervention, the stick. Colombia had a rough idea of that with both FARC and AUC. However, fair and attainable negotiations were better achieved with AUC. On the other hand, negotiations with FARC have always been more of a façade than a real and possible solution to the conflict. The government has not had a specific plan to address all the needs of FARC and, because of that organization’s behavior in past negotiations, is not willing to grant them recognition as belligerents. In this situation, “one possible incentive is to treat those who only go after military targets different from those who target civilians,”⁷² for example. On the same lines, FARC has not proven to have a serious compromise for change and has been found to abuse the trust invested in them by the government. What this all means is that, before even trying to approach and address the humanitarian issues with FARC, the government should have attainable goals and be willing to yield in some instances to get something in return. Positive results are only possible if the government has a set plan to offer IAOs in exchange for their compliance with LOAC.

⁶⁹ Associated Press, “U.S., Colombia near base access deal,” *msnbc.com*, 15 July, 2009. http://www.msnbc.msn.com/id/31925276/ns/world_news-americas/.

⁷⁰ *The U.S. Army defines overwhelming combat power as “the ability to bring together, in combination, sufficient force to ensure success and deny the enemy any chance of escape or effective retaliation.”* Department of the Army Headquarters, *FM 100-5: Operations* (Washington, D.C.: Department of the Army, 14 June 1993), Glossary 6.

⁷¹ Albright, “Preventing Genocide,” 81.

⁷² Daniel Byman, “Re: Colombia Research,” e-mail message to author, August 4, 2010.

Even so, the government's plan should have reasonable tenets and, preferably, work with a carrot and stick method. This will help balance out whatever consensus both parties reach, so that an agreement is actually respected and does not mock any of the parties involved. The law of justice and peace with AUC in Colombia had a little bit of both. After analyzing Colombia's international obligations and national legal implications, the Government presented the *Ley de Justicia y Paz* (Spanish for *Law on Justice and Peace*) to Congress, as a conflict resolution alternative to negotiations with paramilitaries. The goal was for AUC to desist fighting and disband, but also to abide by this new law the government set created for this IAO – along with social recovery, labor solution and education opportunities – in order to achieve a legal balance between justice and peace. A legal equilibrium was proposed because “too much emphasis on accountability would lack the carrot needed to persuade the paramilitaries to continue the peace process, too much leniency would result in a lack of stick, with the consequence of impunity or limited recognition of the rights of victims.”⁷³ Realistically, many of the guarantees promised were not well fulfilled and there was as much a lack of justice as there was of peace. The takeaway point is that attainable goals will create a positive precedent, for that will serve as incentive for future IAOs to comply with the government's demands: in this case, respecting the lives of civilians.

CONCLUSION

There are ways to approach and convince terrorists that respecting the LOAC and IHL, in order to protect the lives of civilians, is the

right thing to do. Beforehand, it is essential to remember the importance of the legal framework for the intention of this endeavor. IAOs should be reminded that the rules of war do not seek to outlaw them or forbid targeting of legitimate military targets, but they merely “restrict the means and manner of attacks and oblige all forces in a conflict to protect civilians and other non-combatants.”⁷⁴ The purposeful targeting of civilians is a war crime that historically has often ended up in genocide or mass atrocities and should be condemned. Furthermore, leaders and policymakers should be warned that this complex process of convincing IAOs to change their ways has to have a time-place-manner sensitivity analysis. The way this is approached depends on the type of insurgents, the culture and history of the region, the type of government, socio-economic factors and many other reasons that add to the subjectivity of this matter. What is effective for Colombia might not be effective for other nations like Afghanistan or Liberia. Nevertheless, this is a holistic approach that will at least provide a common ground to start.

Hence, the solution to potentially convince IAOs to respect the laws of war and civilian lives requires four main components that together form a carrots and sticks solution. First, international media diplomacy is important as a means to put pressure on the IAO in terms of worldwide opinion. This means that close monitoring will put a check on the actions of every terrorist or insurgent group in order to maintain a positive image. Every one of these IAOs needs some sort of support, and a favorable image is the easiest way to gain that support. Their bad actions will be condemned by the world and their good actions praised. In any case, the desired end state is achieved: IAOs respect the law and

⁷³ Julian Guerrero Orozco and Mariana Goetz, “Reparation for victims in Colombia,” in *Reparations for Victims of Genocide, War Crimes, and Crimes Against Humanity: Systems in Place and Systems in the Making*, eds. Carla Ferstman, Mariana Goetz and Alan Stephens (Boston: Martinus Nijhoff Publishers, 2009), 439-440.

⁷⁴ Human Rights Watch, “Iraq: Insurgent Groups Responsible for War Crimes,” *Human Rights Watch News*, 2 October 2005, <http://www.hrw.org/en/news/2005/10/02/iraq-insurgent-groups-responsible-war-crimes>.

civilians are left out of the conflict. Second, intertwined with public media is the physical presence of international government and non-government organizations in the area of conflict. These organizations have the ability to physically protect people with their presence, since IAOs would not usually target foreign nationals on peace missions. They do it out of fear of a negative worldwide perspective. Also, international bodies have close relations and physical communication with the media. This means that the IAOs actions are in check, which would convince them to think twice about violating IHL and LOAC. Furthermore, these international groups can physically contact IAOs in remote areas where, otherwise, government officials would be attacked. Here, the advantage is that direct negotiations and persuasion can be achieved with both international groups and IAOs. In many cases these private negotiations can have the power of a legally binding document, like the case of Geneva Call. It is unknown how deeds of commitment attain such legal power, however, “the very label and formal signing ceremony unambiguously signal a ritualistic invocation of the force and majesty of the law.”⁷⁵ Third, as international physical and media support corners IAOs against a wall, military pressure puts a sharp sword against their throat – stick. On one hand, they are peacefully being reminded that the world is watching and condemning their wrongdoings. On the other hand, peacekeeping military operations and a strong national army presence – including psychological warfare – undermine the IAO’s military capability and remind them that a better alternative is always to sit down, talk and respect the laws of war. It is altogether proper to remember that, “as a result of the strengthening of the army and a convincing foreign policy under the name Diplomacy for Peace, the Colombian government was in a stronger position to deal with both the paramilitary and guerrillas auguring a new phase of negotiations.”⁷⁶ However, this military intervention must be backed up by powerful foreign military forces like the United States and focus on preventive humanitarian missions as well as reactive

combat missions. This leads to the last phase of this solution process, fair and attainable negotiations. If the government has a serious and possible plan that addresses all issues at hand between them and the IAOs, then it will be an incentive for the conflict to end. Of course, this plan should include IAOs’ respect for IHL, LOAC and the protection of civilians.

In conclusion, this is intended to be a generic answer with variable tenets, not only for Colombia. All of these solutions have to go hand-in-hand in order for the entire process to reach the desired effect. Leaders should be aware of this and promote the defense of the international rules of law, always taking care of the lives of civilians. It is important to remember that leadership is a central tenet for convincing IAOs to comply with IHL. President Harry S. Truman said that “today, the entire world is looking to America for enlightened leadership to peace and progress. Such a leadership requires vision, courage and tolerance.”⁷⁷ American and foreign military and civilian leaders have the crucial task on their hands of advocating for the compliance of International Humanitarian Law. Notwithstanding, this is not an easy undertaking and it requires patience and effort. It is not impossible and it is our duty as humans to take care of our own people. A civilized world has no room for genocide, mass atrocities and war crimes. Hopefully this study helps to provide a solution for Colombia and other nations, and seek out help from nations like the United States or organizations like the United Nations. This should be a world effort because, in the end, all of these countries are in dire need of peace.

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⁷⁵ Provost, 13.

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Special thanks to Major Richard Meyer for giving me the opportunity to embark on this challenge and for guiding me along the way, to Professor Mark Welton for taking the time to help me draft this article, and to Jennifer Ciardelli, Bridget Conley-Zilkic, Lindsay Macneill and the rest of the staff at the United States Holocaust Memorial Museum for allowing to intern and research with them. Lastly, I want to thank God, my family, and my friends for all their support.

The views expressed in this article are solely the author's unless specifically stated and do not necessarily reflect those of the Colombian Army or any other ministry, department or agency of the Colombian government.

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