

## CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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## GENERAL INTERNATIONAL AND U.S. FOREIGN RELATIONS LAW

*United States Revokes Terrorist Designation Imposed on the Revolutionary Armed Forces of Colombia (FARC), While Designating Splinter Groups*

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On November 30, 2021, the Biden administration announced that it would remove the Revolutionary Armed Forces of Colombia (FARC) from the Foreign Terrorist Organizations (FTO) and Specially Designated Global Terrorists (SDGT) lists,<sup>1</sup> reversing designations originally imposed in 1997 and 2001 in the midst of conflict in Colombia.<sup>2</sup> The revocation of the designations occurred five years after the 2016 Peace Accord between the Colombian government and the FARC, pursuant to which “the FARC formally dissolved and disarmed.”<sup>3</sup> However, while delisting the FARC, the State Department announced that it would designate as FTOs and SDGTs two FARC splinter groups and their leaders who have “refused to demobilize” and continue to “engage[] in terrorist activity.”<sup>4</sup>

The group now known as the FARC “trace[s] its roots to Colombia’s armed peasant self-defense groups that emerged in the 1940s and 1950s,” and it was officially formed in 1964 as “a group dedicated to rural insurgency and intent on overturning what it perceived as Colombia’s systemic social inequality.”<sup>5</sup> The FARC grew in power, using revenues from the drug trade to fund its activities, which included “bombings, mortar attacks, murders, kidnapping for ransom, extortion, and hijackings.”<sup>6</sup> By the 1990s, Colombia’s “internal armed conflict was supercharged by profits from illicit crops, primarily cocaine,” and other businesses like “human trafficking and illicit resource extraction, such as logging and gold mining.”<sup>7</sup> The FARC reached the height of its power in the late 1990s and early 2000s when it controlled roughly forty percent of Colombia’s territory and had “an estimated 16,000–20,000 fighters.”<sup>8</sup> In 1999 alone, “[m]ore than 3,000 kidnappings were carried out in Colombia,” and the “homicide rate rose to nearly 60 deaths per 100,000 inhabitants,” sparking protests in Colombia against the FARC.<sup>9</sup>

<sup>1</sup> U.S. Dep’t of State Press Release, *Revocation of the Terrorist Designations of the Revolutionary Armed Forces of Colombia (FARC) and Additional Terrorist Designations* (Nov. 30, 2021), at <https://www.state.gov/revocation-of-the-terrorist-designations-of-the-revolutionary-armed-forces-of-colombia-farc-and-additional-terrorist-designations> [<https://perma.cc/FV63-84CB>].

<sup>2</sup> *Designation of Foreign Terrorist Organizations*, 62 Fed. Reg. 52,650, 52,651 (Oct. 8, 1997), at <https://www.federalregister.gov/documents/1997/10/08/97-27030/designation-of-foreign-terrorist-organizations>; U.S. Dep’t of State, *Executive Order 13224*, at <https://www.state.gov/executive-order-13224> [<https://perma.cc/3CZN-4Z2Z>].

<sup>3</sup> U.S. Dep’t of State Press Release, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> JUNE S. BEITTEL, CONG. RSCH. SERV., R42982, *COLOMBIA’S PEACE PROCESS THROUGH 2016*, at 2 (Dec. 31, 2016), at <https://crsreports.congress.gov/product/pdf/R/R42982/16>.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> JUNE S. BEITTEL, CONG. RSCH. SERV., R43813, *COLOMBIA: BACKGROUND AND U.S. RELATIONS 27* (Dec. 16, 2021), at <https://crsreports.congress.gov/product/pdf/R/R43813>.

<sup>8</sup> BEITTEL, *supra* note 5, at 4–5.

<sup>9</sup> Center for International Security and Cooperation, *Mapping Militant Organizations*, “*Revolutionary Armed Forces of Colombia*,” at <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/revolutionary-armed-forces-colombia-farc> (last modified July 2019).

The FARC's brutality and involvement in the drug trade prompted action by the United States, including designating FARC as a terrorist group. In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act, which delegated to the secretary of state the power to designate groups as FTOs.<sup>10</sup> The FARC was among the first thirty groups designated on October 8, 1997.<sup>11</sup> Inclusion on the FTO list renders a group "subject to financial and immigration sanctions, potentially including the blocking of assets, the prosecution of supporters who provide funds, refusal of visas, and deportation of members."<sup>12</sup> On October 31, 2001, the United States also designated the FARC as an SDGT.<sup>13</sup> Days after the 9/11 attacks, President Bush established the SDGT list via Executive Order 13,224, citing the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act, among other authorities, to block the property of and prohibit transactions with designated individuals and entities engaged in terrorism.<sup>14</sup>

Following several years of negotiation, the Colombian government and the FARC negotiated and signed a Peace Accord in 2016 that signaled the formal dissolution of the FARC.<sup>15</sup> The agreement ended a fifty-eight-year armed conflict that by 2012 had resulted in the deaths of an estimated 220,000 Colombians, "80% of [whom] were unarmed civilians."<sup>16</sup> Among other provisions, the Accord provided "for demobilization of the guerrilla fighters and surrender of weapons, and amnesty for those who had not committed crimes against humanity or other serious offenses and who acknowledged their activities and apologized to victims."<sup>17</sup> It further assured former fighters of "reintegration assistance," as well as the "establish[ment of] a new political party, with guaranteed seats in the country's Congress."<sup>18</sup>

At the request of Colombia and the FARC, the UN Security Council established "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 [to] monitor

<sup>10</sup> 8 U.S.C. § 1189 (1996); Antiterrorism and Effective Death Penalty Act (AEDPA), Pub. L. No. 104-132, § 219, 110 Stat. 1214 (1996) (codified as amended at 8 U.S.C. § 1189 (2018)); *see generally* AUDREY K. CRONIN, CONG. RES. SERV., RL32120, THE "FTO" LIST AND CONGRESS: SANCTIONING DESIGNATED FOREIGN TERRORIST ORGANIZATIONS (Oct. 21, 2003), available at <https://apps.dtic.mil/sti/pdfs/ADA445050.pdf>.

<sup>11</sup> Designation of Foreign Terrorist Organizations, *supra* note 2, at 52,651.

<sup>12</sup> CRONIN, *supra* note 10, at Summary.

<sup>13</sup> U.S. Dep't of State, *supra* note 2 (showing the date on which the FARC was originally listed).

<sup>14</sup> Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 25, 2001). Although the FTO and SDGT list both include terrorist groups:

[s]ometimes it is easier to prosecute organizations or their associates by using the Executive Orders [on SDGTs] under IEEPA. For example, it can be more difficult to prove that someone is materially supporting, or working for or on behalf of, an FTO under AEDPA than it is to prove that someone is violating the terms of Executive Order 13224. In that case, it might be to the benefit of U.S. counterterrorism efforts to name a group a SDGT rather than an FTO.

CRONIN, *supra* note 10, at 9.

<sup>15</sup> UN Secretary-General, Letter Dated Mar. 29, 2017 from the Secretary-General Addressed to the President of the Security Council, UN Doc. S/2017/272, Annex II (Apr. 21, 2017), at [https://unmc.unmissions.org/sites/default/files/s-2017-272\\_e.pdf](https://unmc.unmissions.org/sites/default/files/s-2017-272_e.pdf) (providing the full text of the Peace Accord).

<sup>16</sup> HISTORICAL MEMORY GROUP, BASTA YA! COLOMBIA: MEMORIES OF WAR AND DIGNITY 15 (2016), available at <http://centrodehistoriahistorica.gov.co/descargas/informes2016/basta-ya-ingles/BASTA-YA-ingles.pdf>.

<sup>17</sup> Karen DeYoung & Samantha Schmidt, *U.S. Plans to Lift Terrorist Designation from Former Colombia Guerrilla Group*, WASH. POST (Nov. 23, 2021), at [https://www.washingtonpost.com/national-security/colombia-farc-terror-designation/2021/11/23/01f2dca-4ca1-11ec-b0b0-766bbbe79347\\_story.html](https://www.washingtonpost.com/national-security/colombia-farc-terror-designation/2021/11/23/01f2dca-4ca1-11ec-b0b0-766bbbe79347_story.html).

<sup>18</sup> *Id.*

and verify the definitive bilateral ceasefire.”<sup>19</sup> In 2017, the UN mission confirmed the FARC’s demobilization and the collection of its weapons.<sup>20</sup>

On November 30, 2021, the State Department revoked the FARC’s designation as an FTO and SDGT but designated two splinter groups and their leaders who refuse to demobilize.<sup>21</sup> Pursuant to a statutory requirement that the secretary of state review entities on the FTO list every five years,<sup>22</sup> the State Department determined that the FARC should be removed from the lists, explaining:

Following a 2016 Peace Accord with the Colombian government, the FARC formally dissolved and disarmed. It no longer exists as a unified organization that engages in terrorism or terrorist activity or has the capability or intent to do so.

The decision to revoke the designation does not change the posture with regards to any charges or potential charges in the United States against former leaders of the FARC, including for narcotrafficking, nor does it remove the stain of the decision by Colombia’s Special Jurisdiction of Peace, which found their actions to be crimes against humanity.<sup>23</sup>

The State Department highlighted that delisting the FARC “will facilitate the ability of the United States to better support implementation of the 2016 accord, including by working with demobilized combatants.”<sup>24</sup> In particular, delisting the FARC removes the threat of prosecution under U.S. material support to terrorism statutes that had chilled interactions with former FARC combatants.<sup>25</sup> Reports indicate that “[l]awyers for U.S. officials in Colombia ha[d] applied a strict interpretation of ‘material support,’ even occasionally prohibiting U.S. Embassy or USAID staffers from buying a cup of coffee for a member of Comunes, the rebranded ex-FARC political party.”<sup>26</sup> Moreover, participation by former FARC combatants and their families in economic development programs, like the initiative to replace coca leaf with legal crops, “blocked U.S. support while the FARC was listed as a ‘terrorist.’”<sup>27</sup>

<sup>19</sup> SC Res. 2261, para. 2 (Jan. 25, 2016); UNSC, Identical Letters Dated 19 January 2016 from the Permanent Representative of Colombia to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2016/53 (Jan. 22, 2016), at <https://undocs.org/S/2016/53>.

<sup>20</sup> *UN Observers Conclude FARC-EP Arms Removal Process in Colombia*, UN NEWS (Aug. 16, 2017), at <https://news.un.org/en/story/2017/08/563392-un-observers-conclude-farc-ep-arms-removal-process-colombia>; *Colombia’s Farc Concludes Weapons Disarmament*, BBC NEWS (Aug. 16, 2017), at <https://www.bbc.com/news/world-latin-america-40944329>.

<sup>21</sup> U.S. Dep’t of State Press Release, *supra* note 1. The delisting of the FARC brings the United States into line with the European Union, which removed the FARC from its terrorist organizations list in 2017. Samantha Schmidt & Diana Durán, *How the U.S. Terrorist List Is Getting in the Way of Peace in Colombia*, WASH. POST (Oct. 23, 2021), at <https://www.washingtonpost.com/world/2021/10/23/colombia-farc-peace-process>.

<sup>22</sup> 8 U.S.C. § 1189(a)(4)(C)(i) (2018). Despite this statutory mandate, the FARC’s designation had not been revised since April 2015, partly due to the COVID pandemic. Schmidt & Durán, *supra* note 21.

<sup>23</sup> U.S. Dep’t of State Press Release, *supra* note 1.

<sup>24</sup> *Id.*

<sup>25</sup> 18 U.S.C. § 2339B (2018); CRONIN, *supra* note 10, at 3; Steve Hege, *Colombia: U.S. Aids Peace by Lifting “Terrorist” Label from FARC*, U.S. INST. OF PEACE (Dec. 16, 2021), at <https://www.usip.org/publications/2021/12/colombia-us-aids-peace-lifting-terrorist-label-farc>.

<sup>26</sup> Schmidt & Durán, *supra* note 21.

<sup>27</sup> Hege, *supra* note 25.

Simultaneous with removing the FARC's designations, the State Department announced that it was designating the FARC-EP and Segunda Marquetalia as FTOs and SDGTs and designating four of the groups' leaders as SDGTs.<sup>28</sup> The State Department explained that the designations are:

directed at those who refused to demobilize and those who are engaged in terrorist activity. In August 2019, former FARC commanders, including Luciano Marin Arango, alias Ivan Marquez, created Segunda Marquetalia after abandoning the 2016 Peace Accord. Since then, Segunda Marquetalia has engaged in terrorist activity and is responsible for the killings of former FARC members and community leaders. Segunda Marquetalia has also engaged in mass destruction, assassination, hostage-taking, including the kidnapping and holding for ransom of government employees. Segunda Marquetalia is also responsible for the attempted killings of political leaders. . . .

[FARC-EP] is responsible for the vast majority of the armed attacks attributed to FARC dissident elements since 2019. FARC-EP has also been responsible for the killing of political candidates and former FARC members, and the kidnapping of a political operative.<sup>29</sup>

The FARC and the 2016 Peace Accord are polarizing issues in Colombia, and Colombian political leaders have had divergent responses to the U.S. delisting decision. Former Colombian President Juan Manuel Santos, who served from 2010 to 2018, won the Nobel Peace Prize in 2016 for championing the peace process with the FARC and concluded the Peace Accord.<sup>30</sup> Officials from the Santos administration had pressed U.S. officials to drop the terrorist designation.<sup>31</sup> Sergio Jaramillo, "the Santos administration's architect of the peace talks," referred to the U.S. delisting of the FARC as a "low-cost thing to do" that "sends the signal to the FARC, 'it has been five years, you've done your bit, behaved properly, and we're delisting you.'"<sup>32</sup> Conversely, current Colombian President Iván Duque has historically taken a more critical stance toward ex-combatants.<sup>33</sup> In response to the delisting, Duque said that while his administration understands and respects the U.S.

<sup>28</sup> U.S. Dep't of State Press Release, *supra* note 1. The 2020 indictment charging Venezuelan leader Nicolás Maduro for drug trafficking also included charges against Luciano Marín Arango and Seuxis Paucis Hernández Solarte, who are Colombian citizens and known leaders of Segunda Marquetalia. Arango remains designated as a SDGT for his leadership role in the dissident group. See Superseding Indictment, paras. 11–13, United States v. Maduro, No. 11-0205 (S.D.N.Y. unsealed Mar. 26, 2020), at <https://www.justice.gov/opa/page/file/1261806/download> [<https://perma.cc/9LKP-MA2Z>]; Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 494, 511 (2020); see also Dylan Baddour & Anthony Faiola, *As Colombia Peace Accord Unravels, Ex-FARC Leaders Take Up Arms, Announce Return to Conflict*, WASH. POST (Aug. 29, 2019), at [https://www.washingtonpost.com/world/the\\_americas/as-colombia-peace-accord-unravels-ex-farc-leaders-take-up-arms-to-resume-struggle/2019/08/29/e2a50bd6-ca5d-11e9-9615-8f1a32962e04\\_story.html](https://www.washingtonpost.com/world/the_americas/as-colombia-peace-accord-unravels-ex-farc-leaders-take-up-arms-to-resume-struggle/2019/08/29/e2a50bd6-ca5d-11e9-9615-8f1a32962e04_story.html).

<sup>29</sup> U.S. Dep't of State Press Release, *supra* note 1.

<sup>30</sup> BEITTEL, *supra* note 7, at 5–7.

<sup>31</sup> See Vivian Salama & Juan Forero, *U.S. to Drop Colombian Rebel Group FARC from Terrorist List to Bolster Five-Year-Old Pact*, WALL ST. J. (Nov. 23, 2021), at <https://www.wsj.com/articles/u-s-to-remove-colombian-rebel-group-farc-from-terrorist-list-in-support-of-five-year-old-peace-pact-11637688001>.

<sup>32</sup> *Id.*

<sup>33</sup> *Colombia's Santos Urges Peace as FARC Take Seats in Congress*, REUTERS (July 20, 2018), at <https://www.reuters.com/article/us-colombia-politics/colombias-santos-urges-peace-as-farc-take-seats-in-congress-idUSKBN1KA2UU> (reporting that when the FARC ex-combatants were sworn into the Colombian Congress for the first time in 2018, Duque "said he is incensed there would be 'criminals' in Congress shaping laws after decades of kidnapping, extortion and killing").

move, it would have “preferred another decision” and wants to focus on confronting dissidents moving forward.<sup>34</sup> Vice President Marta Lucía Ramírez issued a statement assuring the public that the FARC would not be forgiven for its past crimes or terrorism.<sup>35</sup>

The delisting also drew criticism from some Republicans in Congress, most notably Florida lawmakers who have a sizeable number of Colombian Americans in their constituent base. Senators Marco Rubio (R-FL) and Rick Scott (R-FL) sent a letter to President Biden stating that the decision is “counterproductive” to the goal of a “peaceful and prosperous Colombia” and “emboldens and enables those FARC members who reject any and all attempts at peace.”<sup>36</sup> Rep. María Elvira Salazar (R-FL) called the delisting decision a “slap in the face for the Colombian people,”<sup>37</sup> and along with Rep. Dan Crenshaw (R-TX), she introduced a bill entitled the No Foreign Adversaries Residing in Our Communities Act (No FARC Act) to restrict admission of former FARC members into the United States.<sup>38</sup>

#### INTERNATIONAL ORGANIZATIONS

##### *United States Re-elected to UN Human Rights Council*

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On October 14, 2021, the United States was elected to the UN Human Rights Council (HRC), fulfilling a pledge President Joseph R. Biden Jr. made during the 2020 campaign,<sup>1</sup> and marking a reversal from the Trump administration’s withdrawal from the Council in 2018. While continuing to highlight concerns with the Council, including the membership of human rights violators and a substantive focus on Israel, the Biden administration has

<sup>34</sup> Steven Grattan, *What Next After Colombia’s FARC Removed from US “Terrorist” List?*, AL JAZEERA (Dec. 1, 2021), at <https://www.aljazeera.com/news/2021/12/1/what-next-after-colombia-farc-removed-from-us-terrorist-list>.

<sup>35</sup> “*El Terrorismo No Se Puede Perdonar*”: Marta Lucía Ramírez Sobre Exclusión de Farc de Lista de Terroristas, SEMANA (Nov. 30, 2021), at <https://www.semana.com/nacion/articulo/el-terrorismo-no-se-puede-perdonar-marta-lucia-ramirez-sobre-exclusion-de-farc-de-lista-de-terroristas/202149> (“Para nosotros es claro que las Farc, mientras funcionaron como organización, siempre fueron consideradas como un grupo terrorista. En la medida en que el acuerdo firmado con el expresidente Juan Manuel Santos, supuestamente dio por terminado ese grupo, pues la decisión del Departamento de Estado reconoce que ya no existen como grupo, aunque eso no significa que las actividades de todos y cada uno de ellos hayan sido delincuenciales y de terrorismo.”).

<sup>36</sup> Office of U.S. Senator Marco Rubio Press Release, Rubio and Scott to POTUS: We Strongly Disagree with Your Decision to Delist the FARC as a Foreign Terrorist Organization (Dec. 1, 2021), at <https://www.rubio.senate.gov/public/index.cfm/2021/12/rubio-and-scott-to-potus-we-strongly-disagree-with-your-decision-to-delist-the-farc-as-a-foreign-terrorist-organization> [<https://perma.cc/XG5A-YGU9>].

<sup>37</sup> Vanessa Vallejo, *Reps. Salazar and Crenshaw Against FARC Members: Push to Deny Them Visas*, EL AMERICAN (Dec. 9, 2021), at <https://elamerican.com/reps-salazar-and-crenshaw-against-farc-members-push-to-deny-them-visas>.

<sup>38</sup> *Id.*; No Foreign Adversaries Residing in our Communities Act, H.R. 6237, 117th Cong. (2021).

<sup>1</sup> Rick Gladstone, *U.S. Regains Seat at U.N. Human Rights Council, 3 Years After Quitting*, N.Y. TIMES (Oct. 14, 2021), at <https://www.nytimes.com/2021/10/14/world/un-us-human-rights-council.html>; U.S. Dep’t of State Press Release, Election of the United States to the UN Human Rights Council (HRC) (Oct. 14, 2021), at <https://www.state.gov/election-of-the-united-states-to-the-un-human-rights-council-hrc> [<https://perma.cc/29E4-Z4WJ>]; see also Katie Rogers, *Biden Administration Moves to Rejoin U.N. Human Rights Council* (Feb. 7, 2021), at <https://www.nytimes.com/2021/02/07/us/politics/human-rights-council-biden-administration.html>.