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Peace talks between the FARC and Santos government in Colombia

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BRICS Policy Center Centro de Estudos e Pesquisas - BRICS



Global South Unit for Mediation

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1. Introduction

In the second half of 2012, the government of President Juan Manuel Santos, in Colombia, started a process of peace negotiations with the illegal group Revolutionary Armed Forces of Colombia (FARC). The initiative reestablishes a dialogue – which had been interrupted for more than 10 years – with the main active guerrillas in the country, hoping to put an end to a conflict that has lasted over 45 years.

Violent confrontations are part of political life in Colombia, especially in the countryside, and they predate the formation of the contemporary armed groups or the growth of drug trafficking. Regional disputes between political groups and the state's lack of control over the entire territory resulted in armed conflict since Colombia's independence. During the 1980s and 1990s, a number of attempts to negotiate with the different armed groups tried to end violence. However, the lack of trust between the parties and the presence of groups willing to sabotage the negotiation process constituted obstacles difficult to overcome.

Throughout this period, two events changed the conflict dynamics, producing an even more complex situation. Firstly, paramilitary activity saw an increase, especially in the rural area, where conflict between different groups with distinctive agendas became more intense, which had devastating humanitarian consequences. Secondly, there was a vertiginous growth of drug trafficking networks, which not only represented a source of funding for insurgent and paramilitary groups, but also put the conflict high in the US foreign policy agenda, impacting its policy towards Colombia, and the entire Andean region.

An issue that must be addressed if the current negotiations are to succeed relates to a change

on international law regarding the grant of amnesties and pardons (1) for political crimes, as well as to the rights of victims of armed conflicts to truth, justice and reparation. Although they have been repeatedly employed during the nineteenth and twentieth centuries to accommodate violence between different armed factions within the country, such alternatives are not politically viable in its current international context. During the demobilization of the paramilitary group United Self-Defense Forces of Colombia (AUC, in Spanish), between 2003-2005, these issues were resolved with the assistance of a framework of transitional justice, formalized in the Justice and Peace Law. The latter created a precedent for the internalization of transitional mechanisms into Colombia's domestic law – a solution proposed by President Santos to facilitate the demobilization of armed groups without affecting the legal stability of the Colombian state.

In light of this framework, this Policy Brief analyzes the recent peace process established between the FARC and the government of President Santos. During the last 30 years, different mechanisms have tried to bring the parties to an agreement and envisage an end to the armed struggle. Several countries and organizations, such as Cuba, Norway, the European Union (EU) and the Organization of American States (OAS), have sought to intervene in different ways to this end, through facilitation, mediation, monitoring and reconciliation policies. By exploring the implementation of these instruments, this Policy Brief will assess their suitability to the circumstances of the conflict; their impact on the creation of spaces for dialogue and for building trust between the parties; and the dilemmas faced in the contemporary scenario.

2. History of the conflict

Colombia contrasts a striking institutional stability (mainly when compared with other Latin American countries) with persistent activity of armed groups. According to James Rochlin (2), despite the formal consolidation of the state apparatus, violence has always been used to some extent as a mechanism for the solution of political controversies.

Until the beginning of the twentieth century, conflicts characterized the political decentralization of the country, marked by disputes between liberal and conservative landowners. This was the background of tensions leading up to the outbreak of violence in 1948, an event that became known as “Bogotazo”. The assassination of the liberal political leader Jorge Eliécer Gaitán on April 9, generated a wave of violent protests and looting in the capital, which led to a retaliation against conservative groups considered responsible and, eventually, to civil war. The period of conflict between 1948 and 1958 went down in history as “La Violencia”, and left more than 200.000 people dead.

The period after the Second World War is also characterized by the beginning of Colombia's rapprochement with the United States on security issues, as well as its accession to the guidelines of the National Security Doctrine (3). This strategic guidance, which would influence the activity

(1) The granting of a pardon by the government exempts the grantee from serving a sentence for a specified offense. Differently from amnesty, which extinguishes the offense itself, a pardon maintains the crime occurrence and removes only the punishment.

(2) See: Rochlin, James F. (2003) *Vanguard Revolutionaries in Latin America: Peru, Colombia, Mexico*. London: Lynne Rienner Publishers, 293p.

of the Armed Forces in several Latin American countries, converges with a widespread position within the Colombian forces that it was necessary to concentrate their activities in the repression of internal disturbances.

At the institutional level, what ended the civil war was a political pact between liberals and conservatives in 1958, which led the National Front to power (1958-1974). This agreement entailed the rotation of the presidential seat between the two parties and an equitable distribution of other positions. Among other things, this articulation allowed the political elites in the country to isolate themselves from popular pressures, since it deprived the different political groups (and their demands) from a viable communication channel. This period witnessed the formation of contemporary guerrilla groups like the FARC and the National Liberation Army (ELN, in Spanish), as well as the first counterinsurgency operations conducted by the Colombian Armed Forces, supported by the US government, which had acquired experience in irregular combat in Vietnam (4).

In the 1980s, two additional elements complicated the conflict dynamics: first, Ronald Reagan's discourse on "War on Drugs", which would guide the United States agenda towards the Andean countries from that moment on; and, second, the growth of the paramilitary phenomenon. The first paramilitary groups were created during the time of "La Violencia". However, the increased flow of funds from drug trafficking, the state's support to the formation of private militias (5), and the refusal of some landowners to stop counterinsurgency after the beginning of peace talks in 1982, put the paramilitary phenomenon in Colombia in a different scale. In 1994, different groups gathered under the leadership of the Castaño brothers in the AUC, becoming a more relevant actor.

Alvaro Uribe's rise to power, in 2003, processed a change in the government's position towards the armed actors: after twenty years of failed attempts at negotiation with the guerrillas, the doors for dialogue were closed, and the armed groups were framed as terrorist groups. On the other hand, the government initiated a process of negotiation with paramilitary groups, including their

(3) The National Security Doctrine refers to the early Cold War context and marks the strengthening of the US role in Latin American security policy. It was institutionally consolidated through documents such as the Covenant of the River (1947) and the OAS Charter (1948). The National Security Doctrine prescribes the priority of the internal enemy versus the external threat and structures the practice of security professionals in three directions: i) it deepens the focus on internal conflict and counterinsurgency; ii) it encourages the active participation of civilian population, which starts to be trained to serve in combat and exercise surveillance functions; and iii) it consolidates the US role in driving the strategy and providing material support to the security policy in Colombia and other Latin American countries. See: Hernández, Carolina (2009). 'De la Seguridad Nacional a la Seguridad Democrática: nuevos problemas, viejos esquemas'. In *Génesis y Transformaciones del Estado Nación en Colombia: una mirada topológica a los estudios sociales desde la filosofía política*, edited by Adolfo Amaya and Carolina Hernández. Bogotá: Editorial Universidad del Rosario p.223-225.

(4) See: Palacios, Marco (2006). *Between Legitimacy and Violence: a history of Colombia 1875-2002*. Durham: Duke University Press, p.163; Avilés, William (2006). *Global Capitalism, Democracy and civil-military relations in Colombia*. New York: State University of New York Press, p.38, 47-48, 106

(5) According to Gonzalo Sánchez, the AUC have several historical roots, but its contemporary configuration is a product of the National Security Doctrine. (See Sánchez, Gonzalo (2001) 'Introduction: Problems of Violence, Prospects for Peace'. In *Violence in Colombia 1990-2000: waging war and negotiating peace*, edited by Charles Bergquist et al Willington: Scholarly Resources Books, p.21). Laws enacted in 1965 and 1968 facilitated the access of citizens to the use of weapons, besides allowing their military organization with the support of the Armed Forces. Moreover, the official forces used these groups as an important information network in places where their presence was small. (See Avilés, op. Cit., p.107). However, at the end of the 1980s, under the pressure for the government to control violence, President Virgilio Barco issued Decree No. 1.194 of 1989, which revoked Law No. 48 of 1968 and authorized prison sentence for those financing and promoting paramilitary groups. (See: Pizarro, Eduardo (2004). *Una Democracia Asediada: balance y perspectivas del conflicto armado en Colombia*. Bogotá: Grupo Editorial Norma, p.119).

demobilization and the application of alternative sentencing in order to assist their reintegration into society.

The Justice and Peace Law (2005) provided a legal framework to regulate the demobilization of paramilitaries. With the departure of Uribe and the weakening of the “War on Terror” discourse, the Law became an important precedent for reopening dialogue with the FARC. Having lost some of its leaders and suffered heavy casualties in the last 10 years, the FARC were signaling a greater willingness to negotiate, under the condition that such dialogues would allow their access to the political scenario. In this context, President Juan Manuel Santos and FARC representatives signed on August 27, 2012, the General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace (General Agreement), which marks the beginning of the current dialogue.

3. History of peace processes

President Santos’ initiative reopens the project for the peaceful resolution of the conflict ten years after the failure of the last attempt in this direction – i.e., the negotiations undertaken during Andrés Pastranavi’s administration (6). From 1982 to 2002, the development of a project to end the conflict with the insurgent groups was a priority for Colombian politics at the national level. Since the waning of the Cold War, only Uribe’s government refused to consider negotiation an important part of its agenda.

The Uribe Accords were signed during Belisario Betancur’s administration (1982-1986), allowing the FARC to organize a political party, the Patriotic Union (UP) (7). Other smaller groups were demobilized during his rule. President Virgilio Barco (1986-1990) attempted to gather different armed groups around the possibility of participating in the drafting of a new constitution (which would only be granted in 1991). Despite of the FARC’s and the ELN’s final rejection of the proposal, Barco was able to demobilize the 19th of April Movement (M-19), responsible for taking the Palace of Justice in 1985 (8).

Deploying a similar tactic to the one used by the current administration, the government of César Gaviria (1990-1994) initiated a series of dialogues with the FARC and the ELN, which at the time negotiated collectively as the Simón Bolívar Guerrilla Coordinating Board. The first discussions took place in the department of Arauca, but were later transferred to Caracas (Venezuela) and

(6) Under Uribe’s government, there were only a few contacts aiming to establish humanitarian agreements for the exchange of hostages, with support from the International Red Cross. After the beginning of the process of demobilization of paramilitaries, a possible dialogue with the ELN was considered as the basis for a similar demobilization. The initiative, however, did not progress.

(7) The extermination of UP members is one of the important landmarks of the conflict’s trajectory, fueling suspicions regarding the possibility of a negotiated solution between the government and the FARC. There is much controversy in the numbers, but thousands of people were murdered between 1984 and 1994, including congressmen, deputies, mayors and other activists of the UP, and also two presidential candidates.

(8) Other smaller groups also demobilized, like the Quintin Lame Armed Movement, the Workers Revolutionary Party (PRT) and a partial demobilization of the People’s Liberation Army (EPL).

Tlaxcala (Mexico) – without celebrating, however, a ceasefire prior to negotiations. These talks were cut short with the kidnap and subsequent murder of the conservative leader Argelino Durán Quintero. Gaviria was succeeded by Ernesto Samper (1994-1998), who, despite his inclination to dialogue with the guerrillas, did not obtain political support for such initiative: attention turned, instead, to investigations of the supposed financing of Samper's presidential campaign by drug trafficking groups.

In 1998, Andrés Pastrana took office and pursued a peace process that was outlined during his election campaign. In November 1998, a demilitarized zone was established in the El Caguán region, where dialogue took place.

Among other reasons, the 1998-2002 negotiation with the FARC failed because the parties adopted very similar strategies: both saw the negotiation and the ceasefire as a way to buy time to reorganize and resume the initiative from a superior position. The FARC was facing its military heyday. They took advantage from the truce and the demilitarized zone in order to regroup and intensify recruitment, aiming at a complete transition to a war of movement. The public forces and the government, on the other hand, were poorly trained, badly equipped and struggling with low morale. The Pastrana government needed respite to set in motion an ambitious plan to restructure the Army with the support of the United States, funded by resources of the so-called Colombia Plan (approved in 2000). This set of decisions jeopardized the parties ability to build trust.

Regarding the ELN, second largest armed group in the country, the negotiations did not take off. After a series of meetings – held in Geneva (Switzerland), Caracas (Venezuela) and Havana (Cuba) – in 1999, an agreement was signed regarding the establishment of a demilitarized zone in the region of Bolivar, similarly to the process undertaken with the FARC. However, local politicians, clearly coerced by the AUC in some cases, opposed the proposal and pressured the government to back down. The ELN came out particularly weak in the face of the expansion and more offensive posture of the AUC since 1998, but continued to seek a negotiated solution to the armed struggle even during Uribe's government. Similar to the previous process, Cuba (December 2002) and Mexico (between June 2004 and April 2005) served as facilitators for meetings with guerrilla members. Uribe's political stance, however, did not offer much room for maneuver, and the meetings could not reach any concrete decisions.

4. The FARC-Santos Government Talks

4.1. Political context and the role of international actors

On September 4, 2012, President Juan Manuel Santos publicly announced its dialogue with the FARC in order to reach a solution to the conflict. Different from the previous peace process, this context was marked by a militarily weakened FARC: in recent years, the group had suffered a dramatic reduction of its contingent, a loss of political legitimacy, had its leaders murdered and its mobility and communication seriously compromised. Although still militarily powerful, the FARC are increasingly at risk of fragmentation. The Colombian government, in turn, tried to build a solid military supremacy in the last ten years to counter the guerrilla's initiative in combat. However, it is unclear whether a definitive military victory is desirable, and most analysts do not even consider it is possible.

Preliminary peace talks took place in Havana since 2011. However, the government and the guerrilla kept it confidential, and only after August 2012 rumors of an ongoing negotiation acquired substance. This period of secret talks allowed to build an agenda and to design a set of rules that could further the issue. Both are underscored in the General Agreement signed in Cuba, on August 26. In order to prevent reactions that could push the government into untenable positions, the parties decided to organize the peace process within a single undertaking logic (9).

The agreement was announced on September 4, after talks facilitated by Cuba and Norway. As indicated above, Cuba had already functioned as a basis for dialogue between the Colombian government and guerrilla groups – especially in the case of the ELN, which was founded on the island. The confidence both armed groups have in the Cuban government has been an important factor in the search for dialogue with the Colombian state. Norway was chosen, in turn, for its experience in conflict resolution and for having a set of diplomats with extensive knowledge about the conflict dynamics and the history of negotiations (10). Despite having played a secondary role in past negotiations compared to Cuba, the Norwegians have long invested in supporting practices of mediation and peaceful resolution of conflicts.

The recent efforts by Cuba and Norway add to a number of other initiatives of international actors that, over the past 20 years, have sought to mitigate the effects of violence and provide answers to the conflict problems. One of the active organizations in the country is the OAS. The OAS Mission to Support the Peace Process in Colombia (MAPP/OAS) is the product of an agreement signed in 2004 between Uribe's government and OAS Secretary General to create a program of support to the ongoing peace process with paramilitaries. The agreement provided for the verification and monitoring of disarmament and demobilization activities, as well as the care for victims of violence. Despite its support of both government and civil society programs at the local level, some of the reports issued by the MAPP/OAS also call attention to important dilemmas that public policy has not been able to resolve. Here, it is important to highlight the legal status of those demobilized under the Justice and Peace Law, and the persistent presence of criminal networks linked to drug trafficking after the demobilization of the AUC.

Another actor trying to play a constructive role in the peace agenda in Colombia is the EU. Its first effective participation in the conflict occurred during negotiations promoted by President Pastrana, between 1998-2002. The EU participated in the negotiation tables in support of Pastrana's peace talks in 2000 and 2001 – along with other countries, such as Switzerland and Norway. However, these actors started to move away as the process of approval of Plan Colombia progressed, due to its growing emphasis on militarization, supposedly connected to the influence of US policymakers (11).

Thus, the EU shifted its strategy towards the conflict, seeking an alternative that would allow a detachment from government policy – especially in the face of Uribe's government fierce offensive against the FARC. The Peace Laboratories project emerges in this context, aiming to support citizen participation in favor of peace in different regions of the country. More precisely, the Laboratories aim to: i) improve the delivery of humanitarian assistance; ii) build a culture of human rights

(9) Single undertaking is a strategy of negotiation used, for example, in trade agreements under the World Trade Organization (WTO). In a single undertaking negotiation, the different chapters or phases of a negotiation remain open until all issues are addressed and the document can be submitted to voting as a block. No partial understanding has effect until the entire agreement is approved.

(10) See: Sparrow, Thomas, Por qué Noruega Enarbola la Bandera de la Paz em ColombiaBBC Mundo 17 de Octubre 2012)

(11) See: Avilés, op. cit., p.130

preservation; iii) create living spaces; and iv) facilitate integral and sustainable human development (12). In December 2013, the President of the European Commission, José Durão Barroso, on an official visit to Bogota, expressed the institution's support to the ongoing peace process with the FARC. He added that the EU was willing to help Colombia to finance the implementation of this peace process, in case an agreement could be reached (13).

4.2. The dilemma of fragmentation and the government's options

Parallel to these developments, the FARC started to use guerrilla warfare tactics again, changing the political context hitherto favorable to peace dialogues (14). In this scenario, the costs of assuming an uncompromising attitude during negotiations increased, in that such a position led to an intensification of the so-called "dirty war" and of surprise attacks against civilians. This new framework may be relevant not only for humanitarian, but also for financial reasons: the Colombian economy has had a considerable growth in recent years (15), and there is a rising fear that these attacks may drive investors away, specially in times of global economic instability.

The possible fragmentation of armed groups creates an unattractive scenario for the government. The demobilization of the AUC gave rise to a set of new illegal armed groups, making the issue of political violence in Colombia even more complex, since these groups do not have a centralized leadership or political agenda to negotiate.

This is perhaps the key difference in strategic terms between the governments of Santos and Uribe: the latter considered security primarily in terms of the indivisibility of sovereignty. The costs of recognizing the FARC as a political party was greater than the humanitarian costs of violence resulting from the absence of dialogue – even when the FARC lost most of its military power. Once elected, President Santos (who had previously held the Defense portfolio during Uribe's second administration) surprisingly shifts the understanding about security in Colombia. His security program finds the main long-term threats to the country to be: the fragmentation of these armed groups, and the construction of local militias capable of electing political representatives that support their criminal organization.

The demobilization of paramilitaries spanned the creation of several such groups, and the fragmentation of the FARC tends not only to enable tactical alliances in the local level (16), but also to lead to a more systematic use of civilians in operations, making the distinction between combatants and non-combatants increasingly difficult, and broadening the ethical dilemmas involved with the government's intervention in certain places (17).

(12) See: Castañeda, Dorly (2009) ¿Qué significan los laboratorios de paz para la Unión Europea? Colombia Internacional, n.69, p. 172-173.

(13) See: Unión Europea entregará ayuda financiera a Colombia si se firma paz con las Farc. EFE Bogota 12 diciembre 2013. Disponible en: <http://www.vanguardia.com/actualidad/colombia/237880-union-europea-entregara-ayuda-financiera-a-colombia-si-se-firma-paz-con-l>.

(14) During its heyday, in 1998, the FARC had more than 16,000 men and was prepared to act almost like a conventional army. Between 1996 and 1998, fighting was usually initiated by the FARC's guerrilla strategy, leading to significant victories over the Colombian Army.

(15) According to World Bank data, since 2010, the GDP of Colombia presents growth rates above 4%, having surpassed Argentina's GDP in 2012 and achieved the second highest rate in South America. See: World Bank, GDP Growth (Annual %), available at: <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>.

4.3. Institutional precedent: the paramilitary demobilization

The trajectory of the political struggles involved in the demobilization of paramilitary groups, as well as the crystallization of these disputes in a transitional legal framework formalized by the Justice and Peace Law (Law No. 975 of 2005) influenced government decisions with respect to the present peace process, especially in terms of how to accommodate it to the legal framework in Colombia, structured to restrict certain powers of the Executive in matters of war and peace.

During the nineteenth and twentieth centuries in Colombia, a large number of negotiations took place among different armed actors, and between them and the Colombian government. In this context, agreements were signed without the participation of other state institutions such as the judiciary, and it was common to grant amnesties and pardons. In the 1990s, following an international tendency, the Colombian State started to restrict the powers of the Executive in determining such concessions. Currently, there are a number of domestic and international instruments (starting with the constitution of 1991), as well as the treaty establishing the International Criminal Court (18), governing such restrictions.

In December 2002, the government signed with the paramilitaries the Agreement of Santa Fé de Ralito, which established a ceasefire and provided for the demobilization of the AUC in exchange for the government's commitment to promote policies of reintegration of combatants into civilian life. However, many civil society groups and members of the judiciary began to mobilize in favor of effective punitive mechanisms for serious violations of human rights, and in favor of reparations for victims.

The Justice and Peace Law resulted from these disputes and, based on the rules of international law relating to transitional justice mechanisms, it aimed to regulate two processes. On the one hand, the establishment of an alternative criminal justice system to provide incentives for combatants to demobilize according to the current regulations on national and international legal systems concerning the special circumstances of transition (19). On the other hand, the creation of the National Commission of Reparation and Reconciliation (CNRR, in Spanish), aiming to try and meet the demands of the victims of the conflict in their rights to truth, justice and reparation, also provided in the documents relating to transitional justice.

(16) There are indications that some FARC fronts are acting in a coordinated manner with new illegal armed groups resulting from the demobilization of the AUC. There are reports of joint operations, notably with “Los Rastrojos” – one of the largest among these new groups. See: (Armada denuncia alianza entre las Farc y ‘Los Rastrojos’ en la Costa Pacífica. 08 Febrero 2012. *Diário Efe21*. Available at: <http://efe21.com.co/nacionales-secciones-53/47546-armada-denuncia-alianza-entre-las-farc-y-los-rastrojos-en-la-costa-pacific.html>.

(17) According to interviews with senior Colombian militaries by the International Crisis Group, the perception that FARC attacks have relied on the support of civilian militias acting as combatants tends to further complexify this framework of fragmentation. In other periods of the conflict, it was common to see community members involved in the theater of operations, providing some kind of material or logistical support. However, they are increasingly found throwing bombs or targeting government troops with long distance shots. This framework deepens the complexity of the humanitarian issue of the conflict, in that it becomes increasingly difficult to distinguish combatants from non-combatants. See: International Crisis Group (2012) Colombia: Peace at Least? Latin America Report n.45 25 September 2012, p.4.

(18) It is noteworthy that, when it signed the treaty in 2002, Colombia claimed a seven-year moratorium in relation to charges of war crimes, in accordance with Article 112 of the Rome Statute. The moratorium expired at the end of Uribe's second term. See Orozco, Iván (2009). *Justicia transicional en tiempos del deber de memoria*. Bogotá: Editorial Temis S.A., p. 150-151.

4.4. Legal Framework for Peace and Victims Act

As seen, at a certain point, the demobilization of paramilitaries escaped the control of the government negotiators. It was thus necessary to prevent the recurrence of similar problems.

A major limitation of the Justice and Peace Law is its association with a specific process of demobilization. The rights it provides to victims apply only to those who suffered violence by combatants in the demobilization process. In 2009, still during Uribe's government, some human rights groups proposed that such rights were extended to all victims of the conflict, thus aiming to internalize this mechanism in the Colombian domestic law. The Congress began to discuss the issue, but Uribe's government sabotaged the initiative. It not only hesitated to establish a permanent mechanism for the explicit recognition of an armed conflict (which would subject it to intervention by the official forces in accordance to international humanitarian law); it also feared setting a precedent for individuals to charge the government as the perpetrator of violence.

Early in his term, President Santos reengaged this initiative to normalize the transitional justice mechanisms that enabled the negotiation with paramilitaries. This normalization was pursued through two initiatives: the Legal Framework for Peace and the Victims and Land Restitution Law (Law No. 1448, June 2011). The latter extends to all victims of conflict, past and present, the rights to truth, justice and reparation. The land issue has generated great controversy and gained prominence in the drafting of the Law, since segments of society feared losing control over lands appropriated through the violation of human rights, the use of threat, and forced removal.

The Legal Framework for Peace consists of a constitutional amendment that aims to create legal mechanisms to regulate the demobilization of armed groups by establishing favorable conditions for their crimes to be presented and judged, and for their reintegration. This opportunity extends to all armed combatants at any moment. Similarly to the demobilization of paramilitaries, the Law also generated much controversy because the government was accused of being negligent with the severity of the crimes committed and of offering members of armed groups a form of amnesty. In May 2013, the Human Rights Watch, for example, made public its rejection of the terms of Santos' project. The Colombian government, for its turn, insists that the Framework does not neglect the rights of victims and that, in fact, it is a guarantee that victims will have access to justice. The Executive defends its position in pragmatic terms: to prosecute every member of an armed group through the ordinary justice would overload the system and make judgment impracticable in most of cases.

(19) People convicted through the alternative penal system established by the Justice and Peace Law for heinous crimes or crimes against humanity are subject to two concurrent sentences: a conventional sentence, which can extend from 40 to 60 years in prison, and the alternative sentence ranging from five to eight years. In theory, to benefit from the alternative penalty, the defendant must meet five requirements: i) contribute to the demobilization of his armed group; ii) confess the truth; iii) return or refund all that was acquired unlawfully; iv) ask for forgiveness; and v) not reoccur in the crime for which he was subject to alternative sentencing (in this case, in addition to retrial in the conventional system, the defendant would have to fulfill the rest of the sentence by the previous crime). See: Pizarro, Eduardo (2009). 'Reparar el bote en alta mar'. In Pizarro, Eduardo And León Valencia Ley de Justicia y Paz. Bogotá: Grupo Editorial Norma, p.85.

4.5. Negotiating dynamics: elections, spoilers and advances

Talks formally began on October 18, 2012, in Oslo. Norway and Cuba, which had acted as mediators in secret contacts leading to the General Agreement in 2012, are now participating as facilitators of the negotiations. Besides the president's men of confidence – such as Humberto de la Calle, former vice-president and head of the negotiating team – the government included in its negotiating team representatives from business and the military, key groups to consolidate the support of society (20). Since the second round of negotiations, the dialogues were transferred to Havana. The General Agreement provides that the negotiations between the parties will be conducted around five points: i) land reform; ii) political participation; iii) demobilization and conflict termination; iv) solutions to the problem of illicit drugs; and v) victims.

From the beginning, many civil society groups within the country mobilized to have their demands considered. With the exception of experts called to Havana to talk to negotiators, external interference has been marginal in the process, and details about the content of the understandings between the parties have been kept confidential.

The parties achieved an understanding on land reform in a relatively short time. The debate on political participation, in turn, polarized Colombian society and almost put the entire process at risk: because this is the most sensitive issue for those who staunchly oppose the peace process (21), the Executive has been heavily criticized in the media. Additionally, the wave of protests on August 2013 drew a blow to the popularity of President Santos, putting the government in a defensive position and giving more impetus to the opponents' initiative – indicating that the peace talks will remain on the agenda of presidential candidates in 2014 (including Manuel Santos).

On November 6, 2013, the negotiators officially reported having reached an agreement on the issue of political participation and further moving to the problem of illicit drugs. Besides accommodating their public policies with the demands of the FARC, this agenda item brings a further complicating factor: the need to reconcile the positions of the government with the US policy for the region and the war on drug trafficking. In early December 2013, during Santos' visit to the United States, President Barack Obama demonstrated, for the first time, his support to the country's efforts to end the conflict. However, neither president expressed views on this particular issue.

(20) In September 2012, the Reserve Military Officers Association manifested its desire to be represented at the negotiating table. Due to the remarkable influence not only of this particular Association, but of the military in general, Santos summoned the retired general Jorge Enrique de Mora Rangel to be part of his negotiating team. Moreover, the reserve general Óscar Naranjo Trujillo, director general of the National Police of Colombia during Uribe's second term, also occupies a spot in the government staff. In addition to the military, the only social group to be specifically represented was the businessmen, with the inclusion of the president of the National Association of Industries, Luis Carlos Villegas Echeverri.

(21) This question allowed conservative groups organized around former president Álvaro Uribe to build a concrete political agenda. Their major concern was not demobilization per se, but the possibility that any FARC veteran may enter the political life through elections. According to the Manifesto of the Front of Unity Against the Terrorists: "To support a policy of appeasement with the terrorists is to evade the constitutional obligations that command the State to firmly exercise the monopoly of force. Terrorists are criminals: they are not political criminals. The real legal framework for peace is to respect the constitution. Terrorists, for having committed crimes, have self-excluded their right to be elected, albeit voluntarily demobilized." See: *Manifiesto del Frente de Unidad em Contra de los Terroristas*, 05 de julio de 2012. Available at: <http://www.minuto30.com/politica/seccion-nacional/manifiesto-del-frente-de-unidad-en-contra-de-los-terroristas/>.

5. Dilemmas/prospects

By choosing to start peace talks with the FARC, the current Colombian government opted for a risky political strategy. It faced opposition from groups that had supported its rise to power and endangered its position with the military sectors, which have great political importance in the country. However, the government has been successful in building a purposeful agenda with the armed group, exploring its current fragility and using the demobilization of paramilitary as precedent to provide insurgents with protection against groups that resist the peace process and against international jurists who argue that retribution and the right of victims to non-repetition are not being respected (22).

However, despite the great expectations that the process has generated, the perception of public opinion and civil society groups is that the process has been excessively centralized and opaque. Therefore, successful initiatives to promote reconciliation at the local level, such as MAPP/OAS and the EU Peace Laboratories, fail to tune their activities with the dialogues between representatives of the executive and the armed groups. As a result, even with the facilitation and mediation of Cuba and Norway and with different international actors willing to contribute to the resolution of the conflict, social actors that might provide legitimacy to the process are not being able to intervene on the agenda.

At the moment, the polls still indicate a solid public support to the peace process, and the projection that an agreement might be reached gained support, especially after the understanding about political participation. However, there are two dilemmas that make the future of the negotiation uncertain. One of them concerns the effects of electoral polarization around the work of the negotiating table. Most parties expressed support to the peace process. The resistance comes from Uribe's allies, accommodated in the new Democratic Centre Party, and from some sectors of the Conservative Party. The polarization is dangerous because it associates the negotiating table to a specific government policy, thereby putting the entire effort at risk. The evolution of the dialogue has become inseparable from Santos electoral project, especially after his popularity drop with the protests in 2013, which can reduce the negotiators' room for maneuver, for they become potential hostages of both government and opposition agendas.

Another important dilemma is related to the policies for an eventual post-conflict scenario, which, in addition to being subject to many setbacks, will likely frustrate expectations created by a future peace agreement. There are spoilers on both sides of the conflict that need to be controlled. The new paramilitary networks are ready to absorb not only demobilized guerrillas who cannot be reintegrated, but also discharged military personnel, since the conflict that justifies this organization's role would cease to exist. Considering that paramilitary groups have spread across different parts of the country and already rely on networks that, in some cases, penetrate deep into conventional political venues, post-conflict challenges tend to be at least as complex as those involving the present negotiation.

(22) On this issue, see: Orozco, op. cit., p.141-146.

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