

The FARC: Worthy of the EU Label of Designated Terrorist Organisation

After over half a century of fighting, the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) announced a new peace agreement on 12 November, 2016.¹ Both parties had already come to a peace agreement about two months earlier, but that agreement was rejected with a slight majority (50.2%) by the Colombian people in a referendum. The opposition felt that the agreement would be too lenient on the FARC rebels, because the rebels would get reduced sentences for the crimes they had committed over the past years.² In response to the first peace agreement, the Council of the European Union, hereafter abbreviated as the Council, decided to lift the sanctions against the FARC, effectively suspending the organisation from the European Union (EU) list of designated terrorist organisations.³ Even though the EU no longer considers the FARC to be terrorists, many other nations and institutions still do, as well as a large portion of the Colombian people. So are the FARC terrorists or are they truly just rebels as the organisation itself claims to be? Based on decades of history and various scholarly and institutional definitions of terrorism, the FARC must be considered terrorists and remain on the EU list of designated terrorist organisations.

As Bakker explains⁴, there is not really a universally accepted definition of terrorism. However, a common definition is very much needed in the international, legal and academic domain. This paper could therefore be relevant for the discussion on how terrorism should be defined and could be beneficial to the practices within these domains. With regards to the international domain, the FARC mostly operates within the borders of Colombia and only fights the government, but if the FARC is universally considered a terrorist organisation rather than a rebel group then it could perhaps also give some clarity on whether organisations such as Hezbollah or the Kurdistan Workers' Party (PKK) should be considered terrorists or rebels. Without a clear definition it is hard to make such a distinction which might allow for governments to abuse the term and resort to excessive use of power. Under the Uribe administration for example, Colombian military personnel killed unarmed civilians to report them as enemy combat casualties. Numerous alleged unlawful killings attributed to Colombian government forces under the pretext of fighting paramilitary terrorists have surfaced over the years.⁵ Reaching a consensus on whether or not the FARC is a terrorist organisation will give legal institutions a better understanding of how to judge similar terrorist organisations and whether killings by government forces are

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¹ BBC, "Colombia peace deal: Government and Farc reach new agreement", 13 November 2016, <http://www.bbc.com/news/world-latin-america-37965392>.

² BBC, "Colombia peace deal: Historic agreement is signed", 27 September 2016, <http://www.bbc.com/news/world-latin-america-37477202>; BBC (2016), "Colombia referendum: Voters reject Farc peace deal", 3 October 2016, <http://www.bbc.com/news/world-latin-america-37537252>.

³ Council of the EU, "Colombia: EU suspends actions against the FARC", 27 September 2016, [http://www.consilium.europa.eu/en/press/press-releases/2016/09/27-colombia-eu-suspends-farc/?utm_source=dsms-](http://www.consilium.europa.eu/en/press/press-releases/2016/09/27-colombia-eu-suspends-farc/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Colombia%3A%20EU%20suspends%20sanctions%20against%20the%20FARC)

[auto&utm_medium=email&utm_campaign=Colombia%3A%20EU%20suspends%20sanctions%20against%20the%20FARC](http://www.consilium.europa.eu/en/press/press-releases/2016/09/27-colombia-eu-suspends-farc/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Colombia%3A%20EU%20suspends%20sanctions%20against%20the%20FARC).

⁴ E. Bakker, *Terrorism and Counterterrorism. Comparing Theory and Practice* (Leiden: Leiden University Press, 2015).

⁵ Human Rights Watch, "World Report 2015: Colombia", January 2015, <https://www.hrw.org/world-report/2015/country-chapters/colombia>.

lawful. For the academic world such a consensus will be beneficial to the quality of research, because then the FARC can be compared to other terrorist organisations. As a result, future research might explain why certain groups and organisations resort to terrorism which in turn could lead to better countermeasures against terrorism.⁶

Since a universal definition of terrorism has not yet been established, the question of whether the FARC is a terrorist organisation or not has remained up for debate. Yet by analysing the various definitions of terrorism offered by numerous academics and the relevant institutions, it becomes apparent that these definitions have overlapping aspects, making it possible to answer the question. The EU applies its own definition of terrorism in the Common Position 2001/931/CFSP. Article 1, section 3 of the Common Position states that a terrorist act aims to “seriously intimidate a population”, “unduly compelling a Government or an international organisation to perform or abstain from performing any act” and “seriously destabilising and destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation” by means of violence, kidnapping or hostage-taking, damaging public property, seizing vehicles, dealing in lethal arms, release of dangerous substances, threatening with a terrorist act, and directing a terrorist group or participating in one.⁷ The EU’s definition alone is not enough to label the FARC as a terrorist organisation, because it remains open for interpretation and is susceptible to political influence since the Council makes the final decision. A comparison must therefore be made between the EU’s definition of terrorism and that of other institutions and academia so a more credible framework can be applied.

The Colombian government itself does not seem to have officially defined terrorism, but former President Uribe (2002-2010) has referred to the conflicts with guerrilla groups as a terrorist struggle.⁸ Obviously a very subjective statement that remains open to interpretation. A definition for terrorism must therefore be found elsewhere. The US, who have helped the Colombian government with fighting the guerrilla groups and drug cartels for decades, put the FARC on their list of terrorist organisations in 1997.⁹ The US Code defines terrorism as “violent acts or acts dangerous to human life” which “intimidate or coerce a civilian population”, “influence the policy of a government by intimidation or coercion” and/or “affect the conduct of a government by mass destruction, assassination, or kidnapping”.¹⁰ Looking at scholarly definitions, Boaz Ganor¹¹ proposes the following definition: “Terrorism is a form of violent struggle in which violence is deliberately used against civilians in order to achieve political goals (nationalistic, socioeconomic, ideological, religious, etc.)” Three elements are in his definition fundamental to terrorism: the use of, or the threat to use violence, the goal is always political, and the targets are civilians.¹² Many

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⁶ E. Bakker, *Terrorism and Counterterrorism* (2015), pp. 35-37.

⁷ European Parliamentary Research Service, *At a glance. Understanding definitions of terrorism* (Brussels: EPRS, 2015); Official Journal of the European Communities, “COUNCIL COMMON POSITION on the application of specific measures to combat terrorism”, 27 December 2001, 2001/931/CFSP.

⁸ J. A. Echavarría, *In/security in Colombia: Writing political identities in the Democratic Security Policy* (Manchester: Manchester University Press, 2010), p. 33.

⁹ US Department of State, “Foreign Terrorist Organizations”, 2016, <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

¹⁰ 18 USC § 2331

¹¹ B. Ganor, *The Counter-Terrorism Puzzle: A Guide for Decision Makers* (New Brunswick: Transaction Publishers, 2005).

¹² B. Ganor, “Defining Terrorism: Is One Man’s Terrorist another Man’s Freedom Fighter?”, *Political Practice and Research* 3, no. 4 (2002), pp. 287-304.

scholars¹³ refer to the work of Schmid and Jongman. In their work *Political Terrorism*¹⁴ they examine 109 definitions of terrorism and categorise 22 elements of definition by frequency. Topping the list are “violence, force” (83.5%), “political” (65%), “fear, terror emphasised” (51%), and “threat” (47%). Similar to Ganor’s third element, the element of “civilians, non-combatants, neutrals, outsiders as victims” (17.5%) is listed. Also on the list is the element of “method of combat, strategy, tactic” (30.5%) which is very relevant in the matter of guerrilla groups like the FARC.¹⁵ According to Wang et al.¹⁶, typical acts of terrorism are assassinations, kidnappings and hostage-takings, bombings, vehicle hijackings, public shootings and bio-chemical attacks which are similar to the examples given by the EU of a terrorist act.

From 1948 to 1958 Colombia experienced *La Violencia*, a bloody civil war between the Colombian Conservative Party and the Colombian Liberal Party. The conflict gave birth to several guerrilla groups, including the FARC which was officially created in 1964. The FARC is described as a Marxist guerrilla force aiming to overthrow the Colombian government by using both legal and illegal means.¹⁷ The guerrilla group has mostly focussed on the lower parts of society, gaining support of the communities. They barely tried to achieve their political goals by the conventional means such as participating in elections or appealing to national institutions. By concentrating on gaining power at a local level instead of the national level the FARC has not achieved their goal of regime change.¹⁸ However, thanks to a peace agreement in the 1980s the FARC managed to get political influence in parliament through the *Union Patriótica* (UP), but the FARC tried to divert the party from its original course. After seven years the peace agreement was dissolved and the FARC was back at fighting the Colombian government.¹⁹ In its 52-year existence the FARC has resorted to all kinds of means to influence and damage the Colombian government, such as: shootings, executions, assassinations, explosives (car bombs, artillery attacks, hand grenades etc.), kidnappings, hijackings, torture, death threats, and arson. The targets were not only public servants such as politicians, police officers and military personnel, but also civilians and public property.²⁰ Although there were also many instances where civilians were not the main targets and thus considered collateral damage by the FARC. Yet the FARC has killed civilians using ‘enemy collaboration’ as a pretext. Civilians were also often kidnapped for ransom while public servants were often kidnapped for political leverage.²¹ Furthermore, in 1999 the United States Committee for Refugees (USCR) stated that “no region of the

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¹³ E. Bakker, *Terrorism and Counterterrorism. Comparing Theory and Practice* (2015); A. E. Feldmann and V. J. Hinojosa, “Terrorism in Colombia: Logic and Sources of a Multidimensional and Ubiquitous Phenomenon”, *Terrorism and Political Violence* 21, no. 1 (2009), pp. 42-61; J. M. Siskind, *Terrorism Defined: An Impossibility or an Imperative?* (ProQuest Dissertations and Theses, 2005); G. Bruce, “Definition of Terrorism. Social and Political Effects”, *Journal of Military and Veteran’s Health* 21, no. 2 (2013), pp. 26-30; J. Sinai, “How to Define Terrorism”, *Perspectives on Terrorism* 2, no. 4 (2008), pp. 9-11; Y. Wang, Z. Yidan and J. R. Gartner, *On Terrorism: Chinese Perspectives* (United Kingdom: Paths International Ltd., 2014).

¹⁴ A. P. Schmid and A. J. Jongman, *Political Terrorism: A new guide to actors, authors, concepts, data bases, theories and literature* (New Brunswick: Transaction Books, 1988).

¹⁵ J. M. Siskind, *Terrorism Defined* (2005), pp. 16-17; J. Sinai, “How to Define Terrorism” (2008), p. 10; A. E. Feldmann and V. J. Hinojosa, “Terrorism in Colombia” (2009), p. 44; G. Bruce, “Definition of Terrorism” (2013), p. 27; Y. Wang, Z. Yidan and J. R. Gartner, “On Terrorism” (2014), p. 6; E. Bakker, *Terrorism and Counterterrorism* (2015), p. 40.

¹⁶ Y. Wang, Z. Yidan and J. R. Gartner, “On Terrorism” (2014), pp. 1-3.

¹⁷ A. van Engeland and R. M. Rudolph, *From Terrorism to Politics* (Aldershot: Ashgate Publishing Limited, 2008), pp. 136-138.

¹⁸ G. M. Leech, *The FARC: The Longest Insurgency* (London: Zed Books Ltd., 2011), p. 24.

¹⁹ A. van Engeland and R. M. Rudolph, *From Terrorism to Politics* (2008), p. 142; G. M. Leech, *The FARC* (2011), pp. 27-30.

²⁰ “557 reasons why the FARC is on the international lists of terrorist groups”, 2008, http://www.latinamericanstudies.org/farc/557_Reasons.pdf; A. van Engeland and R. M. Rudolph, *From Terrorism to Politics* (2008), p. 140; A. E. Feldmann and V. J. Hinojosa, “Terrorism in Colombia” (2009), p. 50.

²¹ G. M. Leech, *The FARC* (2011), pp. 109-114.

country is untouched by the violence and all the civilians are potential targets of the violence. Many fear for their lives on daily basis.”²²

Based on the provided information it is clear that the FARC must be considered a terrorist organisation and belongs on the EU list of terrorist organisations. The guerrilla group fits all the aspects of the EU's definition of terrorism as well as the definitions given by the US and the numerous academia. The FARC uses violence, force, intimidation and threats against public servants and civilians, effectively inciting fear among the population, to achieve their political goal of overthrowing the Colombian government. In fact, the FARC have actually often declined peace negotiations that would bring them closer to their political goal and thus have continued to attack and kill public servants and civilians. This only strengthens the argument that the FARC is a terrorist organisation.²³

Nevertheless, some people argue that the FARC are not terrorists, but insurgents who should be even recognized as belligerents. One notable supporter was former and late Venezuelan president Hugo Chávez.²⁴ In 2008 he claimed that the FARC are an insurgent force with legitimate political aims and deserve the belligerent status. The FARC itself has also claimed that it deserves the belligerent status.²⁵ For the FARC it would be a strategic advantage, because then the organisation can receive legitimate support from states, such as Venezuela, and also from other groups and individuals abroad.²⁶ It would also mean that FARC soldiers would have to be treated as prisoners of war as is stated in the 1949 Geneva Convention. In order to be considered a belligerent group under the laws of war the FARC would need to: “...(1) represent an identifiable group of people or have a relatively stable base of support within a given population, (2) have the semblance of a government, (3) have an organised military force and to be able to field its military in sustained hostilities, (4) control significant portions of territory as its own, and (5) have outside recognition as a belligerent, nation, or state by a state that is engaged in an armed conflict with or by other states in the international community.”²⁷

If a group does not meet the fifth requirement, but does meet the other four requirements then the group is considered an insurgency. The likelihood of receiving a belligerent or even an insurgency status as guerrilla group is very slim, because they often do not meet the second and fourth criteria.²⁸ However, lawyer Paul Wolf argues that the FARC does meet the requirements, because the FARC control large parts of Colombian territory and has an organised military force.²⁹ Whether or not the FARC meets the requirements for the status of a belligerent or insurgency is irrelevant, because the guerrilla group has still undertaken terrorist acts. To elaborate, an insurgency directly attacks its defined enemy with asymmetric war tactics to achieve its political goal. In the case of the FARC that would be the Colombian government. The fact that the FARC also attacked civilians to indirectly achieve its political goal,

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²² A. de la Asuncion, “Colombia: The Ignored Humanitarian Crisis”, *University of Miami Inter-American Law Review* 31, no. 3 (2000), p. 459.

²³ A. van Engeland and R. M. Rudolph, *From Terrorism to Politics* (2008), p. 145.

²⁴ C. Kraul, “Chavez keeps up campaign to get rebels off terrorist list”, *Los Angeles Times*, 20 January 2008, <http://articles.latimes.com/2008/jan/20/world/fg-farc20>.

²⁵ A. Alsema, “FARC says conditions are met for belligerent status”, *Colombia Reports*, 4 December 2012, <http://colombiareports.com/farc-says-conditions-are-met-for-belligerent-status/>.

²⁶ The Economist, “The FARC files”, 22 May 2008, <http://www.economist.com/node/11412645>.

²⁷ J. J. Paust, “Armed Opposition Groups”, in M. Noortmann, A. Reinisch and C. Ryngaert, eds., *Non-State Actors in International Law* (Oxford: Hart Publishing, 2015), p. 279.

²⁸ Ibid.

²⁹ G. M. Leech, *The FARC* (2011), pp. 101-102.

makes it a terrorist organisation.³⁰ Even if the FARC had the status of a belligerent army then it would have to abide by international treaties, including the 1949 Geneva Conventions and the Hague Conventions of 1899 and 1907. Any act of terrorism would then be considered a war crime, meaning members of the organisations could be punished by international criminal courts.

Some may argue that the FARC is no longer a terrorist organisation since it has reached a peace agreement with the Colombian government which states that the FARC will become a political party. However, the FARC must first hand over all its assets, establish an actual political party and all members suspected of terrorism must stand trial.³¹

Conclusion

In conclusion, the FARC must be put on the EU list of designated terrorist organisations. The guerrilla group is not only a terrorist organisation according to the EU definition of terrorism, but also according to the definition given by the US and numerous academia. In the past 52 years the FARC has aimed to achieve its political goal of overthrowing the Colombian government with terrorism, including typical terrorist acts like assassinations, kidnappings, hostage-takings, bombings, vehicle hijackings, and public shootings. By using violence, threats and fear against civilians as a method, strategy and tactic to achieve its political goal, the actions of the FARC can generally be defined as terrorism, making the FARC a terrorist organisation. In response to the people claiming FARC to be an insurgency which deserves the status of a belligerent, the FARC cannot acquire the status of a belligerent nor can it be considered an insurgency. Since the FARC has attacked civilians to indirectly achieve its political goal it must be considered a terrorist organisation which automatically excludes them from being an insurgency and a belligerency. Only if the FARC hands over all its assets to the Colombian government and stops all of its military operations and terrorist activities, then the organisation can be taken off the EU list of designated terrorist organisations.

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³⁰ M. C. Ünal, "Terrorism vs insurgency: a conceptual analysis", *Crime, Law and Social Change* 66, no. 1 (2016), pp. 28-29.

³¹ J. Otis, "Colombians get 2nd chance at peace with new, revised treaty", *CBC News*, 14 November 2016, <http://www.cbc.ca/news/world/columbia-farc-peace-deal-second-1.3849388>; A. Alsema, "FARC will be considered terrorists until they disarm: US", *Colombia Reports*, 1 February 2016, <http://colombiareports.com/farc-will-continue-to-be-considered-terrorists-until-they-disarm-us/>.

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