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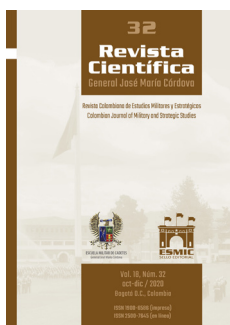
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Miles Doctus

Does the end justify the means? The FARC and drug trafficking as a related crime

¿El fin justifica los medios? Las FARC y el narcotráfico como delito conexo

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ABSTRACT. The use of drug trafficking as the main funding source of The Revolutionary Armed Forces of Colombia (FARC) led to its consideration in the Havana peace talks. If its rebellion was financed by drug smuggling, this would compel the Special Jurisdiction for Peace to consider it as a related crime to political crime in the Final Agreement's framework, prompting the question, is it legally possible to consider drug-trafficking a related crime? This article is structured into five sections. The first, historically describes the context in which the armed conflict evolved. The second discusses the theoretical relationship between drug trafficking, international conflict, and international law. The third analyzes the concepts of political crime and related crime according to doctrinal debate. From a legal stance, the fourth validates if drug trafficking constitutes a related crime. From these, conclusions are drawn.

KEYWORDS: revolutionary armed forces of Colombia; drug trafficking; peace processes; related crimes; transitional justice.

RESUMEN. Las Fuerzas Armadas Revolucionarias de Colombia (FARC) convirtieron el narcotráfico en su principal fuente de financiación, por lo cual fue un asunto crucial en el proceso de paz en La Habana. A raíz de esto, el Acuerdo Final estableció que el narcotráfico se considerara un delito conexo al delito político en la Jurisdicción Especial para la Paz si se comprueba que se usó para financiar la rebelión. Así, ¿es posible considerar el narcotráfico como delito conexo? Para responder, este artículo desarrolla cinco secciones. Primero, se expone el contexto histórico en que se desarrolló el conflicto armado y el nexo entre las FARC y esta economía ilícita. Segundo, se discute la relación teórica entre narcotráfico, conflicto y derecho internacional. Tercero, se analizan los conceptos de delito político y delito conexo conforme a la doctrina. Cuarto, se evalúa la posibilidad de que el narcotráfico constituya un delito conexo. Por último, se presentan las conclusiones.

PALABRAS CLAVE: Fuerzas Armadas Revolucionarias de Colombia; narcotráfico; procesos de paz; delito conexo; justicia transicional.

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Introduction

The Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) adopted drug-trafficking as its primary funding source, prompting the issue of drug-trafficking to become a crucial topic in the Havana peace talks. In fact, the FARC's degree of participation in this illegal market elicited the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz, JEP) to consider drug smuggling as a *related crime* in the Final Agreement. However, this clause would only apply if it is found that the FARC members' profits obtained through drug trafficking were used to finance the rebellion, unfolding the possibility of obtaining amnesty. Thus, under the ordinary court system, the ex-combatants are to be judged for crimes associated with drug dealing. If the court obtains sufficient evidence to prove that they elicited personal gains from drug sales, they will be condemned. The ex-combatants condemned for drug trafficking after the signing of the Agreement will be sanctioned; however, under the conditions stipulated for a *common crime*¹. Through this controversial decision, the Final Agreement attempts to address the main issues concerning FARC ex-leaders, such as their imprisonment, eventual extradition to the United States, or prohibition of holding public office (Isacson, 2018).

Despite the American Government's pressure, given the formal drug trafficking accusations against FARC heads, Juan Manuel Santos (2010-18), the Colombian ex-president, insisted that the actions chosen by the American Government could create an unstable environment for the end of Colombian armed conflict. He noted that not considering drug dealing as a related activity could be a major obstacle to advancing political discussions (Duzán, 2018). In this sense, developing a well-defined legal framework is essential to implement an adequate peace process², as well as a diverse set of legal and political instruments to facilitate agreements. For instance, the connection between specific kinds of common crimes and political crimes should be considered. These tools would provide differential penal treatment for crimes perpetrated by the FARC to establish penal responsibility. Simultaneously, they would give judicial certainty to the members that have participated in the war. The latter is very important to ensure the FARC's political participation in its collective dimension. Namely, as a group going from sustained armed conflict to a participant in a democratic system, and its scope in the case of those members that participate in the Disarmament, Demobilization, and Reintegration process

1 In this context, an example of *common crime* is the case of Seuxis Hernández (also known as *Jesús Santrich*), who was captured in April 2018 because he supposedly exported 10 tons of cocaine to the United States of America after the signature of the Final Agreement. Given this clause, he would be excluded from the Special Jurisdiction for Peace. To read further, see (Yagoub, 2018).

2 A peace process is commonly defined as a focalized effort to end conflict among specific actors through dialogue and non-violent means. Its objectives and means to achieve them can vary from a negotiation to obtain a reciprocal ceasefire and the interruption of lethal violence to the signature of a peace treaty. To read further, see (Boer & Bosetti, 2017, p.9).

(DDR)³. This instrument would allow the authorities to achieve this kind of negotiation's fundamental objective, stable, and long-lasting peace.

In August 2018, Iván Duque, the President at the time, announced a constitutional reform to eliminate the "related crime-common crime" connection to make it so that no peace negotiations or amnesties apply to drug smuggling and it is simply brought to justice (Zuleta, 2015). Passing this reform, however, would not have retroactive force, making it inapplicable to the FARC's ex-combatants because of the favorability principle⁴. The inability to provide drug trafficking adequate penal action under the *related crime* clause could undermine future discussions towards a political settlement, reducing the Colombian Government's autonomy of opting for a specific solution. Depending on the mentioned negotiation's context, the treatment given to certain armed groups could be compromised because of two factors, the use these groups make of this criminal activity to survive, and the Colombian State's multiple efforts to combat drug trafficking.

Under this logic, Duque's project would affect the Final Agreement's central axis, given that no group negotiates imprisonment because of issues related to war funding activities that are not international crimes. FARC ex-members may perceive this kind of negotiation as a failure that could cause middle-ranking officers and soldiers to abandon the peace process (enticed by dissidents) and start reoffending because of the high uncertainty of the negotiation's results. This peace proposal has generated intense debate on what is understood as a *political crime* and the context in which the armed non-state actors and the Colombian State refer to it from political, strategic, and legal perspectives. Similarly, it has spawned a debate on the understanding of *related crimes*; in other words, the behaviors that are required to carry out the intended political objective.

Considering the setting, we formulated the following research question: Can drug trafficking be considered judicially as a *related crime*? To answer it, we followed a five-section thematic framework. First, we present a historical context of the armed conflict, focusing on the evolution of the relation between FARC and drug trafficking. Second, we discuss the theoretical link between the concepts of International law, international conflict, and drug trafficking. Third, we analyze the concepts of *political crime* and *related crime*, both from the doctrine's standpoint. Fourth, from a judicial standpoint, we survey the feasibility of considering drug smuggling as a *related crime*. Finally, we present this article's main conclusions.

3 The DDR's main objective is to create, in the case of ex-combatants, the conditions needed for a successful social, political, and economic reinstatement to civil life through various training, employment creation, and housing programs and psychological assistance and re-socialization. To read further, see (Moore & Ehrhart, 2012, p.55).

4 Under Colombian law, the favorability principle always applies the most favorable sentence available from the moment the crime was committed to the prosecuted or condemned. In other words, amnestied, or to be amnestied, FARC ex-guerrillas will maintain that condition in virtue of the peace agreement. To read further, see (Crisis Group, 2018, p.11).

Drug trafficking and the FARC: Siamese twins?

According to the *University of Hamburg's Institute of War Studies*, the conflict between the FARC and the Colombian State can be classified as prolonged, high-intensity *anti-regime warfare*. It evolved from localized conflicts in a few geographic locations that reached national scale warfare financed by the FARC's operations in illegal markets (AKUF 2018). The FARC was born as a self-defense group during the period known in Colombian history as *La Violencia* (1948-58). This non-state organization rapidly transformed into an insurrectional movement that questioned the Colombian economic and political system's nature. Its initial primary objective was to establish a Marxist regime based on socialism to address the injustices and redistribute wealth in Colombia (Felter & Renwick, 2017).

During the FARC's first two decades, the armed conflict's complexity of was relatively low, given that the FARC was not considered a real threat to the Colombian State. During its first years (between 1960 and 1970), the organization was focused on survival. At that time, its armed forces were merely a peasant militia operating in areas where the State's presence was weak or nonexistent, like in the mountains or the Amazon jungles. It should be noted that during this time, the FARC had limited material and logistic resources, which were mainly provided by local supporters, making it a weak, ill-equipped organization with no strategy or military capacity. Moreover, its military personnel were poorly trained and could not contend with the governmental forces in those years (UCDP, 2018).

This situation changed radically after the *VII Conference* (1982) when the Secretariat approved drug trafficking as the primary financial support for the FARC's strategic plan to improve its military equipment and fight in more front lines. The leaders and combatants effectively subordinated criminal activities to the FARC's political objectives based on the Soviet Communist Party's *hyper-pragmatism*. Theoretically, it allowed the FARC to make the systematic use of narcotics dealing and, as well as other illegal businesses, to finance a war against the Colombian State without eroding its command unit or troops' ideological commitment to the warfare effort.

However, in practice, the FARC's participation in drug dealing generated some organizational issues, like isolation and dispersion. Internal fractures and divisions arose when the FARC's leaders accused some of its middle-ranking members of being more immersed in illegal activities than political work (Boer, Garzón & Bosetti, 2017). The profits obtained through drug trafficking made the units associated with these illegal markets more reluctant to restrain from using of force or demobilizing their troops in the peace process with the Colombian Government. In other words, the possibility existed that its greed undermined the FARC's identity and objectives, which Makarenko's (2012) *Crime-Insurgency Nexus* claims arose from political grievances. However, its motivational structure evolved because of its links with drug trafficking, achieving a *motivational convergence*, which made that organization able to use criminal and political strategies simultaneously, and in any order.

Conflicts on drug trafficking: State legitimacy and international law

The international legal order, structured by the post Second World War *Nomos of the Earth* (Schmitt, 2003), is firmly based on land-appropriation as a foundational act of law and political power that comes before its division, as well as its usage for production and consumption (Schmitt, 2003). Nonetheless, based on the appropriation of earth and sea and partially free air space, appropriation is currently in progress in the contemporary international system. In a spatial sense, contemporary international law, as a materialization a system of states' power, is in a transition toward a new *nomos*. According to Schmitt (2003), the new *nomos* could be structured in three ways: 1) that a single sovereign of the world arises; 2) that the pre-World War II hegemonic balance structure prevails, and; 3) that a set of blocs or *Großräumen* that could constitute a balance and, then, to give birth a new order to the earth.

Philippe Delmas (1996) postulates that an international system structured by international law rests in a "juridical utopia." In other words, the States embark on a progressive reliance on international law to reach solutions to a set of political and security conflicts. In this sense, the author distinguishes two subjacent logics within the international system, the "logic of power," and the "logic of sense." The first concept indicates that international law, in its current state, cannot become a political order because it does not propose a principles-based political project to achieve collective security. The latter refers to the legitimacy of a common imaginary to create and develop a political link between the State and society that allows them to be together (Delmas, 1996). In this sense, the State's presence in its territory through the exercise of its public function and employment of its public services is a quintessential factor in preserving its internal sovereignty (Delmas, 1996). However, drug trafficking is one of the major threats to the State's territorial control because the criminal organizations that profit from that illegal activity increase their legitimacy at the State's expense (Delmas, 1996).

This dispute of state territorial control with criminal organizations implies that conflict can escalate to the point that regular armies can be required to control the threat emanated from the criminal organization's violence. Especially when the latter evolve into *guerrilla groups*, insurrectional movements, or other irregular armies' variants, in this case, the threat to the State becomes more complex. Low-intensity conflict commonly surpasses the strategy, tactics, and technologies usually employed by regular armed forces (Van Creveld, 1991), giving rise to more casualties produced by the prolonged conflict and inherent violence. The latter is frequently used against the civil population when irregular armies prevent the regular armed forces from employing their most destructive weapons (Van Creveld, 1991).

If the conflicts go on for too long or are ended by foreign military intervention, then the risk of civil war increases significantly (Gleditsch, Salehyan & Schultz, 2008). Moreover, an international conflict's likelihood increases dramatically if civil war aris-

es; this is especially menacing for neighboring countries (Gleditsch, Salehyan & Schulz, 2008). International law *imperium* alone cannot stop this type of violence escalation. It is unable to couple the logic of power, indispensable to ending the conflict, and reach a compromise between the actors to resolve their disputes pacifically, especially in the case of criminal organizations that grow by eroding the legitimacy of the State and putting its very existence into high risk (Delmas, 1996). An international-supported national solution is possible when the intervention is implemented in exact phases of the conflict and is legitimized by the other actors.

Relationship between political crime and related crime: a legal approach

Currently, a precise (national or international) definition of *political crime* does not exist, and there is no widely recognized international law instrument proposing a firm and specific concept. In this regard, Colombia's Constitutional Court provides the following in sentence C-695: a) only the legislator may indicate which behaviors will be classified as *political crimes*, considering the political and historical context of the behaviors, and b) the Court's normative configuration must be guided by reasonability⁵ and equality criteria. In turn, Giraldo & Bustos (2018) outline the following characteristics of the previously noted *criminal definition*:

- It always implies an attack against the State's political-institutional organization.
- It is executed seeking the maximum social transcendence and political impact.
- It is carried out on behalf of a political or social group, regardless if that representation is real or apparent.
- It is inspired by socially, politically, and philosophically definable principles.
- It is executed for real or alleged sociopolitical vindications.

On the other hand, in Sentence C-928 (2005), Colombia's Constitutional Court stipulates that a political crime must meet objective and subjective criteria. Objectively, the Court only accepts the crimes stipulated in the Colombian criminal code as *political crimes*. These are rebellion (Art. 467), sedition (Art. 468), uprising (Art. 469), conspiracy (Art. 471), and seduction, usurpation, and illegal retention of political command (Art. 472). These legal definitions are intended to protect the State's structures and functions. However, sedition includes other political crimes that are not stipulated in the referred code. Moreover, this definition includes crimes that –although initially considered common crimes– following an ulterior legal investigation, were proven to encourage the per-

5 This principle indicates that there must be a relationship between means, aims, and constitutionality. Therefore, whether the means affect, limit, restrict, or alter the essential contents of other fundamental rights, according to its purpose (from the victim's standpoint) and the legal good to protect it, must be analyzed. To read further, see (Sapag, 2008, p.185).

petration of *political crimes* or those that allow the perpetrator to evade any penal sanction contemplated for these cases. Under this logic, the Colombian penal code classifies political crimes into the following two categories:

- *Pure or simple* political crimes.
- *Relative or concurrent* political crimes understood as crimes that objectively violate an individual's rights or those of the State as a passive actor. In the subjective scope, this category covers the existence of a political motive, effect, or occasion as the primary intention of its perpetration (Zárate, 1996, p.10).

In other words, there are *political crimes* effectively established as such (objective criterion), and *common crimes* related to *political crimes*; this last scenario, given the common crimes necessary to consummate a specific political objective (subjective criterion).

According to Sentence C-171 (1993) of Colombia's Constitutional Court, the difference between these crimes lies in that political crimes receive a more benevolent treatment because the perpetrators seek an altruist end by political and social actions. The perpetrators are also seeking the constitutional regime's protection, and the State is the passive subject in this phenomenon. In the case at hand, the political character of political crimes, and its recognition as such, supports, on the one hand, the legitimacy of armed insurrections looking to overthrow the Colombian Government or its constitutional regime. On the other, it reinforces the idea of seeking a transformation in the current Colombian system to implement a new order, like the one proposed by the FARC. In turn, *common crimes* are punished more severely because their perpetrators seek to accomplish individual, egotistical objectives by exercising violent actions against the civil population. In drug trafficking, public well-being is the legal asset to protect, and the citizen is the passive subject.

Based on the previous, drug trafficking cannot be considered a *political crime* per se. The only available option is to subordinate it to the *political crime* of rebellion concerning this activity's funding. Therefore, the most appropriate category for this crime is *relative or concurrent political crime*, given that the motivation behind its exercise is the one related to *political crime*. Thus, a *related crime* occurs when a link between a *common crime* and a *political crime* exists. While, in some cases, the connection between the two latter crimes is direct and clear, in other cases (like drug trafficking), this link is not that clear, giving birth to a gray zone that requires clarification. To determine whether both categories are connected or not, and establish which behaviors can be classified as *related crimes*, it is important to consider the following criteria defined by Sentence C-577 (2014) of Colombia's Constitutional Court:

- Purpose: to seek an altruistic aim.
- Principle of related actions: the crime must be perpetrated in relation to a *political crime*.

- Proportionality: to achieve a specific objective, the means to be utilized must not be excessive or unjustified.

Sentence SP-5200 (2014a) of Colombia's Supreme Court addressed the definition of related crime as "all those behaviors focused on facilitating, supporting, funding, or hiding the development of a rebellion [...] from which any personal enrichment has taken place." However, classifying a crime as a *related crime* does not necessarily make it political; it merely invalidates its legal implications because the related crime was necessary to perpetrate a *political crime*. Then, the most relevant questions would be, which crimes can be classified as *related crimes*? Which of these crimes meet the conditions to be classified as *related crimes*?⁶

Given the high specificity of the criteria to classify a common crime as a related crime, the Court must carefully examine each case, considering the context in which these behaviors took place, and determining the active subject in the *related crime* (Sussman et al., 2015). Ultimately, the privileges associated with *political crimes* cannot be arbitrarily applied to behaviors that are not related to their nature. Doing so could cause the Court to incur in granting the perpetrators unfounded preferential treatment.

Drug-trafficking and the principle of related actions as an instrument for peace

Considering what has been explained so far on the connection between drug-trafficking and *political crime*, we set forth to determine whether judicial treatment is applicable to particular FARC actions during its armed conflict against the Colombian State, based on this connection.

In Sentence CP-117, the Colombian Supreme Court (2015a) indicates that drug trafficking could be treated as a *related crime*, given that the International Penal Court prohibits the application of the principle of the related facts, which, from an international humanitarian law perspective, includes only four penal types: genocide, crimes against humanity, war crimes, and crimes of aggression. However, drug trafficking is excluded from the International Penal Court's jurisdiction. Therefore, it does not appear in this list, allowing its association with *political crimes*. Although drug trafficking could be classified as an international crime, given its high transnational impact⁷, it certainly cannot be and international law crime because it does not infringe upon humanity or the international community.

6 The 1991 Constitution established that the recognition of political crimes and their related actions have four favorable consequences for their perpetrators: the concession of amnesties or indults, the order to apply alternative sanctions, the possibility to participate in politics, and the suspension of extradition. To read further, see (Zuleta, 2015).

7 Nonetheless, the impact of drug-trafficking at the international level has been recognized by various international agreements, like *Palermo Convention*, that enhances judicial international cooperation among states and non-state actors.

With all this in mind, and considering that drug trafficking is not expressly prohibited by international humanitarian law, it could be considered a related crime “at the domestic level, in which the State has total autonomy to define the punishable behaviors that can be the object of a pardon right, either by an open catalog or by annexing it to a *political crime* applying the principle of related facts” (Supreme Court, 2015a). Therefore, this principle’s application to prove a link between drug trafficking and a *political crime* depends solely on national law. The Colombian State has a wide assessment range concerning the link between these two crime categories, and it does not have any international restrictions whatsoever. In this sense, a nexus between drug-trafficking and the *political crime* of rebellion by the *principle of related facts* is possible. Especially if we consider that these crimes, considered serious violations for international humanitarian law, were excluded from Colombia’s *constitutionality block* by the signature of many international agreements, if that were not the case, Colombia would be violating international standards of transitional justice⁸.

However, Traversí & Rivera (2016) note that the Colombian State’s international obligations must also be considered. First, drug trafficking cannot be considered a fiscal or political crime; it cannot even be classified as a politically-motivated crime because Article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances impedes such a classification. In fact, the Colombian State could disregard this Convention if it considers drug trafficking as a politically-motivated crime. This situation would further complicate determining the existence of the principle of the related facts in this case. However, Sentence T-006 of Colombia’s Constitutional Court indicates that the Convention’s compliance is relative in the sense that “no section of the Convention may be interpreted to force any legislative, legal, administrative, or any other kind of action that restricts or limits Colombian State’s constitutional or its legal system, or forces it to violate any international agreement currently in force in Colombia.”

Because this Sentence is not a part of the Colombian *block of constitutionality*, the “Constitutional supremacy over all other norms that incorporate the legal system lies on its capacity to define the most basic State structure, institutes the entities by which public authority is exercised, attributes competencies to make rules and to apply them to resolve controversies and disputes in society. And in carrying all of this is what makes possible that same juridical order of State. So, the Constitution is the supreme and ultimate juridical order framework to establish any norm, rule, or decision formulated for any institution subordinated to her” (Constitutional Court, 1992). In other words, if any controversy arises between a binding international obligation and a domestic constitutional disposition, the decision would favor the latter over the former.

8 Transitional justice can be defined as the governmental response to a legacy of wide-scale violations of human rights that cannot be fully treated by the legal structures in force. Its most common materialization mechanisms are: truth commissions; reforms to security and justice institutions; and preservation of historical memory. To read: (Snodderly, 2018, p.51).

Incidentally, there are some reservations on the issue of international juridical co-operation, particularly concerning extradition, which is underlined by the *aut dedere aut judicare* principle. This principle is referred to in the Colombian Constitutional Court's Sentence CP-117 as follows: "States are obliged to prosecute those responsible at the domestic level or, when not possible, to place them at the disposal of another State. In this situation, the State's obligation is to cooperate with prosecution at an international level, but, once those responsible are captured, the States have the right to choose either national judicial action or extradition." However, extradition laws and treaties "hardly ever define the concept of political crime, because this is a matter of juridical interpretation and administrative discretion" (Travesí & Rivera, 2016, p.11). In this sense, whether a particular crime has a political nature or not is a decision that the Colombian State has to make.

According to Article 490 of Colombia's Criminal Procedure Code, extradition is inadequate to prosecute *political crimes*. Indeed, if drug trafficking was considered as a *related crime*, then extradition orders from the USA against FARC leaders would be invalid. For instance, in September 2015, during the Havana peace process, an extradition request was submitted in Colombia to prosecute the FARC's front line, number ten finance chief, Juan Vicente Carvajal (alias Misael), on drug-trafficking charges. According to the Colombian Supreme Court, Misael collected taxes levied directly from cocaine producers in his areas of influence, which proved the existing connection between drug trafficking and crimes of rebellion (El Espectador, 2016). President Santos refused to hand him in, arguing that "the referred citizen has been condemned on *political crimes* charges as militant of the FARC [...], which leads the Government to reconsider its earlier decision about extraditing him." Santos also indicated that the "constitutional rules that authorize the Government to conduct the Colombian State's international relations and exercise its given discretion under the law on extradition allows it to assess national expediciencies and discretionally make any political decision that the Government considers appropriate to achieve the aims stipulated in the constitution." (Valero, 2015)

While it is true that Article 16 of Law 1820 on Amnesty, Pardon, and Special Penal Treatments provides a detailed list of *related crimes*, it does not include drug trafficking. The Colombian Supreme Court's jurisprudence has extensively addressed the existence of the principle of purpose and the principle of the related facts between drug trafficking⁹

9 The following crimes are considered in this list: "illegal possession of aircraft, ships or means of collective transport when no kidnapping has taken place; coercion to commit a crime; breaking and entering; violation of illicit communications; offering, selling or buying instruments to illegally intercept private communications between people; unlawful violation of official communications or correspondence; unlawful use of communications; violation of freedom of work; slander; libel; slander and indirect slander; damage to the property of others; personal falsehood; particular material falsehood in public document; obtaining false public document; criminal conspiracy; illegal use of uniforms and emblems; threats; instigation to commit a crime; burning; disturbance of public or official transport services; possession and manufacture of dangerous substances or objects; manufacture, carrying or possession of firearms, accessories, parts or ammunition; manufacture, carrying or possession of firearms, restricted ammunition, military use only or explosives; disruption of democratic

and *political crime*. As the Court noted in Sentence CP-117, drug trafficking can be considered related to *political crime* as long as the crime was perpetrated to finance FARC's rebellion. In Sentence AP501 (2014b), the Court states that "Under a strictly logical argument, if all the [FARC] has subversive ideals and it uses drug trafficking as a means to reach its aim, then, it must be concluded that its parts preserve the same interest, given that the parts take advantage from the referred crime to defeat the enemy and accomplish their common purpose."

Similarly, in Sentence AP2747 (2014c), the Supreme Court considers that it is "possible to address any punishable behavior if and only if it was perpetrated under any of the arrangements related to an illegal armed group. That is, from the moment of the perpetrator's demobilization and the perpetrator's assigned role in the organization." This case law determines that no crime can be excluded from a transitional justice perspective. Its objective is to extend the Sentence and its application to all criminal behaviors by FARC combatants under all the conditions and circumstances indicated by the Court, including the impact of drug trafficking on the FARC's actions. Therefore, the imputation of a *political crime*, and the ensuing establishment of a *related crime*, is based on the defendant's motivation to join the FARC and not their role in the organization. However, meeting the penal demands requires the defendant "to be associated with the organization and fully share its ideas, regardless of the functions developed by the defendant." Taking into account that a militant could be responsible for "performing drug trafficking activities to achieve the aims of its competence [...] so that the militant cannot be deprived of its right to access to the benefits of the transitional process." (Supreme Court, 2014c)

To enforce the *principle of the related facts*, the Supreme Court's Sentence SP-5200 established the prerequisite that the FARC "had not been organized merely for narcotics traffic or illicit enrichment nor that any of its members have had these aims." In fact, Articles 10.5 and 11.6 of the Justice and Peace Law "seek to hinder any person or groups exercising drug trafficking as their sole or primary economic activity from the opportunity to access alternative punitive measures or any benefit to enhance the demobilization of armed groups" (CEJIL, 2005). In this regard, it is worth recalling the case of the United Self-Defense Groups of Colombia (AUC; *Autodefensas Unidas de Colombia*) when, soon after taking office (2002-10), Álvaro Uribe negotiated the demobilization of approximately 36,000 AUC members (Miklaucic & Pinzón, 2017). In this case, the boundary between the political and criminal dimensions was a fundamental factor in making the mediation politically viable. Moreover, the Government emphasized the paramilitaries' political nature to legitimize the peace process.

competition; coercion against the voter; voter fraud; fraudulent registration; corruption against the voter; fraudulent voting; breach of contract; violence against public officials; escape; and espionage. To read further, see (Tarapués, 2017).

However, instead of a combatants' demobilization, the dialogues sounded more like the surrender of the Colombian justice to drug trafficking organizations. González-Bustelo (2016) stated that the armed conflict allowed the Colombian State to approach to the AUC like it would reproach a political actor. The Colombian State eluded two key aspects in the dialogues during this process, 1) the support from the political and economic sectors and the armed forces, and 2) the AUC's hybrid nature and its criminal agenda. Thus, the mediation resulted in a set of concessions that neither approached the AUC's criminal agenda nor severed their ties with legal and criminal actors. Ultimately, only a few victims obtained adequate economic reparation, and most of the AUC units preserved their illegally acquired assets. Furthermore, the Government's demobilization tactic to enable the paramilitaries' legalization provided them a double condition as demobilized combatants and active leaders of criminal groups (Gil Ramírez, 2013).

However, a sustainable peace process requires dismantling the criminal organizations' strategic nodes, namely, their economic, social, and political networks to prevent the paramilitary group's reorganization and illegal activities (Villa & Viana, 2012). The Organization of American States' Mission for Peace Process Support in Colombia expressed its concern regarding the demobilization process, addressing paramilitary groups' reorganization. These groups assumed various illegal markets managed by their predecessors and gave birth to criminal gangs called BACRIM (*Bandas criminales*). In this regard, Villalobos (2016) stated that "any pacification process entails the risk of creating a transition from organized to anarchic violence. Thus, producing individuals entirely dedicated to illicit activities as a consequence of paramilitary demobilization was an undesirable but unavoidable consequence." In any case, it is worth noting that approximately 20% of AUC members relapsed because of a breakdown in the peace process (Verdad Abierta, 2015).

Based on the AUCs experience and to prevent the peace process from being infiltrated by mere drug smugglers, the Colombian Supreme Court has made sure to differentiate the FARC members' motivation to enter the drug trafficking market. Thus, it set the prerequisite to enter the peace process, that the involvement in the narcotics market was not motivated to enrich themselves illegally. With this in mind, the Supreme Court stated in Sentence SP-16258 (2015b), concerning FARC members, that the magistrates must guarantee the previously noted criteria "by a strict, rigorous, and detailed analysis of the contexts and means of proof added to any legal proceeding." Therefore, the JEP revises aspects of these illicit activities, like the amount of drug produced or the infrastructure of the activities, to ensure that the demobilized combatants have, in effect, been trained or enlisted attuned with the insurrectionist struggle.

In summary, we can state that the Colombian Supreme Court's sentences indicate that the *principle of the related facts* in drug-trafficking cases must be considered directly connected and subordinated to the concept of *political crime*. Domestic Colombian ju-

jurisprudence recognizes a connection between drug trafficking and the armed conflict. The former supporting the latter by financing it entirely or partially. Therefore, based on the principles of *purpose*, *proportionality*, and *related facts*, the Court recognizes drug trafficking as a means and not an end in itself. The Special Jurisdiction for Peace's (JEP; *Jurisdicción Especial para la Paz*) Amnesty and Pardon Tribunal, and each of its magistrates, must ponder this criterion to determine whether the FARC's members resorted or not to drug-trafficking with a personal or profit-based interest. Regardless, the concrete cases in which it is applied should be used to set judicial precedents to guide dogmatic discussions on deciding future cases.

Conclusions

The FARC has transformed drug trafficking into its primary funding source. Therefore, the issue became a vital subject during the Havana peace talks. According to the Final Agreement's framework, the FARC's level of participation in this illegal market drove the JEP to consider it a *political crime* if the activity was used to finance their insurgency, creating a potential for amnesty. In August 2018, Colombian President, Iván Duque, announced a constitutional reform to nullify this decision's criterion. It classified drug trafficking as an activity exempt from peace negotiations or amnesties that must be brought to justice. This presidential initiative gave rise to a crowning debate on how a *political crime* must be understood based on the context of the relations between the Colombian State and armed non-state actors. A multidimensional approach is needed from strategic, political, and legal perspectives to understand the behaviors involved in achieving a political aim on the framework of *related crimes*.

However, the issue is not in considering drug trafficking a *political crime*; it is in recognizing its connection as an instrument for peace by achieving the FARC's demobilization and giving its members a chance to participate in politics. From that perspective, it is worth noting that the Colombian authorities' main challenge is interpreting the concept of *related crime* in light of national and international legal standards, and considering the realities produced from the belligerents' prolonged conflict. Thus, *political crime* constitutes a *penal type* that involves the exercise of various possible behaviors. Therefore, determining the objective and subjective factors that motivate these actions is essential. When examining the FARC's actions, it is necessary to establish if that action was generated to reverse the constitutional and legal order in force (objective criterion), and if it was crucial in achieving an altruist or political aim (subjective criterion).

If we consider the principles of purpose, related facts, and proportionality in the Supreme Court's decisions, drug trafficking can be classified as a *related crime* for two reasons. Firstly, international humanitarian law does not prohibit its definition as a *related crime* in the international juridical order, given that the latter cannot be legally classified

as a crime against humanity, genocide, war, or aggression. Secondly, *political crime* consists of a set of illicit actions that helps to achieve a meta-political objective. Therefore, both categories can be connected as a means and not an objective by showing that drug trafficking was exercised solely with the finality to finance the FARC's insurgency, and no personal gain was obtained in that process. In conclusion, considering Colombian case law and international agreements signed by the Colombian State, there is no obstacle to consider drug trafficking as a *related crime*.

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