

## **Law in Peace Negotiations**

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**E-Offprint:**

Francisco Gutiérrez, “The Peace Process with the Paramilitaries in Colombia: Sustainability, Proportionality and the Allocation of Guilt”, in Morten Bergsmo and Pablo Kalmanovitz (editors), *Law in Peace Negotiations*, 2nd edition, Torkel Opsahl Academic EPublisher, Oslo, 2010 (ISBNs: 978-82-93081-08-1 (print) and 978-82-93081-09-8 (e-book)). This publication was first published on 26 March 2009. The Second Edition was published on 23 July 2010. TOAEP publications may be openly accessed and downloaded through the web site [www.toaep.org](http://www.toaep.org) which uses Persistent URLs (PURLs) for all publications it makes available. These PURLs will not be changed and can thus be cited. Printed copies may be ordered through online distributors such as [www.amazon.co.uk](http://www.amazon.co.uk).

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2010

## **The Peace Process with the Paramilitaries in Colombia: Sustainability, Proportionality and the Allocation of Guilt**

**Francisco Gutiérrez**\*

### **6.1. Introduction: Give War a Chance?**

This chapter discusses a frequently disregarded aspect of negotiated settlements: the crisis of the proportionality of justice, and the need of establishing a “correct” public allocation and distribution of guilt. I will claim that allocating and distributing guilt “correctly” may be a necessary condition for achieving long term, sustainable, peace.

By long term peace I mean the presence of a set of conditions that facilitate the arrival to a strategically stable equilibrium, in which no relevant existing actor has either the reasons or the means to quit the accord, and the barriers to the entry of new armed challengers are very high. By negotiated settlement I understand any solution of a macro-social dispute through means different than the military victory of one of the parts. At a certain level of generality, all of these agreements (ends of civil wars, regime transitions, etc.) face similar problems, and I believe that the distribution and allocation of guilt is one of them.

The problem can be formulated in more operational terms. “How to achieve peace” and “how to make it sustainable” are two distinct questions, and for the practical politician they generally appear in se-

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quential form. So their main concern is striking a deal, not building the conditions that make it defensible in the long run. In particular, the public explanation of the advantages of peace and the allocation and distribution of guilt cannot be neglected. Such allocation is critical for sustainability, precisely because of the typical characteristics of peace pacts (which almost always entail the mutual pardon of the bulk of the crimes committed in the course of the conflict, and more generally a crisis of the principle of proportionality of justice).

Rarely do politicians ask themselves if an agreement will last; it is already sufficiently difficult to arrive to one. Since the prize is so big, and the task so hard, peacemakers are essentially presentists. They are prepared to incur in heavy future costs tomorrow to achieve tangible positive results today. There are several analytical and strategic motives for behaving in such a way. The most malicious departure point would be that there is hardly a reasonable manner of holding pro-peace politicians that were successful at time 1 responsible for disgraces that appear in time 2; the line of causality is too blurred, as generally there are too many intermediate events. In the other direction, the blooming literature about “spoilers” singles out political leaders that fail to put their bets on peace, magnifying risks, difficulties, and future costs.<sup>1</sup> That there is no shortage of spoilers, and that they behave precisely in that fashion, is beyond dispute. What the reflection about spoilers frequently lacks is the awareness of the fact that, regarding peace, feasibility and sustainability can be in dynamical tension.

Actually, I would claim that the Colombian history is a good case study to try to understand such tension. According to Aguilera, we have had more than 50 peace agreements in our republican history, very few of which have been sustainable.<sup>2</sup> A revision of the accords that have been arrived at throughout our baroque pacifist trajectory suggests that it is not rare to find situations in which precisely the as-

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<sup>1</sup> *Challenges to Peacebuilding: Managing Spoilers During Conflict Resolution*, edited by Edward Newman and Oliver Richmond, United Nations University Press, New York, 2006. Stephen John Stedman, “Spoiler Problems in Peace Processes”, *International Security*, Vol. 22, No. 2 (Autumn, 1997).

<sup>2</sup> Aguilera, Mario, “Amnistías e indultos, siglos XIX y XX”, *Credencial Historia*, Mayo de 2001.

pects that made an agreement feasible caused it to be hardly sustainable. If this appears in a particularly strong form in Colombia, it is not an oddity: according to quantitative evidence, for countries that have suffered a civil war the probability of a relapse is high.<sup>3</sup> My hunch is that one of the reasons for which this is the case is that frequently the negotiated arrangement did not solve well past problems, or created new ones, so significant that they gave origin to a new wave of violence.

Put otherwise, contrary to standard interpretations, there is sufficient evidence to claim that the problem of Colombia is not the intolerance or belligerence of its political elites, but their perception of time.<sup>4</sup> They disregard completely the issue of sustainability, focusing on feasibility. Sometimes this happens because they have no margin of manoeuvre.<sup>5</sup> Sometimes, it is related to strategic behaviour. Indeed, arriving at negotiated peace and/or shared government is a form of self-binding – but not always a genuine concession. There are three types of self-binder. “Constitutional agents”;<sup>6</sup> “pseudo-constitutional-agents” (who claim to restrict themselves but in fact are restricting others, as in Elster’s self-criticism);<sup>7</sup> and “cunning self-binders” (who in effect limit themselves, but do so only to exclude from their feasible set actions that they do not want to perform). The last category is particularly important because in politics modal logic behaves in an odd manner: wanting and being able to are linked (in a non linear fashion). In situations in which a suboptimal arrangement is arrived at, a cunning self-

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<sup>3</sup> Sambanis, Nicholas, Doyle Michael, “Building Peace: Challenges and strategies after Civil War”, The World Bank Group, 1999.

<sup>4</sup> Be it because of high discount rates or hyperbolic discount.

<sup>5</sup> I believe this is the case of the National Front, which I have analyzed in “Organized crime and the political system in Colombia (1978-1998)”, in Welna Christopher and Gustavo Gallón (eds.), *Peace, Democracy, and Human Rights in Colombia*, Notre Dame University Press, 2007, pp. 267-308; *¿Lo que el viento se llevó? Democracia y partidos en Colombia* (Editorial Norma, Bogotá, 2007).

<sup>6</sup> Jon Elster, *Ulysses unbound: studies in rationality, precommitment, and constraints*, Cambridge University Press, 2000.

<sup>7</sup> Elster, *Ulysses Unbound*.

binder can claim that there was no better solution within the feasible set.

A good part of the tension between feasibility and sustainability resides in the fact that there is no costless peace. Among the many costs associated with peace the following deserve to be highlighted:

- *Wrong calculation of limiting conditions.* Thanks to a favourable environment (for example, international support), or simply attrition, political agents and social groups can have a genuine will to peace, and calculate at some moment that their bargaining minimum is, say,  $X$ . However, when  $X$  is implemented, they discover that the only way to survive (defend vital interests, maintain cohesion as a relatively unitary actor, etc.) is to achieve  $X+$ . In other words, after striking the deal they find themselves bellow the “threshold of intolerability”.<sup>8</sup> This is neither rare nor attributable only to lack of technical expertise, although such factor can loom large over the heads of the negotiators – some examples of which will be presented bellow. Increasingly, peace accords involve very intricate arrangements and trade offs, and typically their real meaning is not captured by the leadership of all the parties, let alone combatants and constituencies, when they are formulated in an abstract or specialized, for example legal, language. When implemented, though, their meaning becomes painfully visible. In other terms, agreements over nice sounding general principles can be easier than the hard discussions about the small print. As Heine famously said, “the Devil is in the details”.
- *Impunity.* There are several types of impunity involved in peace making. Indeed, this is a generalized phenomenon, both in time and in space.<sup>9</sup> There are several types of impunity. First, there is individual impunity; thousands of hideous criminals and of people who incurred in morally repulsive behaviour go unscathed. Second, there is political impunity; organizations whose tag is associated in certain regions, or even countrywide, with horrid

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<sup>8</sup> David Apter, “Political violence in analytical perspective”, in Apter D. (editor), *The legitimization of violence*, New York University Press, 1997, p. 25.

<sup>9</sup> Elster, *Ulysses Unbound*.

crimes can continue to act. Third, social impunity; groups that enjoyed privileges, abused other groups or hosted wrong behaviours continue to maintain a privileged position. For example, in Colombia cattle ranchers heavily funded paramilitaries and collaborated with them.<sup>10</sup>

- *Limited reparation.* Given the nature and dimension of the social wrongs caused in a macro-dispute, there is a deep asymmetry between them and reparation. Peacemakers and negotiators need to go beyond retributive justice, but their constituencies will not necessarily want or be able to do so. There are also strategic bounds. Almost by definition, when a negotiated solution is arrived at, all the parties involved have the sufficient clout to demand for them and their members access to certain goods, from which numerous victims might be excluded. For example, the press has claimed in Colombia that the reinserted members of the paramilitary receive an allowance that is several times higher than the stipend transferred to internally displaced people.<sup>11</sup> Furthermore, societies can have objective limits (fiscal, but also symbolic and human) to repair.
- *Modalities of consociationalism.* War and corruption feedback into each other through several easily identifiable mechanisms. The link between both is historically established, highlighted by classical thinkers,<sup>12</sup> and recently retrieved, with mixed results, by the literature about the political economy of civil wars.<sup>13</sup> The fact that negotiated agreements can also produce strongly suboptimal governance arrangements is much less stressed, but is crucial to adequately capture the tension between feasibility and sustain-

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<sup>10</sup> Carlos Medina Gallego, “Autodefensas, paramilitares y narcotráfico. Origen, desarrollo y consolidación. El caso de Puerto Boyacá”, Documentos Periodísticos, Bogotá, 1990. Mauricio Romero, *Paramilitares y autodefensas, 1982-2003* Iepri-Planeta, Bogotá, 2003.

<sup>11</sup> Rafael Pardo, “Desde el jardín. ¿Más plata para los reinsertados?”, *Revista Semana*, 28 July 2006.

<sup>12</sup> Machiavelli, *The Prince*.

<sup>13</sup> See for example Paul Collier, “Rebellion as a Quasi-Criminal Activity”, *Journal of Conflict Resolution* 44, no. 6 (2000).

ability. Peace does – sometimes very powerfully – create pro-corruption niches and processes. First, criminals, warlords and politicians can enter into regional alliances that imply mutual protection, which thus burdens with prohibitive costs the act of denouncing corruption. Protected with such a powerful shield, political barons create domains that are highly inaccessible to the law and to democratic accountability, especially if they can count with the complicity, or at least the passivity, of officials at the national level. Second, these alliances create rents.<sup>14</sup>

- *Credibility.* Peace-making gestures do not always have the desired effect. Signalling in the midst of a conflict is indeed a complicated system. As frequently happens, Schelling has flagged the problem with utmost clarity: “If one reaches the point where concession is advisable, he has to recognize two effects: it puts him closer to his opponent’s position, and it affects his opponent’s estimate of his firmness. Concession not only may be construed as capitulation, it may mark a prior commitment as a fraud, and make the adversary sceptical of any new pretence of commitment. One, therefore, needs an “excuse” for accommodating his opponent, preferably a rationalized interpretation of the original commitment, one that is persuasive to the adversary himself”.<sup>15</sup> Actually, this syndrome and other related ones appear once and again in the Colombian context. According to many analysts, as soon as the FARC starts a peace process it engages in a big scale offensive, to be able to speak from a position of force (for example, in February 2007, president Pastrana pronounced a speech announcing close of peace talks, because although an agreement had been signed, the FARC perpetrated 117

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<sup>14</sup> For analyses in this vein, see Jack Snyder, *From voting to violence. Democratization and nationalist conflict*, W.W. Norton and Company, 2000; Francisco Gutierrez and Mauricio Barón, “Re-stating the State: paramilitary territorial control and political order in Colombia”, Crisis States Programme, DESTIN-London School of Economics, Working Paper no. 66, 2005. Available at [www.crisisstates.com/publications/wp/WP1/wp66.htm](http://www.crisisstates.com/publications/wp/WP1/wp66.htm).

<sup>15</sup> Thomas Schelling, *The strategy of conflict* (Harvard University Press, 2003), p. 34.



terrorist attacks in one single month).<sup>16</sup> The offensive, in turn, weakens critically the political support to the process.<sup>17</sup>

- *The Arendt dilemma.* Hannah Arendt once stated that the two main characteristics of a good society were the capacity of enforcing contracts and the ability of forgiving.<sup>18</sup> She did not say, though, that both “core characteristics” could be in dynamical tension. A negotiated settlement of a macro-dispute is, indeed, a form of public pedagogy in the art of forgiving. But it is also a public lesson in the advantages of criminal behaviour. It ostensibly shows that thousands, perhaps hundreds of thousands, can indulge in delinquent and morally repulsive behaviours and get away with it. Not only a general demoralization, but also a weakening of the principle of proportionality associated to the basic sense and practice of justice can ensue.
- *Indivisibility.* It may be the case that the dispute that caused the conflict – or that arose in the midst of it – is indivisible. Typically, conflicts around identity tend to have this character.<sup>19</sup> When one of the parties aspires to *all* the pie – for example, the totality of political power – the result is identical. According to the greed theorists, political claimants may use their discourse to mask the aspiration of extracting rents from exportable agricultural production, but when this production is illegal, and no joint extraction arrangement is possible, greedy fighters behave as if they were identity- or ideology-driven.<sup>20</sup> During the 1980s, the hopes of initiating negotiations between the Colombian govern-

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<sup>16</sup> Andrés Pastrana, “Discurso mediante el cual se anuncia la ruptura de los diálogos de paz”, 20 February 2002. Available at: [http://www.Solidaritat.ub.edu/observatori/esp/colombia/marco.htm?pagina=/documentos/proceso.htm&marco=frame\\_1.htm](http://www.Solidaritat.ub.edu/observatori/esp/colombia/marco.htm?pagina=/documentos/proceso.htm&marco=frame_1.htm)astrana.

<sup>17</sup> Of course, in this example it is feasibility, and not necessarily sustainability, which is affected.

<sup>18</sup> Hannah Arendt, *The Human Condition*.

<sup>19</sup> Frances Stewart, “Crisis Prevention: Tackling Horizontal Inequalities”, *Oxford Development Studies*, 28:3 (2000).

<sup>20</sup> Because extraction becomes an indivisible good; see Snyder, *From voting to violence*.

ment and the ELN – a Castroist guerrilla that settled for nothing less than full-fledged socialism – were near to null. The paramilitaries arrived at an agreement with the government, but have maintained their rackets and *narco* export outfits, a situation that has pushed the country into a situation of semi-permanent scandal.

The existence of indivisible goods flags another source of strain for peace processes. Suppose that both parties are able to agree over common goals, and arrive at an enforceable agreement. It may happen that the aims that the former adversaries share cannot be achieved simultaneously. I believe that something of this sort took place during the National Front (1958-1974) in Colombia. The NF was many things, among them a peace process, and its architects set three categories of objectives: pacification, democratization and social reform. However, the institutional designs crafted to arrive to pacification – which necessarily involved offering strong guarantees to relevant political minorities – obstructed and/or distorted the program of social reform, as it allowed relatively small coalitions to block any significant advance.<sup>21</sup> Mutually contradictory desirable objectives are especially important to analyze in the context of peace-making in countries that suffer from very high levels of inequality. Is so called “structural change” a precondition for sustainable peace?<sup>22</sup> This has been a point of view staunchly held by various actors – among them the FARC and other guerrilla groups – in Colombia. But then the question is how to force the Colombian socio-economic elites, which have not been defeated militarily, into an agreement. If an attainable subset of reforms is not specified, or if nothing short of a full takeover by the guerrilla is

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<sup>21</sup> Gutiérrez, *¿Lo que el Viento se llevó?* Naturally, majorities also could have behaved according to the principle of “cunning impotency”, claiming that they were hampered by institutionally protected minorities whose activity was producing precisely the outcome that they (the majorities) desired.

<sup>22</sup> According to some definitions, extreme inequality in itself involves violence. I will disregard this and concentrate on the more conventional understanding (“rough or injurious physical force, action, or treatment”, or some similar variant).

satisfactory, then such a question simply has no answer.<sup>23</sup> Here it appears in very clear form that burdening peace agreements with excessively high demands sacrifices feasibility (and can also be a strategic gambit of actors that do not aspire to peace but do not want to pay the price of admitting it openly).

At the same time, the notion that consensus has a material base – according to Przeworski’s expression – and that this is a necessary condition for sustainable peace should not be taken lightly. Practically all the protagonists of the National Front – who have been wrongly accused of adamantly ignoring social reform – were acutely aware of the need to deflate the enormous levels of inequality that the country exhibited already then, and claimed that without doing so neither peace nor democracy would be sustainable or genuine.<sup>24</sup> In political terms, then, the problem is how to push forward reforms in a context in which each of the relevant parties in the conflict has a *de facto* veto power.

*Pace* the header of this section, that sustainability and feasibility are in dynamical tension is of course not sufficient reason for giving war a chance. However, it does underscore the fact that peace is a costly, complex, risky operation of social change, and that generally states arrive to settlements not when they can, but when they must. Whenever the state gives up the imposition of the monopoly of legitimate violence, it is signalling that it is too weak to do so, either materially or politically. In the Colombian case, the datum that there has not been practically a single year in the last decades without an ongoing peace process is a symptom of chronic weakness, which is taken by all of the protagonists of the conflict as a fact of life, to which they adjust their beliefs and mutual expectations.

The tension between feasibility and sustainability appears quite clearly in the Colombian paramilitary reinsertion (PR) process started in 2002-2003. Among the many puzzles that it offers to the analyst, one of the most intriguing is the following. Regarding the (inevitable)

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<sup>23</sup> In the course of many peace processes, the FARC has procrastinated when urged to tell which reforms would be enough to decide them to come back to civil life.

<sup>24</sup> See for example Carlos Lleras, *Crónica de mi propia vida*, Vol. VII, Stamatopoulou editors, Bogotá, 1983.

trade-off between justice and peace, the PR seems to be way above international standards. The leaders of the groups have been taken to justice, are in the process of confessing, and the majority of them will go to jail for a certain (short) period; others have been (and will be) extradited. Actually, even part of the second level leadership has also been taken to justice. In the majority of other negotiations, this simply does not happen.<sup>25</sup> On the other hand, both nationally and internationally the PR has been a source of unending political conflict and malaise, and has chronically lacked legitimacy. Is this a typical case of spoilers taking the upper hand, or is there something else?

My basic answer is the following. Every peace process creates two intimately related problems, crisis of proportionality and allocation of guilt. By establishing relatively high standards (in comparison to other processes elsewhere, but also longitudinally) in the trade-off between peace and impunity, the government thought it was assuring the PR. In particular, it tried to make it unassailable through a symmetry argument: the paramilitary is not worse than the guerrillas. Contrary to past processes, we are not conceding here anything near the full impunity (plus access to political participation) that the guerrillas enjoyed in past processes. The argument makes a point that cannot be avoided, but at the same time (independently of the correction of its premises) it misses several specificities of the PR. Among those specificities, the main one is the very strong link between the paramilitary and intra-systemic forces (several orders of magnitudes higher than whatever kind of networking the guerrilla has been able to build), and consequently the lack of clarity about the type of rapport between the actors that are negotiating. Are the state and the paramilitary friends or foes?<sup>26</sup> Depending on the answer, we are living in two completely different universes. In other terms, the symmetry theory looses the crucial relational aspect of the discussion.

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<sup>25</sup> Elster, *Ulysses Unbound*. Actually, even when the offender has been defeated politically and militarily, trying him might be tortuous. The best example is Argentina.

<sup>26</sup> My own answer is something in between.

Peace is a marvellous opportunity for any conflict-ridden society. At the same time, it entails the public recognition – and official endorsement – of a crisis of justice, expressed in the lack of proportionality, the acceptance of many force relations as the building blocks of the new polity, etc. The trade off is worthwhile, as long as the state:

- Recognizes some political mandate in the irregular group that the state itself has not been able to express;<sup>27</sup> and/or:
- Recognizes its military weakness to deal with it.

In one or the other case, not all major offenders can be taken to the tribunals.<sup>28</sup> This public celebration and entrenchment of powerful offenders is morally repulsive, and offers a clearly dangerous message to society (“if you are violent and or criminal and have enough clout you can get away with it”). Peace, as a higher good, frequently overrides the concern over these issues, but it is destabilized by them. Spoilers, groups that are driven by vengeance, and potential new armed challengers, all of them are bolstered by such message. To guarantee sustainability, this inevitable side-effect of peace agreements has to be dealt with effectively. Thus, it is indispensable to develop credible pacifist discourses, in particular discourses about justice and peace. My simple claim in this chapter is that in the PR this has not happened, and that the price to be paid by the whole of society will be dear.

The discussion below is ordered in the following manner. In section 6.2 I present a (necessarily unelaborated) sketch of antecedents: the Colombian peace experience, and in particular the PR, with its advantages and shortcomings. In section 6.3, I discuss pacifist discourses in the Colombian context. Section 6.4 evaluates the limits and shortcomings of the governmental discourse. The conclusions synthesize

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<sup>27</sup> Of which there is a rich tradition in the country, associated to the legal figure of political criminal. Iván Orozco, *Combatientes, guerreros y terroristas. Guerra y derecho en Colombia*, Editorial Temis, Bogotá, 1992.

<sup>28</sup> Increasingly, international variables play a key role here, but in this paper I will not take them into account. Colombia is signatory of the Rome Statute, but with a seven year suspension clause for war crimes. According to such proviso, for Colombia the Treaty only starts to operate in 2009 as regards war crimes.

and explain why the PR – despite its relatively high standards in some regards – has been so weak politically.

A comment about the exposition style is due. I do not aspire here to be systematic. I present some basic ideas in a very informal manner, and illustrate them with the PR, using the ideas to evaluate the PR, and the PR to specify some points that appear to be interesting. In a sense, this chapter is a protracted vicious circle. Necessarily, I resort to other Colombian experiences, especially the National Front, which is an extremely rich – and as yet unexplored – source of reflections about the wherewithal and limitations of peace discourses and arrangements.<sup>29</sup> From time to time, I also exemplify a point with events taken from other cases. I frequently recur to simple, schematic accounts, of complex matters, to be able to stick to the basic ideas. As always, a price is paid for this.

## 6.2. Antecedents

Using the terminology introduced above, at the end of the 1990s Colombia's problems regarding peace could be put in the following manner:

- a. In Colombia, starting peace processes is not particularly difficult. Several guerrillas returned to civil life: the M-19, the EPL, an important sector of the ELN (the *Corriente de Renovación Socialista*), and at least two cohorts of paramilitary groups (a first cut just before the constitutional assembly of 1991, and the much bigger PR that started in 2002). Other results of peace negotiations are the reinsertion of other minor groups and the creation of a political branch of the FARC. There has not been a single year in the last three decades without ongoing negotiations.<sup>30</sup> Very

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<sup>29</sup> A consociational arrangement stemming from an accord between the country's main political parties, which functioned between 1958 and 1974.

<sup>30</sup> The FARC's behaviour might be a function of its military skills. There is some indirect evidence that this is the case. For example, the process in which they went farther – accepting to stop kidnappings and creating a political party, which was eventually eliminated – could have coincided with their worst military moment, at least in terms of casualty ratios.

small groups, both guerrillas and paramilitaries, have been able to negotiate their return to civilian life, even in the face of ostensible military, financial, and social weakness.

- b. These negotiations have not always ended well. Some outcomes actually were disastrous, and have acted throughout the period as negative precedents. The political branch of the FARC, the *Unión Patriótica*, was massacred. The EPL – under its new guise, *Esperanza, Paz y Libertad* – suffered the same fate, this time at the hands of the FARC. The two governments that engaged in more ambitious negotiations – Belisario Betancur (1982-1986) and Andrés Pastrana (1998-2002) – ended in disarray, completely discredited and hounded by accusations of having given out the country to the guerrillas. Nonetheless, rational politicians keep on betting in favour of peace. One reason may be circular preferences: citizens desire peace, so vote gatherers follow them, but the costs of pushing forward the process are so high that in the middle of the path all of them (first the citizens, then the politicians) change heart. Another, simpler, reason is that occasionally negotiations have ended quite well.<sup>31</sup> Two main groups were able to extricate themselves from the dynamics of targeting and marginalization: the M-19 and the *Corriente de Renovación Socialista*. The former participated successfully in politics after its reinsertion, and after disintegrating because of internal squabbles, lent the new civilian left some of its best leaders. The latter led a more modest life, but many of its cadres have played a meaningful role in public life. The M-19 and the *Corriente* indeed suffered grievous losses in their process of reinsertion – in the first case the assassination of its caudillo, and presidential candidate, Carlos Pizarro – but held fast to its pacifist intentions.
- c. This story of (limited and blood stained, but genuine) feasibility has one exception: the FARC. Despite creating a political expression, the FARC never really relinquished armed struggle and has used diverse negotiation scenarios to push forward its main

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<sup>31</sup> I believe that both explanations hold.

strategic concerns, not to arrive to a definite settlement of the conflict.<sup>32</sup> Even today it argues in favour of linking peace to structural (socio-economic) reform, which explains why, despite all the confidence building measures made in the Pastrana years, negotiations did not advance a single step. Additionally, there is the negative precedent of the *Unión Patriótica* (UP). The UP was created as a political branch of the FARC but with the recrudescence of the conflict it was targeted as the civilian wing of the guerrilla. In the last years, the FARC – which, as many other pro-Soviet groups in the world, abided by electoral participation and open politics – decided to launch new, clandestine, political expressions. Such encroachment further complicates new pacifist endeavours with the FARC.

- d. Naturally, the permanence of the FARC is a problem not only for feasibility, but also for sustainability, for many reasons. First, as elsewhere, there is a strong association between ongoing civil conflict and massacres, politicides, and violence against civilians in general.<sup>33</sup> In an environment characterized by violence and instability, groups coming from the armed left can be the object of hatred by state agents, victims, vigilantes, and paramilitaries. Second, there is a historical, and logical, sequence: the paramilitaries appeared as an armed response of narcos, agrarian elites, and criminalized state agents against the guerrilla and some of their most shocking offences, particularly kidnapping.<sup>34</sup> If the FARC remains in business, new entrants – in the form of post-PR paramilitaries – will find civilians and officers ready to support them. Third, more obliquely, the permanence of the FARC

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<sup>32</sup> See for example Jacobo Arenas, *Cese el fuego: Una historia política de las FARC*, Editorial Oveja Negra, Bogotá, 1985. This duality brutally increased the vulnerability of the *Unión Patriótica* members.

<sup>33</sup> Mathhew Krain, “State sponsored mass murder. The onset of genocides and politicides”, *Journal of Conflict Resolution* vol. 41 no. 3 (1997).

<sup>34</sup> Certainly, already in the 1960s big landowners routinely had their hit men to deal with social conflicts and protests (see for example Cristina Escobar, “Clientelismo y ciudadanía. Los límites de las reformas democráticas en el departamento de Sucre” *Revista Análisis Político*, No. 47, Septiembre/Noviembre 2002). But there is a qualitative difference between this phenomenon and paramilitarism.



is a symptom that some of the basic causes – be them political or “only” available rents – of the conflict remain.

- e. The involved parties interpret differently the text and spirit of the agreements. Sometimes, this is a result of technical difficulties. During the reinsertion of the urban militias in Medellín (1994), the rebel leaders were not clear on what they could demand, or even on what they did really want.<sup>35</sup> Government officials had to help them elicit preferences. In other cases, both parties reach the accord because they expect that parts of it will not be enforced. Highly criminalized actors accept to be processed and jailed, and surrender themselves to justice, but experience has shown – in past processes and in the present one as well – that they continue their criminal activities.<sup>36</sup> They simply expect that the state will tolerate this (on which they are partially right).
- f. More substantially, the governments invest all their political capital in achieving peace, and after that they do not have the pull – sometimes they also lack the will – to limit the anti-peace activities of their own partisans in the regions. If the paramilitary groups appeared as a result of a regional rebellion against the pacifist center, Colombia has suffered more generally from a lack of grip of the center over bellicose regional elites.<sup>37</sup> Peace is proclaimed above but not necessarily upheld by sub-national actors, and the center lacks the resources – or will – to guarantee a long-term control of the pacifist course of action.
- g. Peace accords have not precluded the operation of other illegal groups. The reasons for this are easy to understand. First, several parties participate in the Colombian war. It is true that from the 1990s there was a certain centralization of the conflict, with the

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<sup>35</sup> Romero, *Paramilitares y Autodefensas*.

<sup>36</sup> Fabio Sánchez, Ana María Díaz, Michel Fornisano, “Conflicto, violencia y actividad criminal en Colombia: un análisis espacial”, 2003. Available at: <http://ideas.repec.org/p/col/000118/002185.html>.

<sup>37</sup> Mauricio Romero, “La Desmovilización de los Paramilitares y Autodefensas: Riesgosa, Controvertida y Necesaria. Síntesis 2004”, in *Anuario Social, Político y Económico*, Universidad Nacional, IEPRI-FESCOL, Bogotá, 2005.

reincorporation and/or extinction of several insurgencies and the creation of the AUC. But the AUC broke down, and the vanishing of some guerrillas simply meant that they were replaced by the FARC or by the AUC in the majority of regions. In 2002, the paramilitary federation broke down, in the thick of an orgy of internal feuds. Second, the paramilitaries lack a clear chain of command. In particular, when the chiefs are jailed the second level generally supplants it, robbing its territorial control and economic networks. Peace has operated in Colombia step by step, with the state reaching agreements with each group, while other opportunistically try to make profit from the vacuum left in each reinsertion.

In this context, the PR shows some continuities and discontinuities with past agreements. There are both similarities and differences between the paramilitary and the insurgencies. The paramilitary started their activity by the early 1980s, though, inevitably, they had some antecessors. The first groups were basically anti-subversive coalitions of rural elites, narcotraffickers, and members of the armed forces.<sup>38</sup> Along with the scale of their violent activity, their interrelation and connections with state agents grew increasingly dense. Despite the fact that several government officials highlighted the existence of the problem, the groups remained practically untouched – and many a times openly supported – by the security apparatus of the state until the mid-1990s. The following were their main characteristics, relevant to this chapter:

- *Massacres.* Of all the actors of the Colombian conflict, the only one that picked up massacres as its central war strategy was the paramilitary. Indisputably, the guerrilla also massacres routinely. Actually, during a certain period the FARC increased systematically its participation in this type of offence (see Table 2). However, only the paramilitary adopted it strategically. There are not generally accepted figures, but even according to the army – the source according to which the paramilitary's share in authorship

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<sup>38</sup> Romero, *Paramilitares y Autodefensas*; Gutiérrez and Barón, "Re-stating the State".

of massacres is lower – they are the main culprit. It must be said that the strategy seemed to work. Occasionally, the paramilitary obtained spectacular political results with a massacre spree, both regionally and nationally. At least once, a massacre offensive was specifically conceived as a way to force the government into negotiations with the paramilitary (29 April 2001).

Year	Number of massacres	Number of victims
1993	37	172
1994	63	310
1995	135	720
1996	141	731
1997	110	554
1998	144	769
1999	163	939
2000	198	1203
2001	152	519
2002	152	903

**Table 2:** Massacres by the FARC (Source: *Departamento Nacional de Planeación*, Colombia).

- *Gory manipulation of bodies – dead or alive.* During Colombia’s past wave of civilian conflict, all groups indulged in manipulations of the body of the victim. Homicide was linked with the ritualization of pain and destruction.<sup>39</sup> The entry of the guerrillas implied a change in the “murderous signature” of illegal groups,

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<sup>39</sup> See for example María Victoria Uribe, *Matar, rematar y contramatar: las masacres de la violencia en el Tolima (1948-1964)*, P. Imprenta, CINEP, 1990. Germán Guzmán, Eduardo Umaña, Orlando Fals Borda, *La violencia en Colombia: Historia de un proceso social*, Iqueima, Bogotá, 1962.

because their behaviour was guided by a much more instrumental and technical ideology-mentality. The paramilitary brought back a type of violence that seemed to belong to the past<sup>40</sup> — with all the horrid consequences (for example claims, which have not been refuted, that some of the victims were dismembered alive).

- *Selective incentives.* One of the main differences between the guerrillas and the paramilitary is that the latter offers (sometimes substantial) selective economic incentives both to their commanders and to their rank and file. Contrary to standard *homo economicus* assumptions, this weakened the paramilitary organizations and triggered all sort of centrifugal tendencies.<sup>41</sup> It also produced a rapid advancement within the organization of *narcos* that trafficked for their own benefit.
- *Interaction with the state.* Until 1995, there was no record of a paramilitary killed in combat or jailed – not a single one. Intelligence reports by the government in the late 1980s found evidences of widespread support – active, or at least benevolent neutrality – within both agrarian elites and the security agencies in some regions.<sup>42</sup> Ongoing journalistic publications corroborated this, suggesting that the connections of the state and the paramilitary had flourished in the last decades.<sup>43</sup> However, with growing international pressure, the Colombian armed forces

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<sup>40</sup> This appears to have an explanation. Since the focus of the paramilitary strategy is to “remove the water from the fish”, i.e., intimidating and dispersing populations that are considered accomplices of the guerrilla, it is extremely important to establish a reputation of brutality and limitless violence. Field work and other evidence shows that, after the punitive expeditions are over, though violence remains high, the most extreme and bizarre practices diminish, and mass violence is replaced by selective attacks.

<sup>41</sup> Francisco Gutiérrez, “Criminal rebels? A discussion of war and criminality from the Colombian experience”, *Politics and Society*, vol. 32 no. 2 (2004).

<sup>42</sup> See for example Gutiérrez and Barón, “Re-stating the State” in Gonzálo Sánchez and Ricardo Peñaranda (editors), *Pasado y presente de la violencia en Colombia*, La Carreta Editors, Medellín, 2007.

<sup>43</sup> Gutiérrez and Barón, “Re-stating the State”.

started to harass some of the paramilitary groups, sometimes in quite murky circumstances. Still, by the end of the Pastrana administration (1998-2002), the paramilitaries were able to twist the arm of the state, blocking the intent of the president to launch a demilitarized zone with the ELN.<sup>44</sup> By then, as posterior evidence has shown, the penetration of the political system and of the administrative apparatus by the paramilitaries and the narco-paramilitaries was widespread.<sup>45</sup>

- *Semi-pacific fiefdoms.* Thanks to the dense networks that link it with the state, the regional economic elites, and the political system, the Colombian paramilitary has been able to build municipal and regional fiefdoms over which they maintain a tight control. If at first the typical action of the paramilitary was the punitive expedition, with its corresponding orgy of murder, after evicting the guerrilla and establishing a firm control, they created diverse forms of governance in which violence was only one tool among many.

The paramilitaries, which had started and spread throughout the country as regional undertakings inspired in a basic blueprint offered by a few canonical experiences, was integrated in 1997, after several efforts, into a federation, the *Autodefensas Unidas de Colombia* (AUC). The AUC – under the leadership of the Castaño brothers – was supposed to be an anti-subversive army, a unitary actor with an ideology, a clear line of command and a keen sense of discipline – the basic notion being that, in order to defeat the FARC, its best practices should be imitated.<sup>46</sup> However, the AUC only survived five years, and disintegrated in 2002, under the weight of the centrifugal dynamics triggered by the combination of the access to drug rents and an organizational design that offered economic selective incentives to commanders and fighters. Despite the efforts of centralization, led by Carlos

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<sup>44</sup> Omar Gutiérrez, “La oposición regional a las negociaciones con el ELN”, *Revista Análisis Político* 52 (2004).

<sup>45</sup> Colombia has a Congress of 262 members. In the recent scandal, already near 40 of these (and counting) are being processed for deals with the paramilitaries.

<sup>46</sup> Gutiérrez and Barón, “Re-stating the State”.

Castañó – efforts that generated several bloody internecine hassles<sup>47</sup> – each regional commander increasingly won a wider autonomy, not to speak about the resistance of small pockets of the provincial agrarian rich that, with their armed groups, opposed the presence of “aliens” in their own territory. The centrifugal drive was reinforced by the massive entry of narcotraffickers in the leadership of the federation.

Indeed, paramilitarism has always been intimately associated with the drug economy,<sup>48</sup> but between the late 1990s and the beginning of the new century the proverbial qualitative change took place: the *narcos* became not a partner but the dominant actor of the paramilitary undertaking. It has been claimed, without a definite proof, that a couple of fronts were sold to *narcos* for millions of dollars. In some regions – notably the department of Antioquia, but there are a handful of other examples – paramilitarism split around a basic issue: the attitude towards drug trafficking. For one group (the Bloque Metro), *narco* rents were a defensible source of funding, but they should be considered only a means to an end, which is to fund the anti-subversive war. For another group (the Bloque Cacique Nutibara) no restrictions concerning the capture of narco rents were tolerable. The dispute degenerated in open armed conflict, in the course of which the Bloque Metro, together with its commander, was wiped away. Similarly, other pro-army structure factions were thwacked in a very short period. Between 2000 and 2002, there was a de facto military victory of the faction with the strongest *narco* leanings over the rest of the paramilitary groups, a fact that later was to be simultaneously officialised and symbolized by the assassination of Carlos Castañó by his brother Vicente.<sup>49</sup> It was this

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<sup>47</sup> It is difficult to quantify, but it is not absurd to think that more people have been killed in the paramilitary internecine conflicts than in the combats between the paramilitary and the guerrillas.

<sup>48</sup> As is shown in detail in Gutiérrez and Barón, “Re-stating the State”.

<sup>49</sup> It must be stressed that there is no evidence whatsoever that would allow one to claim that the less *narco* wing was less murderous than the victors. What the two tendencies were disputing was the social insertion of the group, its relation to the state (and the United States), and its future in a possible reinsertion process, a possibility that was already seriously on the table in the second half of the 1990s. Carlos Castañó himself was planning a reincorporation in great style, in which he would play a leading political role, for which he needed at least the tolerance of

already highly narcotized paramilitarism which, during the Pastrana government, was able to build a broad social base, twist the arm of the state to block the peace process with the ELN, and destabilize the negotiations with the FARC.

In 2002, Álvaro Uribe won the presidential elections by a landslide. As governor of the “hot” Antioquia department between 1994 and 1997, he was regularly accused of taking decisions that favoured the paramilitary (including the legalization of security cooperatives that hosted them). In 2002, Uribe launched negotiations with the Bloque Cacique Nutibara of Antioquia, which in practice worked as a pilot for the national process. Participation in it, according to the government, was possible only if the paramilitary surrendered to justice and stopped their criminal activity. Redistribution of assets has appeared occasionally as an additional key condition. Certainly, this is considered in the judicial dealings of the PR, but it also has a political dimension.

PR has lasted from 2002-3 until today. The process with the paramilitaries was received in the country as a mixed blessing. Though it still has to be definitely proved, and there are many contentious technical points pending, it has been asserted that the pact deflated the rates of both lethal and non-lethal violence. In effect, some available time series suggest that both rates have fallen systematically in the previous years, a reasonable enough outcome when taking into account that the paramilitary were the group that committed most massacres, etc.<sup>50</sup> The political reading of this is also open to discussion.<sup>51</sup> Kidnapping rates

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the United States (Mauricio Aranguren, *Mi confesión: Carlos Castaño revela sus secretos*, Oveja Negra, Bogotá, 2001). That he held talks with officials of some US agencies about delicate issues is an established fact.

<sup>50</sup> On the other hand, since these are not representative, but only convenience samples, standard statistical inference should not be drawn (in regard to this, see Patrick Ball’s work). Advanced statistical techniques based on the systematic matching of different time series (more than two) can arrive to a completely different conclusion than exercises based on only one source.

<sup>51</sup> Homicidal rates can fall because the state has taken control, or because the illegal group has established its authority firmly in the given region. Lack of competition generally entails a less violent environment.

shrank substantially; in contrast to homicides, I think that in this regard there are no grounds for reasonable doubt. Thousands of combatants have deposed their arms, and a substantial portion of them is heading for a fresh start in life. Even more outstanding – at least from a comparative perspective – is that:

- a. PR has been submitted to constitutional and judicial control. For example, the original Justice and Peace Law, the milestone of the PR, was more lenient with the paramilitary than the final, definitive version, which was adjusted by the Constitutional Court. Critically, the conditions to obtain benefits – only if they tell the whole truth – were toughened.
- b. The paramilitary leadership is in jail, it is being tried, is confessing publicly, and after a short period of public discussions, the victims have been guaranteed a certain access to the confession audiences.
- c. Certain amount of asset redistribution is in process.<sup>52</sup> As of now, however, the public disclosure of goods by the paramilitary is not mandatory.
- d. The volume of confessions is so large that indeed society has been unable to assimilate them. These confessions have allowed investigators to find mass graves, and to return the bodies to the families of victims.

This is not a meagre result. Compared with peace processes both elsewhere and in the Colombian past, it is difficult to find other examples in which the leadership, the middle level, and an important part of the political support of the group that returns to legality are being processed and jailed. No impartial observer would claim that presently the paramilitary are better off than in, say, 1998. Indeed, the conditions – judicial and otherwise – of the leaders have gradually worsened, and there is evidence of widespread discomfort among them. Probably their first calculation was that the PR was going to be an easy ride, and many of them were crafting plans to go into politics and business, but now their prospects are bleak.

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<sup>52</sup> It is difficult to assess its magnitude. My hunch is that until now it is very modest.



At the same time:

- a. The leadership and rank and file continue their criminal activity. The expectations of an immediate banishment of paramilitarism were not realistic. All political sense of the accord was linked to the suspension of illegal activities by the paramilitary. Uribe has emphasized from the beginning that, contrary to the processes of his predecessors, now the state was demanding an immediate subjection to the rule of law by the group with which it was negotiating. Actually, since the very beginning the paramilitary signalled publicly that it was unable or unwilling to restrict itself. Uribe's delegates were in talks with the Bloque Cacique Nutibara while it was whacking its adversaries from the Bloque Metro. Despite the desperate cries from the Metro leadership, the government did not intervene, actually did not even acknowledge the existence of the problem. While the PR was in progress, a huge purge took place within the paramilitaries, the consequence of which was the elimination of the last factions that had qualms relative to drug trafficking.
- b. Trade unionism is still a high-risk job – half of the assassinations of the trade unionists in the world take place in Colombia – although in other fronts (e.g., journalism) the climate has improved.<sup>53</sup> But in general, the tool of selective homicide against opponents is still generously utilized. It has not been proved that internal displacement has declined.<sup>54</sup>
- c. The paramilitaries have rarely shown clear signs of repentance.<sup>55</sup> Especially at the beginning of the process, they actually indulged in the ostentatious parading of their power, which scandalized broad sectors of public opinion. Since they kept on committing

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<sup>53</sup> Mark Knoester, "War in Colombia", *Social Justice* Vol. 25 (1998).

<sup>54</sup> There is a dispute between NGOs and the government about figures. The former claim that displacement has actually increased, the latter believes it has fallen substantially.

<sup>55</sup> After Castaño was assassinated, Salvatore Mancuso became the main leader. He cried in a public audience but there was some consensus about the fact that these were, as they say, crocodile tears.

- crimes, and transacting with politicians, entrepreneurs, and racketeers, they have lost prestige very fast.
- d. This is related with a (rather metaphysical) question about the nature of the paramilitary offences. The reader should remember that in Colombia, contrary to many countries, the legal figure of political crime exists. So there is a classificatory problem: who is a political criminal? In particular, can the status of political delinquent be bestowed upon the paramilitary? The issue has been debated in congress and in the press, with inconclusive results. Slowly but surely, given the high levels of narcotization of today's paramilitary, the verdict has tilted towards a negative answer. But the discussion remains in latent form, and several times the government, directly or through friendly congress members, has tried to re-open it.<sup>56</sup>
  - e. The PR revealed the immense extension of the links between paramilitarism and the state. The governmental defence has been that those links did not start in 2002, and cannot be offered as proof against the PR. On the contrary: one of the main objectives of the PR is precisely to dismount those links. The other side of the coin is that the overwhelming majority of the politicians that have been seriously accused of having accepted paramilitary support (backing force or money) belong to the governmental coalition – it makes quite a substantial, and growing, portion of it.<sup>57</sup> For example, the congressional leaders of four of the main parties that support the president (*Alas Equipo Colombia*, *Colombia Viva*, *Convergencia Ciudadana*, *Colombia Democrática*) are now in prison. New captures are expected.

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<sup>56</sup> Rafael Pardo, *Fin del paramilitarismo ¿Es posible su desmonte?*, Ediciones B, 2007.

<sup>57</sup> More than 40 congress members. In the face of this, the president encouraged its parliamentary block to vote his bills “while you remain out of jail”.

### **6.3. Pacificist Discourses and the Specificities of the Colombian Situation**

#### **6.3.1. What is Happening?**

Presently, the Colombian situation is rather bizarre regarding peace:

- a. Despite all its shortcomings and trade-offs, it is difficult to dispute the fact that the PR is much more astringent with war offenders than previous ones, or than others that have taken place elsewhere and have been enthusiastically accepted by the international community.
- b. The process lacks political legitimacy, both nationally and internationally. This assertion needs to be qualified. It is true that the president has captured, with astonishing stability, very high levels of citizen support for more than six years. On the other hand, for key audiences of pundits, advocates, experts and social movements, and international interlocutors,<sup>58</sup> the PR is at best confusing, and there are clear signs that a pessimistic evaluation of the whole process is starting to prevail.<sup>59</sup>

What is happening? The PR seems to be losing the legitimacy battle. The main problems it faces are the following:

- a. *Inseparability*. In negotiated macro-conflict, there is a separability scale. Can guilt be allocated on one specific sector (highly separable)? Or does it affect the whole of the society? For example, Poland and South Africa seem to be very near the separability end of the spectrum. In Poland, the dominant discourse considered the communists in reality as a distinct group, in essence unrelated to the Polish society. Teresa Toranska's classic of journalism – whose title, *Oni*, “Them”, is already quite revealing – is an effort to rediscover how those aliens live and think. Society was innocent; the regime (or for the most radical factions of Solidarity, the communists, “*oni*”) was guilty. Something similar

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<sup>58</sup> Whose approval or at least benevolent indifference is necessary.

<sup>59</sup> For example, the October 2007 evaluation of the generally very benevolent OAS is quite harsh.

took place in South Africa. The universally acknowledged malevolence of the apartheid facilitated this favorable allocation of culpability. Colombia, instead, is near the non-separability end of the spectrum, both because of historical precedents and by the very nature of its conflict. Regarding precedents, the previous wave of confrontation, *La Violencia*, engaged broad sectors of the Colombian population, and culminated in the peace agreements of the National Front, with the canonical conclusion of Laureano Gómez – one of the heads of the Conservative Party, and not by chance perhaps the main instigator of *La Violencia* – “All of us are guilty”. The present Colombian conflict is particularly messy. There is not a single caste that can be singled out as the promoter of social wrongs. The regime is a democracy – not a very pure, or aesthetically appealing democracy, but a democracy after all (or something that falls near that). The predominant discourse is one of “community in guilt”.<sup>60</sup>

- b. *Friend or foe?* During the National Front, relevant factions within both parties opposed the peaceful outcome on grounds of the horrible previous ten years, punctuated by mutual atrocities. The famous response of Carlos Lleras Restrepo – a statesman who argued in favour of the pact, despite having taken strong positions during the conflict – was that peace is agreed not with friends, but with adversaries. This assertion has two readings. On the one hand, if the actors were not enemies, they could manage their differences through standard institutional channels.<sup>61</sup> On the other hand, the typical trade offs that characterize peacemaking – mutual absolutions for atrocities, etc. – become a big scale operation of complicity if they are performed between friends. If two allies engage in mutual forgiveness of their crimes, this might

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<sup>60</sup> Fernando Cubides, “La violencia en Colombia, Junio de 1962: Glosas de un lector de hoy”, *Revista Colombiana de Sociología* vol. 4 no. 1 (1999), pp. 34-42. For a much clearer analysis see Eduardo Posada Carbó *¿Guerra civil? El lenguaje del conflicto en Colombia*, Alfaomega Colombiana, 2001.

<sup>61</sup> When *La Violencia* started the country was still democratic.

appear as a “peace against society”, to paraphrase Daniel Pécaut’s phrase about the nature of the Colombian war.<sup>62</sup>

- c. So one of the main issues of the PR is the relation between the state and the paramilitaries. This has a structural dimension (which includes the problem of what to do with the agencies more deeply penetrated by illegal groups), but also a more politically operational one. When the president and his political supporters are considering whether to pass a bill to alleviate the burden of the politicians jailed because of their links with the paramilitaries, are the former abetting the cause of peace or simply promoting their own cause? When the government claims it cannot press further the paramilitary, is it acting like a cunning impotent, claiming that it cannot, when in reality it does not want?<sup>63</sup> The lack of clarity about the true status of the protagonists has permanently sapped the political support out from the process.
- d. *De-criminalization?* As said above, the paramilitary is a highly criminalized network. One of the principles of the Uribe administration is to push forward with the utmost energy the war on drugs, and be implacable enforcing extradition. At the same time, the peace with the paramilitary involves a *de facto* forbearance of drug trafficking.<sup>64</sup> Furthermore, a political peace agreement is only possible *vis-à-vis* a political actor. I already observed above that, despite oblique governmental attempts, conceding “political status” to the paramilitary has been impossible. But then: in which sense are they political? How can the government of the war on drugs dialogue with them, and tolerate their ongoing criminal activity?<sup>65</sup>

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<sup>62</sup> Daniel Pécaut, *Guerra contra la sociedad*, Espasa-Planeta, Bogotá, 2001.

<sup>63</sup> As will be seen in the conclusions, these are *not* rhetorical questions – there can be a genuine debate about them.

<sup>64</sup> This is not new. See Hernando Gómez, “El tamaño del narcotráfico y su impacto económico”, *Economía Colombiana*, no. 226-227 (1990).

<sup>65</sup> Once again, at least some of these questions are not rhetorical. My own conviction is that Colombian paramilitarism has a clear political substance, but the discussion goes way beyond the scope of this paper.

In other words, this is a peace agreement that goes beyond international standards, and has produced tangible positive effects. But it takes place in a context in which separability is a tangible issue, and it is ambiguous in at least two basic senses – is the negotiation between enemies and friends? Is it between the government and criminals, or between the government and a political force?

### 6.3.2. Functions of Pacifist Discourses

The government has not offered a sound pacifist diagnosis to support the PR. Pacifist diagnoses are oriented to explain why the war took place, who indulged in violence and why, and which are the viable alternatives. Viable pacifist diagnoses have a clearly instrumental dimension, but have to match at least approximately the available information.<sup>66</sup> What are they supposed to do? At least:

- a. *Attribution.* There are different modalities of attribution: moral, judicial, and sociological. Factual and judicial attribution involves finding who did what to whom, and translating this into the terms of some (reasonably proportional) judicial mechanism. The difference between this operation and what actually happens can be interpreted as the quantum of forgiveness of the given society. Moral attribution is related to the explanation of why the conflict started. It must be noted that a key step when launching an organized challenge to the state is to produce a believable (at least for the group) moral attribution. For example, during *La Violencia* the followers of Laureano Gómez asserted that violence was a product of electoral fraud, a version that came to be adopted by major social and political actors, including Laureano's adversaries. During peace accords, it is frequent to ascribe guilt to an impersonal entity – a regime, a kind of behaviour – to prevent both attacks on signatories of the accord, and the spread of dynamics of vengeance. In this sense, creating a pacifist moral attribution usually involves a major argumentative shift. Lastly,

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<sup>66</sup> In the social sciences, the reasoning proceeds from the diagnoses to the alternatives; in the pacifist discourse the reasoning proceeds from the alternatives to the diagnoses.

we have sociological attribution. The moral attribution refers to persons, natural or juridical. The sociological attribution refers to structures, institutional designs, and social dynamics. In Colombia, symptomatically, sociological attribution has been preferred to moral or juridical attribution; the imputation of specific responsibility in peace processes has been difficult or impossible.

- b. *Evaluation.* Each peace process has an (implicit or explicit) yardstick to measure the severity of offences committed during the conflict. The metric of the process does not necessarily (or only rarely?) coincide with either the norms held by the population or with the extant legality. In this regard, there are deep inconsistencies that as yet have not been probed. For example, in Colombia there has been a protracted discussion – once again, sometimes implicit, others explicit – about the way in which kidnapping compares with other crimes. Since each armed group has – viewed from an aggregated perspective – its own violent signature, this is a very important variable to compare different processes.<sup>67</sup> All this boils down to the discussion of what kind of offence is worse – which shows that evaluation is not only used to compare processes or armed groups. For example, in Colombia it has been frequently debated what is worse, if committing the typical crimes of members of an illegal armed group, or supporting them (via funding, information, etc). The most frequently issued point of view – shored up by journalists, government officials, and members of the judiciary – is that supporting is worse because at least members of the armed groups are incurring in some risk to attain their objectives.<sup>68</sup>
- c. *Distribution.* Who should carry the heaviest burden in the process of reconciliation and reparation? What is the role of the vic-

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<sup>67</sup> The guerrillas abduct more than the paramilitary, but the latter incur more frequently in massacres. As said in the note above, this does not imply that the guerrillas do not massacre (they do, and actually have gradually increased this type of offence, as shown in Table 2) or that the paramilitaries do not kidnap.

<sup>68</sup> It should not be forgotten that this has been precisely the justification of the paramilitary and the guerrillas to target civilians. Note that here moral and legal assessments are at odds.

tims in all the process? Clearly, if this role is not carefully laid down then victims are the ideal candidates for spoiler. During the conversations with the guerrillas in the 1980s and 1990s, government officials basically disregarded the victims (for example of kidnapping), some of which drifted towards the extreme right and played easily the role of antagonists of the process.

- d. *Motivation.* Why were the crimes, and/or the errors, committed? A first categorization, a deep-seated notion shared by peoples of all backgrounds and walks of life, is the greed or grievance dichotomy.<sup>69</sup> Actors that are political, and generous, behave better and kill less and are more likely to be absolved for their offences.<sup>70</sup> Elsewhere I have suggested that such dichotomy is flawed in many senses,<sup>71</sup> but it still seems to be a cultural operator taken very seriously.

#### **6.4. The Governmental Discourse and its Limits**

Now let us see what kind of pacifist discourse the government has developed.

##### **6.4.1. What Has not Been Clarified**

- a. *PR and previous processes.* A point that has been permanently stressed is the favourable contrast that the present process makes with previous ones. This has three dimensions: a normative one (“now finally we are dealing with victims, we are not guaranteeing total impunity”, etc.); a strategic one (some of the main critics of the PR are members of the opposition, but they themselves, claim governmental officials, have taken advantage of excessively generous agreements; some of the main crimes committed in the immediate past have not been punished, etc.); and a time-horizons one (critics of today’s PR, who generally

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<sup>69</sup> Proposed by Collier, but for me it is clear that Collier is picking here a very broad form of common sense.

<sup>70</sup> Jeremy Weinstein, *Inside rebellion. The politics of insurgent violence*, Cambridge University Press, 2006.

<sup>71</sup> Gutierrez, “Criminal Rebels?”.



demand more stringent standards, are destroying the possibilities of peace with the guerrilla tomorrow).

- b. *The paramilitaries and the guerrilla.* This latter argument is based on another canonical classificatory problem: in which sense are the guerrillas and the paramilitaries different? From an institutional, mechanistic point of view,<sup>72</sup> it is possible to exhibit very crucial differences, which make it completely incorrect to collapse them into a single category like, say, “warlords” or “narcotraffickers”. Be this as it may, the moral identification of insurgents and counterinsurgents is a given of the Colombian public opinion. Actually, the disrepute of the guerrilla among the population – as reflected by opinion polls – is even worse than that of the paramilitaries. Why then should the rules for the guerrilla be different than those for the paramilitaries? I believe that here the government and its defenders make a valuable point, but forget a crucial aspect. In reality, the comparative moral evaluation of guerrillas and paramilitary is inconsequential here. What matters is the type of conflict: are the paramilitary friends or foes of the Colombian state? The answer, in the optimistic version, is ambiguous. In contrast, regarding the guerrillas, it is conclusive. Instead of addressing the issue squarely, the government has resorted to a legal trick, according to which those who intend to attack *or* replace the state belong to the same category.
- c. *The timing of spoilers.* Be this as it may, in terms of time horizons the debate has developed in an intriguing fashion. The opposition appears in the role of present and future spoiler, insisting on high standards today, but – in the governmental version – precisely because of that, it is jeopardizing accords with other actors in the future. The government appears in the role of a retrospective spoiler, aspersing desultory remarks about past proc-

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<sup>72</sup> Normatively, though, it may be the case that both are so above the reasonable threshold of transgression that they cannot be set apart.

esses, opening old wounds, and asking for the revision of already terminated reinsertions.<sup>73</sup>

- d. At any rate, there is an implicit political admission of the government that there is not a perfect symmetry between the paramilitary and the guerrillas, as it has hastened to initiate negotiations with the latter. In particular, it tried to balance the lack of legitimacy of the PR by opening a process with the ELN (which has proved to be extremely tortuous).
- e. *The paramilitary and the criminals.* The government has not understood that the comparison of paramilitary and guerrillas is relational (friend or foe), not only normative. Another complication with which it has had to deal with is the greed and grievance dichotomy. Are the paramilitaries in an anti-subversive war, or are they simply pursuing their personal enrichment? The question is consequential. The case against greed is clear-cut. Covetous fighters have at least three damning characteristics. First, they will go on fighting while war is profitable. In fact, the majority of them discovers their entrepreneurial skills, and enrich themselves, thanks to war. Oskar Schindler is a one-in-a-million exception. Second, they will use force to expropriate the weakest and most vulnerable sectors in society. This is precisely what the paramilitaries have done with land in the last decades, evicting between two and four million peasants, producing a *de facto* inverse agrarian reform of immense proportions.<sup>74</sup> Third, they have no kind of normative constraint, so they can indulge in whatever gross crime to attain their means.

Elsewhere I have argued that this perspective should be nuanced. In the Colombian context, it would not be unreasonable to claim that it

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<sup>73</sup> This was the defensive reaction against former members of the M-19 who denounced that the paramilitaries were violating the PR rules of the game. The president and his staff retorted that the M-19 peace had required neither peace nor truth – which is rigorously correct – and pledged for re-initiating the debate about the alliance between M-19 and *narcos* during the takeover of the Palace of Justice (1985).

<sup>74</sup> There is wide variance in the figures, depending on the source.

was the strictly greedy character of the paramilitaries which allowed a relatively expeditious accord and reincorporation and reincorporation proceeding. The paramilitaries clearly had the expectation of sacrificing part of their wealth and power, without losing all but overcoming the high risks associated with war waging. I do not believe that it can be argued that it is essentially wrong to negotiate in these terms with such an actor. But the double standards of the PR, which express themselves in two mutually contradictory violations of proportionality, are untenable:

- On the one hand, the offer of steep reductions of sentences to greedy actors, on the grounds that presently they are (among other things) peace builders.
- On the other hand, maintaining the threat of extraditing the paramilitaries if, and only if, they have incurred in drug trafficking.<sup>75</sup> But why should drug trafficking be considered a worse offence than massacres? Obviously, this only makes sense if there is an implicit theory of motivations behind: the worse violence of all is greedy violence (as opposed to: the worst violence of all is risk-free, cowardly, violence). On the other hand, brutal transgressions (like wiping away the less narcotized blocks and leaders during the conversations with the government) did not deserve even a comment.
- But this theory of motivations goes against the very act of negotiating with the narco-paramilitaries. This blatant contradiction is not a nuance for academics; people of all walks of life captured it rapidly. For example, common prisoners in Bogotá launched a protest, asking why big offenders, like the paramilitary, had access to reduced sentences and they did not. The government did not yield. Had it bought into the greedy theory of guilt (in which common crime, even if mild, is unforgivable, while political crime, even if serious, is not)? A couple of months later, however, members of congress jailed because of their collaboration with the paramilitaries started a more discreet, but also more ef-

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<sup>75</sup> This threat is only made effective by will of the president. Pardo, “Desde el jardín”.

fective, offensive to get the same legal treatment as paramilitaries. Some of them actually declared formally belonging to the organization. By castigating more severely politicians than members, was the government adhering to the risk theory of guilt? No, because it signaled very, very prudently, that it considered with sympathy such initiatives. Apparently, the political *is* superior. But then why hasn't the government argued clearly in favour of the political status of the paramilitary, and why does it ignore its common delinquency actions?

In sum, it appears that instead of a building a discourse that restores proportionality, the government is accommodating to strong and contradictory political pressures, on the one hand by the United States, and on the other by the paramilitary themselves (who obviously have blackmailing power) and other national forces. This further feeds the deep ambiguity of the PR, which appears to broad and significant sectors as an accord between friends (or accomplices), and as a form of accommodating criminality.

#### **6.4.2. What is Missing**

But additionally this accommodation to criminality can be read in rather sinister terms: as a way of appeasing the criminals, because if they finally decided to talk the state representatives would be in hot water. This reading, unfortunately, is increasingly credible.

In a word, the PR has suffered from an acute political deprivation. To overcome it, the president and government officials have advanced a symmetry theory, asking why what is conceded to the guerrillas should not be bestowed to the paramilitary. The question does not have an easy answer, and every morally aware analyst (and citizen) should take it seriously. But it misses the main point: the relational aspect. The government has failed to show that the PR is not a bargain between *amigos*, in which one has state power and the other blackmailing power. In these circumstances, the PR has at least the following critical shortcomings:

- a. *Scaling of social wrongs.* From the point of view of the violation of proportionality and production of viable compensations, the

PR has been extremely vulnerable. *If* the allocation of guilt is, directly and publicly, the result of pressures on the government, the pedagogic message is that retribution depends on force. But the more the force, the bigger the capacity to destroy. Thus, the magnitude of the offence appears to be strictly related to the forgiveness of the state. As a female member of an urban militia once said, “in Colombia you have to be rich or you have to be dangerous”.<sup>76</sup> This message appears to be transparent, as said above, to common delinquents, politicians, political and social leaders, etc. This undermines sustainability, opening the doors to new violent actors and practices.

- b. This is reinforced by other violations of proportionality that have not been acknowledged publicly (for example, the fact that displaced people’s allowances are lower than those of the reinserted paramilitary combatants).
- c. The definition about the political substance of the paramilitary. This has not only rhetorical importance – which of course should not be underestimated – but also very practical consequences. In the overwhelming majority of peace processes – both in Colombia and abroad – a substantial part of the solution of the conflict is to guarantee to each of the parts a portion of political power. In the last decades in Colombia typically the group that returned to civilian life became a political party.<sup>77</sup> This is *not* possible in the case of the paramilitaries – though some of its leaders explicitly aspired to that solution. First, the paramilitaries already wield huge political power, way beyond its democratic support. Second, the political sectors that accompany them tend also to be well represented; cattle ranchers and – if one wants to be flippant – *narcos* have historically had comfortable access to political power. Third, the government has shied away from openly promoting the concession of political status to the paramilitary. All

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<sup>76</sup> Alonso Salazar, *No nacimos pa’ semilla*, Corporación Región, Medellín, 1990. The paramilitaries combine both sources of power: they are rich *and* dangerous.

<sup>77</sup> Or, if the group was small, an NGO.

- in all, for the judiciary the main task today is to exclude the paramilitary from the political system, not to include it.
- d. For a country that has had so many (unsustainable) peace processes, a key issue is the construction of a point *O*, that is, a starting point after which transgressions associated to the conflict are not committed (or committed only marginally). In reality, these processes tend to culminate in a constitutional accord.<sup>78</sup> The paramilitaries were actually heading, along with their allies in congress, towards a “re-foundation of the country”, a clandestine pact that, when revealed, produced a huge scandal. In the other direction, the government has tolerated huge violations of the basic rules of the game by the paramilitaries, and when these are made public it has reacted criticizing harshly the media and the opposition. There are already a score of examples about this. While at the beginning of the PR several (rather credulous) analysts hurried to speak about post-conflict and made their best effort to sell the hope of the termination of the Colombian ordeal to the international community, the country was only starting another round of negotiations about the real status of the paramilitaries, and the conflict associated to this phenomenon was far, far away from finished – not to mention the FARC and the new paramilitary groups that are being created. This process lacked a point zero.
  - e. The definition and role of the victims. The symmetry theory is advanced to proclaim the superiority of the PR over other processes. This leaves the victims in the role of spoilers.<sup>79</sup> Naturally, it can happen that people that were victimized in the past spoil the possibilities of an agreement, if they orient themselves one-sidedly towards the redress of wrongs. However, the difference between the PR and past processes is that presently victims pertain to the voiceless sectors of the society. Their incorporation

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<sup>78</sup> Stephen Holmes, “Precommitment and the paradox of Democracy” in Elster and Slagstad (editors), *Constitutionalism and Democracy*, Cambridge University Press, 1993.

<sup>79</sup> Stephen Stedman, “Spoiler Problems in Peace Processes”.

appears to be both desirable and possible, but it has been forsaken.<sup>80</sup>

- f. Ironically enough, the PR – charged as it has been of being benevolent with the paramilitaries – lacks a “stopping instruction”. Nobody knows where the punishment stops. Given the nature of the paramilitary groups, their high level of criminalization, and the fact that committing massacres was for them a basic strategic tenet, it is clear that thousands of these fighters incurred in horrible atrocities. But the country lacks the financial and human resources to try them all. Additionally, if one of the main problems of a sustainable settlement is to establish a workable *and* reasonable trade-off between peace and proportional justice, then the question of where the punishment must stop is crucial. Actually, this is important even in the face of an overwhelming military victory. Nazi Germany counted with widespread civilian collaboration.<sup>81</sup> In Colombia, inseparability problems – due to extended paramilitary power and networking – makes it indispensable to have some kind of stopping instruction. By losing completely the specificity of the PR – be it because of malice or conviction – the government has allowed it to operate in such political weakness that at the end all the involved actors are worse off.

## 6.5. Conclusions

Peace discourses must be credible, palatable to different audiences, and reasonable. This is a high order. No wonder the international community, observers, and advocates try by all means *not* to overburden peace processes with unreasonable demands. At the same time, in a country

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<sup>80</sup> The passivity of the government in this regard is illustrated by one event: the assassination of a social leader of the victims by the paramilitary when the process was already quite advanced (7 February 2007). There was no official reaction (see Ernesto Tamara, “Los paramilitares deciden la agenda política colombiana” 2007, on file with the author).

<sup>81</sup> It is not necessary to buy Goldhagen’s rather strident argument to agree with this point (Daniel Jonah Goldhagen, *Hitler’s willing executioners*, Alfred A. Knopf, New York, 1997); see for example Christopher Browning, *Ordinary Men*, Harper Collins, New York, 2001.

like Colombia, where feasibility and sustainability are so clearly – and tragically – separated, it makes sense to flag critical issues in extant accords that can generate new violent conflict in the near future.

The main shortcoming of the governmental discourse throughout the PR is that it has concentrated in a symmetry hypothesis, the premises of which are doubtful, and the substance of which does not address two critical problems. First, these are powerful actors, already with political sway, and a very broad network with a broad palette of state agencies and actors. When negotiating with them, is the state recognizing that they express some interest or voice not present previously in the political system? But then which, cattle ranchers'? They have historically enjoyed over-representation. Drugtraffickers? The government emphatically denies wanting to empower them (and cannot do otherwise). Alternatively: when negotiating with paramilitaries, is the state recognizing some fundamental military weakness? This is not too credible, as the paramilitaries were hardly combated until 1995, and even afterwards the behaviour of the security apparatus towards it was clearly lenient.

On which grounds, then, is the negotiation based? This translates into the key question: are we speaking about friends or foes? As said above, this is not in the least a rhetorical question. On the one hand, the idea that the Colombian paramilitary is simply a tool of the state is an over-simplification. On the other, the government is right when it argues that, due to the process, the paramilitary power has been exposed and started to show breaches. The problem did not start with the PR; the PR has offered some solutions. But by ignoring the huge problem of the relational content of the negotiation, the government has been unable to present a credible and acceptable discourse that helps cope with the proportionality crisis that any peace agreement causes, let alone one with the specifics of the PR. This has strong historical precedents. During the National Front, the country's two main political parties made a peace agreement, but were also harried by the spectre of the "peace between friends" criticism. Their inability to solve it was a factor that deeply destabilized the pact. However, the National Front



accord is – from this point of view<sup>82</sup> – actually more defensible. The parties had less margin of manoeuvre – both were too powerful to impose a solution over the other, and they had fought each other alright. There are a lot of examples of strategic use of the peace discourse to bind the other during the National Front – for example, excluding non Liberal or Conservative actors from the political system – but all in all a case can be made about the need to arrive to a consociational formula in that situation. The PR, instead, is ridden by events of self-serving weakness by the state and its representatives.

This has increased all the costs associated to peace negotiations: impunity has not received a political solution (nobody knows really what should be pardoned and what not), regional consociationalisms between socio economic elites and paramilitary groups have persisted (a *de facto* co-government in its most corrupt expression), the tension between forgiveness and recidivism is at its peak, and there are several issues of indivisibility (the main one being that there is no possibility of creating a joint-extraction solution of the main rent that feeds war, coca).<sup>83</sup> And the tension between peace and the implementation of necessary reforms (for example, agrarian) has appeared very strongly.<sup>84</sup>

The conditions for sustainability are still not there.

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<sup>82</sup> Note that regarding impunity, the PR is much better.

<sup>83</sup> Snyder, *From voting to violence*.

<sup>84</sup> The politicians linked to the paramilitaries have continued promoting, this time in congress, an inverted agrarian reform: legalization of lands taken by violent means, and transference of properties to the very rich. It appears that the agrarian elites have very strong presence in the governmental coalition. This is also different from the National Front, where the situation was somewhat more balanced.

FICHL Publication Series No. 5 (2010, Second Edition)

## Law in Peace Negotiations

Morten Bergsmo and Pablo Kalmanovitz (editors)

This volume contains papers presented at the seminar “Peace and accountability in transitions from armed conflict” held in Bogotá on 15 and 16 June 2007. The seminar was co-organised by the Vice Presidency of Colombia, the National Commission for Reparation and Reconciliation of Colombia, Universidad del Rosario and PRIO (its Forum for International Criminal and Humanitarian Law).

The volume has contributions by experts such as Pablo Kalmanovitz, Jon Elster, Claus Kreß and Lena Grover, David Cohen, Monika Nalepa, Francisco Gutiérrez, Ana Arjona, Roger Petersen and Sarah Zukerman Daly, Marieke Wierda, Florence Hartmann, Carsten Stahn, Maria Paula Saffon and Rodrigo Uprimny, and Antanas Mockus.

ISBN 978-82-93081-08-1



**Torkel Opsahl Academic EPublisher**

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