

The Peace at Hand: War and Peace in Colombia's 1991 Constituent Assembly

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Abstract

At the end of the 1990s, the dramatic rise in social and political violence, and the Medellin drug cartel's terrorist attacks, placed Colombia, to quote a popular book at the time, on the "edge of chaos." Twenty years later, the country has changed: although it continues to have enormous problems with social and political violence, no one seriously doubts anymore the stability of its institutions. How did Colombia avoid falling into the abyss? This article argues that the 1991 Constitution-making process, and the legitimacy of its democratic reforms, played a determinant role in this transformation. It addressed violence in at least three ways: first, it solidified a broad consensus on the importance of peace, democracy and a robust Bill of Rights. Secondly, it set the stage for lasting peace with four guerrilla groups, and pressured two more into negotiations. Thirdly, the nearly unanimous decision to include the prohibition of extradition in the Constitution enabled the government to reduce the scale of its war against the Medellin cartel and focus on negotiating surrender in exchange for reduced sentences. Violence and armed conflict continued, but they did so in the midst of an increased institutional legitimacy that has made it possible for the country to withstand the lawlessness that characterizes social relations under prohibitionist drug policies in poor countries.

Introduction

"There came a point when, with the possible exception
being the President of the Republic, Escobar could kill or
kidnap whomever he wanted, which in fact is what he did."

César Gaviria, Prologue, *Contra todas las apuestas*,
Humberto de la Calle (2004), p. 36.

Despite the persistence of armed conflict in Colombia, it is difficult to remember the violence of the 1980s and the impact it had on national conscience. In the three short years between August 1986, when Virgilio Barco (1986 – 1990) took office as President ,

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and May 1990, the next presidential elections there were 19 car bombs, resulting in around 300 victims; hired killers (*sicarios*) shot and killed 250 policemen; guerrillas blew up the Caño Limón-Coveñas oil pipeline 125 times, and death squads murdered thousands of anonymous militants from the left-wing party *Unión Patriótica*.² Year after year, month after month, Barco's administration presided over a seemingly endless series of assassinations of politicians, policemen, judges, journalists, and human rights activists, as well as of ordinary citizens. The Medellín drug cartel was behind many of these attacks, in part as a protest against extradition to the United States. A critically acclaimed analysis published in 1990 summed the entire situation up in its title: *On the Edge of Chaos*.³

To make things worse, the increase in violence caught the State unarmed, not only in the sense that its security forces lacked sufficient military strength, but also for the want of a criminal investigation system. By some inexplicable blunder, the 1987 reform of the criminal procedure system did not provide a period of transition, leaving the country without an operating investigation system for 18 months.⁴ According to official figures reproduced by the main national daily, *El Tiempo*, in August 1990 there were 1,200,000 criminal trials underway for which not a single person was in custody. The degree of impunity reached the public order jurisdiction (charged with rebellion, terrorism and drug trafficking) where 60 judges oversaw around 10,000 trials, of which only 1500 had

² Luis Cañón Moreno, "Narcodialogos, doble juego mortal," *El Tiempo*, Bogotá, August 6, 1991.

³ Francisco Leal and León Zamoza, *Al filo del caos: Crisis política en la Colombia de los años 80*, Tercer Mundo y Universidad Nacional, Bogotá, 1990.

⁴ Rafael Pardo, *De primera mano: Colombia 1986-1994, entre conflictos y esperanzas*, Editorial Norma, Bogotá, 1996. p.51-52.

reached sentencing; and of 2000 forfeiture motions to seize the assets of drug traffickers, not a single definitive decision had been handed down.⁵

During the 1990 presidential elections, hit men murdered four presidential candidates. Two of them, Jaime Leal and Bernardo Jaramillo, ran for the *Unión Patriótica* (Patriotic Union, henceforth the U.P.), the left-wing party created by the FARC guerrilla group (*Fuerzas Armadas Revolucionarias de Colombia*) during the failed peace process of the mid-1980s. By the end of the decade the U.P. was trying, and failing, to distance itself from armed conflict. The third murdered candidate was Carlos Pizarro, the charismatic leader of the M-19, a guerrilla group that had recently given up its weapons and renounced armed struggle. The fourth was Luis Carlos Galán, an enormously popular Liberal politician who was on his way to being named his party's presidential candidate. The first three were killed by paramilitary groups with ties to different drug traffickers; Galán was murdered on Pablo Escobar's orders, allied with Alberto Santofimio, a Liberal politician who coveted the Liberal Party's nomination.⁶ Their deaths, especially Galán's murder, sparked a massive social movement demanding a National Constituent Assembly, a movement that saw institutional reform as the end of violence. They elected the candidate most likely to bring it about, Galán's young debate advisor, César Gaviria, running in Galán's stead.⁷

⁵ Luis Cañón Moreno, Op.Cit.

⁶ Alberto Santofimio, a liberal politician and contemporary of Galán, was convicted for this act more than twenty years later. See, *El Tiempo*, "Santofimio se distanció de actos públicos ante inminencia de la condena," September 3, 2011.

⁷ For a more detailed account of the violence at the time and social movement that advocated a Constituent Assembly in reaction against the violence, See: Julieta Lemaitre, *El Derecho como conjuro*, Siglo del Hombre y Editorial Uniandes, Bogotá, 2009.

The movement for the Constituent Assembly was a reaction against terror and impunity, and the Assembly convened in its wake managed for some months in 1991 to represent the possibility of lasting peace. Perhaps this word, “peace,” and the longing for it, were the most repeated sentiment of the 1991 constitution-making process. It was given legal existence by the Supreme Court’s decision to allow the government to convene the Assembly through a martial law decree, with the argument this was justified by the possibility of peace. It was the longing for peace that led people from every ideological persuasion to believe and participate in the Assembly. In its shadow the M-19 grew stronger, three other guerrilla groups gave up their arms and negotiations with two others moved forward. The deep desire for peace was also the reason why a significant portion of the country – and of the Assembly – was willing to yield to the drug traffickers on the issue of extradition, and so seek by that means a truce with the Medellin cartel. It was also the reason, perhaps not the only one but still an important one, why many today are disappointed with the Constitution, for peace never came, it never comes but it remains in the intangible future instead. And this is what forces us to examine what happened to peace, and what is, or was, its relation to the persisting war on drugs.

This article contributes to answering this question through a description and analysis of the ideas about war and peace in the debates, speeches, and documents of the National Constituent Assembly. It is based on the examination of archival documents as well as on a review of the press, the academic literature on war and peace in Colombia, and secondary sources about the Assembly.⁸ It argues that three different types of peace

⁸ I deliberately avoided doing interviews considering that memories of the ideas of peace and war at the beginning of the 1990s are distorted by the course of events involving the failed peace negotiations with the

animated Assembly debates. The first was a rhetorical peace, the peace constantly invoked in speeches, a word without any concrete meaning, and at the same time the empty signifier that brought together political antagonists. The second type of peace was political peace, peace with the insurgency, the peace that for many, then and now, represented “true” peace. And the third was peace with drug traffickers, or at least the peace that would come with the end of the war on drugs, a peace that Colombia imagines as impossible and yet one that in 1991 materialized for an instant through the prohibition of extradition of Colombian nationals for trial abroad. The description of each kind of peace, and its limitations, will lead to, I hope, a better understanding of the foundations of peace laid down in 1991. I believe this analysis will contribute to a better understanding of Colombia’s challenge, which is increasingly shared by other countries in a region ravaged by the war on drugs.

A Rhetorical Peace

“That which abounds in this case does not seem to be doing any harm.”
 Delegate Augusto Ramírez Ocampo,
 Article 22 debates of the First Commission of the National Constituent
 Assembly,
 April 9, 1991

On Tuesday, February 5, 1991, the interim presidents of the National Constituent Assembly, Aida Abella of the U.P. and Carlos Daniel Abello of the *Movimiento de Salvación Nacional* (or Movement for National Salvation, henceforth MSN), inaugurated the sessions and 5-month period the 73 Assembly delegates would have to adopt a new constitutional text. Elected to the interim presidency following alphabetical order, Abella

FARC during the Pastrana administration (1998-2002) and the aggressive policies of the Uribe administration (2002-2010).

and Abello coincidentally represented the two ideological extremes of the Assembly, with Abella at the left and Abello on the right. So, on that inaugural session for Aida Abella, a communist, union organizer, and U.P. member living through the slaughter of her party by paramilitary death squads, peace was essentially peace “between the State and the insurgency.”⁹ But for Carlos Daniel Abello, a corporate lawyer and a political conservative from MSN, peace was “the return of past morality and justice.”¹⁰ That same day President César Gaviria (1990 – 94) articulated a Liberal vision of peace: “a just and democratic order” that did not require negotiations with the insurgency but would instead follow from more modern, more liberal, and more legitimate institutions that would make armed struggle illegitimate, and produce “governability”.¹¹

The deep differences between these concepts of peace, however, were often obscured by the permanent references to the possibility of peace.¹² Everyone seemed to agree that the new Constitution would provide a new social pact, and hence peace. The word peace, repeated ad-nauseam from the inaugural session on February 5, became by the last day of the Assembly, July 4, the most intangible of rights: the right to peace of Article 22. This right is an example of the ways law, and rights, can signify nothing yet generate agreements between political enemies and opposing ideologies.¹³ The cornerstone of our

⁹ Aida Abella, Presentación Inaugural, *Gaceta Asamblea Nacional Constituyente* No.1, February 5, 1991.

¹⁰ Carlos Daniel Abello, Presentación Inaugural, *Gaceta Asamblea Nacional Constituyente* No.1, February 5, 1991.

¹¹ Gaviria: “The simplistic vision that this reform cannot lead to a great peace treaty unless everyone with dissenting views is present is also unacceptable. This is an instrument for peace primarily because of its democratic origin and its principled rejection of violence ... because of its faith in peaceful transformation ...” *Gaceta Asamblea Nacional Constituyente* No.1, February 5, 1991.

¹² This was a particularly pressing issue considering that even though the country had voted massively for a Constituent Assembly, voter turnout for delegate elections was very low in comparison to the turnout for other national elections of that same year.

¹³ Examples of ideological convergence involving peace: Project no. 5 was presented by Francisco Maturana to form a Constitution “for peace, social justice, democracy and change in Colombia,” *Gaceta Asamblea Nacional Constituyente*, February 18, 1991, no. 6 p. 9; project no. 5, presented by Antonio

Constitution, “peace”, is an empty signifier at the center of the very project of constitutional reform (the new “social pact”).¹⁴

The archival transcription of the debates over Article 22 in the Assembly’s First Commission (the plenary sessions paid little attention to this article), show the prevalence of a rhetorical notion of peace, peace as the goal of social life, without much more content. Delegates of various ideological currents, Left as well as Liberal and Conservative, attempted to define peace as a standard, an aspiration, a value, a right and more generally as one of several guiding principles but without a concrete meaning.

At the same time, however, some delegates defended very specific and antagonistic concepts of peace. Some stood for a kind of peace I define as a “Liberal peace,” basically composed of more democracy and human rights. Others defended a concept of peace “to

Navarro and all the delegates of the M-19, insist on its purpose “to consolidate peace,” *Gaceta Asamblea Nacional Constituyente*, February 18, 1991, no. 6 p. 1; in his address to the general assembly, the demobilized guerilla José Matías Ortiz (from the PRT) said, “we laid down our arms out of belief in a future of liberty, dignity, and democracy for all [...] This is the Constituent Assembly for life, peace, and national reconstruction,” *Gaceta Asamblea Nacional Constituyente*, March 5, 1991, no. 16 p. 6. Darío Mejía of the Central Command of the EPL read a declaration in the Assembly, which said: “[the] new Constitution is the possibility of a Social Pact, reconciliation, and national reconstruction [...]. Here we are all in one place, the political country and the national country, under the name *Esperanza, Paz y Libertad* (hope, peace, and liberty)” (*Gaceta Asamblea Nacional Constituyente*, March 4, 1991, no. 14. P6, in which the plenary act of Friday, February 8 is also published). Alberto Zalamea’s speech (from the MSN) ends: “My esteemed delegates, may we not fall short of our mission. May we attain peace and reconciliation. May we give Colombia a just Constitution. That is what I am voting for,” Alberto Zalamea, “La sociedad colombiana es una sociedad bloqueada” in Contraloría General de la Nación, *El debate general en la Asamblea Nacional Constituyente*, Bogotá, 1991, p. 376. Project no. 17, presented by the Social Conservative Party (Miguel Pastrana and Augusto Ramírez Ocampo), describes peace in its first article, and in others, as the supreme value (*Gaceta Asamblea Nacional Constituyente*, March 4, 1991, no. 14. p. 7.) One of the Christian delegates, Arturo Mejía Borda, even proposed that the Assembly create a “Peace for Colombia” medal to be awarded posthumously to Luis Carlos Galán Sarmiento, Bernardo Jaramillo Ossa, Jaime Pardo Leal, and Carlos Pizarro Leongómez, (intervention dated February 12, 1991, in Bogotá and published in the *Gaceta Asamblea Nacional Constituyente*, March 12, 1991, no. 20 p.4.)

¹⁴ The reference to the empty signifier in politics is from Ernesto Laclau’s work. See his “Why do Empty Signifiers Matter in Politics” reproduced in *Emancipations*, Verso, 1996. This section of the paper is based on an analysis of the references to peace in the transcriptions and background material on the adoption of Article 22, as well as of the delegates’ inaugural speeches. The documents show a handful of delegates insisted, to the relative indifference of the rest of the Assembly that peace, much more than an aspiration, was “a right and inalienable duty of Colombians.” Their insistence resulted in the inclusion of peace in the Bill of Rights.

the Left,” which included social justice defined as re-distribution of wealth. Still others proposed a “Conservative peace,” meaning respect for law and order. These definitions generally excluded or ignored rather than refuted each other.

In the Assembly, beyond the rhetorical references, the Liberal concept won the day. It was supported by most of the Left, who put aside its redistributive aspirations out of a more urgent concern for the defense of civil rights. Defeated, perhaps, by the weight of the recent violence, the Left in 1991 adopted as its own historically Liberal causes, such as due process and the right to *habeas corpus*, and gave up on asking for a different allocation of social resources. In addition, some from the Left, in particular in the M-19, believed that stronger democratic institutions would enable an eventual transformation of the economic regime, allowing them to postpone these aspirations.¹⁵

The Left’s support for civil rights, and its alliance with the Liberals, did not come with a Liberal support for “social justice” issues, even though the Liberal Party had been a strong defender of the Welfare State in the 30’s and 40’s. Its silence on these issues was probably the result of the Party’s, especially the governing clique’s, support of the international “Washington consensus,” especially on the importance of privatization of state enterprises, free trade, a small State, and minimal market regulation, including of the labor market. Therefore, there was little debate in the Assembly of the social ideas of

¹⁵ This was the repeated position of the government, who associated peace not so much with negotiations with the guerrilla groups as with the legitimacy of the State as guarantor of individual rights and the retainer of the monopoly of the legitimate use of force. Cf. the speeches of César Gaviria on the Constitution in Manuel José Cepeda, *La Constituyente por dentro: mitos y realidades*, Bogotá, Presidencia de la República, 1993. This might have corresponded to the importance of political inclusion of the Left for several intellectuals in the government, which was seen as part of a restructuring of the National Front Pact the country inherited from the last civil war (*La Violencia*) into a government-opposition scheme. Naturally, it was also associated with the general perception that it was necessary to re-legitimize the State with the enthusiastic participation of majorities in the democratic regime.

Liberalism or of Left proposals for social justice.¹⁶ A handful of Liberal delegates persisted in bringing up social ideals, but, at least when in relation to peace, without concrete proposals for institutional reform and wealth redistribution.¹⁷

The concept of peace as redistribution of wealth was not the only loser in the Assembly; so was the Conservative notion of peace. The Conservatives were divided between a traditional camp (grouped within the MSN) and conservatives who identified themselves as “social” to call attention to their concern for the poor (the latter grouped under the *Partido Social Conservador*, Conservative Social Party, henceforth PSC). For the Conservatives of the MSN, peace meant the peace of a patriarchal society and State, invoking the values of order and discipline (to counter the chaos and anarchy of violence), the dominance of general interest over individual rights, and the so-called *Estado Fuerte*, the “strong State” that would guarantee public order, and obedience of the law.¹⁸ They also spoke of the need to enforce the law equally for everyone, without privileges, and of the importance of virtue in public administration and private life. These are Conservative ideas with a long history of tension in Colombia with the Liberal ideal

¹⁶ In fact, while peace was being discussed in the Assembly, the government and Liberal Party were pushing important reforms through Congress that ran counter to Left ideas of peace as social justice (especially the reforms that privatized social security and reduced labor rights).

¹⁷ Cf., for example, Helena Herrán de Montoya’s speech: “Esta será la Constitución de la concordia, de la convivencia de la paz,” in *Contraloría*, Op.Cit. pp. 67-72.; From the group of delegates led by Horacio Serpa, See: “Exposición general,” Eduardo Verano de la Rosa: “[once] violence has been identified as the primary and most difficult problem, the State must be strengthened not only through the force of arms but i by uprooting the causes of discontent in order to address its causes,” “Today we all want the privilege of designing and building the Colombia we wish” p.473-480. Cf. also the Liberal delegate elected on the list of the ADM-19, María Teresa Garcés, when she states that the need to create a State that would guarantee “life with dignity for all of its habitants,” *Gaceta Asamblea Nacional Constituyente*, March 4, 1991, no. 15. p. 6.

¹⁸ Álvaro Gómez, for example, in an irritated intervention in response to the calls of Misael Pastrana for the Assembly’s intervention in the peace process, calling violence the “internal public order” *Gaceta Asamblea Nacional Constituyente*, March 7, 1991, no. 17, p. 3.

of individual rights and with the Left notion of social justice as the ground for a lasting peace.¹⁹

The PSC held a more ambiguous position on peace than the traditional Conservatives. The “social” Conservatives in the Assembly related peace, at least in rhetorical terms, to issues historically defended by the Liberals, especially respect for civil rights.²⁰ Unlike the Liberals, however, the Conservatives of the PSC shared their faith and enthusiasm for a negotiated peace with the guerrillas as well as their deep dislike of a Liberal government that, as will be seen in the next section, was reluctant to negotiate with the guerrillas that were still in arms. Unlike the Left, however, the “social” Conservatives, had no social program bound up in their concept of peace, nor did they speak of the “objectives conditions” of violence (poverty and inequality like the Left did). Instead, they seemed to define peace as the silence of arms, as the very end and means of negotiation.

Despite these differences there was a rhetorical agreement in the Constitution over the importance of peace. The adoption ceremony, staged amid a chorus of hallelujahs, included the parade of delegates from all political factions signing the new social pact. They signed a Constitution that was literally a blank piece of paper, since the drafting

¹⁹ Raimundo Emiliani, in the *Gaceta Asamblea Nacional Constituyente*, March 5, 1991, no. 16, p.2; Cornelio Reyes, in the *Gaceta Asamblea Nacional Constituyente*, March 7, 1991, no. 17, p. 14, and Álvaro Gómez Hurtado in “Exposición general”, in the *Gaceta Asamblea Nacional Constituyente*, March 8, 1991, no. 18, p. 2.

²⁰ In the plenary session of Monday, February 11, Misael Pastrana said: “we are facing a country in ruins [...] in view of the indecision of the government, we have to do something [...] Our mandate is to act with peace, from peace, for peace. I propose the formation of an exploratory committee that will explore formulas for a solution with the government and the groups that have taken up arms,” *Gaceta Asamblea Nacional Constituyente*, March 7, 1991, no. 17, p. 2. Peace is addressed by PSC delegates in their inaugural speeches: Carlos Rodado Noriega, “Desde la Independencia hasta hoy hemos estado en guerra,” *Gaceta Asamblea Nacional Constituyente*, March 7, 1991, no. 17, p.11, and Misael Pastrana, “Hagamos una campaña libertadora para darle a Colombia la soberanía de la paz,” *Contraloría*, Op.Cit. pp. 41-52.

committee had not yet been able to produce a final version of the Charter. But they signed, and the country avoided “the edge of chaos”. And the blank paper and the rhetorical “right to peace” of Article 22 represent perhaps the essence, in its splendor and futility, of our Political Constitution.

Political Peace

“Our homeland is afflicted with all types of violence, but that carried out under political pretexts is the one that warrants the special attention of the Assembly.”

Horacio Serpa Uribe, *Gaceta Asamblea Nacional Constituyente*, March 4, no. 15.

At the end of the 1980s it was common sense in Colombia, at least in classrooms, press rooms, and taxis in the cities, that the guerrillas had taken up arms for political reasons. Whether people sympathized or not with these reasons, they thought achieving peace would require some kind of change in social conditions beyond military victory. Even many of those who were most averse to dialogue and favored a military solution believed that the guerrillas were “communist,” that is, that they had ideological motives and that their eradication would require, in addition to armed victory, transforming the social conditions that attracted recruits to their cause. It was a consensus that over the years became a rarity, especially among the radicalized, urban middle class who turned against political negotiation after the failure of the zone of détente with the FARC under Andrés Pastrana (1998 – 2002) and after eight years of the bellicose discourse of the popular Álvaro Uribe (2002 – 2010).

At the beginning of 1991 the general opinion regarding political peace was quite different from what it would be twenty years later. The M-19 had a leading role in the Constituent Assembly, in spite of Carlos Pizarro’s murder. The number of votes they received was

slightly greater than that of the governing Liberal Party and much greater than those of the other parties, including the divided Conservative Party. Moreover, the peace process with the *Ejército Popular de Liberación*, (People's Liberation Army, henceforth EPL) historically one of the largest guerrilla groups, was moving forward successfully. Soon there would be peace talks with the FARC and the ELN, grouped together under the *Coordinadora Guerrillera Simón Bolívar* (henceforth the *Coordinadora*), as well as with two small regional guerrilla groups, the *Partido Revolucionario de los Trabajadores* (PRT) and the *Movimiento Quintín Lame*.²¹ For a while it was possible to believe in the promise made in government publicity, "The Assembly is the Way," and believe that meant the way to political peace.

The consensus that armed conflict had a political nature the peace process eased the transformation of guerrilla groups into political parties. It also produced broad agreements regarding the necessary institutional reforms. These reforms revolved around the two main axes of what I have called Liberal peace: human rights and democracy.²² They were shared by the government, most of the Liberal Party, and by the recently formed M-19 Democratic Alliance, led by ex-combatants of that guerrilla group. The consensus was that the path to peace was through more democracy and more human

²¹ In all of these cases, however, negotiations were preceded by either significant military defeats, military weakness, loss of leaders, or in the case of the EPL, repeated massacres of civilian sympathizers. Likewise the fall of the Iron Curtain forced some leaders into a loss of faith in the revolution.

²² The relationship between both ideas is very close, of course. Opening up the political system was seen as essential to uprooting political violence in Colombia. The report also provides stunning proof of the broad scope of violence: according to its sources, 3760 people had lost their lives to political violence by 1991. Of these, 1362 were reported as combat victims (a suspicious figure, as civilians who were killed by the army were often reported as combatants), 560 were killed for obviously political motives, 389 were victims of "social cleansing," and 1269 were cases that presented evidence of being politically motivated assassinations, by the method employed and the political affiliation of the victims; cf. Méndez, Juan, "La apertura del sistema político," Americas Watch, *La violencia continúa: asesinatos políticos y reforma institucional en Colombia*, Bogotá: CEI - Universidad de los Andes, IEPRI - Universidad Nacional, Tercer Mundo Editores, 1993 pp. 5-6.

rights. It was shared by former guerrillas and by those who remained in arms; it was part of the government's proposal for the Assembly and animated its speeches; and it was the common thread that wove together most public interventions and statements by assembly delegates, regardless their party.²³

Academics also agreed on this recipe, based on the general understanding of the armed conflict as essentially a political conflict. Intellectuals at the time, generally left or liberal, shared the idea that violence was an extension of the political, particularly of the political aspirations of the Left, which had deliberately excluded from electoral politics since the late 1950's by the bipartisan peace pact that put an end to the mid-century civil war known as *La Violencia*. The definition of war as political went beyond universities; many of those who wrote about it also collaborated in Barco and Gaviria administrations in positions or projects related to peace and human rights.²⁴

In constitutional terms, the wager for more democracy and more human rights was translated into an extensive Bill of Rights, a generous procedure for their justiciability (*tutela*) as well as the constitutional limitation of martial law powers. The Constitution also created the possibility of direct democracy in some spaces as well as more elections, and more spaces for citizen participation in policy decisions. Several political sectors

²³ Perhaps the group most distant from this consensus were those delegates from the Movement for National Salvation who maintained the traditional right-wing position of the Conservative Party, according to which it was necessary to defend order and restore obedience to the law and give the executive ample martial law powers, essential for a strong State to guarantee peace. Consequently, they were reluctant to negotiate anything with guerrilla groups beyond unconditional surrender and placed greater importance on law and order over rights and democracy.

²⁴ For example, both Estanislao Zuleta (who published the influential book, *Colombia, democracia y derechos humanos* in 1991), and Jorge Orlando Melo (who helped elaborate the highly-esteemed encyclopedia, *Nueva Historia de Colombia*) were government Peace Consellers. For his part, Gonzalo Sánchez, a major scholar of *La Violencia*, led a landmark study on contemporary violence commissioned by President Barco and participated in the National Policy Against Violence adopted by the Gaviria administration.

converged in these reforms and in ideological terms the only people who opposed them were those traditional Conservatives who defended the limitation of individual rights in times of crisis. Their arguments were dismissed by the majority.

In addition to a proposal for peace that involved more democracy and more human rights, the Constituent Assembly provided an important setting for the peace process with several guerrilla groups. The M-19's political party gained enormous visibility through the Assembly; negotiations made in the shadow of the Assembly led to peace treaties with the EPL, the PRT and the Quintín Lame Armed Movement. Assembly delegates made several attempts to participate in the government negotiations with the *Coordinadora*; in turn, it made several attempts to contact the Assembly.

It is difficult to overestimate the importance, at least the symbolic importance, of the Constituent Assembly for negotiations with the guerrillas. Three of the largest, the FARC, the EPL, and the M-19, had at some point in the 1980s proposed holding a Constituent Assembly by other names.²⁵ In fact, in the 80's the M-19 felt that then President Belisario Betancur (1982 – 1986) had not fulfilled his peace talk promise of holding a “great national dialogue.” Its absence was one of the reasons for the failure of negotiations in 1985. In a sense, then, the call for a Constituent Assembly represented a vindication of their aspirations.

²⁵ This is an idea that had widespread cultural resonance, as it resuscitated memories of the bourgeois revolutions, especially the French Revolution, but above all the Marxist tradition which identified the Constituent Assembly as part of the dissolution of the bourgeois State. It also fits in a way with the colonial and republican tradition of town meetings as well as with guerrilla proposals for a great national dialogue. In the M-19 its greatest champion was Jaime Bateman, in the FARC Jacobo Arenas, and in the EPL Oscar William Calvo.

At the other end the Gaviria administration, through various official communications, insisted time and time again that the opportunity had come for guerrillas to return to civilian life, and that the disintegration of the Soviet Union was a sign of their imminent end. For the government, the Assembly and its devotion to rights and democracy didn't just set the stage for peace talks, it also delegitimized armed struggle. The government held that the new Constitution rendered moot many of the arguments that justified insurgency, such as the argument that "the defeated" were historically excluded from constitutional reform or that there were legal and institutional limitations on the Left political activities or that the permanent suspension of rights through martial law was equivalent to having no rights at all. For the government, the constitution-making process should then suffice to entice the guerrillas to join civilian life.

However, peace talks depended on factors other than institutional reform. It is likely that the very dynamics of the conflict determined the possibility of negotiations with the different guerrillas. For example, leaders mattered: most groups had some commanders who favored negotiations and others who favored armed struggle, so the decision to negotiate or not was also a matter of internal power struggles. The balance of power with the state was also an important consideration. For example, to a good measure the M-19 was defeated, or at least severely reduced, and its entry into civilian life was negotiated many months before elections for the Constituent Assembly. The EPL, for its part, although it was much larger than the M-19 and dominated a significant amount of rural territory, had suffered important reversals, such as the loss of important leaders and the paramilitary offensive against its peasant base. The other two other small guerrillas, the

Quintín Lame (an indigenous guerrilla group) and the PRT (initially a splinter group from the EPL), had little fire power.

The Constituent Assembly provided the stage for a lasting peace with these guerrillas. The M-19 had signed a peace agreement and reentered civilian life in 1990. The EPL however, as well as the PRT and the Quintín Lame found in the possibility of participating in the Assembly a real motivation. The former commanders of the M-19 discreetly lent their support to the peace talks with these groups and their inclusion in the Assembly.

The symbolic value of these peace treaties was enormous.²⁶ This was especially the case of the M-19, which was able to participate in Assembly elections and received a large number of votes. Its leader, Antonio Navarro, sat with a liberal (Horacio Serpa) and a Conservative (Alvaro Gómez) on the Assembly's directory board. The other three guerrillas that joined the Assembly signed the peace agreement towards the end of January, and then turned in their weapons and joined the Assembly after it had begun.²⁷

There were ceremonies, and the rituals of peace drenched Assembly sessions.

²⁶ The EPL had, like the M-19, lost many leaders, yet it remained larger and stronger than what was left of the M-19, and the other remaining groups were even smaller. In the negotiations, the number of guerrillas who returned to civilian life included 2000 soldiers and, loosely, 5000 peasants-collaborators from the EPL; 883 soldiers from the M-19; 200 from the PRT; and 156 from Quintín Lame. *Cromos*, "Uno más uno dos", August 26, 1991, no. 3839 pp. 26-29; the following information can be found there as well: PRT: 200 in the rural zone of Sucre, Bolívar, and Atlántico and the indigenous reserve of San Andrés de Sotavento; community projects were negotiation for 300 million pesos and it was agreed to provide defense for human rights on the Atlantic Coast. The EPL received around a million dollars for community development projects in 100 municipalities concentrated in Apartadó, Montería, Medellín, Cúcuta, and Pereira. Quintín Lame, with 157 indigenous Paez (Nasa), 80% in Caldon, asked for two changes of clothing each, water supply systems for two municipalities, new roads, and community development projects in the Cauca region (Popayán, Tototo, Cajibío, Corinto, Santander, Caloto, Jambaló, Puracé, Toribío, Paez, and Inzá) for loosely 600,000 dollars. The M-19 returned to civilian life with 883 guerrilla members. Most asked for start-up sums of money, access to free education and health services.

²⁷ On January 26, 1991, the PRT lay down their weapons; on January 29 the EPL signed a peace agreement.

The guerrillas grouped in the *Coordinadora* were in a different situation from those who negotiated peace treaties in 1990 and 1991. Even though the *Coordinadora*, and especially the FARC, said several times they wanted to join the Assembly, they were not in dire straits either economically or militarily. The ELN had established a considerable source of financing from oil companies, as had the FARC through protection rackets that funneled money both from legitimate businesses and from cocaine traffickers. Moreover, the ELN was stronger for its recent and successful participation in the peasant marches of the 1980s, and had close ties to many social organizations. Likewise, the FARC continued to enjoy a strong presence among peasants in its traditional zones of influence. Both groups also financed themselves by extorting and kidnapping wealthy individuals and families.²⁸ None had suffered the onslaught of paramilitary groups as had the EPL. The combination of these reasons, and internal power struggles we know little about, probably accounts for their more reticent attitude towards peace.

Even so, the *Coordinadora* expressed an interest in joining, albeit armed, the Constituent Assembly. This willingness provided the opportunity and pressure to initiate a round of peace talks in Caracas which lasted until the end of 1992.²⁹ Half-hearted negotiations were not new to the FARC: it had been involved in peace negotiations with the government since the Betancur administration in 1982; talks that continued during the

²⁸ There is significant literature on the sources of financing and military structure of the guerrilla groups, particularly the FARC. Eduardo Pizarro is one analyst who stands out with many contributions to the field. See, for example, his recent *Una democracia asediada: Balance y perspectivas del conflicto armado en Colombia*, Norma, Bogotá, 2004.

²⁹ The question is whether or not they were sincere. In this respect Gaviria says: “before the election of constituent delegates we tried to offer the FARC a peace process that would culminate in their participation in the Assembly. Their position was unacceptable. They wanted half of the constituents, without disarming, and without even making any commitment whatsoever in this respect. Some say that the FARC were shut out of participating in the Constituent Assembly. What shut them out was the possibility that this democratic assembly be converted into a scenario for undemocratic decision-making.” Gaviria, in De la Calle, Op. Cit., p. 61.

Barco and Gaviria presidencies. Negotiations stalled, stopped and started sporadically in the midst of armed conflict, and there were extended truces with bilateral cease-fire. In 1990 the Gaviria administration offered seats in the Constituent Assembly as an incentive to negotiate, a proposal that, although of little interest to the ELN, had special appeal to the FARC, as it did for the EPL and M-19. The FARC's interest, however, was largely due to Jacobo Arenas, one of the guerrilla's historic leaders who died in August 1990, depriving the rapprochement of its driving force. Furthermore, the FARC as well as the ELN rejected the government's requirement that they declare a unilateral cease-fire.

Elections for the Constituent Assembly were held December 9, 1990; the Army and the Air Force, who had been preparing to strike the FARC for some weeks, chose that day to bomb the FARC's Secretariat traditional hideout, known as "*Casaverde*". The attack signaled for the FARC and for many observers a rejection of any further rapprochement. It is still remembered as essential to the failed peace talks of 1991 and 1992, and issues such as the choice of day, President Gaviria's involvement in the decision to bomb, and the implications of the attack for the guerrillas are still debated.³⁰

The attack on *Casaverde* justified a dramatic escalation of *Coordinadora* attacks, including the destruction of many electrical transmission towers, water supply systems, and other buildings and roads at the margins of the urban center. The guerrillas also attacked police

³⁰ Ricardo Zuluaga Gil, for example, in his book of interviews with delegates, transmits the idea shared by many that the attack definitively marked the failure of attempts for peace with the FARC and "marred, if not completely erased, the possibility of future peace." Zuluaga Gil, Ricardo, *De la expectativa al desconcierto: el proceso constituyente de 1991 visto por sus protagonistas*, Cali, Pontificia Universidad Javeriana, 2008, p. 156. Hernando Llano Ángel expresses similar ideas in: "La Carta del 91: ¿Un criterio constitucional ficticio?" *Revista Criterio Jurídico*, volume 5, pp. 31-49, Pontificia Universidad Javeriana (2005).

and army posts, killing many in a show of force and intimidation.³¹ On the eve of the Constituent Assembly's inaugural session, the *Coordinadora* blew up two transmission towers, one bus, and a sector of the Atlantic Coast pipeline.³² The escalation of attacks came with a general increase in combat activity and its lethality; while the Constitution was presented as the national peace pact the war raced along.³³

At the time, there were different positions regarding the possibility of peace with the *Coordinadora* and its importance for the new Constitution. During the initial debates on procedural rules some delegates asked to negotiate directly with the *Coordinadora*, based on their mandate to make a national peace pact. The Assembly rejected the proposal, but one of its supporters, delegate Alvaro Leyva joined six FARC members who, on April 30, demanded refuge in the Venezuelan Embassy to pressure the government into initiating peace talks.³⁴ Although the government refused to negotiate with them, they were flown to Venezuela, and the government authorized its Ambassador in that country to make the necessary contacts to set up peace talks in Caracas.³⁵

Despite these overtures and Alvaro Leyva's important mediation, many delegates were not supportive of peace talks with the *Coordinadora*. Perhaps the most visible was Horacio Serpa, the leader of the Liberal delegates and one of three members of the

³¹ *El Tiempo*, "Las Farc en las goteras de Bogotá", Bogotá, February 6, 1991.

³² *Cromos*, "En 150 días habrá Camino", February 11, 1991, no. 3811, pp.12-15.

³³ According to the Jesuit think tank Cinep, combat fatalities went from between 500 and 600 at the end of the 1980s and 1991 to 1,362 in 1991. The army also modernized and increased its ground presence, creating mobile counter-insurgency brigades; this was partly financed through United States' aid for the war on drugs, but also for a new war tax. *El Tiempo*, "Sobre Farc y Eln hablarán hoy Mingobierno y Montaña", Bogotá, February 11, 1991; *Cromos*, "Al vaivén de la paz", February 18, 1991, no. 3812, p. 19. The new war taxes were created by Law 416 of 1991.

³⁴ Delegate Augusto Ramírez Ocampo had proposed in the Constituent Assembly that an Embassy of a foreign country technically constituted the foreign territory that the government referred to as a prerequisite for negotiation: *ANC, Sección República*, Fondo Constituyente, Legajo 863-3, folio 75.

³⁵ *El Tiempo*, "Diálogo: El Gobierno no acepta hechos de fuerza", Bogotá, May 1, 1991.

Assembly's directive board. Serpa had been Secretary of the Interior under Barco, and Senator for the embattled region of Santander. He knew the FARC well and disliked them, and made several strong public declarations against them.³⁶ The M-19 delegates, with an important part in the Assembly, and important in the peace talks with other guerrilla groups, also had a difficult relationship of mutual distrust with the FARC.³⁷

By July when the Assembly ended, peace talks in Caracas advanced slowly. The new Constitution gave the government temporary powers to sign a peace agreement, powers the government never used. By then it was clear the government and the *Coordinadora* did not agree on the terms of a cease-fire, stalling the process: the government was set on a cease-fire, the guerrillas wanted a demilitarized zone as well as social and economic reforms as prior conditions to any peace. While its real intention remains obscure, it is likely that the government did not believe in the willingness of the *Coordinadora* to make peace and took a stern view of the guerrilla's demand that substantive social changes precede, and not follow, laying down their arms. It is even harder to identify the guerrilla's real intentions and whether their proposals for social change were merely a manoeuvre to prolong negotiations and build up strength in the interim, or not. What is certain is that neither the FARC nor the ELN had any pressing reasons to reach a peace agreement in 1991, and that none of their leaders were visibly interested in political

³⁶ AGN, Sección República, Fondo Constituyente, Legajo 769-18 folio 10-12. In response, *See, El Tiempo*, April 21, 1991, "La Guerrilla acusa a Serpa de pertenecer a grupos paramilitares."

³⁷ Antonio Navarro, the M-19 chief, was present at the beginning of the dialogue in Caracas, but was not, according to the press, well received by the FARC: *Revista Cromos*, "Desacuerdos en el acuerdo," June 17, No. 3824, pp. 26-27. This tension is important because in many ways the M-19 had the government's ear on questions concerning the *Coordinadora*, and the M-19 was wary of the FARC's intentions. At the beginning of the year they had announced that they suspected the FARC were behind the assassination of some of its former members: America's Watch, *La Violencia continúa: asesinatos políticos y reforma institucional en Colombia*, Bogotá, Tercer Mundo Editores-Iepri, Universidad Nacional-Centro de Estudios Internacionales, Universidad de los Andes, 1993, pp. 55-56.

negotiation.³⁸ It did not seem that the government had any forceful reasons to negotiate either, as it apparently trusted the legitimating power of the Constituent Assembly process to overcome the crisis. The years to come would show just how accurate their wager was, and how wrong.

The Impossible Peace

“May God and Country forgive us...”
 “I cast my vote publicly and have nothing to be ashamed of...”
 Unidentified Assembly delegates, Plenary Session, June 19, 1991

In many ways, the 1991 Constituent Assembly played out in Pablo Escobar’s shadow. He was impossible to capture, heavily armed, with apparently unlimited access to cash and surrounded by hundreds of loyal men. Over and over again he broke through the blockades set up around him and was able to make good on his threats. His strategy went from a war of revenge on judges, politicians, and journalists who dared speak against him, to a phase of indiscriminate terror involving acts like setting off a bomb in an airplane, to a stage of terrorism aimed at the State, to a strategy meant to pressure the ruling class by kidnapping and assassinating selected individuals.³⁹

³⁸ Such was the case of Manuel Marulanda. Jacobo Arenas had been the political chief of the FARC and was, within the FARC Secretariat, the person most interested in a Constituent Assembly, of little interest to the leaders of the FARC after him.

³⁹ Escobar had already tried this strategy early 1990 by kidnapping of Patricia Echavarría, close to the family of President Barco, and of Diego Luis Montoya, son of the President’s Private Secretary Germán Montoya. At the time these kidnappings put enough pressure on the Barco Administration to ask for the mediation of several personalities, including former president Alfonso López Michelsen. For a while Barco relented in his war against the *Extraditables* and they “admitted the State’s victory” and offered not only peace, but also to stop drug trafficking and give the Colombian government large sums of money: *Cromos*, “Diálogo Epistolar,” January 22, 1990, No. 3756, pp.6-10. The kidnapping strategy was apparently successful; important leaders called for negotiations with the drug traffickers, including two Conservatives who would become Assembly delegates: Juan Gómez Martínez, former Medellín mayor, and Rodrigo Lloreda, presidential candidate in 1990. But both these appeals and direct approaches failed and the war gradually resumed by the end of 1990. Ortiz, Carlos M., “El sicariato en Medellín: entre la democracia participativa y el crimen organizado”, in: *Análisis Político*, 1991, vol. 14, pp. 66-82.; Orozco, Iván, “La guerra del presidente”, in: *Análisis Político*, 1989 vol. 8, pp. 87-93; Orozco, Iván, “El diálogo con el narcotráfico: historia de la transformación fallida de un delincuente común en un delincuente político”, in: *Análisis Político*, 1990, vol. 11, pp. 34-74.

In early 1991, as the Assembly was underway, Escobar had kidnapped Francisco Santos, from the publishing family that owned the newspaper *El Tiempo*, and Maruja Pachón, Luis Carlos Galán's sister in law. He had also kidnapped Diana Turbay, daughter to ex-President Julio César Turbay Ayala (1978 – 1982) but she was killed on January 25 during what appears to have been a rescue attempt. He was also responsible for the kidnapping and execution of Marina Montoya, an elderly woman close to former President Barco's family.⁴⁰ Her body was found on February 1, the first day of the Assembly's sessions, but she had been shot a week earlier. These put enormous pressure on the government, as well as on the newspaper *El Tiempo*, a vocal advocate of extradition with close ties to the American Embassy and on the Galán family, a symbol of the righteousness of the drug war.

By 1991 Escobar and his companions in the Medellín cartel had given up on their dream of entering local elites, shattered by their public notoriety and by the increasing stigma of their terrorist attacks. They had also given up on their attempt to negotiate some sort of truce with the government in exchange for weapons and money (at some point in the 80's they famously offered to pay Colombia's foreign debt). In 1991 their demands concentrated on the repeal of the extradition treaty with the United States, and it could be summed up in the one fateful phrase that headed their public statements: "better a grave in Colombia than a prison cell in the United States."

Hence, the violence stemming from the drug trade was visibly focused on aggressive, armed resistance to extradition. It is true that some communications from the so-called "*Extraditables*" (primarily Escobar and his associates in the Medellín cartel) also asked

⁴⁰ *El Tiempo*, "Extraditables ordenaron ejecutar a Marina Montoya", Bogotá, February 5, 1991.

for humanitarian protection from police abuse, treatment as political prisoners, and even for the unlikely pardon for crimes they sometimes attempted to describe as political. These demands, however, were secondary to their demand that they not be extradited, an issue that provided the name for their brand of terrorism and justified their violence.

Pablo Escobar put the government in an unwinnable situation. With the *Extraditables*, he managed to make the extradition of nationals the main issue terrorism. The State, meanwhile, with its weak police and military apparatus, seemed to agree that extradition, and collaboration with the U.S., were the central components of the war on drugs.⁴¹ The U.S. government, under George H.W. Bush 1989-1993, insisted Colombia capture and extradite the Medellin cartel. Everything pivoted on the issue of extradition, and Escobar's violence not only pressured the government, it also delegitimized any other solution different from his imprisonment or death.⁴² But the Colombian government

⁴¹ Moreover, Barco accepted funds from the United States destined for army operations against drug traffickers and used them for counter-insurgency. Lewis Tambs, the U.S. Ambassador in Colombia, had already said that the FARC were a *narco-guerrilla*, that is they were financed by drug traffic. Barco also changed the objective of the recently created elite police corps: created for pursuing emerging paramilitary groups, he used them against the Medellin cartel and then, once they killed Gonzalo Rodríguez Gacha, a.k.a. el Mexicano in 1989, to the exclusive pursuit of Pablo Escobar.

⁴² In the 1980s there were several attempts for negotiation between drug traffickers and the government. The theme was interwoven in Colombia with negotiations with paramilitary groups. Going as far back as 1989 significant paramilitary groups had sought negotiations with the government on the grounds that their counterinsurgent activity had political roots. *MORENA (el MOVimiento de REstauracion NAcional)* was formed in Magdalena Medio to seek negotiations similar to those being held with guerrillas. Furthermore, the paramilitary groups associated with the Castaño brothers participated in the war against Pablo Escobar in collaboration with the DAS, and called themselves the "Pepes" ("P"ursued by "P"ablo). They were joined by the leader of the emerging paramilitary armies in the central valleys of the Magdalena River, Henry de Jesús Pérez and his counter-insurgency association, Acdegán. Pérez would later be assassinated in 1991, presumably on Pablo Escobar's orders issued from jail. Neither these overtures nor the subsequent negotiations with the Cali cartels, are well documented. They are, however, the direct antecedent of negotiations leading up to the Justice and Peace Law during Alvaro Uribe's administration (2002-2010). This process led to the extradition to the U.S., on charges of drug trafficking, of a significant group of paramilitary leaders who had turned themselves in as part of the peace process. For early approaches with the drug cartels, Cf. Orozco, Iván, "El diálogo con el narcotráfico", Op. cit.; Op. cit.; also, America's Watch, *La Violencia continúa: asesinatos políticos y reforma institucional en Colombia*, Bogotá, Tercer Mundo Editores, 1993, p. 8.

couldn't capture Escobar, or kill him, and negotiation, the only alternative, was out of the question.

Nevertheless since late 1990 the Gaviria administration was taking its chances with discrete negotiations, offering non-extradition along with other privileges (such as the choice of confinement location) in exchange for surrender. Some traffickers, notably the Ochoa brothers of the Medellin cartel, accepted, but Pablo Escobar mistrusted the government as much as he trusted his own power of destruction. His shadow fell on the Assembly's sessions, especially with the upcoming debate on an article prohibiting extradition.⁴³

The climate of fear and tension generated by Escobar explains why one of the Assembly's first acts was to declare that "no subject was excluded from debate" (implying that non-extradition would be considered) but that "[the Assembly] would not be subjected to pressure" (if there were no more terrorist attacks...). But of course it was subjected to pressure, and did adopt the prohibition of extradition, apparently in part, at least in some cases, after threats and offers of money.

Still it must not be forgotten that, independently of the pressure, many – perhaps most – of the delegates in favor of the prohibition of extradition were convinced they had made the right decision. Many delegates, particularly from the Left, resented U.S. foreign policy in Latin America, and found extradition to that country repulsive.⁴⁴ After all, the Cold War was still recent, and the memory of U.S. control over Latin America was fresh;

⁴³ The *Extraditables* even sent proposals to the Assembly through the press to ask for the prohibition of extradition. See: *Revista Cromos*, "En 150 días habrá camino," February 11, 1991, No. 3811, p12-15.

⁴⁴ Navarro Woff, for example, Health Minister under Gaviria, expressed shortly after returning to civilian life his reserves against extraditing nationals. cf. De la Calle, Humberto, *Contra todas las apuestas: historia íntima de la constituyente de 1991*, Bogotá, Planeta, 2004, p. 152.

the war against drugs, its militarization, and the demands for extradition seemed a mere extension of the Cold War. In addition to those who opposed extradition out of nationalism, there were those who did so based on a pragmatic calculation. The State was unable to win the drug war. Surveys showed the majority of Colombians rejected extradition. The government itself had stopped extraditing prisoners, and was negotiating the traffickers' surrender. So, if non-extradition reduced violence, which indeed it did, then it was welcome.

In truth, from the outset of the Assembly, few people doubted it would prohibit extradition. Many of the delegates had campaigned on the promise to do so; the government was resigned to the prohibition; opinion polls revealed popular support for it.⁴⁵ The U.S. Embassy had already voiced its protest.⁴⁶ President Gaviria traveled to Washington to communicate the news at the end of February and the Bush Administration also seemed resigned, and supported Gaviria's policy of negotiated surrender.⁴⁷

In fact, the government considered there was an issue more threatening than the prohibition of non-extradition: the general pardon for crimes. The idea's exact source remains unclear, although the *Extraditables* themselves had called for a general amnesty. A proposition circulated in the Assembly that the new Constitution, a new social pact, should include a general pardon for all crimes. In his memoirs, then Government Minister Humberto De la Calle recounts that while Gaviria considered the prohibition of

⁴⁵ De la Calle, Humberto, op. cit., p. 193.

⁴⁶ Baena, Javier, "EE. UU.: se debe mantener la extradición," in *El Tiempo*, Bogotá, April 16, 1991.

⁴⁷ Krauss, Clifford, "Colombian leader is hailed by Bush," in *The New York Times*, New York, February 27, 1991; *The New York Times*, "Colombian seeks anti-drug pacts on U.S. trip", New York, February 24, 1991.

extradition inconvenient, on the possibility of a general amnesty his exact words were: “*primero nos morimos todos* (we will all die first, or loosely: over our dead bodies.)”⁴⁸ Serpa also opposed the possibility of general pardons in several speeches.⁴⁹ The idea, however, carried some weight, and there are many letters and telegrams in the archive from prisoners and even some from family members of people in custody asking for a general pardon.⁵⁰

The impending prohibition of extradition did not stop violence.⁵¹ On April 30, 1991, hired killers shot Enrique Low Murtra, a former Minister of Justice and staunch defender of extradition; his assassination was perceived as yet another way of pressuring the Assembly, and many delegates made press declarations to that effect.⁵²

The analysis of delegate’s interventions on extradition doesn’t show any relationship between political affiliation and their position in favor or against extradition, except on two counts. First, as mentioned, the Left tended to be against it. Second, some Liberal delegates held a generally left-liberal position in criminal law that led them to oppose extradition on the grounds that it violated the accused right’s to a fair trial: it was widely believed that the U.S. system lacked basic human rights guarantees for the accused, and that it was vicious with foreign nationals. However these issues were not the focus of the

⁴⁸ De la Calle, Humberto, op. cit., p. 194.

⁴⁹ Contraloría General de la República, *Debate General en la Asamblea Constituyente*, Bogotá, Edición Contraloría, 1991, p. 512.

⁵⁰ *Cromos*, “Narcos y guerrilleros tienen al país con la soga al cuello; Escobar no se entrega”, February 25, 1991, no. 3812, pp.12-13. AGN, Sección República, Fondo Constituyente, Legajo 752 folios 112-120; Legajo 557 folios 1-18; Legajo 548 folios 3-8; Legajo 859 folio 451. A message was even received from U.S. prisons signed by a foundation of “repatriable Colombians”: Legajo 859-30 folios 80-82.

⁵¹ *Cromos* “Colombia a un paso de la paz” 27 de marzo de 1991 p8-15 N.3826

⁵² Several delegates expressed concern in this respect. Cf. *El Tiempo*, “Muchas dudas sobre la falta de protección a Low Murtra”, Bogotá, 2 de mayo de 1991.

debate, but rather whether extradition was merely a technical criminal law problem, or instead a political problem dealing with the cartel's destructive power.

Surprisingly, no one suggested the State negotiate directly with drug traffickers. This absence is surprising considering it had been an important debate in the 1990 presidential campaign a year earlier.⁵³ And many powerful people in Colombia, including the national bank association, had seriously considered legalizing the drug trade before the signature of the 1988 Vienna Convention against drug trafficking.

The first round of plenary voting took place on June 19, and the Assembly voted for the prohibition of extradition. A few delegates protested the adoption of the secret ballot (a change in the Assembly's regular voting rules) for this article. A few were so bold as to vote publicly in the first plenary round: five against the prohibition, and two in favor. The rest of the ballots were secret, and at the end of the day, of the 69 delegates present, 51 voted for non-extradition, 13 against, and 5 abstained.⁵⁴ An unidentified delegate said, as recorded in the session's transcription,: "May God and Country forgive us." Another unidentified delegate answered: "My vote was public and I have nothing to be ashamed of."⁵⁵

That very day Pablo Escobar surrendered. He would be confined together with his closest cohorts in a location of his choice, and adapted to his preferences; it was rumored he even chose the guards.⁵⁶ The U.S. Embassy protested anew: Thomas McNamara said the

⁵³ Cf. Orozco, "El diálogo con el narcotráfico", óp. cit.

⁵⁴ Asamblea Nacional Constituyente, *Artículo 35 de la Constitución de 1991: sesiones de las comisiones*, June 19, 1991.

⁵⁵ Id.

⁵⁶ America's Watch, *La Violencia Continúa: asesinatos políticos y reforma institucional en Colombia* (Bogotá: Tercer Mundo Editores, 1993) p. 82.

prohibition of extradition was “an error, considering the corruption of the justice system.”⁵⁷ On the day he turned himself in, Escobar sent out a press release saying he had surrendered “for peace in Colombia.” In it he also thanked Assembly delegates “for their great contribution to the noble cause of national peace.” And just as any delegate might have said, Escobar added that he wanted to “contribute to the strengthening of respect for human rights, to the strengthening of civil society, and to the strengthening of democracy.”⁵⁸

On June 28 there was a second round of voting. The first round had been by secret ballot; the second, with Escobar in custody, was made by a show of hands. Instead of 69 delegates there were 60; 45 voted for the prohibition (6 less than in the first round), 5 voted against (there were 8 more votes against in the first round), and 7 abstained.⁵⁹ On July 4, the day of the new Constitution’s adoption ceremony, the *Extraditables* announced the end of their organization.⁶⁰ Peace with the traffickers was clearly tied to the Constituent Assembly, even if the link was not explicit. Once the Assembly included the prohibition of extradition of Colombian nationals there was a significant reduction of violence.⁶¹

⁵⁷ Cited in: *Americas watch*: Douglas Farcah, Top Colombian trafficker surrenders, *The Washington Post*, June 20, 1991.

⁵⁸ *El Tiempo*, “Lo hago por la paz de Colombia,” Bogotá, June 21, 1991.

⁵⁹ Asamblea Nacional Constituyente, *Artículo 35 de la Constitución de 1991: sesiones de las comisiones*, June 29, 1991.

⁶⁰ *El Tiempo*, “Extraditables: fin del terror,” Bogotá, July 4, 1991.

⁶¹ America’s Watch, *La Violencia Continúa: asesinatos políticos y reforma institucional en Colombia* (Bogotá: Tercer Mundo Editores, 1993) pp. 8. Non-extradition did not last long, in good part because of the intense opposition mounted by the United States Embassy. On top of that, the DEA helped make a much publicized videotape of a ADM-19 delegate being bribed by supposed Escobar emissaries. The U.S. also placed enormous pressure both on Congress and on the administration of Ernesto Samper (1994-1998) to reinstate extradition through a constitutional amendment, which eventually happened. Yet by the time this occurred, Pablo Escobar had already been dead for three years.

Despite the consensus against extradition, which may seem radical now that Escobar's bombs are so distant, the fact remains the Assembly took a cautious position with regards the violence generated by the drug trade. In the first place, it refused to negotiate directly with the traffickers: in spite of the calls for peace made by some delegates, the drug lords were always considered criminals, not political objectors. There is no evidence of any doubt over the nature of the crimes and the need for a criminal law solution. In other words, the violence that was being suffered most painfully, the terrorist violence of Pablo Escobar, was not conceived of, at least not in any majoritarian way, as negotiable. On the contrary, it was considered a problem for the justice system, a problem of organized crime, and a problem involving impunity and forms of criminality and punishment. Extradition was in this sense was only a "legal" problem, as alleged by those who supported its prohibition. Outside of the (temporary) prohibition of extradition both the Assembly and the establishment responded to the violence generated by the drug trade by creating a criminal justice system that imitated the U.S. system both in terms of the criminal process and in terms of the repressive conception of the penitentiary system.

Only one delegate proposed a different type of response. Jaime Castro from the Liberal Party suggested opening the door for the legalization of drugs.⁶² Although he recognized that the government policy of negotiating surrender in exchange for shortened prison sentences and non-extradition worked, it did only so in terms of encouraging individual traffickers to surrender, not as a permanent solution to the underlying problem. Those who turned themselves in, he said: "would be replaced by others in the most profitable business of all time." The model he proposed involved regulated tolerance of

⁶² Jaime Castro, "Vivimos los momentos más dolorosos y difíciles de nuestra historia," *Gaceta Nacional Constituyente*, no. 16, March 5, 1991, p. 8.

consumption and traffic, through the inclusion of a constitutional article (based on the 1921 article on alcohol) which would say: “the production, distribution, and consumption of toxic and hallucinogenic substances may be subjected to restrictions by law.” The goal of this article was lasting peace.⁶³ His proposal was largely ignored; the consensus at the time was that any decision to legalize drug use would have to be taken by the United States.⁶⁴ Hence, any mention of the drug war in the Assembly was limited to interventions on extradition.⁶⁵ The drug war itself was never debated because it was, and remains, impossible to end.

The Peace at Hand

The 1991 Constitution represent peace, to be sure, but a peace won not through negotiation or even through war, but through the legitimation of the State and the “modernization” (or liberalization) of its institutions. Our “rhetorical peace” ended up supporting an institutional transformation where more rights and more democracy did, in fact, albeit imperfectly, allow for a persisting, if fragile, stability and growth. An

⁶³ Jaime Castro, Op.Cit.

⁶⁴ In 1990 the United States was furiously pursuing the war on drugs and had intensely and consistently opposed all attempts by Colombia to negotiate with drug traffickers. These efforts go back as far as 1983 and were repeated in 1984 and 1988, but failed for various reasons, including the inflexible opposition of the United States Embassy and the impact in of the murders of Secretary of Justice Rodrigo Lara Bonilla in April, 1984 and later of Luis Carlos Galán in August, 1989. In 1991 it was evident there would be no more attempts at negotiations for several reasons- an important one being the international treaty that committed Colombia to the war on drugs.

⁶⁵ There had been some debate of legalization near the end of the 1970s and the beginning of the 1980s, however, especially on the question of marijuana and of legalizing profits made on its traffic. Although the first question was not resolved, the second was, effectively, through the tax reform of 1990 (Law 49) which conceded an amnesty for the repatriation of capital, and even earlier by the so-called “sinister window” by which the Bank of the Republic exchanged pesos for dollars without questioning their origin. See: Claudia López, *Y refundaron la patria...De cómo mafiosos y políticos reconfiguraron el Estado colombiano* (Bogotá: Editorial Debate, 2010); Gustavo Duncan, *Los Señores de la guerra: de paramilitares, mafiosos y autodefensas en Colombia* (Bogotá: Planeta, 2007); Álvaro Camacho, *A la sombra de la guerra* (Bogotá: Universidad de los Andes, Facultad de Ciencias Sociales, CESO, Ediciones Uniandes, 2009); Luis Jorge Garay, *La captura y reconfiguración cooptada del estado en Colombia* (Bogotá: Avina: Corporación transparencia por Colombia: Método, 2008).

increasingly urban country, inching toward middle class, Colombia avoided chaos while also managing to avoid success.

However, despite the aspirations, rhetoric, and the peace processes in 1991, the war remained. The government never signed a peace treaty with the *Coordinadora*, which went back to the initial groupings: the FARC and the ELN. And although there have since been other attempts to negotiate peace, most notably by the Andrés Pastrana (1998-2002) administration, these also failed, as did Álvaro Uribe Vélez (2002-2010) more aggressive policies, despite his success in containing the guerillas in the periphery. And the guerrillas, in spite of the fall of the Soviet Union, have managed to maintain a rather steady flow of resources and recruits financed largely, it seems, by drug trafficking.

Over the years the prohibition of extradition has come to be seen as a disgrace forced upon the country by Pablo Escobar, whose subsequent surrender and the reduction in violence were forgotten after he was killed on a rooftop in Medellín in 1993. The large Colombian cartels were soon forgotten, replaced by Mexico's. The country also forgot the prohibition of extradition played a part in their demise, not only in Escobar's surrender, but also in the capture or surrender of the Cali cartel bosses during the Ernesto Samper administration (1994-1998). By the time extradition resumed in 1997, under enormous pressure from the United States, Colombia had dismantled, with a lot of help from the United States, its great drug cartels. Since then the country's participation in a business mostly dominated by the Mexican cartels is limited to relatively small organizations which the State usually dismantles before they become too large and powerful.

The years to come saw the rise of paramilitary groups; some were initially funded and supported by local elites and agro-industrial companies, but most were eventually led by drug lords. In 2005 the Colombian State, under Alvaro Uribe, led a singular peace process with these groups, following a model that combined the 1991 strategies for peace. It did not give up on criminal prosecutions which included massive plea-bargaining for generous sentences (the model Gaviria's government applied to drug traffickers) but it also used political negotiation and peace treaties (the model applied to the guerrilla groups). The passage of the 2005 Law for Justice and Peace affirmed that the paramilitary groups were by nature political and counter-insurgent, and involved a truth commission of sorts. But it was an open secret many of the commanders were actually drug lords, either just-drug-lords, or both drug and war lords... The State did not offer them amnesty, as it had to the guerrillas, but the opportunity to substantially reduce their prison sentences and to have greater choices with regards the circumstances of their confinement by confessing to certain crimes. Fourteen major commanders, nonetheless, were extradited to the United States on drug trafficking charges when they started talking about their links to local elites and national politicians. Unlike Pablo Escobar, they had not managed to obtain any non-extradition pact, and the U.S. now holds them in silence.

So what remains of the 1991 Constitution as peace pact? It certainly remains one for the guerrillas who returned to civilian life. It also legitimized the State, delegitimized armed struggle for many, and facilitated a considerable reduction of the violence caused by the drug trade. Yet the country continues to be divided. On the one hand we have an urban country where the rule of law is applied to various degrees of success, and where the democracy and human rights touted by the Assembly as the "path to peace" seem

reasonable. On the other hand, we have a vast periphery, both in the zones of colonization and agricultural frontiers and in the precarious developments that surround urban areas. In these areas the local authorities are not State representatives but private armed groups, and the local elites that benefit from them. People carry on their daily lives in the shadow of this dominion, and rights are subject to the whim of the local commanders. Elections simply place their loyal representatives in local government.⁶⁶ And violence, not law, is the way to solve not only conflicts over illicit business deals but also other social conflicts.

Colombia's success, its peace at hand, has been to minimize the power and national influence of these parallel worlds that flourish in the shadow of the drug trade. In part, it has done so through the elimination of large cartels when they are strong enough to disturb the constitutional order, particularly in Bogotá and to a lesser degree in the other big cities. But the 1991 Constitution has also played a major role. Its reforms did bring more democracy and human rights to important sectors of the country, especially urban ones, and with them more institutional stability. This might not be the peace promised in so many speeches, but neither is it the disintegration augured by the escalation of terrorist violence at the end of the 1980s. What Colombia has accomplished, with some success, is limiting violence to a manageable level, one at which official institutions, in general, keep on working.

The Constituent Assembly might not have brought the great peace to which it aspired, but it did lead to this type of peace as the restriction of violence. That may be the only peace possible for a poor, drug-producing country in the setting of an international war on

⁶⁶ See López et al. (2010) for a detailed report.

drugs. That is the war we believe we cannot end, but also the one we cannot win; peace thus means not losing it completely. It means continuing to exist as a nation, as a project of society under a Constitution. This persistent search for peace, and the obstinate refusal to admit its impossibility, represents our peace at hand.