REFLECTIONS ABOUT *THE PEACE PROCESES IN COLOMBIA*
The legal framework and other considerations*

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Resumen

Existe un cambio de lenguaje entre la Constitución de 1886 y la de 1991; la primera, con amplias referencias a la guerra y la segunda, con la invocación reiterada de la paz como valor, principio y derecho de 3ª generación, garantizable mediante las acciones populares. En la última década en Colombia, los procesos de paz con grupos subversivos han sido manejados por el ejecutivo mediante facultades obtenidas por vía de declaratoria de los estados de excepción o mediante facultades de carácter transitorio recibidas del Congreso, predominando en ellas el estilo presidencial, el cual ha oscilado entre la vocación militarista y la democrática.
Palabra clave: Proceso de paz, subversión.

Abstract

There is a change in language between 1886 and 1991 Constitutions. The former widely refers to war and the alter reiteratively invokes peace as a value, principle and third generation right, which is guaranteed through popular actions. In the last decade, in Colombia, peace processes with subversive groups have been managed by the executive through faculties obtained via declaratory of the exception states or through faculties transitory in character given by the Congress. In all of them, the presidential style has predominated. This style has been oscillating between the military and the democratic vocation.
Key words: Peace process, subversion.

Fecha de recepción: June 2002

* Conferencia dictada en la Universidad Johannes Gutemberg de Mainz (Alemania).

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I. IN THE WAY OF AN INTRODUCTION

I would like to take this opportunity to thank Johannes Gutenberg – Universitat Mainz and especially the distinguished Dean of the Economic Sciences and Law Faculty, Dr. Michael Bock, for the kind invitation that he gave me this March during his visit to our university campus located in the city of Barrranquilla, in the north of Colombia. I would also like to take this opportunity with you and fundamentally to jointly look at an academic agenda through which we can strengthen our educational projects.

Colombia is located on the northeast coast of South America; it has territories in both hemispheres and coasts on the Atlantic and Pacific Oceans. It has a total area of 1,141,748 Kilometers square and is the fourth biggest country in South America. By 2001, it had a population of 43 millions inhabitants, the third South American country with respect to population.

In the last few years, and also as a product of the violence rooted in the armed conflict, the population has shown a gradual tendency towards displacement from the rural to the urban sector. As a result around 70% of the population lives in urban areas, although 25 years ago 54% of the total population lived in cities.

The current situation has produced social problems, since the cities were not prepared to receive such displacement on the massive scale in which it took place.

Within this general framework, I will explain to you a topic of supreme importance for the development of our country, as it is the analysis of the legal framework within which the PEACE PROCESS OF COLOMBIA has been developing during the last 20 years. The future of a country which fervently desires to live in peace again will depend on the results of this process.

The first attempts to dialogue were made in the sixties between the National Government of that time[1] and the so called «bandits» of the era, who were no more than a group of armed peasants belonging to the Liberal Party, - one of the two traditional parties which have governed the country throughout almost all of its 200 years of republican life- who reacted in this

[1] The first moves were made by President Guillermo León Valencia (1962-66), but they were always treated as bandits and were never given political status for their movement.

way to to the assassination of the popular leader of this party, Jorge Eliécer Gaitán, on the 9th of April, 1948, an event which generated one of the most violent political periods/times which the Colombian society has ever experienced in all its history.

This conflict gave birth to the principal subversive group that presently exists in Colombia: The Revolutionary Armed Forces of Colombia (FARC).

However we have decided to take the year 1982 as the point of departure for our analysis, as this was the year in which Belisario Betancur became president. During his presidency the political and social character of the conflict was recognized and it was decided to use dialogue as the principal instrument in the search for the reconciliation of the country.

It was also during this time when the sinister «black hand» of drug trafficking was born, which through its great economic power began to show its great disturbing power on whatever national activity that could affect its obscure interests. The movement currently known as «Para militarism» also found its genesis in those times. It is for this reason that we have taken this date as the start for our analysis.

II. THE LEGAL ANALYSIS

The reflections that I am going to share with you have no other meaning other than to analyze the normative framework, from a substantiating point of view, of competence and procedure which have regulated the different peace processes in Colombia. Hence, two periods will be taken as points of reference: between 1982 and 1990 and in particular the peace process undertaken by the government of Belisario Betancur (1982-1986), and since the Constitution of 1991.

1. THE *PEACE PROCESSES* UNDER THE APPLICABILITY OF THE 1886 CONSTITUTION: *THE CASE OF PRESIDENT BELISARIO BETANCUR*

The introduction to the Constitution of 1886 invoked the concept of peace as an essential value[2] and although in the dogmatic part, in article III of the Constitution, named «Social Guarantees and Civil Rights» no right in

[2] The introduction to the Constitution of 1886 was modified by a plebiscite in 1957, and the original text approved in 1986 established: «*In the name of God supreme source of all authority, and with the objective of achieving national unity and to ensure justice, liberty and peace, we have decreed the following Political Constitution of Colombia*».

particular was incorporated, it is clear from different provisions such as article 16 which establishes that the authorities were instituted to guarantee the life, honor and possessions of citizens, a founding stone among other things of police power.

In the constitutional text, on the other hand, references to war were used in order to establish constitutional guarantees during peace times. So, for example Article 28, established that not even during war times people could be sentenced ex-post-facto; but at the same time it allowed, even during peace times, and with the aim of covering severe perturbation of public order, the detention and retention under governmental orders with the previous acceptance of ministers of any person suspect of conspiracy against public peace. This instrument wouldn't have had any effect if there weren't declared a commotion declaration since the 40's. Likewise, Article 33 established that during war times expropriation without a juridical order or previous indemnification was legal. In Article 38 the government power to limit the circulation of printed material during war times and in Article 42 the guarantee of free press, but only during peace times..

From the point of view of competence, it was of the President's concern to prepare the public force and maintain public order. Besides, he had the possibility of ordering a state of emergency[3], through which he could suspend the application of the existing laws that were incompatible with the declared state, without limit of time and whilst the cause which had given origin to the order existed.

The ex-Chancellor of the Republic of Colombia Alfredo Vásquez Carrizosa in his book *Presidential Power in Colombia* pointed out that «*[...] Anything, which draws the attention of the peculiarity of this institution from one moment to the next, confers on the president a legal dictatorship with absolute powers that may last months or even years. From the point of view of its normativity an institution calculated to confront emergencies of the civil wars of the XIX century has remained applicable in Colombia in the last part of the XX centuy [...]*»[4]. In this way the state of emergency turned into an instrument to combat subversion, but at the same time designed to break up labor disputes[5] and resolve political crisis such as the closing of the regional

[3] Article 121 of the Constitution of 1886: «*In case of exterior war or internal commotion the President may, with the signature of all the ministers, declare the state of siege and public order as altered in the whole or part of the country. Through declaration, the government may have, in addition to the legal instruments, those that the Constitution authorizes in times of war or alteration of public order and those that according to the rules accepted by the 'peoples rights' deal with the war among nations [...]*».

assemblies[6] in 1942, the military coup of Colonel Diógenes Gil in 1944 in Pasto (capital of the department of Nariño), the closing of the national Congress in 1949, the state of emergency in place from 1949 until 1953 which culminated in the military coup of General Rojas Pinilla who was the last Colombian dictator between 1953 and 1957. The state of emergency served equally to repress social protests through the issuing of the Security Statute, under the administration of president Alfonso López Michelsen, dictated through legislative decree no. 1923 on September 16th, 1978 after the civil strike on the 14th which was backed by the four central unions of the country.

On the other hand, the Congress not only reserved the authority to concede amnesties or general pardons[7], but could also exercise the general legislative power.

Within this normative framework Belisario Betancur took over the presidency, and after taking possession established the basis for the development of a peace policy in the country. In his inaugural speech, the leader pointed out:

> *I raise a white flag of peace in order to offer it to my compatriots. Stretching out my hand to those up in arms so that they may be included in the full exercising of their rights, in the broad framework of the decision taking of the Chambers. I declare peace to my co-citizens without any distinction: I devote myself to that priority task because we need Colombian peace in order to take care of it like a tree that calls out to its fallen branches, to all the national family [...]*

In this way, the president issued the legislative decree no. 2771 of the 19th of September 1982, creating a peace commission made up of 40 representatives from different sectors of the country, directed at four essential objectives.

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[4] VÁSQUEZ CARRIZOSA, Alfredo, *Presidential powers in Colombia*, 3rd edition. Bogota, Ediciones Sudamerica, 1986, p. 381

[5] The labor conflict of the banana growers in the Department of Magdalena of 1928, the labor strike of the railroad workers in Antioquia in 1934, the transportation strike in Caldas in 1943 and the solidarity strikes on the central unions in 1977 were all dealt with the state of siege.

[6] The departmental assemblies are administrative corporations elected by popular vote that exist in every department in Colombia. No less than 11 members and no more than 31 form them. Its members carry the name of Diputados and are elected for a term of three (3) years. Article 299 of the National Constitution.

[7] Article 76, numeral 19 of the Constitution of 1886.

a. *The inclusion of different strata to the political, economic and social life of the country, within the framework of the legal state.*
b. *The recuperation and development of the regions that required the presence of the state.*
c. *A substantial improvement in justice, citizen security, monitoring of public administration and protection of citizen's rights.*
d. *Efficiency of the State and of public spending.*

Through the initiative of the government, the Congress of the Republic issued law 35 of 1982 known as ***Amnesty Law***, through which the itinerary of the peace process was established in order to know:

1º) Amnesty

2º) Political, Economic and Social Refoms

3º) Disarmament of Insurgent Groups

This broad formula was adopted taking into account the failures of the amnesties and pardons which had been approved by Congress during the previous administration of President Betancur, as it was during the administration of President Julio Cesar Turbay Ayala[8]. However, the pressure exercised principally by the army which opposed to the Peace Commission finally halted the peace process until 1984. Due to some changes in the Ministry of Defense and in the same commission[9] they finally achieved the signing of agreements with the FARC on the 28th of March, 1994 and also with M19, the ELP and ADO on the 24th of August of the same year.

The breaking of the ceasefire signed by the government with M19 brought with it the tragic events of the seizure of the Palace of Justice on the 6th and 7th of November, 1985, which culminated in the destruction of the building and the murder of 15 Supreme justice Court magistrates and other legal staff.

Although Law 35 is historically considered as the most significant advance concerning the peace processes, the same strategy of leaving the process of reinsertion until last brought with it the reconstruction of armed

[8] Law 37 of 1981 and the legislative decree 474 of the 18th of February 1982.

[9] Otto Morales Benítez was the President of the commission who was replaced by John Agudelo Ríos. In the ministry of defense, Gen. Landazabal was dismissed because he opposed the peace process.

squads and the strengthening of insurgent armed groups. The decommissioning of arms was never even discussed during the peace process.

Under the government of President Virgilio Barco, an agreement of insertion was finally reached with M19, protected by a general law of amnesty and pardon contained in law 77 of 1989. In 1991, the same powers were used to concede the same benefits to members of the EPLL, PRT and MAQL through the decree 213 of that year.

2. THE *PEACE PROCESSES IN COLOMBIA* SINCE THE CONSTITUTION OF 1991

2.1. **Substantial normative framework**

The climate of violence that preceded the drawing up of the Constitution of 1991 (when groups of drug traffickers led by the now deceased Pablo Escobar, became a real army of mercenaries through their economical power, known in our environment as «sicarios» (hired assassins), filled our cities with blood, planted bombs in shopping malls, on passenger planes, in government buildings such as the Administrative Department of Security «DAS») gave to the peace process and to the mechanisms for dealing with armed and social conflicts, an emphatic role in the writing of the basic text. From the introduction, to which our Constitutional Court recognizes full binding force[10], it invokes peace as one of the essential purposes which it tries to secure, together with others such as life, harmony, work, justice, equality, knowledge and freedom. In accordance with this, in the 2nd article peaceful coexistence is incorporated as an essential principle to be promoted by the State as a fundamental objective. In this way, peace appears as a value and as a principle. In the first aspect, added to others, it forms an axiological catalog from which the meaning and the purpose of the other legal norms are derived. The second aspect constitutes a general judicial prescription «*which supposes a political delimitation and a recognized axiology, and as a consequence, restricts the space for interpretation, which make those norms immediately applicable, both for the legislator as for the constitutional judge [...]*»[11]

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[10] CONSTITUTIONAL COURT, sentence C-479 of August 6, 1992: «*This court, on the contrary, deems indispensable to replevy the legal conception through which the right does not extinguish itself in the norms and, thus, the constitutional right is not limited to the restricted field of the articles that make up the Constitution. The introduction to the Constitution incorporates, beyond a simple specific mandate, the ends towards which the legal ordering tends; the principles that inspire the constituent to design in a particular way the fundamental structure of the state; the political motivation of the whole normativity; the values that the constitution inspires and that transcends the mere articles*».

[11] CONSTITUTIONAL COURT, sentence of the 5th of June 1992, T-406.

But besides this, and especially in article 22 of the Constitution it is declared as a fundamental right or of first generation[12] that *«Peace is a right and a duty to be obligatorily fulfilled»*.

Although this norm did not appear in the 1886 Constitution, it cannot be considered foreign to national judicial tradition, since the same type of principles were welcomed by Colombia through the ratification of both the International Pact of Political and Civil Rights[13] as the American convention on human rights[14] in which it is established in article 13.5 that *«All propaganda in favor of war and all statements in support of national, racial or religious hatred, which constitute an incitement to violence or any other similar illegal act against any person or group of people, for whatever motive, including race, color, religion, language or national origin will be prohibited by law»*.

Peace as a right is not simply the absence of war or the conspiracy to affect national tranquility and security, but is conceived as the effective respect of human rights, in such a way that *«when human dignity is violated by violence or terror, you are in a situation of war against the most sacred and inviolable right of a human being. There cannot be peace whilst there are people around us who kill, kidnap and cause disappearances [...]»*.[15]

Taking into account peace as a right but at the same time as a constitutional principle, the right to peace adopts multiple forms in such a way that it oscillates between positive and negative status, because on occasions, it is guaranteed through the inaction of the state and in others it is used as an instrument to demand the fulfillment of an obligation. From the individual's point of view, it allows each member of a society to be able to demand the right to live in a society that excludes violence as a mechanism to solve conflicts, the authority to denounce the violation of human rights and in general, to be protected against the abuses and arbitrariness of the authorities and other individuals.

Despite of being included among the fundamental rights[16], the right to

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[12] The codifying commission of the Constitutional Assembly used a generation classification of the rights, so that they would be incorporated in the constitutional text. This way, the first three chapters of the second title concerning RIGHTS, GARANTIES and DUTIES put forward the environmental, collective, cultural, social, economical and fundamental rights.

[13] Ratified by Colombia through law 74, 1968, and was enforces on the 23rd of March 1976.

[14] Was ratified through law 16, 1972 and was enforced on the 18th of July 1978.

[15] CONSTITUTIONAL COURT, sentence T-102 of the 10th of March 1993.

[16] The *a rubrica* method is not accepted in the constitutional interpretation considering that the codification of the ordering did not follow the assigned procedure by the Constitutional Assembly for the approval of the article.

peace is considered a third generation right in the sense that « *to achieve it requires the collaboration of the most varied social, political, economic and ideological factors which, can be reciprocally demanded without becoming reality through its collaborative or mutually binding nature [...]*»[17] It is through the aforementioned that its effectiveness or guarantee is only possible through popular actions[18] and not through the actions of guardianship[19]. In this sense, law 472 of 1998 regulates on group and popular actions; its 4th article describes in an enunciativa manner, the collective rights in which the distinctive manifestations to the right of peace are inferred in a descriptive way. Moreover, in the precise penultimate the law provides that *«equally the rights and collective interests as defined in the Constitution, the ordinary laws and the treaties of international law signed by Colombia [...]».*

2.2. **Responsibility for peace processes**

In Colombia the President of the Republic has the functions of head of State, head of Government, maximum administrative authority[20] and supreme commander of the Armed Forces of the Republic[21]. Within his functions he directs the public forces, keeps public order through his ordinary authority which the law confers on him[22] and the extraordinary powers in exceptional cases, directs the operations of war when deemed necessary and, in general, provides for the external security of the nation.

Considering the normative hierarchy, the presidential functions, except those that come directly from the constitution and that are known as constitutional or autonomous decrees[23], are enforced within the framework of the constitution and the law. Within the general functions of Congress established by article 151 of the Constitution, there isn't any special provision related to the peace processes except numeral 17 that relates to

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[17] CONSTITUTIONAL COURT, Sentence T-008 of May 18, 1982.

[18] National Constitution, article 88: *«The law will regulate popular actions for the protection of collective rights and interests, in relation to equity, space, security and public health, administrative ethics, the environment, free economical competition and others of similar nature described within [...]».*

[19] National Constitution, article 86: *«Every person will have the accion of tutela to request form the judges, at all times and places, by means of a preferent procedure and sumario, by him or herself or whomever may act on his or her name, the immediate protection of his or her constitutional rights, whenever they may be threatened by action or omission of any public authority [...]».*

[20] NATIONAL CONSTITUTION, article 188.

[21] NATIONAL CONSTITUTION, article 189, numeral 3º.

[22] In a special way, the National Police code, decrees laws 1355 of 1970 ant 522 of 1971.

[23] The constitutional decrees can be general, in witch event they are known as autonomous or of individual character. RODRÍGUEZ RODRÍGUEZ, Libardo, *General Administrative Law and Colombia,* 10ª edition. Bogotá, Temis, 1998, p. 276.

the concession of general pardons and amnesties for political crimes[24]. Nevertheless, in Colombia the general clause of legislative decision making is fixed in Congress since *«the body which has the generic jurisdiction to develop the constitution and issue the rules of law is the Congress, since it is this body which "makes the laws" and for this reason the enumeration of the functions established by article 150 of the Constitution is not taxable [...]»*.[25]

2.3. **Management of peace processes since 1991: *legal perspective***

In this last decade the peace processes have been handled through two distinct legal systems: the use by the President of the Republic of the states of exception and specifically the one regarding internal commotion and the use of the powers given by the Congress of the Republic. Let us talk about each one of them.

2.3.1. ***Peace processes under the figure of states of exception***

The National Constitution, like in most regimes, gives exceptional powers to the President of the Republic under extraordinary circumstances such as external war, internal commotion and state of ecological, social and economic emergency.

Internal commotion, regulated by article 213 of the constitution, establishes that *«in case of grave public order disturbances that endanger in an imminent manner the institutional stability, the security of the state, or the coexistence of the citizens, and that cannot be corrected by means of ordinary powers granted to the police, the President of the Republic with the signature of all the ministers, can declare the state of internal commotion, in the whole Republic or in part of it, for a period no greater than 90 days, which can be extended for two equal periods, the second of which requires the previous acceptance of the Senate of the Republic [...]».*

In 1992, taking into account that *« public order in the country, which has been disturbed for a long time, has aggravated significantly because of terrorist activity of the guerrilla organizations and organized crime»*, the President of the Republic César Gaviria Trujillo, today General Secretary of the Organization

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[24] N.C. article 150: *«it corresponds to Congress to make the laws. Through them it exercises the following functions: [...] 17. To concede, by a majority of two thirds of the votes of the members of one and the other chamber and for real reasons of public convenience, amnesty or pardon for political crimes. In the case that favorecidos where exempt from the civic responsibility, the state will be forced to compensate a que hubiere lugar».*

[25] CONSTITUTIONAL COURT, sentence C-527 of the 18th of November of 1994.

of American States, proceeded to declare through decree 1793 of the 8th of November of that same year, and for a period of 90 days, the state of internal commotion, which was extended for 90 additional days, through decree 261 of 1993. While this decree was in effect, a group of guerrillas expressed their will to negotiate, demobilize and reintegrate themselves to civilian life, and based on the same declaration of the state of exception, the President with the signature of all his ministers passed the legislative decree 0542 of the 23rd of March of 1993, «*by which powers are provided to facilitate dialogue with the guerilla groups, their demobilization and reinsertion into civilian life*», through which the following were established:

a. Authorization was given so that government representatives could go ahead with peace talks spokespersons of the guerrilla groups;
b. Authorization to sign agreements was granted;
c. The possibility of establishing a zone that would allow the temporary stay of the demobilized groups;
d. The suspension of arrest warrants for the spokespersons and representatives of the guerilla groups was granted, in order to facilitate the dialogues;
e. The president ratified his exclusive responsibility in directing the peace process.

The peace process did not prosper and finally the decrees issued were left with no effect.

The problem of managing a peace process through the exceptional powers of the State of internal commotion is that of a response to the situation presented with the permanent figure of the state of emergency in Colombia, maintained under the Constitution of 1886. In effect for more than 30 years, temporary limits were established. The declaration must be made for a term of 90 days, extendable for up to two equal periods. When the cause that gave origin to the declaration no longer exists or the given deadline expires, the legislative decrees issued will stop to apply as these do not have a permanent character and simply «suspend» the laws that are incompatible with the declared state. The peace processes cannot be subjected to fixed terms and in any case, the legislation issued only acquires permanent character when it is passed as a law of the Republic in Congress.

2.3.2 *The permanent legal framework for the peace processes in Colombia*

Through law 104 of the 30th of December of 1993, the Congress established a series of instruments directed at the search for coexistence and in relation to the peace processes regulated two aspects, one of an individual character through which they gave the people linked to guerrilla groups and popular militias a series of legal guarantees like provisional liberty, guarantees of non-investigation or accusation, home arrest, conditional liberty, etc. in the case of voluntary abandonment and another of a general nature which would allow the facilitation of dialogues with the guerrilla groups, reproducing for such an end the text of the legislative decree 0542 of 1993. The same law established a general authorization to concede pardons and amnesties to reinserted groups. In virtue of these authorizations, the government managed to go ahead in 1994, with processes for reinsertion of the CRS, of the Popular Militias of Medellin[26] and with two other groups such as the «Garnica Front».[27]

The law was given an applicability of two years, a period which was later extended for an equal term through law 241 of 1995 in which some modifications were introduced as for example the extension of the facilitating mechanisms, to the self-defense groups.

Law 418 of the 26th of December 1997 in which they practically transcribe the previous norms annulled the two former functions[28]. Nevertheless, it is observed in this law how the scope of the dialogue is extended, not only to the demobilization and reintegration to civilian life, but also to the effective application of Humanitarian international law, the respect for Human Rights, the cessation or scaling down of hostilities and the creation of conditions which facilitate just economic, social and political order. Based on these legal functions, they undertook a peace process, reinsertion and pardon of subversive groups such as the MIR-COAR.

This law was equally submitted to a term of applicability of two years, which was extended for three more years, through the law 548 of 1999.

The above normative framework which is characterized by norms of authorization for the government to undertake dialogues and concede

[26] Decree 1059 of the 26th of may 1994.

[27] Decree 1387 of the 30th of June 1994.

[28] In the law, likewise, norms for the protection of minors and in general to the victims of the conflict are included.

amnesties and pardons was complemented by the law 434of the 3rd of February, 1998, which created the National Council for Peace[29] with the objective of involving different government bodies and sectors of civil society in the establishment of peace policies with the objective of guaranteeing its integrality, solidarity, responsibility and gradualism.

In the latest peace process undertaken with the FARC, the President issued the resolution 085 of the 14th of October, 1998 through which he set up not only the initiation of the peace process with that guerilla group, but also, the establishment of a demilitarized zone made up of the municipalities of Mesetas, La Uribe, La Macarena, Vista Hermosa in the department of Meta and San Vincente del Caguán in the department of Caquetá, from the 7th of November, 1998 until the 7th of February, 1999. The demilitarized zone was prorogated on several occasions through executive resolutions 007 of the 5th of February 1999 for the period of 90 days, 032 of the 7th of May of the same year for 30 days more, 039 of the 7th of June 1999 for 6 months and 092 of the same year.

Finally, the President of the Republic in response to the violations of the agreements signed by the FARC, proceeded to revoke the demilitarized zone and suspend indefinitely the dialogues, in spite of the signing of the «Common Agenda for Change towards a New Colombia» and the establishment of an international committee for the verification of problems which could arise in the demilitarized zone.

3. Synthesis of the juridical framework

3.1. There is a difference in the Constitution of 1991 with respect to that of 1886, a different language in the conceptualization of rights. In the sense that it has developed in the affirmation of guarantees taking into account the type of crisis and clear limitations have been established, both with respect to time and materials, to the powers of the government in states of exception.

3.2. The legal mechanisms to deal with peace processes in Colombia before and after the Constitution of 1991 have largely been established through the definition of legal frameworks defined by the legislator,

[29] The National Councils are advisory organisms, in charged of the establishment of general policies in relation to things that relate to the participation and interest of different governmental bodies and occasionally, private. In accordance to what is established in law 489 of 1998, article 38, they make up part of the executive branch of public power.

through which they have authorized the processes of dialogue and negotiation and have conceded general powers for the granting of pardons and amnesties.

3.3. The management of negotiations and the processes or reinsertion have been guided by the President, his style and vocation predominating, militaristic in some cases and democratic in others.

III. «AD LATERE» CONSIDERATIONS ON THE *COLOMBIAN PEACE PROCESS*

It is not possible to make a judgmental analysis of the peace process that has been developing in Colombia, the most Nordic country in South America, without undertaking some considerations of a social nature as to why it has not been successful after more than 20 years of trying.

It is necessary to affirm that the Government, despite having had the ideal legal instruments to move forwards with the different processes mentioned in this work. It has been demonstrated that these are not sufficient if political will between the negotiationings parties does not exist in order to jointly obtain the agreement which they claimed to be looking for.

First of all, it is not necessary to clarify that currently there is not only one but two (2) peace processes. One is with the FARC-EP, which was undertaken until March in national territory in the zone known as «El Caguán», (as mentioned earlier). The other is with the National Liberation Army, «ELN», a guerilla group of religious and intellectual roots, who have always declared their objective to be the defense of the country's natural resources in order to prevent the unequal exploitation of them on the part of multinational companies, which is presently being carried out by representatives of mentioned subversive group and the Colombian Government in Havana (Cuba). It is important to note, that with respect to this latest process, the German Government offered its good oficios to act as a facilitating body. It was in this way as in 1998 they met for the first time in Germany, representatives of the Government and the guerilla group, in Maguncia, in a convent called «The Door to Heaven».

Regarding this process, we not comment on, since it is in full development and seemingly everything points to a quick, and depending on the new Colombian Government that will take office the coming 7th of August, they will be able to reach a positive outcome.

On the other hand, it is worrying to see the way in which the process failed with the most powerful group in terms of military power, the FARC-EP.

It is essential to state that the stages upon which they developed the first processes in 1982 are very different from the present ones. During the first ones, not only was the country very different from the present day, but the discourse and ideals have also changed.

The country has changed substantially in the last 20 years even though it has not changed substantially in macroeconomic terms[30] bearing in mind that we increased the Gross National Product per capita each year, from US$78.9 in 1982 to US$2048.oo for the year 2000, it is no less true that we had a growth rate of 1.9% in 1983 against a decrease of 4.6% in 2000.

Despite the above, it is worrying that whilst the level of unemployment in 1982 was 9.1%, in 2001 was 20.5%. This figure without doubt, is what we in Colombia call «wood to stoke the fire», with respect to our conflict.

These substantial changes in the national economy were also linked to the changes that occurred in the ideological discourse of the FARC, which gave way to a militaristic discourse, perhaps a product, as sustained by some experts on the theme, of the death of its principal ideologue Jacobo Arenas in the past decade.

The discourse that this movement sustained took shape among others, in a document written in March1983, in the middle of President Betancur's peace process when they declared: *«In this struggle for democratic peace in Colombia, we confront very powerful forces interested in the war to avoid national harmony. We know that foreign and national interest move these forces that are resorting to every type of pretext to torpedo the negotiations and the struggle for peace.* ***One of these pretexts consists in kidnapping and extortion. The FARC-EP strongly condemns such procedures****. If there are armed groups that claim to be of the FARC and have hostages in their power, they must free them immediately. If other guerilla movements have committed such practices, we ask them to do the same».*[31]

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[30] Source: National Planning Department (DNP), National Statistics Department (DANE) and Bank of Republic.

[31] *The Peace Process in Colombia 1982-1994,* Vol. 1., p. 566, Bib. de la Paz. Office of the High Commissioner for peace. Republic of Colombia Presidency, Santa Fe de Bogotá D.C., 1998.

In 2002, handling of the theme of hostages by this movement, was precisely one of the most decisive points in the failed negotiations, taking into account this atrocious crime and its violation of human rights, as is the right to freedom. It became a source of finance for the guerilla movement in contrast to the revolutionary discourse published in the 80s.

On another level, its alliance with drug trafficking, firstly through a tax which they charged the owners of the poppy and coca crops to «protect» the crops, which later turned into direct intervention in the drug trafficking business on an international level, a change in the panorama of this guerilla movement, and so produce new sources of finance which strengthened them in such a way, that it allowed them to toughen their discourse before the Colombian State, causing their warlike direction to dominate over ideological direction. As reliable proof of what's been noted, we can see how in 1998 there were 93.000 cultivates hectares of coca, marihuana and poppy concentrated in those departments where the guerrilla group[32] has most power, which make up the famous safe-haven of 42.000 square Km which the Colombian Government handed over to them.

In conclusion, to make a sociological and historical analysis of what has been the peace process in Colombia, would lead to, without a shadow of a doubt, an extensive discourse for those interested in Latin American social themes. Therefore in the interest of not testing your patience any longer, I would like to finish my talk by saying that the Colombian conflict has not been failed up to the present by the lack of legal instruments; hence the respective governments have had what is necessary to develop their own proposals. What has been missing, from my personal point of view, is genuine political will on both sides in such a way that it can be understood that on the part of the guerrilla their armed struggled makes no sense in the 21ST century as a strategy to gain power, as the defenseless people are tired of so much violence and on the part of Colombian Society. It will be necessary to accept some substantial changes to the present concept that we have of our institutions, beginning with a re-conceptualization of our own democracy, of political traditions and above all, of an absolute respect toward the concept of *«lo público»*. All that has been previously mentioned would lead to without a doubt, the creation of a new civic ethic, a greater social commitment on the part of all of the members of that new society and to the creation of new social values in which the common good take precedence over individual interests.

Thank you very much!

[32] ROCHA GARCÍA, Ricardo, *The Colombian Economy after 25 years of drug trafficking*, p 47 and 48.