

From Coexistence and Complementarity to Confrontation?

Colombian Paramilitaries, Their Successors and Their Relation to the State*

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Abstract: Colombian paramilitaries have ‘demobilized’; some of the most prominent figures of the former *Autodefensas Unidas de Colombia* are serving prison sentences. But news of selective murders speak of post-paramilitary activities. Without neglecting the role of the state, this article focuses on the ambiguous relation between state and non-state actors, between state presence and fragmented sovereignty, and the oscillation between collusion and confrontation over time. As this requires a typology of different organized non-state violent actors, the article deciphers differences between former *autodefensas* and new *bandas criminales*. Is their relation to state institutions one of coexistence, complementarity and collusion or one of confrontation?

Keywords: Paramilitaries, Colombia, collusion, state, criminal groups

Schlagworte: Paramilitärs, Kolumbien, Kooperation, Staat, kriminelle Gruppen

1. Introduction

Some of the most prominent figures of the former *Autodefensas Unidas de Colombia* (AUC) serve prison sentences in the USA. AUC Colombian paramilitaries, responsible for the great majority of human rights violations (state prosecution cited in López Hernández 2010), have demobilized. The Colombian state seems to have “regained” its monopoly on violence in great parts of the country. Yet, there are news of selective murders, excessive violence and post-paramilitary activities in towns such as the strategically important port Buenaventura. Paramilitaries seem to have provided organizational structures for succeeding groups. Some paramilitary ‘leaders’ who are serving prison sentences under demobilization schemes are already bound to be free and possibly integrate into political life.

Looking into the ambiguous relation between state and non-state violence, on a less abstract level, requires a typology of levels of cooperation of organized non-state violent actors with the state. The article deciphers differences between former *autodefensas* until their official “demobilization” in 2005 and new “*bandas criminales*” (BaCrim). Is their dynamic relation to state institutions one of coexistence, complementarity or confrontation? The first section will briefly explore relevant research on the state. A second section explores definitions and suggestions on typology with reference to historical developments. The third section focuses on the case of the Colombian AUC and its relation to the state up to the demobilization process in 2005, while the last two sections analyse how this relation was modified when the AUC as such ceased to exist.

2. The Role of the State and History

When we engage in an investigation on militias or paramilitary groups, the role of the state for the production of in-/security should not be disregarded. Debates on the constitution of states in the Global South often conclude that the central state has to compete with other groups for its monopoly on the use of force

(and often is in need of help from outside to do this) (see Gurr et al. 1998; Eizenstat et al. 2005 for this line of thought). Some arguments in policy papers by institutions such as the German Ministry for International Cooperation (BMZ 2013) rest on a clear idea of how state functions are to be fulfilled. By now the fragility concept has been differentiated (on weaknesses in providing public services and legitimacy see Stewart/Brown 2010) and criticized (e.g. by Raeymaekers 2005). The fragility perspective is based on the assumption that the state has to fulfill functions such as the monopoly of violence. They are embedded in the idealized assumption that the state (other than insurgents or non-state violent actors) fundamentally aims at the common good.

Even though international discourse has somewhat shifted, for instance in the OECD (Helzer 2015), which now formulates a set of factors which may lead to a situation of fragility and may combine elements of risk and resilience, the argument that states in the Global South suffer from incapacity in conflict management is still thriving. This stems mostly from research questions which focus on zero-sum games between states and insurgents competing for the control of territory or on the legitimate monopoly of the use of force.

As Staniland (2012) states, the relations between states and non-state actors are often much more complex. We might add: what is in question is not just legitimacy; but the actual outcomes are determined by specific power relations. Once and again Latin American authors have pointed out that the exercise of violence in Latin American contexts differs in structure from the European experience. Historically, they argue, a monopoly of violence consolidated by the central state has been a global exception. While Latin American states gained independence before other colonial projects even began, in many cases an effective centralization of violence has not taken place.

Which approaches integrate historical particularities and grasp complexities? The Latin American discussion on private security shows (Bolívar 2010; Arias and Goldstein 2010; Franco Restrepo 2009): Often it turns out impossible to distinguish which state and non-state actors are in conflict with each other or cooperate. The debate ascribes this to historical particularities, constitution and developments in the Latin American context, namely a design of the state function of violence usually different from that in European state formation. Some Latin American authors

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argue that – far from discovering state failure or incomplete development – it is an empirical question if the state actually exerts coercion by ways of monopolizing violence or not (Bolívar 2010; Franco Restrepo 2009). The monopoly of violence, then, is not constitutive for the state, and its decentralization is not just an anomaly. State control is construed in very diverse ways. For Kalyvas (2000), the actual relation between social factions and the extent of the exercise of violence have to be explained according to context. Pearce (2010) argues that actually the perception of a loss of control helps maintain a certain social order, independent of the actual level of cooperation between regular and irregular armed forces and which antagonisms are at play. Arias and Goldstein (2010: 20-21) find “a myriad of other actors employ violence”, not just police and military, private security firms or death squads “whose members may double as police, soldiers, or firefighters at other times of day or during other periods of their careers”.

Research in the Colombian academic field has for a long time pointed beyond interpretations of failure. Already in 1962, well-known Colombian sociologist Orlando Fals Borda (2009 [1962]: 139f.) published his seminal work on the *Violencia* (1948-1958). This phase “could be interpreted as an impressive accumulation of functional failures in all the basic institutions.” It was “obvious that in Colombia the political institutions clearly didn’t fulfill set goals, and in spite of that they were eminently effective [...]. They were functional in another sense: In the forcing a specific group’s will upon others” (2009: 139f.). González et al. (2003) established knowledge about the selective state presence in capital cities or transport hubs in early state formation. Coercion was often delegated to local *caciques*¹ who would exercise a considerable grade of autonomy. Intermediaries and local society were often interwoven more closely with each other than with the central state. With this in mind and following Bolívar (2010: 100f.), we can assume that the central state did not dissolve local power structures but rather is constructed on this basis and interrelates to it. In analyzing statehood in Latin America, historical factors have us pay attention to the relation between central state, local and regional power structures and the exercise of violence on these levels.

3. Functional Collusion and Complementarity in History

To grasp the relation between state and paramilitary forces in the Colombian case, we can refer to complementarity or collusion as defined by Staniland (2012), even though he refers mostly to insurgents and not to paramilitaries with traditionally close links to part of the state. Staniland develops a typology of levels of cooperation between the state and non-state armed actors; his starting point is empirical data from actually existing cases; and he provides entry points for complementing categories.

First, Staniland defines active cooperation and collusion. “These alliances may break down or be transformed over time, but they can also be important and enduring elements of wartime order”

(ibid.: 249). Collusion is a type of active cooperation in which the geographical spheres of influence overlap – this would be a case of shared goals, not of segmented sovereignty which Staniland (2012: 247) understands as “analogous to a conventional military frontline” where each force controls its own territory separately from the other. In collusion, with shared goals, state and non-state actors don’t compete for territory nor do they dispute each others’ control (of territory or social and economic activity).

This typology might be supplemented by a type of complementarity, meaning active cooperation within the same territory, overlapping areas of operation with a separation of tasks. Anti-civilian action is taken over by paramilitaries instead of the military. The latter can describe the former as autonomous – a “plausible deniability”-pattern as has been widely described in counterinsurgency research. A more passive cooperation or tacit coexistence implies silent arrangements but can lead to cases of fragmented sovereignty, where state and non-state actors mix. Obviously a scenario without cooperation also exists; Staniland (2012: 248) grasps it in the terms “clashing monopolies” and “guerrilla disorder”, and refers to patterns of at least partial confrontation.

What distinguishes the Colombian case from the scenarios described by Staniland (2012) is that the role of the paramilitaries has never been one of insurgents who became co-operating forces. At least those groups founded since the 1980s always had links to sections of the military and played a part in state counterinsurgency strategies. Temporary legalization of militias underlines this. These ‘un-orthodox methods’, which are legally limited by international law, make use of the following argument: Civil society’s immunity in an armed conflict is rendered invalid when society itself becomes scenario and object of the acts of war (Franco Restrepo 2009: 502). Kalyvas (2000: 5) once put it clearly: “The fight must be conducted through the people – ‘like a man who has to hit an opponent through the body of the referee’”.

State institutions are subject to constant negotiation processes and their functional logic might differ from European states, as shown in the example of the police. The police relation with non-state armed actors and openly criminal groups can be framed as a functional collusion. Following Fals Borda (2009), the police never guaranteed public order but took the role of an intermediary between disorder and crime. He sees a role deformation within state institutions: criminal activities by the police are not individual infringements. Rather, this conduct is systematic and responds to expectations by powerful social groups. They are the ones who, by setting informal norms, define the role of the police: “These groups [...] have legitimized a new violent role for the policeman, which is different from what is intended in the legal codes. If his actions did not correspond to these orders he would fulfill his role unsuccessfully. In this way, a violent type of police is institutionalized and positively sanctioned” (2009: 140f.).

This historical characterization of the police could be analogous for the military. It implies that the state exercises violence within limits, but state action goes beyond legal fixation and does not always appear in the form of legal rule (see Franco Restrepo 2009). Some state practices are always located outside the legal

1 Local or regional intermediaries with an autonomous power base and their own means of violence (militias, private armies) but often good relations to central state institutions.

system but don't necessarily constitute arbitrary or individual rule-breaking. In this realm, regular and irregular armed forces can cooperate, and limits between state and non-state actors blur. While Staniland (2012: 247) concludes that in segmented or fragmented sovereignty, the state monopoly of force "has broken down", Latin American authors argue that the fact there are multiple forces which exercise violence rather point to a different historical structuring of the relation of state and private violence (Franco Restrepo 2009). In this context, the relation between state and Colombian paramilitary actors, as we will see, is one of complementarity throughout their existence.

4. The Case of the Colombian AUC: Towards Collusion

Colombian author Franco Restrepo interprets the relation between the state and the AUC between 1995 and 2005 as a political project. In it, dominant interests in the ensemble of the state and those of the countrywide paramilitary organization AUC converged. Within this margin, an authoritarian order was closely related with economic activity and with landowning fractions' negotiations to maintain their social position. Excessive violence by the AUC was systematic (selective murders, terror strategies such as the public dismembering of victims). Massacres by AUC in the second half of the 1990s were part of a first phase, followed by violent forms of social control which went hand in hand with the resuming of agrarian production on the basis of agro-industrial, capital-intensive sectors (see Jenss 2012). Phases of excessive violence in which the state seemed to lose control thus cannot be separated from economic restructuring and the increasing concentration of land in fewer hands. Some authors state that the AUC alleviated costs of war which in spite of a new "war tax" on financial assets and considerable U.S. military aid from 2002 onwards became burdensome to the state. The AUC collected financial support through private voluntary and involuntary fees but above all, as AUC speakers have stated, through income via the cocaine trade (as cited by the Embassy of the United States 2002).

When on the 15th of July 2003 the Colombian government under president Álvaro Uribe Vélez signed an official treaty with AUC in Santa Fe de Ralito and set the seal on the so-called AUC demobilization, a process began which would have parts of the AUC actually hand in their weapons. Evidently, above all those communities who had been victims of massacres or displacements by the AUC or had been subordinated to new patterns of control² then interpreted this as a reorganization of para-militarism and not as the officially proclaimed "peace process": In this view, a "legalization" of the paramilitaries (if not the AUC) was implemented – or this was the interpretation of human rights organizations such as Amnesty International (AI 2005). The irregular forces, in some regions thousands of armed persons, were in a sense "enclosed". They forfeited what autonomy they had, but benefited from the same process, and

sometimes became part of the legally operating workforce with salaries paid by the state as traffic police, or they were integrated into legal security forces.

State crime and human rights violations tended to be downplayed especially during the early 2000s when the military offensive against the FARC was pursued most forcefully, "to maintain the idea of a moral superiority [of the state]" (ibid: 501). Those segments of society whose political projects were *possibly* associated with 'subversive' fractions, were converted into military objects and objects of "psychological warfare" (ibid: 503) by state elements as well as AUC forces. They were victimized through selective murder, violent displacement, etc. by various different actors: It is the violence that turned against them which exposes them (individually and collectively) as the social base of those who are to be defeated. Violence itself converts into incriminatory evidence, independent from the individual's actual sympathies or participation in tasks directed against the existing order. This takes effect as it exceedingly disorganizes emancipatory groups. By all means the control of society and the establishment of a certain disciplining pattern was part of AUC practices.

Yet, the problem of legitimacy not only concerns the state. The AUC felt impelled to justify their activities. This is confirmed by the often-reproduced argument, that, given the passivity of the state, the AUC members themselves were the only available defense against 'subversive' aggression. While they could claim an exceptional relation to the executive branch, they would refer to the irresponsibility and inaptness of the state and claim the "right to self-defence". What is usually overlooked when analyzing non-state actors and their relation to the state is the additionally central question on the starting point of the conflict: referring to numerous public statements Franco Restrepo (2009: 28) argues that part of the Colombian society perceived the armed conflict as a reaction to insecurity caused by a feared imminent loss of private property through the guerrilla. This part of society interpreted the paramilitary intervention as a means to restore their security. For considerable parts of society this ultimately constructed AUC activities as "inevitable"; they were "ascribed a political value" as were the power relations which had "defended and produced" them (Franco Restrepo 2009: 385). These sectors are the ones who possibly, in spite of the paramilitaries' excessive violence, now regret the latter's absence as "ordering forces" (see statement by cattle-ranching federation president Felix Lafaurie, interviewed by El Tiempo 2006).

5. Collusion, Complementarity and Demobilization

One almost logical consequence of the demobilization process was the law *Justicia y Paz*. In the official reading the initiative for the subsequent law 975 ("Justice and Peace") was presented as the missing legal framework in a sense of transitional justice. This framework would facilitate the clarification of crimes committed during armed conflict and would allow the judging of those who actually already faced judicial charges and couldn't be included in the demobilization process alone because of already existing crime charges.

² This meant control of social conduct on a micro-level. In towns such as Barrancabermeja Paramilitaries introduced dress codes, prohibited young men from wearing long hair, closed bars from LGBT representatives or established dusk-to-dawn curfews.

The law was first presented as an outright amnesty – without penal sentences for those responsible. After various rounds of parliamentary debates in which the text of the law was heavily challenged, it still provided minor five to eight years imprisonment for serious crimes. The law codified numerous benefits for AUC members (early dis-imprisonment, serving of sentences in agrarian projects, partial amnesties) and made it difficult for victims of paramilitary violence to search for their disappeared and hindered their right to remembrance. It is no longer contested that the AUC exerted direct influence on this process. For instance, the former paramilitary alias 'Gonzalo' who, according to himself, became a member only after the treaty in 2003, said to the weekly magazine *Semana* (2006): "Don Jorge⁴⁰ [an influential paramilitary figure from the Atlantic coast] said to me: 'You have to travel to Bogotá for me, take care of everything that might be needed in the legal initiative Justicia y Paz. In the end the law has to have the shape that we want.' In fact my job above all was to rescue articles 64 and 71, which had to do with rebellion and political crimes. You remember, these articles had been kicked out and much lobby was necessary to re-introduce them".

This can be interpreted as a phase of re-institutionalization during which social forces, with clear initiative by the executive branch, were able to implement exceptional juridical norms. Obviously, transitional justice mechanisms always include exceptional elements to enable peace processes. But firstly, it should have been clear that the demobilization of the AUC was not seen as a peace process between antagonistic forces: The relations, convergence of interests and logistical cooperation between state officials and AUC had been far too close. UNHCHR (2002) and others explicitly voiced their doubts about a "peace process", as "public servants involved in grave abuse of power, in omission or openly consenting to para-militarism" were co-responsible for the grave human rights violations committed. As there was no confrontation between state and AUC, whereas the armed conflict between state and FARC-guerilla went on (and continues to this day),³ there were no grounds to argue for a post-conflict phase which would be eased by amnesty. If this holds true – and academic studies as well as numerous judicial processes against politicians and published documents concerning 'pacts' between officials and AUC members have since shown – the 1990s conflict wasn't one of three enemy parties (state, para-militaries and guerrilla), but of the state with loosely connected paramilitary forces against the FARC and "potentially subversive" parts of society (see Franco Restrepo 2009). This last conflict is ongoing.

In fact, the law explicitly illustrates how temporarily specific constellations of social forces translated into legal texts which finally the Colombian congress would vote upon. Here, the relation of complementarity between the Uribe government and AUC forces is most transparent: The law's implementation generally supported the "legalization" (AI 2005) of paramilitary groups. In spite of the struggles surrounding its enforcement it

ultimately served to disguise that those (precisely) targeted by the law had committed crimes against humanity according to international law. The government clearly and transparently sided with the AUC; it formulated a juridical framework as tailor-made as was possible in the current constellation in parliament. This provided an *apparent* sanctioning of those who were responsible for crimes of war: Critics argued that the government-led congress had changed the legal conditions for a peace process to be able to use transitional justice mechanisms for those responsible for mass executions, forced displacement and terror (Franco Restrepo 2009), whom it would otherwise – as ordinary *para*-military forces – have had to prosecute. Opposition to the process built slowly, and those opposing pro-paramilitary legislation only achieved considerable standing later on. When the entanglements of the AUC with the political 'elite' became clearer, opposition to the Uribe government became stronger. In this later context, law 975 would already have been more difficult to implement.

But the Justice and Peace law also created tensions and contradictions between state institutions and AUC factions who felt they had not been properly represented and their (illegally appropriated) property not sufficiently protected. Tensions culminated in 2006. Shortly after Uribe was sworn in for a second presidential term and shortly after their last meeting with the Colombian high commissioner for peace, 14 of the AUC's leading figures were surprisingly detained. The juridical figure of the *conducción* permitted a detention without arrest warrants (which had been suspended since 2003). Responding to growing pressures to distance themselves from the AUC, important business associations shortly after affirmed their support for the "peace process", but distanced themselves from the "criminals" (Consejo Gremial Nacional 2006). In November 2006 AUC leading figure Vicente Castaño (2006) threatened the high commissioner from his hideout ("Bear in mind, doctor, that promises are like debts"). According to him, the government had informally assured them it would neither extradite nor allow long prison sentences. In May 2008 the Uribe government extradited 14 leading AUC figures to the USA where they faced charges of drug trade. This detracted them from the Colombian judiciary; the hearings within *Justicia y Paz* in their majority never led to judicial sentences.

The following were decisive factors for this rupture between the Uribe government and the paramilitaries, turning the relation from one of complementarity and collusion to one of passive cooperation or even partial confrontation, albeit not by military means: Firstly, active politicians from the government coalition were pressurized from the judiciary as soon as AUC members made their relation and contacts transparent, and thus began pushing for extradition. Secondly, growing criticism on the openly criminal entanglements was feared to impair foreign investments. Thirdly, it seems, former AUC members had increasingly become serious competitors for economic and political factions. At least symbolically, the government was under pressure to revoke its links with the AUC.

6. Unclear Boundaries: Bandas Criminales

With the demobilization process and extradition under way a new discourse about supposedly new criminal groups (BaCrim)

³ Despite peace negotiations between the Colombian government under President Juan Manuel Santos and the FARC in Havanna, Cuba, since 2012 the armed conflict is still ongoing. It remains to be seen how the arrangements agreed upon by the two parties, including a September 2015 agreement on a special jurisdiction for former FARC members and transitional justice mechanisms, will be implemented and accepted by different sectors of society in the long-run (ICG 2015; WOLA 2015).

emerged. State representatives in this discourse constructed the demobilization process as the crucial intervention by the state and as a turning point in the balance of forces. The government claimed para-militarism in Colombia didn't exist anymore (Uribe Vélez 2007). The National Reconciliation Commission (CNRR 2010) spoke of the rearming "of some dissidents of the process". Others called this cynical because actually the *majority* of AUC paramilitaries didn't answer any charges at court or an official hearing. However, the commission admits that paramilitaries – an "organizational structure heavily affected" by the drug trade – tended more to rearming than demobilized guerrilla members (CNRR 2010: 11). Even FEDEGAN's president, José Lafaurie – one of the economic federations which had initiated private militias in the first place – criticized the demobilization process for unexpectedly bad management. The process left unclear the future of those willing to demobilize (El Tiempo 2006).

What changed in the relation with the state after demobilization and the described rupture? In fact, the talk of re-arming was a rhetorical twist. On the one hand, groups succeeding the AUC were a predictable result of the demobilization which practically left former organizational structures untouched. The BaCrim often stemmed from former mid-level AUC structures, which implies continuity between the AUC and succeeding groups. On the other hand, criminal practices (selective murder against union members or organized displaced) resemble those of the AUC down to the micro-level and are not appropriately described by the term criminal violence. Even though they don't possess the national organizational structure the AUC established before demobilization and internal fragmentation, rather than newly established groups, BaCrim can be described as persisting paramilitary structures whose relation to state personnel has partially changed.

Violence and displacements did not end with the demobilization process. Activists today confirm that Medellín – Colombia's second biggest city – is separated into *cuadras*, within which BaCrim establish rules and have taken over conflict management: When problems arise between a homeowner and tenants, the former "won't go to the district administration [...] for it to order an eviction, he will be looking for the armed structures for them to expulse the tenant" (declaration BaCrim cited in Zapata 2013). Even big supermarkets pay concession – a scenario structurally similar to the one before demobilization. In many regions after 2006 the BaCrim preserved a military-hierarchical structure: In 2011 the so-called '*Urabeños*' – demobilized AUC – ordered a complete freeze of transport in various departments of the Caribbean coast (Semana 2012). Even the numbers are incoherent: in 2002 the government announced, around 12-13,000 active paramilitaries would eventually demobilize from 2005 onwards. In 2010 the estimate of 10,000 members of BaCrim groups renders the complete process futile (HRW 2010: 32). Again, this confirms a duplication of sanctioning and disciplining institutions instead of a substitute or counter-model to the state. Threats against human rights and grassroots organizations who criticize the state, selective murder and even the diction in written threats document this structural continuity. With the economic restructuring widely concluded, the BaCrim have an enormously bigger legitimacy problem.

Official discourse treats them as criminals – they are not potential political actors who could be invited to parliament. Access to state institutions is not as smooth. The relation can now be interpreted as one of partial confrontation.

7. Conclusion

The article's first two sections sketched the role of the state in Latin America, which historically differs from that in Europe. The second section described how social scientists found a functional, historical collusion between state and criminal actors in our exemplary case, Colombia. The following sections focused on the relation of Colombian paramilitaries, namely the AUC, with state institutions and argued for a relation of collusion as well as complementarity. AUC forces were clearly not perceived as enemies/insurgents by the governing coalition. It was not necessary to limit them to legally legitimized practices; instead, it was their activities in illegal spheres which allowed the AUC certain liberties. Franco Restrepo (2009: 389) thus concludes: "through this complex process of organization and action they contribute to domination over subaltern sectors, who are or have the potential to become insurgents". Colombian paramilitaries in their self-conception were not anti-state but affirmative. Rather, the boundaries between violent state and non-state actors were actively blurred: The exercise of violence was temporarily decentralized and then re-institutionalized. The relation between state and the BaCrim at a first glance seems to be quite the contrary, but a closer look reveals structural similarities which point to only partial confrontation within fragmented sovereignty on a regional level. The levels of cooperation (Staniland 2012) differ, and the role of the state has been modified, but the outcome for political opposition or activists speaks of continuity.



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Schriften zum Internationalen und Europäischen Strafrecht



Bettendorf

Die strafrechtliche Verantwortlichkeit deutscher Soldaten bei der Anwendung militärischer Gewalt

Exemplarisch dargestellt anhand des Einsatzes in Afghanistan und des Luftschlages von Kundus am 4. September 2009

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Die Bundeswehr hat sich in den letzten 20 Jahren zu einer „Armee im Einsatz“ entwickelt. Deutsche Soldaten leisten weltweit, z.T. mit der Waffe in der Hand, Dienst. Die sich dabei ergebenden Strafbarkeitsrisiken in einer handbuchartigen Darstellung aufzuzeigen ist Aufgabe dieses Werkes.

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