

Selected briefs from the seminar *Law in peace negotiations*, Bogotá, 15-16 June 2007

Monika Nalepa:
*Infiltration as insurance**

Transitional processes tend to pose a difficult strategic problem. In transitions from authoritarianism or communism, the outgoing regime needs assurance that the terms of the agreement will be kept once it has stepped down from power. Provision of this assurance, which may be called the credible commitment problem, was needed for Pinochet to step down in Chile, and also for the former communists in Eastern Central Europe (ECE) to open the way for democracy. Nalepa discusses this problem in the context of transitions from armed conflict, and compares the cases of the ECE with the current peace process in Colombia.

Strategic obstacles to peace

In all transitional contexts, the group that leaves power needs incentives to step down. The post-transitional situation has to appear attractive enough to the outgoing group. A transitional package is often negotiated in order to make the transition attractive. In the case of armed conflicts the package takes the form of a peace accord.

But offering a group enough incentives to demobilize is not sufficient; it is also necessary to make the offer credible. A peace accord may be satisfactory in paper to all sides, but the important issue is how to guarantee to the group weakened by the transition that what is in paper will become reality. Typically, peace accords contemplate amnesties — or at least a special regime of reduced penalties — and often some further benefits. Why should an armed group believe that amnesty will be conferred and benefits delivered once it has surrendered its weapons?

Under the assumption that no form of assurance mechanism is available, a rational government will have no interest to deliver its promise once the armed group is powerless, and so a rational armed group has no reason to make an agreement. In other words, if the mechanisms necessary to solve the commitment problem are missing, no transition can take place among rational actors. Had an armed group gone ahead with a peace accord, then one should see a rational government renegeing from its promise to give amnesty and other benefits.

Overcoming obstacles in ECE

A mechanism to solve the commitment problem was available in the transitions of the ECE countries. It worked as a sort of insurance policy, which could be collected if the terms of the agreement were not kept.

In communist times, there were varying levels of recruitment of collaborators by secret police services within ECE countries. Recruitment of collaborators was a way of infiltrating opposition groups. At the time of transition the outgoing regime — the communists — had exclusive access to information about past collaboration with the secret police. Unlike the communists, the democrats had no way of knowing the degree or form of past collaboration among their ranks. If collaboration of members of the democrat elite took place and was revealed, a significant harm would be done against them, for electoral purposes and otherwise. In this sense, *the communists had a skeleton in the democrats' closet*, that is, their past collaboration with the secret police.

The communists agreed to step down, and the democrats refrained from applying measures of transitional justice for a while, because the former were able to convince the latter that they would be seriously harmed if the files of the secret police were opened. Their private knowledge worked as an insurance against purges and other transitional justice measures.

Skeletons in armed conflicts

In the case of transition from armed conflict, the analogous insurance condition is:

The government can credibly commit to delivering amnesty to the demobilizing fighters if it has “a skeleton in the closet” that the fighters could release in the event that the government reneged on the peace accord.

The skeleton can take the form of infiltration of governmental elites with members of the armed groups — e.g., association or collaboration between government officials and paramilitary forces. But it can be any sort of information embarrassing the reputation of governmental elites. For this insurance to work, two conditions must be met:

1. The government should believe that members of their elites have incriminating links but must be uncertain about the form and levels of incrimination.
2. The armed group should be in a position to reveal the information if the government reneges on its promises.

Aside from undermining the life and reputation of government officials, the fighters may have things to gain by revealing incriminating information. Thus, after they have surrendered their arms, the fighters are forced to seek political influence in the public arena. They may do so by organizing political parties or by supporting existing ones. In both cases they will compete with the existing government for legislative and executive seats. Hence exposing the corruption of existing governmental elites makes it easier for an armed group to place representatives of their own in positions of responsibility.

Moreover, the fighters already have a reputation of perpetrators of human rights violations. By sharing this responsibility with some government officials they can only gain. The costs of revealing embarrassing information are fully absorbed by government elites, which can expect to suffer the electoral consequences of such revelation.

The Colombian case

A puzzling feature of the current peace process with the United Self-defense Forces of Colombia (AUC) is the speed and eagerness with which the fighters have demobilized. It may be explained in part following the previous model, given that:

1. Links between paramilitary groups and government officials, particularly members of the armed forces and local political elites, have long been common knowledge in Colombia. The government has good reasons to believe that some of its members have incriminating links but cannot be certain about the form and extent of such links.
2. Presumably, former paramilitaries will be in a position to reveal incriminating information if necessary.

Paramilitary leaders want mainly two things: to avoid long-term imprisonment and to keep as much of their assets free from the ongoing reparations program. When these benefits have been threatened — as they were by the Colombian Constitutional Court when it changed key aspects of the transitional legal framework —, paramilitary leaders have made important disclosures on the links between high governmental officials and paramilitary activities. Infiltration of governmental elites by paramilitary groups has been instrumental in forcing the government to stick to an agreement of lenient treatment.

The skeletons insurance mechanism is in all likelihood not the only one facilitating the peace process in Colombia. The media have recently revealed that paramilitary leaders, even though waiting for their sentences in jail, have preserved links with illegal armed organizations; some of them have lieutenants ready to follow orders. It is unseemly that the paramilitaries burned all bridges when they entered the current demobilization process. Access to drug money and to illegal armed organizations is not far out of reach for them.

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