



## **‘ORDER FIRST, JUSTICE LATER’: Emergency criminal policy as a path towards development. The Colombian case**

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### **I. - INTRODUCTION**

During the last decade, the governments of different countries in Western Europe and America have adopted emergency criminal policies to combat criminal phenomena which they regard as particularly dangerous (such as terrorism and narco-trafficking), for they are a threat to the existence of the state and society. Emergency criminal policies are characterized by the granting of broad powers to state security forces (i.e. search, seizure, and arrest powers without a judicial warrant) and the hardening of criminal procedures and punishments (i.e. longer terms of detention; proscription of liberty under bail and parole; secret witnesses, prosecutors, and judges; and longer prison sentences); another salient feature of such policies is the limitation of the human rights and legal guarantees of those prosecuted (i.e. the rights to due process, to liberty, and the presumption of innocence).

With the argument that they are defending the rule of law and democracy, governments' actions and policies have consolidated an *emergency penal culture* whereupon order and security are invoked not only to limit human rights, but also to push economic and social justice into the background of the political agenda. Thus, order and security are regarded as a pre-condition for economic development and social welfare. As Agamben points out, the emergency is becoming “the dominant paradigm of government in contemporary politics.” (2005: 2). This outlook, which has captured the penal imagination of several western democracies, entails a conservative and neoliberal political economy that promotes the expansion of the repressive functions of the state, as well as the rolling back of its active intervention in the economic and social spheres.

In the following pages I will discuss the Colombian case, where different political, economic, and social phenomena have contributed to the expansion and consolidation of

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such emergency penal culture. During the last decade, the rise to power of the conservative governments of Andrés Pastrana (1998-2002) and Álvaro Uribe (2002-to present) -which support the neoliberal model-, together with a protracted armed conflict and the phenomenon of narco-trafficking, have made of the crime control field a key battlefield for the defence and expansion of such model. Thus, I will focus on the Pastrana and Uribe administrations and particularly in their main security and criminal policies: *Plan Colombia* and *Democratic Security*, respectively.

## **II.- THE PASTRANA ADMINISTRATION AND PLAN COLOMBIA: PEACE THROUGH THE WAR ON DRUGS LENS**

Andrés Pastrana took over the presidency in 1998 during difficult times. The previous government, led by Ernesto Samper, left the country in a critical situation - the political crisis unleashed by Process 8,000, (a major political scandal that uncovered the financial backing of the Cali drugs cartel to Samper's presidential campaign, as well as the campaigns of many other politicians) not only showed the extreme penetration of narco-trafficking in Colombian political, economic, and social spheres, but it also shook the confidence of public opinion in the new institutions created by the 1991 Constitution. The subversive and paramilitary groups also took advantage of the government's political weakness, boosting their finances, number of combatants and violent actions. On the economic front, the optimism of the early nineties heralded by the advocates of neoliberal reforms gradually disappeared - the Colombian economy was experiencing the most serious recession in decades; economic growth stalled, unemployment reached 20% in 2000, and public deficit was high.

Under such difficult conditions, Colombian society was craving for a new political project that would rescue it from such hard times. Conservative Andrés Pastrana claimed that he was the answer. Pastrana promised to a public opinion tired of the never-ending violence, that he would radically change the outlook of state's policies towards public order and the armed conflict through three main strategies: first, a bold plan aimed at resolving the armed conflict through peace negotiations with the two main guerrillas; second, an ambitious social and economic program addressing the entrenched causes of violence; third, the modernization and strengthening of the armed forces, the police, and the criminal justice system in order to effectively combat drug trafficking and to persuade the guerrillas to negotiate a peace settlement.

The Colombian state was incapable to afford the social and institutional reforms envisaged by Pastrana. This is why his strategy consisted in obtaining aid from the rich countries to finance such reforms. The government needed a good reason to demand for international financial help, and drug trafficking was the perfect one. The Pastrana government, only too aware of this, drafted a "plan for peace, prosperity, and the strengthening of the state" (Presidency of the Republic of Colombia 1999) that would be financed both by Colombia and the international community in a joint effort to put an end to drug trafficking, which, according to this line of argument, was the main factor hampering Colombian peaceful

development. Being a problem of international organized crime, of which both consuming and producing countries were responsible, it was only reasonable that all parties involved participated and assumed the costs of its solution.

Pastrana discussed his plan with the United States president Bill Clinton when they met in the White House on August 1998, just a few days before Pastrana took office. Nonetheless, the United States had a clear vision regarding the strategy against drug traffickers - it was mainly military and repressive. Though the US government acknowledged the importance of creating social and economic alternatives to persuade poor peasants to stop growing coca crops, as well as strengthening Colombian institutions, it framed narcotrafficking as a matter of national security which required more drastic and efficient measures. Accordingly, Washington did not simply accept, but rather transformed Pastrana's proposal into a counter-narcotics plan which included social and state-building strategies, but that emphasized a military and repressive approach. This is how Plan Colombia came into being in 1999. Such was the US participation in the drafting of Plan Colombia that, apparently, the English-language version of the plan was available several months before the Spanish one (Crandall 2002: 163).

The fact that Plan Colombia was for the United States basically a set of counter-narcotics measures is made plain by the nature of US contribution to the Plan - it consisted basically in economic, military, and technical aid for anti-drugs operations. Plan Colombia claimed that its goal was to "reduce the cultivation, processing and distribution of narcotics by 50%" within six years (Presidency of the Republic of Colombia 1999); to achieve this target it required \$7.5bn to revitalize the Colombian economy, encourage social development, eradicate coca and poppy crops, build up the rule of law -particularly vis-à-vis human rights issues and the judiciary-, and support peace talks. Colombia would provide \$4bn and the international community the other \$3.5bn (Presidency of the Republic of Colombia 1999). As agreed with the Clinton government, the United States were expected to provide largely military aid, while the European Union and Japan were expected to provide aid for social and humanitarian projects. On January 2000 the Clinton government announced a \$1.3bn two-year aid package to Plan Colombia, most of it to be spent on the Colombian military for its counter-narcotics operations. The United States also provided \$51m to finance a variety of programs for the defence of human rights, judicial reform -particularly the criminal justice system- and alternative crop development (Crandall 2002: 165).

### *1.- The impact of Plan Colombia on emergency penalty*

Plan Colombia was determinant in shaping the state's punitive policy towards the most serious forms of crime that have been linked one way or another with narcotrafficking since the eighties. It went even further, for it also linked common -though violent-criminality in the main Colombian cities with the drugs business. In this respect the Plan said: "The unacceptably high rates of kidnapping and violent street crime, in many cases related to or a product of narcotics trafficking must be reduced to restore the public's sense of security and well being." (Presidency of the Republic of Colombia 1999).

Plan Colombia's explanation of violence, criminality and the main socio-economic problems affecting the country was thus related to narcotrafficking. For instance, regarding Colombia's faltering economy and equality problems, the Plan stated:

(...) the Colombian economy, despite forty years of continuous growth, has not been able to bring the benefits of prosperity to the majority of our people; nor has it been able significantly to reduce poverty levels. The violence and corruption fuelled by drug trafficking generate distrust among foreign investors, putting a major roadblock in the path of modernizing the way things work, which is essential for generating employment and securing a stable and prosperous place for Colombia in a newly globalized world. (Presidency of the Republic of Colombia 1999)

The basic pillars of the criminal policy stated in Plan Colombia were two: on the one hand, the strengthening and modernization of law enforcement; on the other, the extradition of "international criminals" to stand trial "in the jurisdictions where the evidence of their violations has been collected" (Presidency of the Republic of Colombia 1999) - that is, the United States. The modernization and strengthening of the criminal justice system consisted basically in copying the main features of the United States model; thus, Plan Colombia granted economic, technical, and human resources to implement an accusatory system that would reduce impunity "through improved prosecution, more effective investigations and speedier trials." (Ibid.). The plan also sought to guarantee the protection of witnesses and judicial officials; the training of the latter and investigative police officers; and, finally, the improvement of the prison system.

Plan Colombia aired the official views of the United States and Colombian governments vis-à-vis Colombia's political, economic, and social situation, alongside with its problems and, more to the point, how to solve them. Thus, the Plan developed a political discourse that weaved all these elements into a narrative that responded to the US-oriented vision of rule of law and freedom of markets. Plan Colombia's narrative attempted to construct a balanced analysis of Colombia's violence and its causes, as well as advocating for economic and social policies that addressed inequality and poverty. Nevertheless, the way of framing the problem and the adequate means to deal with it, responded to political and economic orthodoxy - the one that neoliberal ideology advocates for. According to this outlook, despite the liberalization of its economic system, Colombia's development has been hampered by traditional problems: a weak state, widespread corruption and different forms of violence; all of these intensified by the destructive power of narcotrafficking. This kind of narrative subtly legitimizes the new economic order, which is regarded as a positive change and is exempted from any responsibility vis-à-vis Colombian economic and social problems. Plan Colombia asserts:

In short, the hopes of the Colombian people and the work of the Colombian government have been frustrated by drug trafficking, which makes it extremely difficult for the government to fulfil its constitutional duty. (...) we must

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acknowledge that more than twenty years after marijuana cultivation came to Colombia, along with increased cocaine and poppy cultivation, drug trafficking continues to grow as a destabilizing force, distorting the economy, reversing the advances made in land distribution, corrupting society, multiplying violence, depressing the investment climate and most seriously, providing increased resources to fund all armed groups.

(...) The destabilizing forces of drug trafficking have aggravated the weaknesses of a State still engaged in the process of consolidation. Progressive reforms introduced in the 1990s heralded an age of increased opportunity for Colombians, but they were distorted and penetrated by corrupting influences in economic and political circles; they fostered violence and corruption. More recently, the financial relationship between the various armed groups and the drug traffickers has contributed to the intensification of the armed conflict and limited the capacity of the State to discharge its major responsibilities. (Presidency of the Republic of Colombia 1999).

True, drug trafficking has permeated Colombian politics, economy, and society during the last two decades, and any attempt to explain Colombia's current situation has to deal with the drugs question. But, by highlighting narcotrafficking, Plan Colombia's rhetoric tends to cast a shadow over other phenomena and processes that may help explaining such situation - and narcotrafficking itself. Furthermore, Plan Colombia denotes a static vision of social and political phenomena, for it sees them as almost fixed structures, governed by the same, constant causes and effects. Thus, narcotrafficking is the cause of most of Colombian economic and violence-related problems. It is almost as a disease that has attacked the political and economic systems and is corrupting them. But such a worldview tends to ignore the possibility of assessing drug trafficking not as a cause, but rather as an outcome, and also as an ingredient, of shifting political, economic, and social processes and relations (Romero 2003: 74).

Many of the ten strategies of Plan Colombia are a repertoire of neoliberal commonsense. First of all there is an economic strategy that calls for the liberalization and internationalization of the Colombian economy to generate growth and employment - privatization of state-owned companies and free trade agreements to attract international and national investment are crucial in this respect. Colombia also requires one of the WB and IMF's favourite programs during the last decade - structural adjustment. That is, a "fiscal and financial strategy that includes tough austerity and adjustment measures, in order to boost economic activity and recover the historically excellent prestige of Colombia in international financial markets." (Presidency of the Republic of Colombia 1999). According to this outlook, a robust economy and a state with healthy finances are essential to achieving human development and guaranteeing "within the next few years, adequate education and health, to provide opportunities to every young Colombian and to help vulnerable groups in our society, including not just those affected and displaced by violence but also those in conditions of extreme poverty." (Ibid.).

The economic plan is supported by a “National Defence” strategy to restructure and modernize the armed forces and the police in order to restore the rule of law in the whole of Colombian territory as well as providing security, combating organized crime, armed groups, and protecting human rights. The consolidation of the rule of law requires a further strategy – the reinforcement of state institutions, particularly the judiciary, “pressing ahead with the reforms already initiated in the forces of law and order to ensure that they play their proper role in defending and respecting the rights and dignity of all.” (Ibid.).

Plan Colombia is a key expression of Colombian and US governments’ ruling vision vis-à-vis the Colombian armed conflict and narcotrafficking. Its narrative constructs the problems to be addressed and the best ways to tackle them through the development of a particular political and economic agenda. The crime control field plays a leading role for such phenomena are mainly framed as a problem of extreme and organized forms of criminality. Colombia and the international community are dealing with sophisticated and dangerous criminal organizations (be them guerrilla groups, paramilitaries, narcotraffickers or terrorists) which operate at an international level and that are a threat to the national security of those countries affected. And extreme forms of criminality and violence demand exceptional measures. This is why emergency penalty is not only becoming permanent in a globalized, post-communist world subjected to new threats –mainly narcotrafficking and terrorism-; it is also turning into a key tool to preserve the world order in the name of democracy, free markets, and development.

## ***2.- The end of the peace process and the late nineties economic crisis: fighting narcoterrorists in neoliberal times***

By the end of the Pastrana government it was clear that the peace negotiations with the FARC would not lead to any significant agreement. Most of the time was consumed discussing procedural matters, the eventual contents of negotiations and security guarantees to the subversive group. Time was running out for Pastrana who did not have anything relevant to show that he was fulfilling the peace promise of his presidential campaign. The FARC took full advantage of this situation by unilaterally suspending talks at key moments, when they felt they could gain political advantage from the situation.

The definitive break-up of negotiations with the FARC occurred in February 20, 2002. The event that triggered the crisis was the FARC’s kidnapping of an airliner in order to take hostage a congressman, Eduardo Gechem Turbay, and other political figures. The government considered this a terrorist act which clearly showed that the FARC had no interest in reaching peace and renouncing human rights abuses against civilians. As a matter of fact, this was just one new, though serious, event in a long list of violent acts carried out against civilians and politicians by the FARC – its intimidation campaign was not a novelty. But with only six months from handing over the presidency, as well as a national and international context emotionally charged and committed to a zealous crusade against terrorism after the events of 9/11, Pastrana felt the political pressure. Accordingly, he took the decision to put an end to the demilitarized zone where peace talks were taking place. Overnight the FARC -regarded during the peace process as a

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subversive group with political legitimacy to negotiate with the government- were transformed into a terrorist group that ought to be fought by all means available. On a televised discourse Pastrana not only highlighted the “narcoterrorist” nature of the guerrillas but also blamed them as the main cause of extreme poverty and unemployment:

Without a doubt, within the FARC the bellicose attitude got the upper hand; the great entrepreneurs who are amassing fortunes through narcotrafficking and kidnapping got the upper hand; (...) they are showing with bombs and destruction that they don't want to win over the people's support - they want to bring them down to their knees! And as long as they persist with this attitude, they will be the main cause of unemployment, extreme poverty and forced displacement in the country.<sup>2</sup>

But the FARC were not the main, nor the only, force behind such difficult economic and social situation. Despite the implementation of the neoliberal model, the results achieved by the Colombian economy -in terms of growth and creation of wealth- during the nineties were disappointing for the great majority of the population, contrary to the optimistic predictions of the model's advocates. Though the economy grew between 4.6% and 5.2% during the years of the economic boom -1991 to 1995- (Bonilla 2003: 207), this was not a significant growth rate considering that the average growth rate of the Colombian economy was around 4.7% between 1983 and 1989, before the economic reforms were in force. The jobs available underwent the process of neoliberal “flexibilization”, whereupon their quality and stability are seriously undermined. Law 50 of 1990 was the incarnation of the neoliberal labour ideal - the flexibilization of the labour market and legislation in order to foster investment and economic growth, which eventually will increase employment rates. According to its critics, Law 50 of 1990 did make flexible the labour market through the establishment of temporary and service contracts, outsourcing, and lower compensation rates for unfair dismissals, but it did not significantly curb down unemployment as promised. Though the flexibilization of labour seemed to work at the beginning - unemployment rates decreased from 10.5% in 1990 to 7.6% in 1994 (Bonilla 2003: 218)-, the soaring unemployment rates from 1994 onwards -reaching a critical 19.7% in 2000 (Escuela Nacional Sindical 2003: 75) - showed that flexibilization of labour on its own does not create employment if it is not coupled with an increase of productivity and the overall growth of the economy. Temporary employment -which by definition is unstable- increased from 17.5% in 1992 to 27% in 2000 (Escuela Nacional Sindical 2003: 79). Informal jobs -a common phenomenon in Latin America-, which are precarious, badly paid and are not covered by social security, as well as under-employment<sup>3</sup>, soared, accounting for much of the “improvement” of employment rates. Hence, in the seven main Colombian cities informal jobs increased from 53% in 1994 -already a high

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<sup>2</sup> See “Pastrana justifica medidas antiterrorismo y pide mayor compromiso internacional”, in *El Tiempo* (28-02-2002).

<sup>3</sup> In Colombia under-employment is defined as an economic activity developed by someone who is over-skilled for such activity and/or who is underpaid, considering her skills. It actually means that people with certain technical or professional skills cannot find a job in their area of expertise and are forced to take a job that requires lower skills, or, if they find a job in their field, it is underpaid.

percentage- to 60% in 2000 (Bonilla 2003: 221; Garay 2003: 36). During this period of time around 160,000 formal jobs were lost, while some 675,500 informal jobs were created (Bonilla 2003: 221).

Economic liberalization was not only a lost opportunity for Colombia's development; it also was instrumental in the worsening of the economic and social conditions of the majority of the population, as poverty levels almost remained unchanged -they even got worse during the economic crisis- and inequality increased. Such a trend was not exclusive of Colombia; it affected the whole of Latin America. According to the World Bank, during the last 15 years poverty in Latin America has decreased only 1.2%. Meanwhile, inequality levels, despite a slight reduction during the sixties and seventies, increased during the eighties and nineties - precisely the decades in which neoliberal reforms were implemented. In Colombia, inequality levels during the nineties were similar to those observed in 1938 (Perry et. al. 2006: 21, 22, 54). According to official figures, between 1993 and 1997 the Gini index increased from 0.51 to 0.56 - while the poorest 20% of the population had 2.7% of the national income, the richest 20% had 40%. During the peak of the crisis -1997 to 1999- the Gini index was 0.58 (Núñez and González 2006: 11).

The apparent freedom of markets for all that neoliberalism defends tends to benefit those who concentrate capital while the rest, the majority of the Colombian population, are left behind by the train of development and are forced to accept the harsh conditions imposed by the financial and labour markets. Their options are thus limited - taking unstable, underpaid, low-quality jobs, when they are available; taking their chances and making their way in the ever-expanding informal economy or, in some cases, in the criminal world. Privileges are presented and legitimized as opportunities that are grabbed by hard-working people with an entrepreneurial spirit, while poverty and unemployment are stigmatized as lack of initiative and individual responsibility or, as Plan Colombia claims, the result of the predatory actions of guerrillas, narcotraffickers, and terrorists. According to this worldview, when they do not fall prey of these criminal groups, individuals are responsible for their current economic and social situation, not the victims of adverse social and economic conditions. This worldview has important effects on the crime control field, for it cuts off the ties between criminal conducts and extreme forms of violence, on the one and, and social and economic problems, on the other. The establishment frames the former as deviant conducts committed by evil or morally perverted individuals who act out of greed to obtain immediate gains at the expense of society. Thus, it is not by chance that along with the rise of neoliberalism during the last three decades came the political view that increasingly talks about terrorist and drug cartels threats, instead of an armed conflict rooted in social and political causes. Accordingly, terrorist and narcotraffickers, or narcoterrorists, as the inflammatory prevailing political discourse calls them now, have gradually replaced subversive groups and political delinquents.

Despite negotiating with the FARC for almost three years, the Pastrana government embraced such a conservative vision of crime and social order, as Plan Colombia (which blurred the line between counter-insurgency and counter-narcotic strategies) and the war against terror (after the peace process collapsed) attest. Álvaro Uribe, the successor of



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Andrés Pastrana, has taken this form of authoritarian liberalism (a combination of free markets with a punitive state) to a higher level.

### III.- THE URIBE GOVERNMENT: FROM AN ARMED CONFLICT TO A TERRORIST THREAT

Within a context of conservatism and neoliberalism on the rise, followed by economic and political crisis, Álvaro Uribe, Pastrana's successor in the presidential office, emerged. Uribe presented himself to an anxious electorate as the winning formula to defeat economic recession and the illegal armed groups, particularly the FARC, public enemy No.1 after the abrupt end of the peace process. It was Uribe's firm stance against the peace process with the FARC that brought him to the spotlight of the presidential race. By itself, this was enough to take him to the first place in the opinion polls, but Uribe not only promised to put an end to the armed conflict, whether by the military defeat of the illegal armed actors or by forcing them to sign a peace agreement; he also promised to bring Colombia back to the path of economic growth, development, and social justice. His was an ambitious political program, charged with firmness and optimism, which appealed to the people's sense of patriotism.

Uribe summarized such program, the "Democratic Manifest (*Manifiesto Democrático*) in 100 basic points. There, Uribe promised to deliver a country where a "democratic middle class" would prevail (Uribe 2002, point 1). In simple, and rather vague, terms, Uribe expressed the state model he wanted to implement, which he calls a "Communitarian State" (*Estado Comunitario*), "devoted to eradicating misery, constructing social equality and providing security" with the active participation of citizens, who will partake in the "definition of public tasks, their execution and control" (Ibid., point 5).

On the economic front, Uribe portrayed himself as a critic of the neoliberal model that leaves the social sphere to the market's devices, thus "increasing misery and social injustice." (Ibid., point 6). In this order of ideas, Uribe pledged to take advantage of Colombia's "entrepreneurial vocation" and to actively support "middle class economic activities (the true defences of democracy)" and "small businessmen" with financial resources, as well as granting them opportunities to grow and to create employment, in order to transform them in "new economic actors that will bring to a halt the concentration of property and income" (Ibid., point 66). Despite his criticism of neoliberalism, Uribe's proposed economic policies were quite orthodox and followed the basic features of the neoliberal pattern (Dugas 2003: 1117). Uribe pointed out that another basic aspect of his economic plan was to recover investors' trust through the reestablishment of public order, trustworthy macroeconomic management, a drastic cutback in central government expenditure, tax incentives, and reduction of tax tariffs for those who invested in the Colombian economy (Ibid., point 42).

But the central aspect of Uribe's political manifest, and that won him the presidential election, was his security plan to restore public order, which he called Democratic Security

(*Seguridad Democrática*). This was the axis of Uribe's political program and campaign for, according to him, public order and security are unavoidable preconditions to attain a steady flow of private investment, economic growth, employment, and social justice. Uribe stressed in his manifest the necessity to get rid of the guerrillas and paramilitary forces and to recover the legitimate authority of the state throughout the Colombian territory in order to protect citizens and "dissuade the violent ones" (Ibid., point 26). The catchy term Democratic Security referred to a security strategy aimed at "protecting everybody, the worker, the businessman, the peasant, the trade unionist, the journalist, the teacher, from any aggressor." (Ibid., point 27).

The war on drugs was another key aspect of Uribe's security strategy. Uribe promised a "country without drugs"; to achieve this, and following Pastrana's steps after the collapse of the peace process, Uribe proposed broadening, with the United States permission, Plan Colombia to fight not only drugs, but also to prevent "terrorism, kidnapping, massacres and attacks to towns" (Ibid., point 31). Uribe not only continued but also accentuated a tendency of previous governments, consisting in mingling the armed conflict with the phenomena of terrorism and narco-trafficking. But with Uribe the idea of an armed conflict was gradually diluted, until being completely absorbed by the more emotive conceptions of drugs and terror threats; according to Uribe, they are two faces of the same problem, for the former finances the latter. Meanwhile, the political and social dimensions of Colombia's violence are lost in the background. In this order of ideas, Uribe claimed that nowadays "political violence and terrorism are identical. Any act of violence committed for political or ideological reasons is terrorism. It is also terrorism the violent defence of the rule of law." (Ibid., point 33).

The reduction of the armed conflict to the expressive label of terrorism affected also its penal treatment, which followed the vision and strategy of Democratic Security. The kind of criminal policy that Uribe proposed is a by-product of such overarching strategy. Thus, it is hardly surprising that Uribe continued -and upgraded- the tradition of previous governments in regarding criminality as an extreme problem that demands exceptional measures. Accordingly, Uribe pointed out in his manifesto the need of enacting an antiterrorist statute in order to increase the efficiency of security forces by granting them powers of search, seizure, and arrest in terrorism-related activities (Ibid., point 33), which, according to the broad definition of terrorism adopted by Uribe, could easily include drug, subversive and paramilitary-related activities. As a representative of the new breed of Colombian technocrats and politicians -educated in prestigious international universities<sup>4</sup> and admirers of the legal and economic models of core countries- Uribe also showed interest for some of the most representative aspects of the punitive systems of such countries. Thus, he advocated for the adoption of the US-style principle of orality in criminal procedures in order to improve the efficiency of the criminal justice system, the increase of punishments for several crimes -i.e. illegal possession of weapons and theft of

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<sup>4</sup> Uribe holds a degree in law from the Universidad de Antioquia and a post-graduate degree in Management and Administration from Harvard University. From 1998 to 1999 after being awarded the Simón Bolívar fellowship by the British Council in Bogotá, he worked as Senior Associate Member at Saint Anthony's College at Oxford University (Presidencia de la República 2006).

cars-, a harsher punitive treatment for delinquent youths regarded as “highly dangerous”, and the implementation of private prisons (Ibid., point 36).

With this manifesto, a combination of a firm and optimistic political message based on the idea of security, together with a set of orthodox economic and punitive policies, Uribe won the massive support of Colombian voters, especially among the middle and upper classes (Dugas 2003: 1117) who fervently believed in the slogan of his campaign, “firm hand, big heart” (*mano firme, corazón grande*). Thus, Uribe obtained a landslide victory on May 26, 2002 with 53% of the popular vote.

### **1.- Democratic Security and emergency penalty: the hardening of the government’s security discourse**

Supported by the international community (above all the United States) that after 9/11 demands strong action against terrorism, war crimes, and crimes against humanity, Uribe heightened the ruthless character of guerrilla groups (particularly the FARC) by denying even the smallest shred of political legitimacy to their activities. From Uribe’s perspective, the very fact of naming rebellion –even to include it in emergency penalty- implied recognizing that the guerrillas are engaged in political crime. According to this view, there is not such a thing as an armed conflict, but a terrorist threat fuelled by narco-trafficking and perpetrated by criminal organizations – extremely dangerous, but merely criminals. Thus, the FARC and the ELN are not rebels in arms against the state (they do not have a political status) but terrorists and drug dealers. Paramilitary groups also received such appellatives, though not with the same intensity as guerrilla groups, while they also received a more flexible political and legal treatment – Uribe agreed with most of the paramilitary groups their demobilization in exchange for more lenient criminal procedures and prisons sentences, which could not exceed 8 years, regardless of the number of crimes committed and their seriousness.

Such was the president’s believe that there is not an armed conflict but a terrorist threat, that he proposed eliminating political offences (rebellion, sedition, and violent protest – *asonada*-) from the criminal statute; such offences could be subsumed in other crimes such as terrorism, illegal possession of weapons or conspiracy to commit a crime. According to Uribe, “the advanced European democracies got rid of political crimes. Why? First, because in those countries there are profound democratic regimes; second, because whenever in a profound democracy anyone tries to reach power by using arms, the offence is no longer political; it is terrorism.”<sup>5</sup>

By denying the existence of an armed conflict, Uribe also explained his understanding of the causes of violence and poverty in Colombia; they have nothing to do with political, social, and economic exclusion (as the guerrillas claim), but rather with the criminal actions of a few: “We cannot recognize any legitimacy in the fight of violent groups; this is

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<sup>5</sup> See “Gobierno busca eliminar los delitos políticos de la legislación penal”, in *El Tiempo* (19-05-2005).

why we call them terrorists. (...) These groups have only increased misery, lack of investment and unemployment; this is why the historical depiction of insurgency (...) may not be applied to them. (...) <sup>6</sup> There is no conflict. We have a democracy that improves everyday; there are problems of unemployment, misery, injustice, but what we have is a challenge of terrorism against citizens.” <sup>7</sup> Such is the president’s diagnosis of Colombian problems; accordingly, the state’s response must be resolute action: “We have been wrong with the civil forms discourse; we have encouraged for decades the prolongation of the terrorist challenge because we have been immersed in a false discourse that mistook civil forms with weakness. Strength within civil forms, aggressiveness within civil forms to defeat them; only then they will negotiate.” <sup>8</sup>

This kind of language, traditionally used by the military to define its enemy, became a central part of the government’s discourse and, accordingly, the legal definition and treatment of the violent confrontation between the state and illegal armed groups. The definition of the kind of enemy being confronted is also crucial to the definition of the nature of the most extreme forms of crime and violence facing Colombia.

#### IV.- SECURITY FOR THE MARKET

Uribe’s political project has furthered like no other of his predecessors the authoritarian liberal model that has characterized Colombia from the second half of the Twentieth century. He decisively defends the ideas of democracy, the rule of law, and protection of human rights of all citizens. But he defends a particular interpretation of those ideas, which is politically conservative. Such a conservative and limited conception of democracy gives priority to freedom (mostly its economic aspect), over equality. Despite declaring its commitment to human rights in general, this conservative version actually focuses on the protection of negative freedoms, which requires the state to refrain from intervening in the liberty of individuals, favouring those who have the economic resources, social status, and political influence to effectively exercise them. In a country with such a high level of inequality as Colombia, this group of individuals is very limited. Meanwhile, half of the population has restricted -or not at all- access to economic and social opportunities, as well as state services, necessary to enjoy a minimum level of wellbeing that would allow them to exercise their freedom of choice and enterprise.

This political conception of democracy sees the conflicts that arise in society between individual rights (the ones that guarantee individual freedom and property) and collective rights (the economic and social rights that foster a fair access to economic and social resources) as a social dysfunction that must be corrected - but mainly to protect the former, which takes precedence over the latter. Thus, social conflicts, which cause upheaval and disorder, are seen as an obstacle that hinders development and economic

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<sup>6</sup> See “Álvaro Uribe insiste en que en Colombia no hay conflicto”, in *El Tiempo* (01-02-2005).

<sup>7</sup> See “Álvaro Uribe pidió transparencia y trabajo en equipo a las Fuerzas Militares”, in *El Tiempo* (11-11-2004).

<sup>8</sup> See “Álvaro Uribe pidió transparencia y trabajo en equipo a las Fuerzas Militares”, in *El Tiempo* (11-11-2004).

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growth (under capitalist rules). This kind of economic liberalism becomes politically authoritarian when it conceives social upheaval exclusively as a problem of public order that must be dealt with through repressive measures. Hence, to protect democracy and human rights, the state actually curbs them. From this perspective the order of priorities is clear: order and security first, full enjoyment of human rights later. This political model constructs a logic that seems inescapable - without security and order it is impossible to enjoy freedoms and there is neither trust nor confidence to develop economic and social activities. Without these it is not possible to develop a free market and, thus, economic growth and development. Finally, without economic growth and development there is not enough wealth to distribute, so it becomes impossible to redress problems of poverty and inequality. Therefore, to achieve freedom and prosperity for all, it is necessary to begin by securing public order. Once this is achieved, the other will follow suit.

This may look like a sound theory, but social reality is much more complex and may not be explained -and addressed- as if it were a system of natural laws that responds to an unchangeable chain of causes and effects. This view ends up being reductionist for it discards all other possible interpretations of society and its problems, as well as different ways of addressing them. And it is politically conservative because it favours a worldview that legitimizes and naturalizes privilege, exclusion, and inequality in the distribution of resources and opportunities.

In the Colombian case, the crime control field maintains the status quo with the excuse of protecting democracy and human rights (while thorough social and economic transformations are indefinitely postponed), thus benefiting a reduced social group that enjoys unfair access to political power, economic wealth, and social status at the expense of the majority of the population. Violence and insecurity are blamed as the main causes of poverty and inequality, completely excluding the possibility of seeing them as their consequence. No doubt, to hold the latter position in such a simplistic way leads to an, opposite, form of reductionism. Nonetheless, there is a strong case to argue that poverty and inequality in Colombia are so extreme and long-lasting problems that they must be among the different conditions that may explain the intense levels of violence and insecurity. This view is excluded from the perspective of authoritarian liberalism, which bans it from political imagination through an aggressive discourse of denial, while legitimizing the priority of repressive responses to public disorder and social upheaval.

The policy of Democratic Security is almost a political manifesto of this form of political conservatism that defends the interests of economic liberalism through the reduction of social conflicts to a problem of security that must be repressed through state's violence. In his introductory note to the official text of the "Democratic Security and Defence Policy", president Uribe plainly outlines the assumptions, aims, and working logic of such policy. The "order first, rights later" credo is expressed in these terms: "Restoring order and security -a basic prerequisite for the strengthening of civil liberties and human rights- is a central concern of this Government. Democratic Security is what is required to guarantee the protection of the citizens." (Uribe 2003: 5). Uribe emphasizes the democratic aspect of his security policy, claiming that "all are welcome in a democracy". Accordingly, Uribe

promises that “The opposition, those who disagree with the ideas of the Government or of their own party, will receive the same protection as those who agree with the Government.” (Ibid.). The declared objective of Democratic Security is to “strengthen and guarantee the rule of law throughout Colombia, through the reinforcement of democratic authority.” (Ibid.: 12). The rule of law is also a prerequisite for development and economic prosperity, as Uribe claims in quite emotive terms: “Every time a kidnapping occurs, investors’ confidence is deeply affected, capital dispersed and employment lost. When Democratic Security develops a policy to eliminate kidnapping, it is defending the citizens and their basic social rights.” (Ibid.: 7).

It is unquestionable that widespread violence and criminality undermine the rule of law and hinder economic development and prosperity; there is no doubt that the illegal, and very frequently horrific, actions of armed actors and criminal organizations have destabilized the country for a long period of time, affecting the normal functioning of democratic institutions and discouraging private investment. Considering all this, it is hard to disagree with the idea that the rule of law and democratic institutions must be strengthened to defeat crime and violence, as well as achieving economic growth. However, what is questionable about the political approach outlined by Democratic Security is that it presents the complex and diverse realities that make up Colombia’s recent history of political instability and violence as a linear chain of events that originate in a reduced set of criminal causes (narcotrafficking, terrorism) that must be eliminated in order to straighten the course towards peace and prosperity.

This reductionist construction of the nature and causes of Colombia’s violence and social upheaval –which subtly plays down the responsibility of the political regime- also sets the scene for the kind of responses required, which are mainly of a repressive and militaristic nature. As Leal notes, Democratic Security is above all a war plan to defeat narcotrafficking and terrorism (2006: 12). Terrorism is regarded as “the main method used by the illegal armed groups to destabilise Colombian democracy” (Ibid.), while the illegal drugs trade is signalled as the main factor that led to the “loss of ideological discipline [of the guerrillas and paramilitaries] and consequently to their downward spiral into terrorism.” (Ibid.). These two phenomena are the overarching cause of the problems of violence facing Colombia; according to such reasoning, they create a climate of impunity that further weakens state institutions and that “indirectly” encourage other forms of crime. Thus, the existence of illegal armed groups and narcotrafficking account, one way or another, for the existence of high crime rates in Colombia: “The more they undermine the judicial system and spread their money laundering, weapons trafficking and murdering skills, the more they create areas of impunity where homicide and common crime can flourish.” (Ibid.: 30).

This is not to say that Democratic Security is inventing a “security problem” that does not exist, as well as arguing for solutions that are completely out of hand. What is questionable is that it frames the problem of security in a partial and selective way, excluding other variables necessary to fully grasp it, thus presenting a solution that is not the only one available (as it claims), and that is not the most suitable. This careful construction of what

may be called a penal commonsense has a clear neoliberal leaning, for it encourages the hypertrophy of the penal state and the reduction of the social state (Wacquant 2001a: 79; 144). Of course, this is not a peculiarity of the Colombian case, but rather a confirmation of a global trend that began in many core countries (particularly the United States) and had spread around the world. A key strategy of the naturalization of emergency penalty and penal neoliberalism consists in cutting-off all the connections between criminality and violence on the one hand, and conflictive social and economic relations on the other.

### V.- DEMOCRATIC SECURITY AND THE MILITARIZATION OF SOCIETY

It is a proven fact that in the overwhelming majority of capitalist societies those who end up in prison are mainly young males, often coming from urban centres and marginalized backgrounds, with low levels of education and usually unemployed (see Garland 1998: 1160-1161; 2001a: 90-93; 2001b: 5; Wacquant 2001a; 2001b; for the Latin American case see Jiménez 1994; del Olmo 1995; 1998 and Wacquant 2003). Colombia is no exception, as shown by its prison population (Ministerio de Justicia 1989; INPEC 1999) and also by the rank-and-file of the guerrillas, the paramilitary groups, and drug cartels (Ferro and Uribe 2002; Salazar 1990). The countryside and the marginal urban areas where state's presence is weak, while unemployment and poverty are high, are breeding grounds for resentment, sentiments of vengeance and grievance, and, ultimately, lawlessness, violence and crime. Hence, they make ideal recruiting grounds for armed groups and criminal organizations. Governments take note of this fact, but only in an authoritarian key, for they see such areas mainly as theatres of operations, where state presence must be mainly repressive. Though the official discourse also speaks of bringing justice and social services to such high-risk areas, the former is mainly translated into criminalization of their inhabitants, while the latter plays a secondary -improvised and under-financed- role. The cases of the *Comuna 13* and the mass arrests strategy are clear examples of this form of control of marginalized populations.

#### *Comuna 13: the militarization of urban spaces*

Both the Pastrana and Uribe governments tried a strategy of military control of the civilian population in highly dense urban areas. Thus, Operations Marshal and Orion were launched on May 21 and October 16 of 2002, respectively, in the *Comuna 13*, a shantytown of Medellín of approximately 130,000 inhabitants, where FARC and ELN's urban militias were located. These were massive operations undertaken by the Attorney General's Office, the armed forces (including the air force), the secret police (DAS), and the national police, using around 1,000 troops, armoured vehicles, and even heavily armed helicopters.

According to CINEP and Justicia y Paz (recognized human rights NGOs linked to the Catholic Church) the state security forces indiscriminately fired against the civilian population, killing 9 civilians in the Operation Marshal, among them two children. They also arbitrarily detained 55 people (CINEP-Justicia y Paz 2003: 121). During Operation Orion one civilian was killed, 8 disappeared, and 355 were detained and presented to the

media as terrorists; many of them were pointed out by hooded informants participating in the operation. 185 of them were released shortly after. Of the 170 remaining, who were detained between 24 and 48 hours without being brought to the incumbent judicial authority, the Attorney General's Office released 88, for there were no charges against them. Hence, of 355 people arrested during the operation, 273 were arbitrarily detained (Ibid.: 124). The working logic behind such a strategy of indiscriminate mass detentions (which has become a common technique during the Uribe administration) was made clear by the Commander of the Medellín Police Force, who, while directing Operation Marshal instructed his units: "everybody has to be arrested... we'll find out later who's not involved... everything that moves must be intercepted." (Ibid.: 10).

*The mass arrests strategy: looking for the enemy*

The "mass arrests" (*capturas masivas*) -as they became known to the press and NGOs- became one of the Uribe administration's favourite law and order tools, sweeping different areas of the country - especially those under the influence of the guerrillas. Mass arrests consisted in operations performed by the security forces and the Attorney General's Office, whereby they captured considerable numbers of people under the suspicion of belonging to, or aiding terrorist organizations. Quite frequently such operations were put into motion by intelligence reports of the security forces (which according to Colombian criminal law may not be used as evidence in trial) and the data provided by informants who most of the times were unknown to those captured, since the state protected their identities. Also, many of those captures were illegal, for they were carried out without a judicial warrant - or it was produced after the arrests (Procuraduría General de la Nación 2004: 162-169; 213-219). President Uribe himself encouraged the security forces to undertake this strategy to produce results; in a public speech in a congress of coffee growers he declared:

Last week I told General Castro Castro [General Commander of the National Police] that in that zone [Sierra Nevada de Santa Marta] we could not carry on with massive arrests of 40 or 50 people every Sunday; we need to arrest 200 people to speed up the imprisonment of terrorists and hit these organizations. These arrests have been massive, but not arbitrary. They have strictly respected the rule of law. They have been carried out after a careful examination of the evidence available.<sup>9</sup>

The National Police reacted promptly to the president's demands - on September 27, 2003 the National Police and the Attorney General's Office undertook Operation Freedom (Operación Libertad) in the municipality of Quinchía, Risaralda Department (Western Colombia), a coffee growing region; 117 people were arrested, including the

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<sup>9</sup> See "Palabras del presidente Uribe al instalar Congreso anual cafetero" (10-12-2003), in [www.presidencia.gov.co/discursos/congresocafetero.htm](http://www.presidencia.gov.co/discursos/congresocafetero.htm), quoted by (Coordinación de Colombia- Europa-Estados Unidos -CCEEU- 2005: 3).



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mayor and other 4 public servants. On October 31 the prosecutor in charge of the case released 48 people, for lack of evidence against them, and indicted the remaining 69 with conspiracy to commit a crime, terrorism, and rebellion. Almost two years later, 62 of them were released for the evidence against them was weak or illegal; one defendant died in prison and 6 more remained detained (Coordinación de Colombia- Europa-Estados Unidos -CCEEU- 2005: 4).<sup>10</sup>

A report by a group of Colombian human rights NGOs clearly showed that the strategy of mass arrests consisted in a systematic violation of human rights of a substantive number of people, particularly their rights to freedom, presumption of innocence, and due process. The most blatant example of such abuses was the arrest in one single day, November 12, 2002, of around 2,000 people in the municipality of Arauca, the capital of the Arauca department, which has approximately 73,000 inhabitants. All of them were accused of belonging, supporting or being linked to subversive groups. Though this is the most representative case, is by no means the only one - between August 7, 2002 and August 6, 2004, 5,535 people were arbitrarily detained in 77 mass arrests operations (CCEEU 2005: 1).

The significant amount of mass arrest operations, and of course of people detained, were used by the security forces and by the government to show the effectiveness of Democratic Security - it did not matter that the evidence on which the captures were based many times proved to be quite weak; what made the press front pages were the arrests, rather than the release of prisoners, as ordered by public attorneys and judges who ruled that there were no legal grounds to keep them under arrest. This constitutes by itself a serious and systematic violation of human rights, but the mass arrests strategy becomes suspicious considering that most of the people detained were accused of belonging to, or aiding guerrilla groups, and that many of them were leftist activists, trade unionists, or even academics with leftist leanings; despite that the government considered paramilitaries as terrorist organizations and claimed that it would persecute them with the same zeal as the guerrillas, in rare occasions people suspected of paramilitarism were subjected to mass arrests. Instead of apologizing for mass arbitrary detentions that ended up in the release of suspects, the government reacted angrily, and with lots of publicity, against public attorneys and criminal judges, accusing them of being inefficient, or even corrupt, for letting go to waste the work of the security forces.

Pointing out broad numbers of people as subversives, especially those living in areas disputed by, or under the control of illegal armed groups, together with a bellicose official discourse, actually stigmatizes those detained and even entire populations, no matter if they are innocent - and in Colombia this may lead to their deaths, forced displacement or forced disappearances. The Attorney General at that time -2003-, Luis Camilo Osorio, clearly displayed such a stigmatizing rhetoric when he publicly defended indiscriminate

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<sup>10</sup> See also "Después de dos años, se demostró que 111 detenidos en captura masiva de Quinchía eran inocentes", in *El Tiempo* (03-08-2005).

mass arrests saying that “In some areas where an entire community come to an agreement to commit acts of violence detentions must be collective.” (CCEEU 2005: 23, 24). Therefore, this strategy becomes a veiled form of political persecution for a great proportion of people being targeted do not actually belong to illegal armed groups, and usually defend ideas that oppose the power relations of the places where they live, as well as the security policy of the government. This is the case of social leaders, trade unionists, politicians from the opposition and human rights activists arrested and accused of being subversives (Ibid.: 34, 35). This may play a great part in explaining why people accused of belonging to, or aiding paramilitary groups are not the main targets of mass arrests – they do not present a challenge to the status quo of the regions where they operate; indeed, they uphold it through violent means. Mass arrests operations are thus a clear example of the neoliberal penal commonsense of Democratic Security, which defends through authoritarian methods, and in the name of democracy, the existing power and economic relations that foster social exclusion and inequality.

## **VI.- NOT SEEING THE FOREST FOR THE TREES: THE RELEVANCE OF SOCIAL INCLUSION TO CURB CRIME**

The neoliberal conception of democracy privileges freedom of markets (together with the small social groups that take the greatest advantages from them), making use of a limited idea of security that guarantees such freedom, while social and economic rights are left in the margins. Those who actively oppose this political and economic arrangement that they find unfair -or those who quite simply are excluded from it- are the ones who usually end up being criminalized and repressed. Making use of what Wacquant calls the “threat thropos” (2001a: 132) the neoliberal state restricts rights in order to “defend democracy” from different threats - in the Colombian case the greatest one currently is narcoterrorism. This actually facilitates the avoidance of active policies against economic insecurity and social inequality (Ibid.), since the government is only concerned to provide “equal access to security” by enhancing mechanisms of control; only then economic and social rights may flourish; as the Democratic Security policy of the Uribe administration claims: “Economic development and employment opportunities also require a climate of security that encourages investment, trade and local authority spending for the benefit of the community, all of which have suffered constant predation by illegal armed groups.” (Presidency of the Republic-Ministry of Defence 2003: 21).

Advocates of this kind of policies claim that it is precisely the poor who are most affected by insecurity, since they are “the least protected, who are displaced from their land and who suffer at first hand the terror of the illegal armed groups.” (Ibid.). Seen this way, it is almost naïve, if not cynical, to criticize the government for concentrating its efforts on security. But looking it from a broader perspective, this argument only shows one side of the coin, for just as the least well-off suffer armed violence and forced displacement at the hands of illegal groups, they also suffer the violence of poverty, hunger, unemployment, lack of health, education, and basic sanitary services – that is, they suffer from social and economic exclusion. Neoliberals may retort that the state has not enough resources to

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cover these needs precisely because of the predatory actions of illegal armed groups, thus the necessity to vanquish them first of all. But, once again, this line of argument only shows part of the story, for the real question is not whether Colombia would be better-off without violence and those who cause it; nobody would disagree with this. The pressing issue is whether the state, and those who hold political and economic power, could do better vis-à-vis the vast marginalized sectors of society. The answer is they do. The liberalization of the Colombian economy and the flexibilization of the labour market (as well as favourable treatment in the form of generous tax reductions and exemptions), have indeed attracted private investment, and thus more resources and wealth. But these have only benefited a small sector of the population, the richest one, while those who live in poverty (half of the population) have been forced to bear the burden.

Many neoliberals still argue that anyhow, thanks to the economic reforms, the poor stand a better chance than they would without them. This reasoning also begs the main question – the problem is not simply about improving the chances of the poor, but mainly about fairness and equality. As Amartya Sen suggests, “the principal question is whether the particular divisions [of benefits] to emerge, among the many alternatives available, are fair divisions, given what could be chosen instead.” (2006: 135). Here the state plays a key role, since public policies –in education, health, credit facilities, land reform, access to justice- have the potentiality to alter, in a positive way, the outcome of economic relations (Ibid.: 138). Colombian governments during the last decade have failed in this respect, not just because of the narcoterrorist threat, but mainly due to lack of political will to fight social exclusion and economic inequality with the same determination that they confront public disorder. Despite economic reforms and neoliberal promises, Colombia is still one of the most unequal countries of Latin America – the most unequal region in the world along with Sub-Saharan Africa (Perry et. al. 2006: 53); extreme inequality also breeds inconformity, resentment, and ultimately violence.

The new global order, led by the United States and of which Colombia is a part, is increasingly governed by the rules and values of free markets and a conservative conception of democracy. This neoliberal political economy claims that securing order, by waging a war against crime, is an essential precondition to achieve economic growth and prosperity. The neoliberal penal commonsense regards criminals as a malign tumour that once extirpated will allow the healing of the social body. Such a penal worldview silences other plausible explanations, such as inequality and exclusion that, together with longstanding grievances, resentment, vengeance feelings, and rage may ultimately lead to illegal conducts. Neoliberal penalty also confines the idea of security to a matter of public order that requires punitive measures, obscuring a more complex concept of social security, which guarantees not only public safety but also the material wellbeing of citizens. To fulfil this more complex kind of security, active social and economic measures, and political will, are required.

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