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Making peace in seas of crime: crimilegal order and armed conflict termination in Colombia

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Abstract The relationship between organized crime and political order in the contemporary developing world and in transition countries is still little understood. Building on the seminal accounts of political order by Weber, Fukuyama and North, Wallis and Weingast, this article introduces the concept of crimilegality. Crimilegal orders are neither 'modern' nor 'non-modern' but combine and integrate elements of both types of order. They are characterized by the blurring of the social boundaries between legality and illegality and/or criminality. What is formally illegal and/or criminal may be deemed legitimate, while what is formally legal may be considered to be illegitimate. The resulting crimilegal governance arrangements, which involve coordination between a range of state and non-state actors, serve (illicit) economic interests but are also reflective of broader particularistic concerns about guaranteeing political stability and the de facto exercise of political authority, as well as the physical security of those in power and, somewhat paradoxically, their judicial impunity. In such orders the state's monopoly on the use of force tends to be replaced by oligopolies of coercion and high levels of violence are not uncommon, though they are also not standard. Using the current Colombian peace process as an example, this article argues that due to eminently political reasons violently contending state and non-state actors, both with notorious criminal pedigrees, can reach agreement on ending armed conflict and decide to cooperate to recover the primacy of legality. However, whether this type of bargaining game can ultimately lead to the positive 'legalization' of a crimilegal order, such as the one in Colombia, remains an open question.

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Introduction

Despite sustained scholarly efforts over several decades, the relationship between organized crime and political order is still relatively little understood. This applies especially to situations in the contemporary developing world and in transition countries. Conventional analysis is often based on the notions that crime groups either fill a vacuum generated by the institutional weakness and the criminal policies of the state; or that they are indistinguishable from the state and exercise quasi-governmental functions. Yet these perspectives, which focus on extremes not means, leave us with little room to advance a clearer and more fine-grained understanding of the ordering power of organized crime and, particularly, of how illegal and criminal activities, structures and governance become or are an integral and systemic part of the wider political order.

To expand the cognitive field and deepen our knowledge about crime, violence and insecurity in contemporary Latin America - the topic of this special issue – this article introduces the concept of crimilegality. I develop this concept on the basis of the seminal conceptions of political order put forward by Max Weber [1, 2], Francis Fukuyama [3, 4] and Douglass North et al. [5]. In different ways, all three of these accounts highlight the centrality of the formal and impersonal (rule of) law in the constitution of modern political orders, that is, of rational-legal, liberal and open access orders, respectively. Such orders are portrayed as being categorically distinct from non-modern orders, that is, traditional, charismatic, patrimonial and closed access orders that are not based on formal notions of the (rule of) law. In contrast to Weber, Fukuyama and North et al., who due to their focus on legality and lawfulness as foundations of modern political order do not consider the element of organized crime, I posit that in many contemporary developing and transition countries political order is neither 'modern' (that is, formally 'lawful') nor 'non-modern' (that is, formally 'non-lawful'), but crimilegal.

In essence, crimilegal orders are characterized by the blurring of the social boundaries between legality and illegality and/or criminality. What is formally illegal and/or criminal may be deemed legitimate, while what is formally legal may be considered to be illegitimate. This results in the emergence of (non-hierarchical) modes of social and political regulation in which organized criminal activities and structures play a constituent role. These governance arrangements, which serve (illicit) economic interests but are also reflective of broader partisan and particularistic concerns about political stability and the de facto exercise of political authority, as well as the physical security and, somewhat paradoxically, judicial impunity of those in power, are neither fully illegal and/or criminal nor entirely legal. Located somewhere on a continuum that stretches from the realm of legality to that of illegality and/or criminality, crimilegal governance is enforced by oligopolies of violence and coercion.

To illustrate my argument about crimilegal orders and the ways in which they function and/or become subject to transformation, I apply the concept to the peace process between the administration of President Juan Manuel Santos (2010–2018) and the Revolutionary Armed Forces of Colombia (FARC, in Spanish). That process started in September 2010 and unfolded over the course of close to two years of covert preparatory talks and more than four years of formal and confidential negotiations in Havana, Cuba. It was successfully concluded in late 2016 with the signing of a final peace agreement that was eventually ratified by the Colombian congress. I chose this

case because the Colombian conflict has an infamous record of permeation by organized criminal activities, particularly, though not exclusively, by the booming illegal narcotics trade. Alongside a plethora of other criminal groups and networks in the country, FARC has played a key role in illicit drug production and trafficking as well as in other criminal trades. But elements of the Colombian state are also known for their deep implication or complicity in organized illegal activities and structures, including drug trafficking and grand corruption, as well as counter-insurgency with criminal traits and the sponsoring of illegal paramilitarism. It is therefore highly relevant that the two parties to the talks would have resolved to include the fight against organized crime as a central element in the peace agenda.

In light of the available evidence - which I gathered during more than two years of research in Colombia, including through a series of in-depth interviews with local expert-informants - the article thus addresses the question of whether, beyond its stated aim to end the conflict by political means, the peace process could also be read as representing an instance of transforming Colombia's crimilegal order in a joint quest between the Santos administration and FARC to recover the primacy of legality and lawfulness in the South American country. While this is in fact what I argue for in this article, it is important to highlight at the outset that due to the covert and confidential nature of the peace talks we still lack a deeper and better informed understanding of the process. Future research will hopefully be able to strengthen the extant evidence base. Furthermore, I am aware of the conceptual and theoretical complexities of the involved issues, which need to be tackled in systematic fashion and by way of granular testing of the concept of crimilegality not only in the context of Colombia but also in other violence-affected and crime-permeated settings across the developing world.[1]

The remainder of this article is organized in the following way. I start with a critical discussion of the conventional framing of the relationship between organized crime and the state and governance, which to my mind fails to grasp the realities of political order in the contemporary world, especially in developing and transition countries (chapter 2). This is followed by the presentation of the concepts of crimilegality and crimilegal governance, which I develop on the basis of, and in contrast to, the accounts of political order provided by Weber, Fukuyama and North et al. (chapter 3). Subsequently, I succinctly analyze the peace process between the administration of President Santos and FARC and address the question of whether this process could usefully be understood as an instance of the transformation of a crimilegal order (chapter 4). A concluding section offers some ideas on how research on crimilegal orders, organized crime, peace processes and development could be taken forward.

The ordering power of organized crime: interrogating the framing of the issues

Understanding crime in its organized form has exercised many minds over the course of the past century or longer. Like prominent film makers and literary authors, scholars too have been captivated and intrigued by the world of the "great criminal" who, in Walter Benjamin's words, "has aroused the secret admiration of the public" not because

[1] For a recent contribution on Nigeria see, for instance, Schultze-Kraft [6].

of "his deed but … [because of] the violence to which it bears witness" ([7]:239). However, the study of organized crime, which until not very long ago was confined to specialized law enforcement agencies and select law, criminology, sociology and economics departments at European and North American universities, has thus far not yielded a cohesive and cumulative body of knowledge; and there is not one, more widely accepted definition of the concept [8, 9].[2]

Broadly speaking, three distinct approaches to analyzing organized crime can be found in the literature. One frames the phenomenon as a set of profit-driven illegal *activities* that display "a certain level of sophistication, continuity, and rationality", and produce a "certain level of harm" in society ([9]: 27).[3] A second perspective focuses on the *structural and organizational properties* of organized criminal groups, that is, whether they are of an entrepreneurial, associational or quasi-governmental nature; and whether they are organized around markets, social networks or political hierarchies ([9]: 100–106).[4] A third strand of research, finally, puts the spotlight on the *governance functions* of criminal groups and organizations, which may play a "quasi-governmental role in place of legitimate government" ([9]: 264). This last approach focuses on determining how criminal organizations gain power and take over governance functions in both the so-called underworld and upperworld. Writes Klaus von Lampe,

> "in the underworld, that sphere of society where the state has no ambition to regulate behaviour other than to suppress it because it is illegal, forms of self-regulation may develop that can take on the form of an underworld government. Individuals or groups may emerge that […] set and enforce rules of conduct and settle disputes among criminals and in turn demand a share of illegal profits. Such influence can also extend into the legal spheres of society [that is, the upperworld], especially where the state is weak. This typically occurs in the form of an alliance of criminal, business, and political elites. The overriding question in both cases is how it is possible that crime, the quintessential violation of commonly shared norms and values, can create order, sometimes even enjoying a high degree of legitimacy, as ethically twisted as this order may be" ([9]: 32).

In relation to the governance function of organized crime, which is of particular interest to the study of crimilegal order, much has been written on the capacities and strategies of large and powerful criminal organizations, particularly the Italian and other contemporary mafias, to fill regulatory vacuums generated by weak and ineffective states (see, for instance, [10–14]). Other, more recent research has focused on how

[2] This has not been helped by the fact that over the years different disciplines and strands of political and social research have picked up the topic of organized crime in rather ad hoc fashion and without much reflection on its conceptual and methodological underpinnings.

[3] Von Lampe identifies three types of organized criminal activities: "(a) market-based crimes involving the provision of illegal goods […] and services […] to willing customers, (b) predatory crimes such as theft, robbery, and fraud characterized by offender-victim relations, and (c) what could be termed "control-oriented" or "regulatory" or "governance" crimes involving the setting and enforcing of rules of conduct and the settling of disputes in the absence of effective government regulation and, in turn, the taxation of illegal profit-making activities" ([9]: 31).

[4] Examples for these three different types of criminal structures would be a burglary gang (entrepreneurial), an outlaw motorcycle gang (associational) and the Cosa Nostra family (quasi-governmental) ([9]: 100).

criminal organizations are infiltrating, coopting and capturing state institutions in developing and transition countries, which in the process may become subject to reconfiguration.[5]

These processes have been analyzed as playing out in a variety of ways, such as through the establishment of mechanisms of "criminal governance" [21] based on close connections between criminal structures and state and social actors at the local level; "illegal-legal partnerships" in which "criminals and officials interact more or less as equals in the pursuit of corresponding or common interests" ([9]: 270); or the bankrolling of electoral machines by drug-trafficking organizations [22]. Still other research has addressed the governance dimension of organized crime by focusing on the criminal and illegal practices of states themselves, including acts of grand corruption in the public sector. This has resulted in the development of a variety of concepts, such as that of "state-organized crime" [23], "power crime" [24], "mafia states" [25], "fusion regimes" [26], "criminalized states" [27] and "parapolitics" [28].

Highly influential in international law enforcement and policy circles has been the perspective that pictures organized criminal activities and structures as a serious threat to the security of states and even the stability of the entire international system (see, for instance, [29–38]). These threat scenarios tend to be developed in conjunction with analyses of processes of accelerating and intensifying globalization "in which transnational criminal organizations and trafficking networks exploit the institutional and other weaknesses of states for illicit economic purposes, making a mockery of national sovereignty by operating across international borders, playing off one national jurisdiction against another, and using violence to regulate global black markets" ([39]:8). The notion of an ever expanding threat posed by transnationally-networked criminal groups is further informed by the reality that since the end of the cold war the lines between, and the identities of, criminal organizations and insurgent, terrorist, paramilitary and vigilante groups have become increasingly blurred (see, for instance, [40, 41]).

This article is not the place to engage systematically with these variegated literatures. What I want to highlight, though, is that authors often cling to the notion of the "alien nature of crime groups" ([42]:359) that operate from the margins of the extant political order and fill a vacuum generated by the absence or institutional weakness and the criminal policies of the state.[6] Or they go to the other extreme, locating the *fons et origo* of the political power of organized crime at the very heart of the state. In these conceptions both the state and organized crime tend to be portrayed as distinct, rather monolithic and essentially non-hybrid entities.

I posit that this leaves us with little room to advance a clearer and more fine-grained understanding of the political dimensions of organized crime and, particularly, of how illegal and criminal activities, structures and governance become an integral and systemic part of the wider political order. In this regard, I suggest that instead of

[5] While the study of organized crime originated in the United States and was subsequently adopted in Europe, over the past two decades we have witnessed the emergence of a growing literature on organized crime in developing countries and so-called 'fragile and conflict-affected states'. For Latin America see, for instance, Garay-Salamanca and Salcedo-Albarán [15] and López [16]; for Central Asia Kupatadze [17]; and for Sub-Saharan Africa Ellis and Shaw [18] and Shaw [19]. For an overview of the debate about the nexus between development and organized crime see Schultze-Kraft [20].

[6] See Naylor [43] for a biting critique of this perspective.

maintaining a "dichotomic view of organized crime and [legal and legitimate] society [and the state]" ([44]:103) it is more pertinent to analyze how they interact and interpenetrate one another, thereby transforming the extant political order. This perspective allows us to expand the cognitive field and develop the concept of crimilegality, which by systematically linking the study of organized crime with that of political order offers to help gain a better grasp of how legality and illegality and/or criminality[7] may be at loggerheads with one another but at the same time may also co-constitute and reinforce each other.

Organized crime and political order: introducing the concept of crimilegality

To sharpen the contours of the concept of crimilegality it is useful to start by contrasting it with Weber's seminal notion of the rational-legal order as well as more recent relevant contributions to the debate offered by Fukuyama and North et al.[8] The latter two narratives have in common that they are (a) developed on the basis of long-range historical accounts; (b) inspired by a belief in the centrality of institutions in producing political order; and (c) heavily influenced by Weber's seminal theory of the modern state.[9] Incidentally, all three accounts are based on the notion that it is possible to distinguish more or less neatly between modern and non-modern political orders, even if only in ideal-typical fashion, as Weber was wise to make clear. Furthermore, they all embrace the idea originally put forward by the German sociologist that a modern political order cannot be conceived of without reference to the centrality of the (rule of) law as a constituent element of such an order.

In Weber's conception, modern systems of domination or political associations (*Herrschaftsverbände*) - what today is more commonly referred to as 'political orders' - are legitimated by a "belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority)" ([1]:215). In the absence of legality or a state of lawfulness a political order stands to lose legitimacy and become vulnerable to decay and breakdown. While legality thus constitutes the bedrock of a "rational-legal" political order (as distinct from political orders based on "traditional" or "charismatic" authority), it is impossible to conceive of such an order without taking into account the element of violence. "A 'legal order'", Weber writes, "shall be said to exist wherever coercive means, of a physical or psychological kind, are available; i.e. wherever they are at the disposal of one or more persons who hold themselves ready to use them …; wherever we find a consociation specifically dedicated to the purpose of 'legal coercion'" ([1]:317). In other words, the employment of legally-sanctioned "coercive means" is the sole prerogative of the state, which holds the "monopoly on the legitimate use of force" [2].

[7] Distinguishing between illegality and criminality is of some analytical importance. Not everything that is considered illegal is also criminal because "not all illegal acts are violations of criminal law and can thus be classified as crimes" ([45]: 6). In other words, while all criminal activities and structures are by definition illegal, it is not the case that all illegal acts are also criminal acts.

[8] Fukuyama [3, 4] and North et al. [5].

[9] They differ in as much as Fukuyama adopts Weber's ideas rather unreservedly, while North et al. forge their arguments in critical dialogue with them.

Weber's ideas are echoed by Fukuyama's recent account of political order: "the miracle of modern politics is that we can have political orders that are simultaneously strong and capable and yet constrained to act only within the parameters established by law and democratic choice" ([3]:25). This "miracle", he explains, is due to the emergence – in the wake of the American and French Revolutions in in the late eighteenth century - of a political order that combines a strong state in the Weberian sense, the rule of law and procedural accountability, i.e. the three institutions that today make up the advanced liberal democracies of the West. The rest of the world, as it were, is held to suffer to different degrees from patrimonialism and a "political deficit", "not of states but of modern states that are capable, impersonal, well organized and autonomous" ([3]:38). Without such a state, according to Fukuyama, the rule of law, accountability and democracy are strictly speaking impossible to obtain. In this substantive and normatively-laden conception of political order the control of violence is framed as a function of the establishment of centralized state authority which holds a monopoly on the use of force.[10]

Although they approach the issue of social order - that is, "patterns of social organization" ([5]: 1) - from a somewhat different angle, North et al. arrive essentially at the same conclusion as Fukuyama. In contrast to the latter, however, the former refrain from *ex ante* assigning any substantive and normative attributes to social orders, which are "characterized by the way societies craft institutions that support the existence of specific forms of human organization, the ways societies limit or open access to those organizations, and through the incentives created by the pattern of organization" ([5]:1). In this institutionalist conception, there are two broad types of social orders: limited access orders or natural states and open access orders. Natural states, the authors contend, have been the historically dominant form of social order since the beginnings of recorded human history some five to ten millennia ago. Even today only "15 percent of the world's population live in open access societies …, the other 85 percent live in natural states" ([5]:xii).

The fundamental difference between these two types of order, which map quite neatly onto Fukuyama's distinction between liberal-democratic and patrimonial orders, is that in natural states access to organizations is limited to elite groups and the capability to use violence is dispersed among a number of elites that form a dominant political coalition. To become open access societies natural states have to meet "three doorstep conditions that enable impersonal relationships between the elite: 1) Rule of law for elites; 2) perpetually lived forms of public and private elite organizations, including the state itself; and 3) consolidated political control of the military" ([5]: 22). In contrast to Fukuyama (and [1]), North et al. do not assume that the state's monopoly on the use of violence historically manifested in the wars between European states that already were *en route* to establishing centralized political authority. Rather, they posit that "we begin with the assumption of dispersed violence" and "argue that these states attain a monopoly on violence only at the end of the process of completing the doorstep conditions in the late eighteenth and early nineteenth centuries" ([5]: 242). In this

[10] Following in the footsteps of his late teacher, Samuel P. Huntington, Fukuyama is unwavering in his normative treatment of the "practical and moral necessity for all societies" of "a political system resting on a balance among state, law and accountability". According to the author, "development of these three sets of institutions becomes a universal requirement for all human societies over time" ([3]:37).

account, modern social orders emerge because a dominant coalition of elites manages to limit the use of violence amongst themselves through the creation of particular sets of institutions and organizations, not through military competition between states that, in the process, are forced to centralize control over the means of violence in order to survive.

With slightly different emphases, all three of the above-discussed accounts highlight that the (rule of) law is a central component of a 'modern' political order. A state of legality and the legally-sanctioned employment of force by a centralized political authority are not considered to be necessary conditions for the existence of other types of order, labeled "patrimonial" (Weber and Fukuyama) or "natural states" (North et al.). Instead, such alternative political orders are erected on the basis of "traditional" or "charismatic" authority (Weber), patronage and clientelistic systems (Fukuyama), and the dispersion of the means of violence in a "natural state" among elite groups that form a dominant coalition that rests on personal relationships and limits the access of individuals to both public and private organizations (North et al.). Though the authors do not engage with the issue of criminality, one may assume that they would interpret organized criminal activities and structures, particularly in the global South, as manifestations of the particular constitution and functioning of pre-modern, patrimonial political orders or natural states.

This, however, would not be consistent with the evidence on the nature of organized crime in contemporary developing and transition countries. I suggest that instead of clinging to binary conceptions of 'modern' and 'non-modern' political orders we should go back to Weber's original idea of the rational-legal order without putting the spotlight, however, on 'legality' but on its opposite, that is, 'illegality' and 'criminality'. Echoing von Lampe's above-cited analysis, the questions that thus arise are whether it is possible to conceive of political orders that are based not on legality as the ordering principle but on illegality and criminality. And whether legality and illegality and/or criminality can and do actually coexist along a continuum of crimilegality that spans what, after all, could in fact amount to not much more than a notional divide between the two realms.

Crimilegal order and governance

Freely drawing on the work of Marcus Felson [46], Adam Edwards and Michael Levi [47], and Renate Mayntz [45] I think of crimilegality as a state of regular patterns of interaction and transaction between state and non-state actors that are formally embedded in a legal institutional structure. At the same time, however, they are straddling the margins of the law or are indeed in flagrant contravention to it. In this conception any categorical distinction between the underworld and upperworld is rendered of limited use for "all social action and action systems that are formally illegal are surrounded by, and in constant interaction with, actors complying with and actors bent on defending legal norms" ([45]: 7). Yet

> "where formal legality and perceived legitimacy diverge, or where action systems are neither illegal nor considered inappropriate, non-repressive interaction between formally legal and formally illegal actors and action systems is facilitated. In such cases, legal and illegal action systems are not separated by clear social boundaries, but connected by what has come to be called 'interfaces'" ([45]: 7).

These "interfaces" resemble what I refer to as the grey areas that lie somewhere on a continuum that stretches from the realm of legality to that of illegality and criminality. They constitute the arenas for the crafting of explicit or tacit agreements and implicit or explicit strategies for the forging of mutually-beneficial mechanisms and processes of coordination, cooperation and regulation between formally legal and illegal and/or criminal actors and action systems, that is, of modes of crimilegal governance. These interactions and transactions are based on the realization on the part of those in power (or those who seek power) that institutions and organizations backed up by the force of legality are useful assets in the pursuit of particularistic agendas, which may well be of an illegal and/or criminal nature. They cater to different types of interests, including ruthless profit-seeking of professional criminals and key figures in the world of finance (see [43, 48]) but also political office and social status-seeking (see [49]). In addition, these crimilegal interactions and transactions are reflective of elite concerns about physical security and, somewhat paradoxically, judicial impunity and even the stability of the 'extractive' political and social system in which they operate and thrive is (see [50]).

Importantly, crimilegal governance does not occur in an institutional and legal vacuum, not even in so-called fragile states (see, for instance, [51–53]; and, for an analysis of Colombia and Italy, [54]). Expanding the scope of goal-oriented cooperation and coordination beyond the legal state, government and society, crimilegal governance arrangements represent modes of social and political regulation in which legality and illegality and/or criminality become indistinguishable as they merge into crimilegality. In this sense, crimilegal governance is not the same as what in the field of international development studies has come to be called – somewhat awkwardly - "bad governance" (see, for instance, [55]). The notion of bad governance refers to issues of weak and arbitrary exercise of political authority, distant and/or predatory state-society relations, and little or inexistent bargaining between elites and citizens in the developing world. While this perspective appears to take a critical distance to the discourse of "good governance",[11] in essence it is hampered by the same kind of normative bias, if only in the negative.

The concept of crimilegal governance, in turn, seeks to shed any normative pretensions by focusing on what Robin Luckham and Tom Kirk refer to as "real governance" [57]. In other words, crimilegal governance is neither 'bad' nor 'good' but 'real' in the sense that it establishes "functional equivalents to developed [modern] statehood" ([58]:3) and creates political and social order by merging the realms of legality and illegality and/or criminality into one single realm of crimilegality. The 'law' ceases to be "wedded to the state" ([58]:21) and does not exclusively represent a "state legal order" ([58]:66) in Weberian terms. Instead it becomes the domain of a range of (competing) state and non-state groups and interests, who seek to derive select legitimacy on the basis of the propagation of their own 'law' and the crafting of governance arrangements for the provision of collective goods, such as security and social peace, however particularistic, clientelistic and corrupt this provision may be.[12] Borrowing from Elke Krahmann [61],

[11] For a critical treatment of the discourse and international donor practise on good governance see [56].

[12] A crimilegal approach to governance is famously reflected, for instance, in the words of Colombian ex-President Julio César Turbay (1978–82) who while in office stated that "corruption [in Colombia] has to be reduced to its right proportions" ([59]:18), not eliminated. Crimilegal orders can also morph into outright criminal ones. This is what Nuhu Ribadu, a former Nigerian anti-corruption chief, referred to when remarking that the Nigerian state is "not even corruption. It is organised crime" (The Economist, 28 April 2007:56, cited in [60]:650).

crimilegal governance – just as legal governance - plays out across several dimensions and at multiple levels, from the local to the global. These dimensions include the geographical and functional scope of crimilegal governance, the distribution of resources amongst crimilegal state and non-state actors and constituencies, their involved interests, the norms and rules that are created by crimilegal interactions and transactions, and crimilegal decision-making and policy implementation.

A crimilegal order is therefore neither 'modern' nor 'non-modern' but combines and integrates elements of both types of political order. Legal institutions and organizations coexist and interact – both formally and informally - with illegal and criminal ones (see [62]). Formal constitutional and legal dispensations coexist and interact with (violent) patrimonialism and clientelism (see [49]). Regular patterns of social interaction and transaction that take place in the grey areas that lie between legality and illegality and/or criminality create their own 'law', which is recognised as 'binding' and is enforced by the crimilegal system. Crimilegality creates crimilegitimacy and a new moral code of illegality (see [48]). Politics takes on crimilegal properties, that is, depending on the context a combination of legal and illegal and/or criminal means are employed by political actors and agents, including members of criminal structures, to achieve particularistic goals.[13] In crimilegal orders it is not the case that "the relationship between organized crime and legitimate government is one of mutual exclusion" ([9]: 264). Rather, illegal and/or criminal governance, which is often held to occur where "the state does not exercise its power effectively" ([9]: 264), is replaced by crimilegal governance in which different combinations of legal and illegal means are used to create and maintain political order.[14]

Violence and coercion play important roles in these processes. 'Legal coercion' in a Weberian sense is exercised not by a single agent – the state - that claims to hold the monopoly on the legitimate use of force [49, 62]. Rather, a variety of state and non-state "wielders of coercion" ([63]:16), including criminal organizations, partake in the formation of oligopolies of violence. Crimilegal orders are therefore not primarily characterized by "mafias [that] seek to impose social orders in peripheral spaces of society … [thereby becoming] rivals of the state" ([64]:19). At the same time it is also not foremost the case that "the mafias' capacity for regulating society is essentially a result of their coercive power" ([64]:19).

I posit instead that in crimilegal orders violence and coercion should be seen as a function of the emergence, existence or breakdown of a political equilibrium between a range of state and non-state actors with access to significant political and economic resources – including criminal organizations - that are anchored at different points on the continuum that stretches from the realm of legality to that of illegality and criminality. With respect to the level of violence that affects crimilegal orders, I hypothesize that it is likely to be higher during the emergence and disintegration of a political equilibrium and lower, though not absent, while the equilibrium remains stable (see [62]).[15] At the same time, the case of Colombia, to which I now turn, reveals that

[13] This echoes the analysis of Mayntz, who points out that "in social contexts of contested legality, where "the law", whether because of its source or its content, is not considered legitimate, the legal/illegal boundary is only weakly drawn, and what is formally illegal may become accepted everyday practice" ([45]: 5).

[14] As the Brazilian and Mexican case studies in this volume show, this hybrid nature of crimilegal orders may be correlated with the existence of political regimes that are neither liberal-democratic nor authoritarian [49, 62].

[15] This argument is inspired by recent work on political settlements and provisioning pacts (see, for instance, [6, 41]; and [65]) and remains to be developed in a future research paper.

crimilegal orders also have the capacity to overcome violent conflict through political negotiation between contending state and non-state actors implicated and/or complicit in criminal activities and structures.

Analyzing the Colombian peace process through the lens of crimilegality

It is no secret to anybody who has studied Colombian politics and governance that South America's third-largest country has a strong legalistic tradition but the law is also regularly broken, circumvented, manipulated or ignored by all imaginable - and unimaginable – means. In other words, the country's political order is characterized by a wide gap between constitutional-legal norm and reality, but simultaneously "the law, its discursive routines, and its representations [all] play a central role in Colombian public life" ([66]: 56). This state of affairs is, of course, not uncommon among the nations of Latin America, but in Colombia it is particularly problematic because it is associated with the historic recourse to organized violence by all manner of state and non-state actors and groups that are operating in the pursuit of particularistic (political, economic, judicial, criminal, ideological, and so on) interests, not the 'common good' [66–68].

One defining feature of Colombia's really existing political order, that is, the order that prevails in reality and not merely on the pages of the 1991 constitution, is the absence of a state monopoly on the use of force and the de facto presence of a constantly evolving oligopoly of violence. Next to the state's military and police forces and a myriad of illegal armed non-state and/or state-sanctioned outfits - including drug trafficking and other criminal groups and networks, (neo-)paramilitary armies, and a plethora of insurgent organizations and local street and neighbourhood gangs - FARC was, for more than half a century, a player of varying importance in this scenario. Until the late 1970s still a relatively small and predominantly rural guerrilla force with few interests in Colombia's fledgling illicit drug economy, starting in the early 1980s FARC rose to become a key stakeholder in the cocaine export industry, which thanks to the industriousness and ingenuity of the Cali and Medellin-based drug trafficking organizations quickly established itself as the largest of its kind in the world [69]. Though joining this trend at a somewhat later stage and using a different route than their criminal and insurgent competitors, with the launch of the Washington-backed Plan Colombia in 2000 the Colombian state's armed forces evolved from a weak and rather incompetent organization into a key player in the United States' 'war on drugs' in the Western hemisphere.[16]

From the perspective of crimilegality it is important to highlight that the different types of armed actors that make up Colombia's oligopoly of violence are not necessarily always locked into competition and/or confrontation with one another. While there have certainly been many instances of violent competition between, say, the Medellin and Cali drug cartels and FARC, ELN, and the paramilitaries, there have equally been instances where political, ideological and criminal enmity did not get in the way of (temporary) collaboration and coordination in the pursuit of shared economic, security, judicial and other interests [69, 72, 73]. These groups and organizations are also not

[16] As has been broadly documented, the participation of the Colombian armed forces in the U.S.-led fight against drugs and drug trafficking resulted in serious human rights violations over a protracted period of time ([70, 71], among others).

autonomous in their manifold relationships with the 'legal' government, state and society. Rather, Colombia's political order is characterized by varying degrees and forms of crimilegality in which different types of armed (criminal) actors – including elements of the state's military and police forces - engage with one another and with formal institutions and public and private organizations in bargains and negotiations. A notorious case in point here is the (temporarily successful) attempt by the Medellin drug cartel boss Pablo Escobar to muscle the government of President Cesar Gaviria (1990–94) into abolishing extradition of Colombian drug traffickers to the United States. In this quest Escobar employed both brute force but also established negotiations with the government and members of the Colombian congress and the constituent assembly of 1991 [74, 75].

Another telling instance has been the negotiation between the leadership of the paramilitary United Self-Defense Forces of Colombia (AUC, in Spanish) and the administration of President Uribe. In talks that lasted from 2004 to 2006, the government achieved the demobilization of some 32,000 paramilitaries, which, however, was never conclusively verified and did little to prevent the resurgence of a number of criminal and neo-paramilitary groups in the country. In what was an altogether shady process, the paramilitaries sought impunity for their atrocious crimes, something President Uribe was prepared to give them had it not been for the opposition from Colombian and international human rights defenders, the constitutional court and eventually even the U.S. government [76].[17] The negotiation with the paramilitaries and its aftermath also brought to the fore another crimilegal phenomenon of major proportions: *parapolitica* ('parapolitics'). Coined by Colombian analysts, this apt neologism refers to the vast network of relationships and the many illegal and criminal deals that were struck over years between AUC leaders and members of Colombia's political class, both at the sub-national and national level. In what was a truly macabre scheme set up between paramilitary killers and politicians, the latter received votes and political support, while the former were granted judicial impunity and a free hand in their murderous appropriation of land and other assets across Colombia (López, [78, 79]).

These two striking cases of crimilegal governance in Colombia are meant to serve the purpose of illustration. Many more could be named, including cases that analytically can be located not toward the illegality/criminality end of the aforementioned continuum that stretches from the realm of legality to that of illegality/criminality, but are anchored on different points of the continuum.[18] In what follows I now turn to the peace process between the Santos administration and FARC, which unfolded over three different stages (preparatory, exploratory and formal negotiations) in the period September 2010–November 2016. I posit that beyond its stated aim to end the armed conflict by political means this process can be read as representing an instance of transforming – not reproducing and/or maintaining - Colombia's crimilegal order. The argument is developed on the basis of an analysis of the reasons of the Santos administration and FARC to engage in peace talks, which are not as obvious as it may seem at first; the covert and/or

[17] The negotiations between the Uribe administration and the AUC leadership were anything but a peace process. According to 'Ernesto Baez', a former paramilitary commander, the talks in Santafe de Ralito (2004–2006) on the paramilitaries' disarmament, demobilization and reintegration were a bargaining game between "disloyal friends" [77]. In effect, in May 2008 the government decided to extradite almost the whole paramilitary top brass to the United States, where they stood trial and were sentenced for drug-trafficking offenses.

[18] Such situations could be classified as 'softer' forms of crimilegality, as opposed to the 'hard' ones in which the criminal element is of significantly more 'weight' than the legal one.

confidential format of talks that the parties chose; and the inclusion of the issue of organised criminal activities and structures as an important agenda and negotiation item.

Why did the Santos administration and FARC chose to negotiate?

It is not entirely self-evident why the recently inaugurated Santos administration (2010–2018) and FARC began explorations that would eventually lead them to enter into negotiations on terminating Colombia's protracted armed conflict, which were publicly announced in August 2012.[19] I suggest that both sides had ample reason to be skeptical about the prospects of any such endeavour. Since the last attempt to negotiate peace with FARC under President Andrés Pastrana (1998–2002) - which got off to a bad start, failed to produce any tangible results over the course of three years, and was finally ended abruptly by the government in February 2002 - military confrontation had ruled. With massive, mostly security and counter-drug assistance from Washington (Plan Colombia), the administration of President Álvaro Uribe (2002–2010) launched a sustained military campaign against the insurgents.[20]

Under the banner of the 'democratic security policy', which prominently included boosting the manpower and capabilities of the armed forces, the Colombian state proved able to drive FARC out of strategic strongholds and deal heavy blows to the insurgent organization's command and control structure (see, for instance, [83, 84]). Seeing the number of fighting forces reduced by more than half - from an estimated 16,000 in 2002 to less than 6000 in 2015[21] - FARC also had to assimilate the loss of several of its top commanders, including FARC's historic leader 'Manuel Marulanda' (26 March 2008) and his successor 'Alfonso Cano' (4 November 2011) as well as commanders 'Raul Reyes' (1 March 2008) and 'Mono Jojoy' (22 September 2010), amongst several others.[22] It is noteworthy that the heaviest blows to the insurgents' leadership occurred under the watch of Juan Manuel Santos, first when serving as minister of defense during Uribe's second term and then as president. Importantly, more than a year into the first Santos

[19] The parties' public announcement of the imminent start of formal talks came in the wake of a first exchange of messages in September/October 2010, more than a year of covert preparations, including four meetings of government and rebel delegations in different locations in Colombia and Venezuela, and six months of so-called "exploratory talks" in Havana. This first covert round of talks resulted in the signing of the "General accord on the termination of the conflict and the building of stable and lasting peace" laying out the guiding principles of the subsequent negotiations and a six-point agenda. The government and FARC went to great lengths to keep the initial stages of the process secret and minimize the risk of leaks, both to the Colombian and international publics and elements of the state, particularly the military. Henry Acosta, an economist and development expert based in the city of Cali who, according to his own account, established a close connection with FARC commander 'Pablo Catatumbo' in the early 2000s and likewise is well respected in influential circles in the capital Bogota, served as a facilitator and messenger during the preparations of the talks [80–82].

[20] For the sake of accuracy, it should be noted that Uribe attempted to establish contact with FARC, as he did with Colombia's second leftwing insurgency, the National Liberation Army (ELN, in Spanish), to gauge the possibility of negotiations. These initiatives did not prosper, however, not least because the president failed to make up his mind as to whether he would be prepared to start political talks with FARC or whether he should persist in his administration's endeavour to force the rebels into military surrender. [80]; author's interview, former government negotiator, Cali, 27 November 2015. Shortly before the end of Uribe's second term, his government made a last-ditch attempt to reach out to FARC, which a military heavily besieged Cano reportedly turned down as "little serious and all-too-hasty" (translation from the Spanish original by the author) ([81]:14).

[21] Author's interview, senior officer of the Colombian army, Bogotá, 29 November 2016.

[22] It should be noted that FARC and observers close to the rebels do not tire to point out that Marulanda died of old age in 2008 and was not killed by government forces, as the official propaganda at the time would have it (see, for instance, [81]). Yet it is likely that both factors played a role in the historic rebel leader's demise.

government and while the preparatory conversations for the launch of the 'exploratory talks' were in full swing Cano was killed by government forces in a rural municipality in Cauca department. As I discuss in more detail below, although the rebels and representatives of political sectors close to them denounced Cano's killing as an "assassination", the episode did not result in the breakdown of the talks ([81]:37–40).

Observers of the Colombian conflict often attribute FARC's decision to enter into negotiations with Santos to the overwhelming military pressure exerted by the government (see, for instance, [85, 86]). While future research will reveal with the requisite detail and precision the accuracy of this interpretation, I suggest that on the basis of the presently available information this perspective could be misleading. As mentioned above, there can be no doubt that roughly from 2003 to 2004 onwards FARC was losing the initiative in the military struggle with the government's forces and was compelled to withdraw from many areas of the country where it had had a presence before.[23] Particularly government air strikes against insurgent camps and other positions but also the armed forces' enhanced intelligence capability proved highly damaging. While thousands of guerrilla fighters deserted over the years and recruitment of new combatants became more difficult, the Colombian state expanded the presence of its coercive apparatus across the national territory.[24]

This notwithstanding, it is questionable whether on its own this adverse scenario was sufficient for FARC's political top brass (*Secretariado del Estado Mayor Central*) and military high command (*Estado Mayor Central*) to consider favorably President Santos' offer to open negotiations to end the armed conflict [80, 82, 87]. There are indications, for instance, that the drop in the number of combatants was not a major concern for the insurgent organization,[25] that FARC retained a degree of striking power and that its finances and income drawn from the illicit drug business and other illegal economic activities, including gold and other illegal mining, had not dried up in spite of the government's sustained efforts to achieve just that. In sum, FARC could likely have continued with the armed struggle, as it effectively did for most of the time since the official start of the peace talks in October 2012.[26]

Yet under the leadership of Cano, who succeeded the late Marulanda as FARC's commander-in-chief in 2008, the option to negotiate gained currency. Rather more a "political than a military man" ([80]:247), Cano's assessment of the situation was reportedly both principled and pragmatic: FARC could carry on with the war but could not win it; there was hardly any social and political support left for the insurgents in Colombian society; and there was no appetite within the organization to engage now in 'armed resistance' after previously having made huge efforts to develop and implement a 'grand' yet ultimately unsuccessful military strategy.[27] Other top rebel commanders, among them 'Pablo Catatumbo' and 'Timochenko', Cano's successor, shared their leader's distrust of Santos but supported his determination to find a political solution to the conflict [80, 81].

[23] Author's interview, former member of a Colombian insurgent group, Bogotá, 11 November 2015.
[24] Author's interview, former government negotiator, Cali, 27 November 2015.
[25] Author's interview, former member of a Colombian insurgent group, Cali, 4 March 2016.
[26] One of the mutually-agreed guiding principles of the process was that there would not be a bilateral ceasefire prior to the commencement and during the negotiations.
[27] Author's interview, former member of a Colombian insurgent group, Bogotá, 11 November 2015.

It appears that in a mirror image the government had rather similar thoughts [87]. In spite of the massive military and security build-up throughout the 2000s and the tipping of the strategic balance in favor of the government armed forces, military defeat of the insurgents remained elusive. In addition, over the course of the war elements of the Colombian military had built up a grave record of human rights violations, collusion with paramilitary groups and involvement in drug-trafficking and other criminal activities, which politically proved difficult, if not impossible, to control.[28] Under these circumstances continuing with the armed struggle threatened to be more costly than negotiating, even when factoring in the vociferous opposition to such a scheme on the part of former President-turned-Senator Uribe, his (many) followers and influential groups of officers inside the military establishment [87]. It therefore seems plausible that the prospect of a negotiated settlement must have appeared as the more attractive option to both sides.

Peacemaking as an instance of the transformation of a crimilegal order?

On 26 August 2012, the government and FARC signed a framework agreement laying out the agenda of a political effort to end the armed conflict and build peace [88].[29] Confidential bilateral negotiations were launched in Oslo, Norway, in October and then moved to Havana, Cuba.[30] As the talks progressed, the government and FARC released a string of joint communiqués and provisional accords on each of the items contained in the framework agreement. Although on several occasions the flow of the negotiations was interrupted for shorter periods of time, both sides stuck with remarkable perseverance to the original six-point agenda: (1) integrated rural development; (2) political participation; (3) ending the conflict; (4) resolving the problem of illicit drugs; (5) victims; and (6) submission of the agreement to popular approval, implementation and verification. On 24 August 2016, almost exactly four years after the announcement of the start of the talks, Santos addressed the nation to break the news that a peace deal with FARC had been achieved. Three months later the government and FARC signed the final accord [89], which following the voting down of the first version of the agreement in a plebiscite in October had seen some amendments [90]. In early December 2016, the peace agreement was ratified by the Colombian congress.

For the purposes of this article, it is of significance that the parties explicitly included organized crime issues in the negotiation agenda.[31] The peace agreement makes ample reference to the threat of criminal structures and activities and both parties commit to fighting them. This is reflected especially in section 3.4 of chapter three that contains the provisions on ending the armed conflict, chapter four that addresses the problem of illicit drugs, and chapter five on the rights of the victims of the armed conflict and transitional justice (Final agreement, 24 November 2016). The centrality of the

[28] Author's interview, former member of the Colombian National Police, Bogotá, 12 November 2015.

[29] The two parties had agreed that the signing of the framework agreement would be made public a week later but were pushed to come out in a hurry on 27 August because the accord had been leaked to two broadcasting companies, Colombian RCN and Venezuelan Telesur [87]

[30] Alongside Cuba, the governments of Norway, Venezuela and Chile played only a limited facilitating role in the peace talks not intervening in any of the substance discussed by the parties.

[31] Another agenda item of significance in this respect is the one on transitional justice contained in the chapter on victims in the peace accord. For reasons of space, this item cannot be discussed in the present article.

commitment to fight crime structures, especially (neo-) paramilitary groups and criminal gangs (*bandas criminales*), and curb rampant illegal activities carried out by non-state and state actors, such as illicit drug production and trafficking, money-laundering, corruption and grave human rights violations, is rare or perhaps even unprecedented in the history of contemporary peacemaking. In effect, the Colombian peace process cannot be analyzed properly without a clear understanding of the role of organized crime in the armed conflict and the explicit agreement of the government and FARC to take the necessary steps to distance themselves from organized criminal activities and structures in the post-conflict peacebuilding phase.

Especially in the earlier stages, the talks were punctuated by mutual recriminations, with both parties pointing the finger at the other side's illegal and/or criminal conduct during the conflict. Whereas the government held against the rebels the widespread practice of kidnapping (for political and economic reasons), the imprisonment under inhumane and dangerous conditions of captured soldiers and policemen, and their involvement in other illegal and criminal activities, including illegal mining and drug trafficking, FARC did not hesitate to point to the Colombian state's collusion with illegal paramilitary groups, the military's record of massive human rights violations, including numerous extrajudicial executions of innocent civilians, and other war crimes like the 'assassination' of rebel leader Cano while he was in a state of defenselessness [81, 87]. According to the accounts of two direct witnesses, Henry Acosta and Enrique Santos,[32] at the start of the process the main goal of the parties was to build a minimum level of mutual trust and establish the framework for the formal negotiations that would unfold subsequently [80, 87]. Perhaps unsurprisingly, this all-important phase of building trust did not involve any reference to a legal framework, something FARC would not have accepted and the government would not have been able to offer.[33]

Since the first exchange of messages between the two parties in September/October 2010 the preparations for the exploratory talks were entirely covert, as were the exploratory talks that took place from early February until late August 2012. Both parties were more than keenly aware that any leak could destroy the possibility of

[32] Enrique Santos is the older brother of President Santos. He was called upon by the president to participate in the preparatory and exploratory talks in the period 2011–2012.

[33] This is not very difficult to see and, guarding the differences, also applies to peace processes in other parts of the world, such as in Liberia, Sierra Leone and Guinea-Bissau in the 1990s and early 2000s. In relation to these West African countries, Jeremy Levitt points out that 'the Accra, Lomé and Abuja accords did not offer any legal basis or authority to legitimize their power-sharing provisions, let alone the accords themselves; rather, they prescribed extralegal rules and processes for sharing power that abrogated constitutionally based superior rules' ([91]: 86). In Colombia, for the government FARC was an illegal armed group that was seeking to destroy the existing constitutional order and was deeply implicated in serious and heinous crimes, such as drug trafficking and kidnapping for ransom. In 2010 (and even today), it would have been politically next to impossible for the Santos administration to provide a legal base for negotiations with FARC prior to presenting proof of the existence of a convincing plan for ending the armed conflict through negotiations without running the risk of being seriously harmed by political and social but also criminal forces and interests – both inside and outside of the state - virulently opposed to any rapprochement with the rebels. In a mirror image, for FARC 'unilateral' government legislation on issues related to ending the conflict would not have been legitimate because it would have come without the explicit approval of the insurgents and would not have been the outcome of a political negotiation with them. In effect, FARC took an open distance, for instance, to the legislation on transitional justice that was passed in mid-2012, i.e., prior to the commencement of the formal stage of the peace talks [81].

reaching the stage of formal negotiations.[34] Even the formal talks in Havana, which had been launched with great publicity in October in Oslo, were conducted under the mantle of confidentiality. While the parties put out a string of joint communiques and published the preliminary accords as soon as they had been signed, and while quite a number of representatives of victim groups and social and business organizations were invited to make statements in Havana, overall the peace talks proved to be extraordinarily hermetic. In short, in the design of the process any issues of accountability were relegated to the mechanism of popular approval of the agreement contained in the general agreement of August 2012.[35]

I suggest that the inclusion of organized crime issues in the negotiation agenda and the final peace accord is reflective of the recognition on the part of both the government and the insurgents that (a) Colombia has a serious organized crime problem that needs to be tackled; and (b) that both parties to the negotiations and the peace deal are, in one way or another, either complicit in, or involved with, organized criminal activities and structures. As mentioned above, each party had access to information and evidence that would have made denial an ineffective strategy and, more importantly, both parties shared an interest in reining in such criminality [87].[36] In this vein, the government could arguably not have developed a sufficient level of trust in FARC if the insurgents had not signaled a clear and categorical decision to withdraw from the illicit drug business.[37] After much resistance for not wanting to labeled a drug-trafficking organization the rebel commanders finally took this decision because it implied that the insurgents' past trafficking offenses could qualify as 'crimes connected to armed rebellion' under the agreement's transitional justice framework.[38] Likewise, FARC would not have been able to build trust in the government if Santos and his negotiators had not agreed to take effective action against, and cut any ties to, (neo)paramilitary and other illegal armed groups that the insurgents (correctly) see as a serious post-demobilization threat to their physical and political survival. The annihilation of the Patriotic Union (Unión Patriótica), FARC's erstwhile political wing, in the second half of the 1980s and the early 1990s by paramilitary organizations working hand-in-glove with elements in the armed forces and sectors of Colombia's landed and violently reactionary political class serve as a grave precedent in this regard.

[34] Here it is noteworthy that President Santos and his peacemakers – and obviously also FARC - did not trust the military with anything, including flying government delegates to remote negotiation sites and airlifting rebel commanders out of the jungle. Instead they relied on a select group of police officers loyal to former Director of the National Police General Oscar Naranjo, who later would form part of the official government delegation in Havana, and the International Committee of the Red Cross (ICRC) to provide air and land transport services to government and FARC delegates [81, 87]. Government chief negotiator Sergio Jaramillo is also reported to never having used a computer equipped with an online facility due to concerns that it might be hacked [92].

[35] The plebiscite on the final peace accord took place on 2 October 2016, when the peace deal was narrowly voted down by a minority of the Colombian electorate that bothered to turn out that day. In early December, the Santos administration submitted an amended version of the final agreement to Congress, where it was approved by a large majority of congresspersons.

[36] Author's interview, Colombian expert-informant, Bogotá, 30 November 2015.

[37] This despite the fact that the government has all along been perfectly aware of the alliances that certain FARC units have been building with drug-trafficking outfits, such as Autodefensas Gaitanistas or Águilas Negras. Author's interview, Colombian expert-informant, Bogotá, 30 November 2015.

[38] Author's interview, Colombian expert-informant, Bogotá, 30 November 2015.

It seems that one of the keys to the Santos-FARC agreement was that during the negotiations both sides recognized – in rather pragmatic fashion - that the primacy of non-violent and legal politics would eventually trump any perceived benefits from involvement in illegal and criminal activities; and, what is perhaps more, help rein in the shared apprehension and/or fear of Colombia's deeply entrenched and pervasive criminal structures. It is in this sense that the Colombian peace process may be seen as representing an instance of the transformation of the extant crimilegal order with the ultimate goal of pushing the Colombian state and society along the legality-criminality continuum toward the end of legality. Whether the conditions for achieving this goal are given in Colombia's persisting crimilegal order, which, as I have shown, reaches far beyond the Santos administration and FARC, remains an open question that needs to be tackled in subsequent research on the Colombian peace process. First indications are that with the disarming of FARC, which successfully ended in late June 2017, and the insurgents' apparently steadfast determination to complete demobilization and start reintegration into civilian life, a range of other illegal armed groups are now engaging in the reshuffling of power relations and territorial and criminal control in the regions from where the rebels withdrew [93, 94].

Conclusion

The essence of the concept of crimilegality is political, not legal. It seeks to contribute to gaining a deeper understanding of the relationship between organized criminal activities and structures and political order, with a particular focus - for the time being - on developing and transition countries. In different parts of the present article, I have pointed to areas and issues in relation to the concept that require more work in order to develop it fully. Elaborating on the political economy of the interactions and transactions between state and non-state actors, including criminal structures, that take place along the continuum that stretches from the realm of legality to that of illegality/criminality promises to provide additional insights into the functioning and reproduction but also the transformation and/or demise of crimilegal orders. As I briefly outline below, incorporating the political settlement approach and the debates about hybrid political orders, political marketplaces and protection markets, both local and global, into this research and linking it systematically to the evolving work on organized crime, peacebuilding and international development could open up interesting new perspectives. A particular challenge in this regard is to devise ways to operationalize the concept appropriately and submit it to rigorous empirical testing.

Organized crime and political order The concept of crimilegality breaks down the assumed divide between the realms of legality and illegality and/or criminality. In so doing it helps sharpen the focus on the mechanisms and processes through which organized criminal activities and structures via crimilegal governance acquire a political ordering function. More work has to be done, however, on the particular conditions (political, institutional, social, economic, criminal, and so on) under which crimilegal orders emerge and what their specific properties are, and on how such orders are maintained or break down. To find answers to these questions we need in-depth case

studies, including on developing and transition but also industrialized countries, as well as cross-national comparative research.

Peacebuilding The concept of crimilegality also stands to be useful for deepening our extant knowledge about peacebuilding. Research on peacebuilding has yet to come to grips with organized crime and issues of illegality. While the literatures on peacemaking and peacebuilding tacitly acknowledge that in many post-cold war conflict settings criminal organizations and networks are a serious problem, either because they fuel internal conflict or because they spoil peace once an agreement has been reached, so far there has been relatively little systematic effort to explain in which ways specifically illegality and organized crime affect the emergence, evolution and (non)settlement of internal armed conflicts; and what role illegal activities and criminal structures play in building a post-conflict order (see, for instance, [95]).

Development While in recent years the international development community has begun to pay more attention to crime issues (see, for instance, [20, 38]), there still remains a great deal of work to be done on the political economy of organized crime in development settings. In this regard, the concept of crimilegality could be usefully linked to the current debate about political settlements in low income countries and so-called fragile states by posing questions about the function of crimilegal governance arrangements in maintaining the stability of a settlement and regulating the use of violence and coercion between state and non-state elites, including contending ones.

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