

The kidnap industry in Colombia

Our business?



pax
christi
netherlands

The kidnap industry in Colombia
Our business?

The kidnap industry in Colombia
Our business?

Pax Christi Netherlands

Utrecht, November 2001

Address

P.O. Box 19318
3501 DH UTRECHT
paxchristi@paxchristi.nl

Text

Pax Christi Netherlands
M. Moor
L. Zumpolle

Photography

Mattheus Engel
(previously published in: 'Colombia. Vergeten mensen')

Printer

drukkerij moretus bv
The Hague

Editor

Pax Christi Netherlands

ISBN

90 704 4351 1

The financial support for this report came from:

Congregation of Sisters of St. Francis of Oirschot
Dutch Ministry of Development Cooperation
Haëlla Foundation
Icco
Novib

Contents

Acknowledgements	7
Map of Colombia	8
Introduction	9
1. Kidnapping in a global context	11
1.1 Kidnapping; the ageless weapon	11
1.2 The worldwide rise of kidnapping	12
1.3 Kidnapping in Latin America	15
1.4 Kidnapping fuels armed conflict	16
2. Colombia: from political kidnapping to the miraculous catches	21
<i>The kidnap industry as an incentive to war</i>	
2.1 The Colombian conflict during the Cold War era	21
2.2 The Colombian conflict after the Cold War era	22
2.3 New ways of financing the war; drugs	23
2.4 New ways of financing the war; extortion	25
2.5 New ways of financing the war; kidnapping	26
2.6 Figures on kidnapping in Colombia	28
2.7 The increase of kidnapping in the 1990s	30
2.8 The principle perpetrators of kidnapping	32
2.9 Kidnapping fuels the war machinery	33
3. Five Colombian strategies to combat kidnapping	39
3.1 The Colombian legal framework against kidnapping	39
3.2 The Colombian institutional framework against kidnapping	40
3.3 National peace negotiations	42
3.4 The affidavit of non-payment; a realistic option?	44
3.5 International humanitarian law and the international criminal court	46
4. Kidnapping by armed opposition groups in a legal perspective	49
Executive summary	49
4.1 Introduction	51
4.2 Legal restraints on the Colombian armed opposition groups	52
4.3 Allocation of accountability	55
4.4 Who should prosecute these offenders?	59
4.5 Conclusions	60
5. Foreigners; the most favoured prey	67
<i>The involvement of foreign investors in the Colombian conflict</i>	
5.1 The kidnapping of foreigners; a new phenomenon emerges	67

5.2	'Few victims', astronomical gains	69
5.3	A code of silence maintained by all	72
5.4	The involvement of the foreign investor in Colombia	73
5.5	The energy and engineering sector Legal defence, against illegal actors?	77
5.6	Towards a code of conduct for European Investors? The extreme reservedness of European investors in Colombia	79
6.	Controlling the risk?	
	<i>Discussions on private security arrangements against kidnapping</i>	85
6.1	Risk assessment	86
6.2	Kidnap and ransom insurance services	86
6.3	Crisis management (including kidnap response services)	89
6.4	Kidnap insurance and response; the discussion	91
7.	Towards a common European policy on kidnapping?	97
7.1	Efforts made by the international community	97
7.2	No common guidelines on kidnapping	99
7.3	Growing political pressure of the EU on warring parties?	105
	Main issues of the anti-kidnapping campaign (November 2001 – November 2002)	109
	Glossary	113
	Annex 1: Een Europese ontvoeringszaak in Colombia; een persoonlijke getuigenis	117
	Annex 2: Article in the daily "Trouw", dated July 14, 1992	119
	Annex 3: Press release Pax Christi Netherlands, April 1999	120

To all victims of kidnapping in Colombia, who can't speak out

Acknowledgements

Many people have contributed to this report in some way or another. We wish to mention some of them individually:
(In alphabetic order.)

- Colombia: Emilio Meluk
Rodrigo Rojas
Héctor Torres
Leon Valencia
- Germany: Prof. Dr. Herdegen
Peter Schumacher
- U.S.A.: John Heidema
- Belgium: Ruth and Yvette Perrier
An Vranckx, IPIS
- The Netherlands: E.C. de Bouter and colleague
Haydee Díaz
Hans Schouwenburg
Liesbeth Zegveld

Without them this report could not have been realized. We want to express them our sincere thanks, also to those who contributed with useful information, but who wish to stay anonymous for safety reasons.

Marianne Moor
Liduíne Zumpolle



Introduction

“This is an urgent call of a mother and a wife to the men who hold the Dutchman in their power, and to all the others who could give information on his whereabouts. We, the mother of Mark and his wife, address ourselves to you in despair through this handout.

Where is Mark???

Who can give information?

We went to Colombia to look for our son and husband.

But searching in your vast country is very difficult.

Who wants to help us?

Our grief is so intense, we cannot take it any more.”¹

Today, almost one country in four around the world is affected by the crime of kidnapping. Colombia has been at the head of this sad list for a number of years. Even mass kidnappings and the kidnapping of small children have become part of this cynical form of financing a war.

Taking hostage of unarmed, defenceless individuals not only paralyzes the individual victim, but also affects the psychological and economic integrity of an entire family. Moreover it creates an impossible moral dilemma for the individuals, companies and governments involved when ransom is demanded. On the one hand, paying ransom seems the only way to save the life of the victim. On the other hand, it contributes directly to the war.

Pax Christi Netherlands has developed contacts over a large number of years with a wide variety of civil sectors in Colombia, especially the churches. We had to witness at close quarters many personal tragedies of the kidnapping of a loved one. The initiative to finally force an open discussion on the rôle of European companies and governments was suggested by various of our Colombian partners. One third of the abducted foreigners in Colombia are European, and together they account for a huge amount of ransom. While Europe is talking about the support of the European Union in dialogue and peace initiatives in Colombia, it fosters the war through ransom and extortion money at the same time.

The subject is surrounded by a wall of silence. In Colombia this can be explained by sheer fear. All parties involved – Colombians and foreigners alike – have their own reasons to keep silent or to hide the reality behind smoke screens and blatant lies. This, combined with a general climate of corruption and lawlessness, is the main reason that no effective action has yet been taken in Colombia. The traditional code of silence did little to help the

production of this report. Less easy to understand is why the crime of hostage taking is not denounced more explicitly in international human rights circles.

This report – far from pretending to be complete – is addressed to both Colombians and Europeans when dealing with the dilemmas mentioned above. Far from condemning the decisions taken by anyone who is confronted with the crime of kidnapping, the document seeks to stimulate discussion about this growing form of terrorism. It is high time for the development of a common strategy. But above all, this initiative should be an incentive for the international community to devote more attention to kidnapping as a gross violation of human rights.

Aim, scope and method of the survey

In this document we focussed on kidnapping practices relating directly to revenues of the warring parties. This excludes kidnapping by common criminals (approximately 10%) and politically motivated kidnapping. The approach in this survey has been defined by the fact that foreigners (Europeans) account for a relatively large amount of ransom payments, although they are few in number compared with the thousands of Colombian victims every year. It is the armed resistance (and not the other illegal armed groups such as paramilitary groups that also practice kidnapping, but as yet no foreigners have been involved) that is responsible for the majority of the kidnapping, including foreigners. This explains why in this European context, the guerilla is mentioned the most.

The research material in this document is based on a large variety of sources such as Colombian and international security authorities, NGOs, and individual international experts. In addition, there was confidential, yet valuable information from civil servants and diplomats as well data from our extensive Colombian network. All the sources consulted only differed in details, but not in substance. They also coincide with our own considerable experience in Colombia, which was the motivating force behind the creation of this report.

1 This is a quote of the leaflet that was distributed in Urabá (Colombia) in the summer of 1993, when Pax Christi Netherlands was asked to help in the kidnapping case of a Dutch gardener. Since then, many more tragic cases of both Europeans and Colombians would follow.

1. Kidnapping in a global context

1.1 Kidnapping; the ageless weapon

Kidnapping has been used throughout the history of mankind as a powerful weapon for obtaining money, rehabilitating defiled honour, bringing about political change, liberating (war) prisoners or (personal) revenge. In fact, kidnapping cases were described as early as the writings of the Old Testament. However, people's attitudes to kidnapping have depended on the historical, political and cultural circumstances. In the era of Antiquity, abduction was commonly accepted as a way to subject or trade other persons following the conquest of territory. In Medieval times kidnapping for ransom, although it was a common practice during wars and crusades, was considered to be a form of illegal robbery.

Nowadays kidnapping is generally seen as a criminal act. Even so, states or private persons sometimes have political, cultural or economic reasons not to qualify acts of kidnapping in this way. For example, on the occasion of the kidnapping of 53 Colombian soldiers, who were kept tied with ropes around their necks by the Colombian rebel group FARC, a Colombian government minister denounced the press for classifying this action as 'kidnapping' instead of using the more neutral term 'retention'.¹ Apparently, the use of euphemisms is an instrument used by Colombian officials to convince public opinion of the idea that their country is not really facing a state of war.

Notwithstanding the multitude of motives that underlie kidnap cases, and the various historical or cultural forms in which abduction can manifest itself, the phenomenon of kidnapping can be described in general terms. The verb kidnapping is described by the American Heritage Dictionary of the English Language as "to seize and detain unlawfully and usually for ransom". According to the Colombian organization of victims of kidnapping Fundación País Libre, kidnapping is generally understood as 'the arbitrary limitation, unjustified and illegal, of personal freedom through activities of retention, seizure, hiding and/or withdrawal'.²

If kidnappings occur in the context of a (civil) war or armed conflict, the word 'hostage-taking' is often being used, a term derived from international humanitarian law, in particular article 1(b) of common article 3 of the Geneva Conventions and article 4(2)(c) of Protocol II. But in many countries acts that qualify as hostage taking are commonly known as kidnapping. Hostages are defined in the commentary on the Protocols as persons who "find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with orders".³

Broadly speaking, the motive and intentions of the kidnappers define the classification of the crime of abduction. Fundación País Libre distinguishes in this respect three types of kidnapping. The first is what they call the ‘simple kidnapping’, which refers to cases where the kidnappers do not make clear demands. Some examples of simple kidnappings are: the illegal traffic of minors for adoption or child prostitution, the violation of the right to custody, the kidnapping of persons in the course of criminal activities such as robberies, the kidnapping of persons for sexual motives, and forced disappearances carried out by state actors. The second type of abduction concerns cases that spring from a political point of view and in which the kidnappers make clear political demands. Extortive kidnapping for economic motives is the best known type of abduction. In these cases the kidnappers demand ransom in cash or in goods, in order to enrich themselves.⁴

1.2 *The worldwide rise of kidnapping*

Safety and security with regard to the threat of being kidnapped are becoming less common in certain countries in the world. The number of abductions for ransom on a worldwide basis has risen considerably over the past decade. Between 1968 and 1982, a US government study reported the taking of 951 hostages in seventy-three countries.⁵ At the end of 1997 the international press revealed the alarming news (based on figures of the security company Hiscox Group) that the number of reported kidnappings had risen in 1997 to a peak of 1407 cases, up from 1367 cases in 1996 and nearly double the number in 1991.⁶ But in 1999 the number of extortive kidnappings even reached a new record high across the world. According to very conservative estimates from the Hiscox Group, 1789 known cases of kidnapping took place in 1999, with 92% occurring in just ten countries. Latin America turned out to be the most dangerous region of all, accounting for more than three-quarters of the total number of kidnappings.⁷ Specialists estimate that more than US\$ 500 million a year goes to pay off professional bands of kidnappers, mostly in South America.⁸

The spectacular growth of kidnapping on a global scale is not only the result of the increase of common crime, but could also be explained to a large extent by the emergence of numerous internal conflicts across the world, and the development of existing intrastate conflicts after the Cold War era.⁹

The Cold war era

Intrastate or internal conflicts are not new in themselves. Even during the Cold War era almost 75% of the registered conflicts in the world could be classified as intrastate conflicts.¹⁰ After the Second World War, irregular, informal wars arose in various parts of the world, which were often waged by

guerrilla groups inspired by left-wing role models such as Mao Tse-tung and Che Guevara.¹¹ In Latin America, guerrilla groups emerged in such countries as El Salvador, Guatemala and Colombia. But intrastate conflicts in this era tended to be limited to certain levels, in view of the mutual interest of both superpowers in maintaining the balance of power in the world. The prospect of a fatal escalation of a local conflict made them cautious and restricted their display of power mainly to mutual deterrence.

The various armed parties of intrastate conflicts during the Cold War focused mainly on this bipolar divide of the two superpowers and even depended financially and militarily on the support of the superpowers. In those days, kidnapping was often used to politically blackmail governments. The high-profile kidnappings by political groups, such as the kidnappings of the Italian ex-prime minister Aldo Moro (1978), the 52 employees of the U.S. embassy in Teheran (1979), and the U.S. Brigadier General James Dozier, were very much in the public eye.

The post Cold War era

At the end of the Cold War era the existing cultural and socio-economic structures weakened in many parts of the world, and the ideological foundations of the power structures lost their meaning. Without the restraining influence of the superpowers, slumbering local tensions and conflicts flared up again. New internal conflicts occurred and took many different forms, ranging from traditional nationalism to tribal war, and the nature of intrastate conflicts already in existence during the Cold War changed drastically afterwards.¹² For example, a considerable quantity of light arms and heavy weaponry became available on the illegal world market, and many intrastate conflicts are being fought with armaments from the run-down stocks of the Cold War era.¹³

The irregular groups of intrastate conflicts in the post-Cold War era could not, or could no longer, depend on the funding and support of one of the superpowers, and had to find their own economic sources. An analysis of a number of such intrastate conflicts during the last decade shows that civil war incidence correlates with the presence of parties that have found the means to finance their involvement in that war. The control over these economic sources very often develops into a motive for (still more) fighting.¹⁴

The looting and taxation and illegal trade of natural resources have proven to be a very lucrative business for rebels and irregular armed groups all over the world. In Angola irregular armed groups finance their war with the illegal trade in diamonds, and the rebels of Afghanistan trade jade and lapis lazuli, and drugs.¹⁵ A recently alleged example of this phenomenon is the timber industry of Liberia, which provides ample funds to a rebel group in Sierra Leone.¹⁶ These war economies are often subject to globalization and tend to cross national borders. In southern Sudan, northwest Kenya and northeast

Uganda, the armed rebel groups control the mining of gold and valuable rubies, which are traded illegally to India.¹⁷

The increase of kidnapping worldwide

Apart from this kind of looting, taxation and trading of natural resources, kidnapping and extortion became two ever more important sources of income to irregular armed groups in Colombia, as well as to other rebel armed groups around the world. During the 1990s the crime of kidnapping increased – or popped up – in countries typified by internal chaos, societal transition and civil war, weak and corrupt law enforcement by the state authorities and an ever widening gap between rich and poor.

The journalist Ms. Ann Hagedorn Auerbach, who wrote a standard work on kidnapping '*Ransom. The untold story of international kidnapping*', explains this worldwide rise of kidnapping in the light of what she calls the phenomenon of '**displacement**'.¹⁸ In many societies around the world, the post Cold War disbandment of insurgent groups and the demobilization of army and police institutions that resulted from lack of funding or peace processes caused high unemployment rates among young men. Many trained and experienced warriors, former rebels and state soldiers alike, were left without a livelihood. They became an attractive pool of recruitment for criminal groups, kidnapping gangs and armed insurgent groups that managed to survive the breakdown of the Old World order through criminal activities.¹⁹ The guerrilla experience itself eventually became a significant contributor to criminal kidnapping by ex-guerrilla fighters.

In addition to this, the spectacular growth of the number of kidnappings can be explained by the ever **increasing globalization** during the last decade, which resulted in the growth of the (eco) tourism industry in underdeveloped and conflict-torn areas, and the expansion of worldwide entrepreneurship and investment.

The victims of kidnapping nowadays are ordinary businessmen, tourists, employees working for international enterprises and NGOs, as well as the upper and middle class families of the local population. These victims no longer attract the media spotlight as in earlier days, but remain to a large extent anonymous figures in the statistics.

Displacement after the fall of the Soviet Union

After the collapse of the Soviet Empire, the Russian Mafia and kidnap gangs recruited unemployed former KGB agents and former police and military personnel to extend their activities. Especially in the Russian province Chechnya, the number of kidnappings grew relatively sharply. Because expatriates

working in this area were often selected by the kidnap gangs, and the chances of being killed during the hostage taking in Chechnya was the highest in the world, the insurance company Hiscox Insurance Group decided in 1998 no longer to insure westerners in Chechnya.²⁰

After the Russian invasion of Chechnya in September 1999, the abduction of foreigners by kidnap gangs practically stopped. Nevertheless, the number of kidnappings increased, because soldiers and officers of the Russian army started routinely to detain Chechen civilians, only to release them for ransom. Because Russian army officials are considered to be state actors, the crime is commonly reported as 'arbitrary detention and extortion'. But in fact it is also a type of extortive kidnapping. According to Human Rights Watch, the Russian army in Chechnya can be held responsible for thousands of such incidents since the war started.²¹

The fall of the Soviet Union also produced the displacement of Muslim rebels from Afghanistan to Kashmir in 1994. After the retreat of the Soviet army from Afghanistan, a few hundred Afghan warriors started to support the Muslim fighters in Kashmir in their separatist fight against the Hindu dominated state of India. With their arrival, the number of kidnappings (especially of foreigners) in India increased.²²

1.3 *Kidnapping in Latin America*

After the Cold War, the national security forces in many Latin American countries underwent a process of demobilization and disarmament. El Salvador, Honduras and Guatemala saw its military forces reduced to half, and in Nicaragua the staffing of the former Sandinista army was even cut back from approximately 90,000 to 11,250 soldiers. Former rebel and contra rebel groups in Guatemala, El Salvador and Nicaragua were also disarmed.²³ The effects of demobilization could also be seen in Latin America's kidnap statistics. In Guatemala the demobilization provided the criminal and kidnapping gangs with trained, experienced and often specialized members. This is one of reasons why Guatemala appeared in 1997 at the top of the kidnap statistics of Latin America, with a total of 1739 cases.²⁴ Among the top ten countries for kidnapping over the period 1991-1998, Guatemala is in sixth place.²⁵

Number two in the same statistics, with 656 registered kidnap cases during that same period, is Mexico. But these estimates seem to be rather conservative. According to the Mexican Attorney General's office, the number of kidnappings reached 1400 in 1994 alone.²⁶ And estimates of some non-governmental analysts range from 1200 to 2000 cases for the year 1995.²⁷ The majority of the kidnappings in Mexico is attributed to common criminals. Another reason for the growth of the number of kidnappings in Mexico after 1994 became clear in 1996. A new rebel group, the EPR (Ejercito Popular de

Revolución/ Popular Revolutionary Army), had been set up two years previously in Mexico.²⁸ The members of the EPR had been trained in Colombia and there has been speculation that the EPR was to operate as a branch of the Colombian guerrillas.²⁹ The rebels had been raising funds largely through kidnapping.

Venezuela

Colombia's neighbouring countries also faced growing kidnap rates during the nineties, and ended up in the top ten of 'hot spots for kidnap danger' as well. In Venezuela the Colombian guerrilla group FARC got involved in the kidnap industry. The Minister of Internal Affairs and Justice of Venezuela publicly condemned the kidnap and extortion activities of the FARC the country. He announced in May 2001 that he intended to take energetic measures against what he called 'the perverse attitude' of the guerrilla.³⁰ This was quite remarkable considering the fact that the Venezuelan government of Mr Chávez holds an official position of 'neutrality' towards the rebels and is said to maintain ties with the rebels.

Ecuador

In Ecuador the activities of the kidnapping gangs concentrate on foreigners working in the remote oil-drilling sites in the Amazon of Northern Ecuador. In October 2000, ten expatriate oil workers were abducted and, after the escape of the two French hostages and the murder of an American hostage in January 2001, the rest of the hostages were ransomed for US\$ 13 million in March 2001.³¹ In June 2001, the Colombian police, in collaboration with the U.S. embassy, rolled up a kidnap network by arresting 50 Colombian suspects accused of selective abductions of employees of multinational enterprises in Ecuador, including the above-mentioned abduction of the ten oilfield workers. Some experts believe the kidnapers to be (former) Colombian guerrillas, as they seem to have the same routine and habits. The Colombian authorities are still investigating this possible link.³² It is a fact, however, that the extortive activities of the Colombian illegal armed groups have increased in Ecuador. The testimonies of Ecuadorians, mainly cattle rangers in the northern province Carchi, are a clear indication of this.³³

1.4 Kidnapping fuels armed conflict

As the following case from the Philippines shows, kidnapping and extortion have become an important source of income for irregular armed groups, such as paramilitaries, guerrilla, separatist and religious rebels. Within the context of the intrastate conflict, this literally means that the payment of ransom fuels the violent conflict.

The Philippines

In the southern Philippines for example, extremist Muslim separatist groups named Abu Sayyaf, Moro Islamic Liberation Front (MILF) and Moro National Liberation Front (MNLF) became responsible for the majority of kidnappings in the country. According to insurance company Hiscox Insurance Group, approximately 460 persons were kidnapped between 1991 and 1998.³⁴ Foreigners working in the Philippines or taking a holiday there are their favourite victims, because of the large amount of money that is paid for them.

In April 2000 the Muslim extremists of the rebel group Abu Sayyaf became world news after kidnapping a group of tourists (including two French, two South African, two Finnish and three German citizens) from a holiday park in Malaysia. The hostages were brought over to the island of Jolo in the Philippines. The Middle Eastern state of Libya, which had become a diplomatic pariah in the Western world since the terrorist incidents in the 1980s, set itself up as mediator.³⁵ But almost three months after the kidnapping took place, only a small group of Malaysian hostages had been released. Pressure on the Philippine negotiators was growing, notably from the German government.

According to the German newspaper Frankfurter Allgemeine Zeitung, the Philippine negotiator, acting independently of the Libyan negotiator, raised US\$ 1 million among business connections of the president of the Philippines and ransomed the German Ms Renate Wallerts on July 17, 2000. The German government refunded the Philippines their money via a special bank account in Hong Kong and thus *de facto* paid the ransom for Ms Wallerts.³⁶ The remaining twenty hostages were ransomed by the Libyan state and released in small groups in August and September. The Libyan negotiator stated that Libya did not pay ransom in cash to the rebels, but financed instead some 'structural development projects' in the southern Philippines for an amount of approximately US\$ 11 - 18 million.³⁷ This 'development money' was to be administered by the Gaddafi Charity Foundation, directed by the son of Colonel Gaddafi.

Various sources, however, contradicted the Libyan government's official version by saying that Libya paid one million US dollars in cash for each of the remaining twenty hostages.³⁸ And according to the Philippine army, Abu Sayyaf also cashed in to an amount of US\$ 5.5 million for the release of other hostages in July 2000.³⁹ New kidnappings took place within a week.

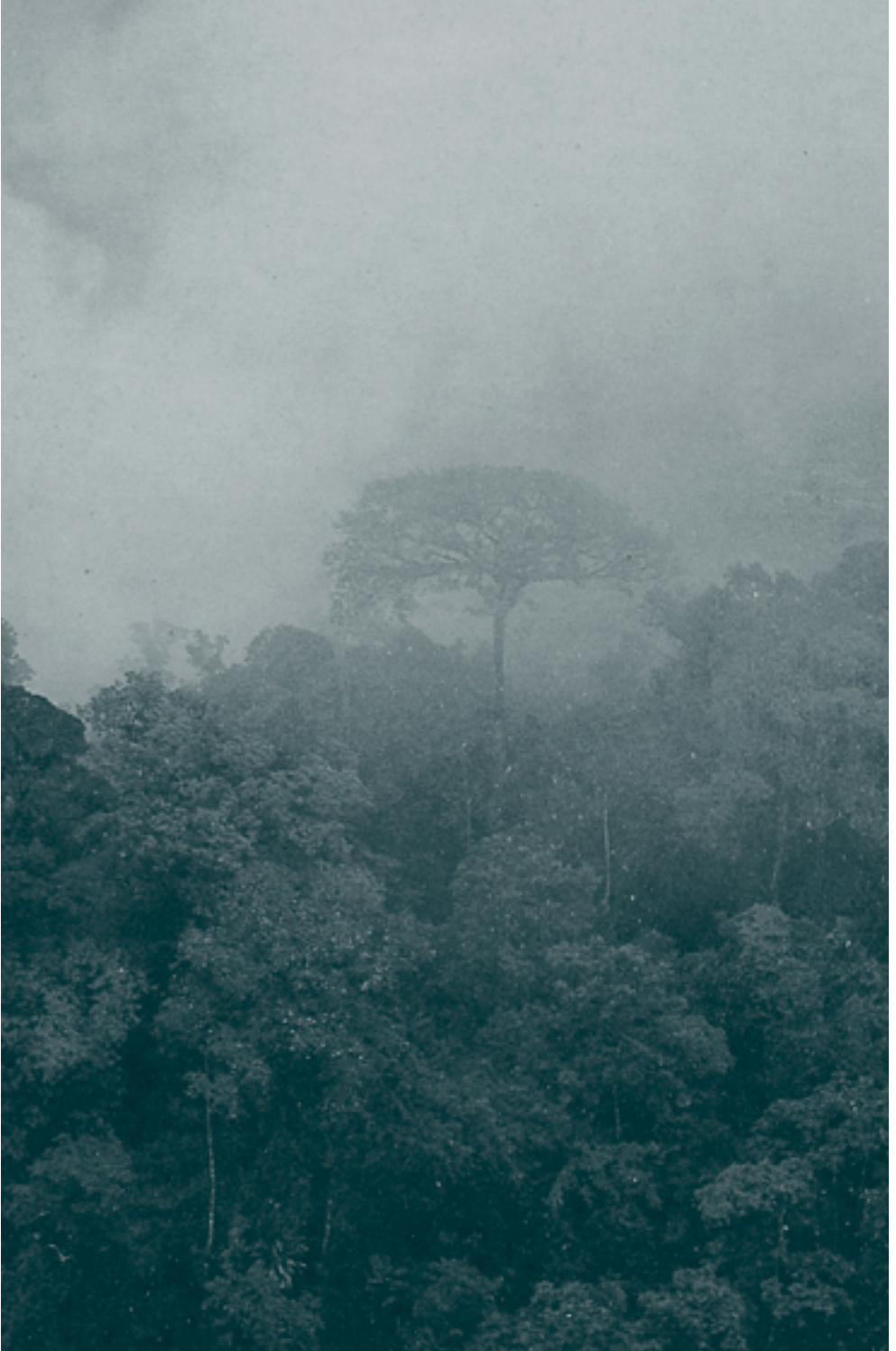
The outcome of this kidnap case benefited the ambitions of the various groups involved, for instance that of the rebels, Philippine politicians and Mr Gaddafi.

The rebels were able to realize substantial military growth. They not only bought new arms and ammunition, but also recruited new members. The Abu Sayyaf had consisted of only a few hundred rebels, but after the ransom payment it became a rebel group of more than a thousand members.⁴⁰ But not all the ransom money went to the rebels. A considerable part of the money was retained by Philippine politicians, among which the Philippine chief negotiator.⁴¹ Mr Gaddafi, for his part, bought an improved image of Libya in the Western world and made a first step towards the restoration of diplomatic relations with European countries. Shortly after the release of the hostages he was invited by France, which held the presidency of the European Union at the time, to join an informal meeting of the European Union in November 2000.⁴² The Wallerts family was less fortunate. The German Ministry of Foreign Affairs presented them with a bill of DM 13,000 (approximately US\$ 6,500) to 'cover the expenses'.

The kidnap industry in the Philippines functions as an economic engine of the rebel groups and produces an increase of violence. However, the most outstanding example of this phenomenon is not to be found in Asia but in Latin America. For more than a decade, Colombia has figured at the top of the lists of all kidnap statistics. In this country, extortive kidnapping has become an important source of income to the various illegal armed groups, and has even prevented one of the guerrilla groups from going into a sharp decline.

-
- 1 Oppenheimer, A., "Colombia's elite remains on war's sidelines" in: *Miami Herald*, July 8, 2001.
 - 2 Information obtained from Fundación Pais Libre.
 - 3 Sandoz, Y., C. Swinarski and B. Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva (1987).
 - 4 Information obtained from Fundación Pais Libre.
 - 5 Hagedorn Auerbach, A., *Ransom. The untold story of international kidnapping* (New York, 1998) 23.
 - 6 Cowe, R., "Kidnapping; the world's top growth industry", in: *The Guardian*, October 9 1998; "Kidnapping on increase, says Hiscox" in: *Daily Mail*, October 9, 1998; Timmins, N., "Kidnappings at record level", in: *The Financial Times*, October 9, 1998; Farrelly, P., "Danger zones", in: *The Observer*, October 11, 1998.
 - 7 Wilson, J., "Kidnaps for ransom reach worldwide high", in: *The Guardian*, 21 April 2000.
 - 8 Treaster, J.B., "Kidnapping with money as the only object", in: *The New York Times*, June 30, 2001.
 - 9 This, of course, is a general pattern, which is not applicable to every situation. Several intra-state conflicts diminished with the end of the Cold War era, for example in Latin America. One of the factors that made the rebels enter into peace processes was the fact that they weakened militarily after the Cold War period, an observation that seems to support the Cold War pattern described above.
 - 10 Holsti, K.J., *The state, war and the state of war* (Cambridge, 1996) 37.
 - 11 Kaldor, M., *New & Old Wars. Organized violence in a global era* (Cambridge, 1999) 30.
 - 12 Kaldor, M., *New & Old Wars*, 70.
 - 13 Kaldor, M., *New & Old Wars*, 96.
 - 14 Collier, P., *Economic Causes of Civil Conflict and their Implications for Policy*, The World Bank, (Washington, June 2000).
 - 15 Duffield, M., "The political economy of internal war: Asset transfer, complex emergencies and international aid", in: J. Macrae and A. Zwi (ed), *War and Hunger: Rethinking International responses* (London 1994).

- 16 McDonald, G., *Exploring Natural Resources as a Fuel for Conflict*, Internal SCIAF document, draft One June 2001, 3.
- 17 Information obtained from Mr A.J. Dietz, professor at the University of Amsterdam (UVA).
- 18 Hagedorn Auerbach, A., *Ransom*, 23-26.
- 19 These warriors often also formed their own kidnapping gangs.
- 20 Cowe, R., "Kidnapping: the world's top growth industry", in: *The Guardian*, October 9 1998.
- 21 Information obtained from the Human Rights Watch office in Chechnya, July 2001.
- 22 Hagedorn Auerbach, A., *Ransom*, 25-26.
- 23 Stevens, W.J., *Uitdagingen voor Latijns-Amerika op de drempel van het derde millennium* (Leuven – Apeldoorn 1997) 16.
- 24 Fundación País Libre, *Programa Nacional de Asistencia Integral al Secuestrado*, Proyecto (Santafé de Bogotá, July 1998) 18.
- 25 Farrelly, P. "Danger zones", in: *The Observer*, October 11, 1998. Statistics based on information from the Hiscox Insurance Group.
- 26 Bamrud, J., "Kidnapping Inc.", in: *U.S./Latin Trade*, February 1996.
- 27 Hagedorn Auerbach, A., *Ransom*, 26-27.
- 28 It should be taken into consideration that the ERP can be held responsible for only a part of the kidnappings that take place in Mexico. Many kidnappings in Mexico are conducted by common criminals, which may or may not be due to the 'copycat effect'.
- 29 Hagedorn Auerbach, A., *Ransom*, 26-27.
- 30 Reyes, M., "Duras palabras de Miquilena a guerrilla", in: *El Tiempo*, May 18, 2001.
- 31 Treaster, J.B., "Kidnapping with money as the only object", in: *The New York Times*, June 30, 2001.
- 32 "Cae poderosa red de secuestradores de extranjeros", in: *El Tiempo*, June 23, 2001. This could be an example of the copycat effect, or it could indicate concrete guerrilla involvement.
- 33 Koopman, E., "Rebellen zijn alles behalve voorbeeldige burenen", in: *Trouw*, July 30, 2001.
- 34 Cowe, R. "Kidnapping: the world's top growth industry", in: *The Guardian*, October 9, 1998; Farrelly, P., "Danger zones", in: *The Observer*, October 11, 1998.
- 35 Colonel Gaddafi sent his envoy Mr Azzarouq in May 2000, who worked together with the Philippine negotiator Mr Aventajado.
- 36 "Hat die Bundesregierung eine Million Dollar für die Freilassung Renate Wallerts gezahlt?", in: Frankfurter Allgemeine Zeitung, October 21, 2000.
- 37 Kremb, J., "Eine Bühne für die Politiker", in: *Der Spiegel*, no. 37/2000, 188-189.
- 38 Boissevain, M. "Vrijgelaten gijzelaars zijn blij, maar wie volgt?", in: *De Volkskrant*, September 12, 2000, and "Hat die Bundesregierung eine Million Dollar für die Freilassung Renate Wallerts gezahlt?", in: Frankfurter Allgemeine Zeitung, October 21, 2000.
- 39 Reuters, AP/AFP, "Vijf westerse gijzelaars vrijgelaten" in: *De Volkskrant*, August 28, 2000.
- 40 Boissevain, M. "Vrijgelaten gijzelaars zijn blij, maar wie volgt?", in: *De Volkskrant*, September 12, 2000
- 41 Frankfurter Allgemeine Zeitung, *Hat die Bundesregierung eine Million Dollar für die Freilassung Renate Wallerts gezahlt?*, October 21, 2000.
- 42 Brouwer, A., "Woestijnorakel", in: *De Groene Amsterdammer*, September 9, 2000.



2. *Colombia; from political kidnapping to the miraculous catches*

THE KIDNAP INDUSTRY AS AN INCENTIVE TO WAR

At the height of the Cold War era, the American president Nixon often used the expression: “money is the nerve of war”.¹ Despite the fact that the balance of power in the world has changed dramatically since then, his statement is still very applicable to the growth of the Colombian conflict after the Cold War era.

This chapter seeks to show that the increasing revenues gained through kidnapping, combined with the growing profits from drugs and extortion, produced the military growth of the warring parties and intensified the internal conflict. A conflict that brought about indescribable fear and hardship, caused the displacement of more than 1.5 million Colombians during the last ten years, and seriously aggravated the economic problems in Colombia. It is often justly argued in Colombia that the kidnap and extortion industry and the internal conflict have fuelled each other. So much so, that a significant decrease or a complete end of the kidnap and extortion practices would mean a great advance towards peace, or vice versa, a peace accord would mean a definite reduction in kidnappings and extortion.

2.1 *The Colombian conflict during the Cold War era*

The history of the state of Colombia has been characterized, practically since it was founded in 1810, by civil wars and internal conflicts. The two opposing political parties, the Liberals and the Conservatives, waged a bloody war until they sealed a political pact at the beginning of the twentieth century. This reconciliation resulted in forty years of ‘political coexistence’ and relative peace. After the murder of Jorge Eliécer Gaitán, a leader of populist lineage and presidential candidate for the Liberals in 1948, the ruling Conservative Party started to use state violence against Liberals. The incapacity of the Liberal party to stop the governmental violence against civilians led, in a spontaneous manner and in multiple regions, to the peasant armed resistance. This civil war, that went down in history as ‘*La Gran Violencia*’ (the Great Violence) culminated in the dictatorship of General Gustavo Rojas Pinilla in 1953. The two major guerrilla groups that surfaced in Colombia in the 1960s were rooted firmly in these Liberal peasant self-defence groups.

The basic group of the FARC (*Fuerzas Armadas Revolucionarias de Colombia*/Armed Revolutionary Forces of Colombia) was founded in May 1964. The second largest guerrilla group in Colombia, the ELN (*Ejército de Liberación Nacional*/National Liberation Army) received assistance from the Cuban revolutionary government for its foundation. During the Cold War period, the ELN depended partly on Havana for the training, organization and arming of their soldiers. Since its foundation in 1964, the FARC was able to count on the financial, political and military support of the Soviet Union. Despite internal problems that reduced its inner cohesion, the ELN experienced moderate growth until 1973. In that year it was the subject of a military strike that nearly killed it. In addition to these two groups, the much smaller EPL (*Ejército Popular de Liberación*/Popular Liberation Army) surfaced, along with a number of very small rebellious groups, such as JEGA (Jorge Eliécer Gaitán), ERP (*Ejército Revolucionario del Pueblo*/People's Revolutionary Army), the M-19 (*Movimiento 19 de Abril*) and the splinter group from the M-19, Jaime Bateman Cayón.²

The Colombian guerrilla groups, unlike the guerrilla movements of Central America, were rather inwardly focused during the Cold War era. Apart from some support received from Cuba (ELN) and the Soviet Union (FARC), the guerrillas tried to develop strategies in Colombia that would generate income without being an excessive burden on the financially weak. In this way they hoped to obtain the political support of the lower classes, in whose name they claimed to wage their war in the first place. It is usually relatively easy in short-lived wars to gain support of the well-off and middle classes. But in Colombia the war was dragging on and, apart from the M-19 that gained some support among the middle class, the Colombian guerrilla groups were not able to secure support among large sections of the population.³

In order to solve their financial problems during the cold war period the Colombian guerrillas often opted for levying what they called 'revolutionary taxes' on medium-sized and large enterprises and farmers.⁴ In the 1970s, Colombia experienced no more than a few dozen kidnappings each year. The motive of the guerrilla groups for kidnapping was mainly political, and their usual targets were politicians and bureaucrats.⁵ Some kidnappings were extortive in nature. Substantial ransom payments to the ELN started in about 1985.

2.2 The Colombian conflict after the Cold War era

By the end of the 1980s, unemployment among the world's best-trained combatants and rebels who had been fighting for one of the superpowers or its surrogates, increased rapidly. With a vast array of weapons and expertise available to them, they joined criminal gangs or launched their own, and

began drug operations and kidnapping gangs. This phenomenon was also seen in Colombia. The infamous Colombian drug barons who controlled the major part of the Colombian drug trade during the 1980s, for example, had the disposal of special troops trained and armed by former Cold War fighters who had become mercenaries.⁶ The crackdown on some of the Colombian drugs cartels in the 1990s provided a second influx of experts on the use of high-tech weaponry and kidnapping. Many of them have resorted to kidnapping and extortion as a way of raising money to start a new drug business, or find employment in criminal or rebellious groups.⁷

The Colombian guerrillas took advantage of the influx of these unemployed experts on war and crime to solve their structural lack of income. The rebel groups, one after another, set their former ideological reservations aside and threw themselves into criminal activities, such as drug production and trafficking, extortion and extortive kidnapping.

The rise of the paramilitary

The extortion and kidnapping industry that emerged in Colombia unfortunately gave rise to a brutal opposition; the paramilitary forces. In the eighties the paramilitary coalition ACCU (*Autodefensas Colombianas de Córdoba y Urabá/Colombian Self-defence Groups of Córdoba and Urabá*) was founded out of former local groups. This group and other paramilitaries in the country joined forces in the national AUC (*Autodefensas Unidas de Colombia/United Self-defence Groups of Colombia*). The guerrilla aggression is not the only factor that drives the growth of the paramilitaries; but, without doubt, this is the motive for many landowners and businessmen for giving financial and logistical support to these private armies. However, the remedy that these paramilitary troops were supposed to offer, turned out to be even worse than the disease. The paramilitary groups, supported and protected by some of the units of the national army, became responsible for a major part of the human rights violations in Colombia.⁸

Like the guerrillas, the paramilitary forces shifted eventually to new sources of revenue to finance their bloody and devastating war, and became increasingly involved in drug trafficking and extortion practices. Some of the experts of the drug operatives of the 1980s found employment in the paramilitary troops of the AUC that protect some of the large estates of the new drug Mafia.⁹

2.3 New ways of financing the war; drugs

The FARC started to rely on drug income in 1985, when the drug baron Carlos Lehder asked them for protection and introduced them to the drug business

in return. After the shift of coca production from Peru and Bolivia to Colombia during the 1990s, Colombia became the producer of almost 75% of the total amount of cocaine in the world.¹⁰ Especially, the FARC took advantage of this shift. Nowadays, the guerrillas and the paramilitary forces of the AUC earn a considerable part of their income by taxing the *narcos* (drug lords) or by participating actively in the cultivation of illicit crops and the drug trade.¹¹

The paramilitary and drugs

The paramilitary forces control vast areas of coca and poppy cultivation, not only to impose tax on the owners of the plantations, but also to guarantee the drug lords (their financiers) a permanent supply of raw material.

Investigations carried out by the national attorney showed that in Córdoba and a neighbouring province, landowners and businessmen in collaboration with drug barons use front companies to channel donations to the paramilitary groups. It remains unclear exactly how much money the paramilitary forces have collected by protecting drug mafia, but it is estimated that they have anywhere from US\$ 200 million to US\$ 1 billion in bank accounts abroad.¹² According to governmental sources, the net income of the AUC from drugs in 2000 was US\$ 21 million, which enabled them to create 10 new fronts.

The leader of the AUC, Mr Carlos Castaño, stated in the press in May 2001 that 70% of the revenues of the AUC come from the drug business. Further details on drug income of the paramilitary were not available for Pax Christi.¹³

The guerrilla and drugs

In a report compiled by DAS functionaries (Administrative Security Department) it is estimated that drug income of the guerrilla shows that the largest part of the revenues of the guerrillas is from drug trafficking. The drug revenues of the guerrilla for the period 1991-1999 are estimated to be US\$ 3.2 billion.¹⁴

The Colombian rebels' annual income from drug trafficking is estimated by the UNDCP to be approximately US\$ 600 million, which is one third of the total volume of the drug trade in Colombia.¹⁵ The DAS estimated that the drug trade netted the Colombian guerrilla US\$ 980 million in 1999.¹⁶ The major part of this amount falls into the hands of the FARC, as the ELN and other rebel groups control only a minor part of the drug business. The guerrilla group FARC got through to all levels of the production and trade of drugs and became without doubt the main producer of coca paste (the prime material of cocaine). In the regions dominated by the FARC, they monopolise the drug market. These figures were merely added together in order to give a general idea of the extent of the drug income of the various illegal armed groups in Colombia. A more detailed study of this subject however, is beyond the scope of this report.

2.4 *New ways of financing the war; extortion*

Among the new sources of income that have contributed to the escalation of the internal Colombian armed conflict after the Cold war era, the second most important is extortion.

The paramilitary groups

Unfortunately, there are no reliable estimates available on the annual extortion income of the paramilitary groups. But given the many individual cases that are being brought to light every year, it can be concluded that extortion money is an important source of income for the paramilitary. In Urabá, for example, the Banana growers have to pay 50 dollar cents for each box of bananas that is being exported, and in Guajira one dollar is paid to the paramilitary for each ton of coals to be exported.

The guerrillas and extortion

During the first decades of their existence, the guerrilla movements tried to gain the voluntary support of the Colombian people. But during the 1980s, when voluntary contributions failed to appear, this moral element turned out to be somewhat susceptible to a loss of vigour. The leader of the ELN, Nicolás Rodríguez Bautista, publicly admitted in a television interview in 2000 that the ELN is generating revenues through extortion and kidnapping.¹⁷

The FARC even formalized the (mal)practice of extortion in 2000 by issuing a 'revolutionary law', Ley 002, which entitles the FARC to impose a 10% tax on every person in Colombia with assets of more than one million US dollars.

Some companies in the department of Santander already received concrete 'assessments' from the FARC with regard to this *Ley 002*.¹⁸ According to the magazine *Cambio*, the FARC sent letters to more than two thousand companies in southern Colombia. Each company was extorted to a minimum amount of US\$ 100,000. In order to enforce payment of the extortion money, the guerrillas threaten companies with acts of sabotage and harassment, such as the bombing of installations, incitement to strike, or the kidnapping of personnel.

Also private persons are often threatened with potential kidnapping. Notwithstanding the 'one million dollar clause' of the *Ley 002*, the middle and even lower income groups of Colombian society are increasingly being affected by the FARC's extortion practices as well. The guerrillas call the forced collection of money by threatening private persons or companies 'imposing revolutionary taxes'. The Colombian population, on the other hand, colloquially refers to this kind extortion with the terms '*la vacuna*' (vaccine against kidnapping) or '*el boleteo*' (extortion).

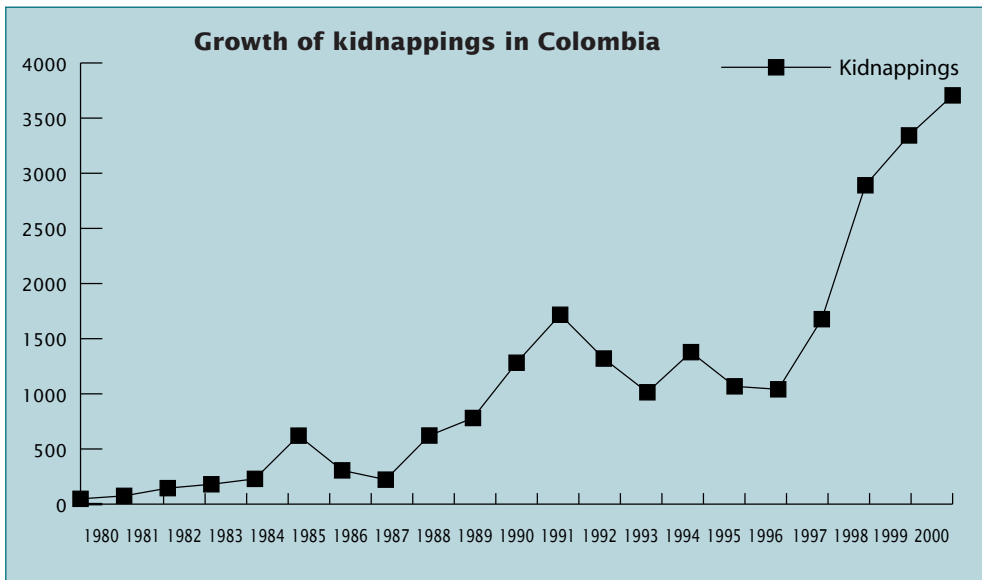
Some companies, such as Bavaria, Leona, Postobón and various oil companies, had the strength and courage to stand up to this extortion. This prompted a chief commander of the FARC, 'el Mono Jojoy', to order his fronts to paralyze the distribution of the beverages (soft drinks and beer) and to obstruct oil production. The respective companies reported that the distribution of their products had indeed been severely hampered.¹⁹

The DAS estimated that between 1991 and 1998 extortion and theft netted the Colombian guerrilla approximately US\$ 1.8 billion.²⁰ This figure corresponds exactly with the amount mentioned in the joint publication of the Colombian army and the government's National Planning Department.²¹ The difference in income between the FARC and the ELN from extortion is much smaller than the difference in income derived from drug trafficking. Or to put it in other words, extortion is a very important business for the ELN. As a source of income, extortion nets the ELN five times more than the drug trade.

2.5 ***New Ways of financing the war; kidnapping***

Halfway through the 1980s the Colombian guerrilla groups began to kidnap for extortive motives on a more structural basis. In their quest for funding their war, the ideological and moral foundations of their struggle lost importance.²²

The first to understand, leverage and apply the practice of kidnapping to its full extent was Jaime Bateman Cayón, Commandant in Chief of the M-19. The M-19 (pledged to amnesty in 1991) refined and took the method of 'revolutionary retention' to dimensions unknown to the guerrilla forces at that time. Their objectives were political and propagandistic as well as economic.²³ Other guerrilla groups were soon to follow, and kidnapping reached an almost epidemic status in the 1990s, which was beyond the control of the Colombian authorities. Although the guerrillas insist on using the term '*retención de personas*' (retention of persons), the motive behind the vast majority of the kidnappings is economic. According to the governmental organisation Conase, 64% of the kidnappings in 1999 were motivated by economic extortion. The real percentage is probably higher, considering that the motive for 11% of the kidnappings in that year was unknown.²⁴ The graph below clearly indicates the progressive growth of the annual number of kidnappings over the past two decades. It is based on the figures and calculations of the lawyer Eduardo Delgadillo Bravo for the period 1981-1989²⁵, and the figures of Fundación País Libre for the period 1989-2000²⁶.



The magical line of 1000 abductions annually was surpassed in 1990, but this turned out to be only a temporary record. In 1998, the total number of kidnappings in Colombia rose to more than 2000 cases, and only two years later a record 3706 kidnap cases were registered by Fundación País Libre.²⁷

This implies that Colombia actually has an average of eight kidnappings per day. Or to put it in other terms, someone in Colombia is being kidnapped every three hours.

The financial consequences of kidnapping are great scars upon Colombian civil society. The amount of ransom depends on the income and assets of the victim, of which the kidnappers are often well informed. The ransom for a Colombian citizen can vary between US\$ 1,000 and US\$ 400,000.²⁸

This usually means that after the tragedy of a kidnapping has come to an end, the victims not only suffer from long-lasting personal traumas but also find themselves in great debt. For many Colombian victims, the ransom payments lead to the bankruptcy of their (family) business or to long-running bank debts that usually attract incredibly high interest rates. After being kidnapped, a 76-year-old man sighed dejectedly that a victim of kidnapping "pays once to the guerrilla and twice to the bank".²⁹

2.6 *Figures on kidnapping in Colombia*

Why do sources show disparities?

The various statistics on kidnapping in Colombia exhibit many disparities and inconsistencies. There are three factors that help to explain this characteristic of kidnap statistics. First of all, many kidnappings in Colombia go unreported and are dealt with privately. And the victims of a reported kidnapping are rarely inclined to reveal the amount of the ransom that was paid for their release.³⁰ Persons involved in a kidnap case fear retaliation, fear the involvement of corrupt or incompetent police forces, or try to protect the corporate image of their company from negative publicity. Statistics based on official information as well as the informed estimates are therefore bound to be incomplete. Secondly, the secrecy of the guerrilla is even more extensive. Rebel forces deny the kidnapping of people, as they are aware that kidnapping is a crime that violates International Humanitarian Law. And as a consequence its practice means both bad publicity and a loss of legitimacy in the international arena. This is why the military commander of the FARC, Jorge Briceño, stated early in 1999 that “The FARC doesn’t kidnap people”,³¹ even though his words were contradicted by many kidnappings that year.

The disparities between the statistics on kidnapping can also be explained by the fact that every type of organization has its own sources, its own way of investigating and its specific aims and interests.

Sources: Colombian state institutions

The Colombian state institutions obviously form the most important source of information for figures on kidnapping. Some ten years ago, official statistics on kidnapping (such as police statistics) were given hardly any publicity, so as to divert the attention of the public from the ineffectiveness and lack of operating capacity of the state institutions. Nowadays, the state tends to distribute the figures on kidnapping, with a refined sense of publicity, through many national and international channels to demonstrate the guerrilla’s lack of respect for Human Rights and International Humanitarian Law. Four official state institutions in Colombia handle statistics on kidnapping on a regular basis: the Fiscalía General de la Nación (the Attorney General, team of prosecutors), the DAS (Administrative Security Department), the national police forces, and the military forces (these two forces cooperate in the GAULA). Publications on kidnapping statistics by other state institutions are based on one of these four sources or on their own compilation of them.

The only state institution with the authority to qualify a kidnap case as such is the *fiscal* (the public prosecutor) who knows the specific case. The police forces merely file the report of the kidnapping, but it is the *fiscal* who, after having finished the legal investigation, decides whether the charges will stay with ‘kidnapping’ or will be changed to, for example, ‘homicide’ or ‘disappearance’. This explains why the statistics of the police are always higher

than those of the *Fiscalía*. On the other hand, the commanders of the GAULA (police and military forces) do have some interest in keeping the kidnap figures in their districts low, since an increase of kidnapping in their district can have a negative effect on their annual evaluation. Unfortunately, there is no communication between these four governmental sources, and since the closing down of the office of the *Zar anti-secuestro* (Anti-kidnapping Tsar) in 2000, no state institution exists that checks, corrects, and harmonizes the inconsistencies between these four sources.

Sources: NGOs

Colombian NGOs, such as Fundación País Libre, make up a second source of information on kidnapping figures. These NGOs usually make informed estimates based on the official information and their own investigations. Fundación País Libre appointed an employee who gathers charges of kidnappings at the *Fiscalía*, the DAS and the GAULA and tracks down any duplication. These official figures are supplemented with cases that were not reported to the authorities. As a consequence, Fundación País Libre can be considered to be a fairly reliable source of information.

Sources: insurance companies

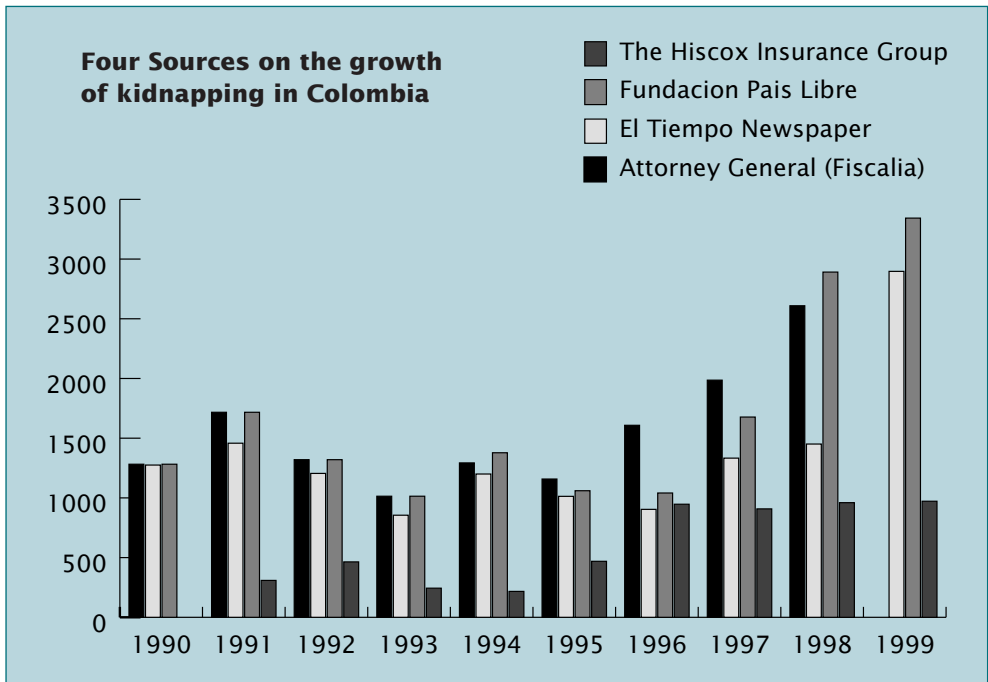
The various private security companies and insurance brokers can be considered to be a third source of information. These companies provide their clients with risk assessments, and they publish estimates to inform the general public. However, not all this information has proved to be accurate. The private security company Kroll, for example, estimated the total number of kidnappings in 1995 to be more than 4000 cases.³² This seems disproportionately high in comparison to the 1068 cases reported by País Libre.³³ Kroll may have consciously exaggerated these figures so as to raise the insurance premium that depends on the risk factor. They were expelled from Colombia in 1997 by the Colombian authorities, officially for broadcasting these figures. This may explain why insurance companies and private security companies are nowadays inclined to do the contrary. The Hiscox Group (Lloyd's), for example, posts on their corporate website very conservative estimates, adding that the figures are 'based on reasonably reliable information, not representing the full extent of the problem'.³⁴

Sources: press

The Colombian and foreign press often make compilations of these three types of sources. Sometimes the press draws on sources of its own. For example, the Colombian newspaper *El Tiempo* introduced the Colombian lawyer Eduardo Delgadillo Bravo, who claims that his statistics are based on 'true and honestly gathered information based on several years of investigation'.³⁵

2.7 The increase of kidnapping in the 1990s

Despite the disparities and inconsistencies of statistics, it remains within the bounds of possibility to draw some significant general conclusions. First of all, the various statistics show a spectacular growth of the number of kidnappings during the 90s. The graph below draws a comparison between the four types of sources of information mentioned above. Although the sources differ considerably on the exact figures, the general tendency of growth during 1990s stands out clearly.



The 'pesca milagrosa'

The annual number of kidnappings increased sharply in the period 1997-2000. In fact the total number kidnapping per year more than doubled, from 1677 cases in 1997 up to 3706 cases in 2000. This can partly be explained by a kidnap phenomenon known as the '*pescas milagrosas*' (miraculous catches), which was applied by the guerrillas far more frequently than hitherto. The term refers to an infamous guerrilla practice of installing roadblocks along highways and busy roads, in the course of which the rebels force the drivers and their companions to step down from the vehicles. A personal identification document is requested from each person, and they are forced to speak: a foreign look or accent is effectively a request for immediate kidnapping. It has been reported that the guerrillas sometimes run the names of the detained persons through a laptop to check out what they are worth, and whether they have kidnap insurance.³⁶ After this first screening, the group of selected vic-

tims is brought to the jungle where the guerrillas confirm their identity and makes a survey of their working, financial and family situation. Those living in precarious economic circumstances are released after a couple of days. The others are kept, to be freed only after payment of an acceptable ransom.

The phenomenon of the *pesca milagrosa* emerged for several reasons, the most obvious being that the police and military forces have insufficient logistical capacity to watch over the entire transport infrastructure in a country that is over one million square kilometres in size. Many of the roads pass through inhospitable regions, without any police or military authority along them. A second reason for the appearance of the miraculous catches was that the potential supply of kidnap victims had shrunk during the 1990s.

Nearly one million Colombians have left their country since 1996, mostly because they think rebels have taken aim at them for extortion or kidnapping.³⁷ And foreigners have taken extreme security measures. The pescas milagrosas make the crime more profitable and increase the chance of catching a few 'big fishes' along with the small fry.

Another profit motive is that proportionally fewer guerrilla men are needed to kidnap a group at a check point. And last, the miraculous fishing allows the guerrillas to exert a kind of territorial control in the regions where it takes place. The mass media and authorities constantly reveal the critical points where kidnappings are likely to occur and make suggestions on how to avoid them. Indirectly, these news items imply that the guerrilla forces hold control.

Mass abductions

The mass abductions in public and private places that started to take place two years ago also contribute to the increase in the numbers of kidnappings. Some of these mass kidnappings in Colombia became headline news in the (inter)national newspapers. The ELN hijacked an Avianca airplane on April 12, 1999, kidnapping 46 persons on board in order to pressure the government into demilitarizing a sizable stretch of territory in Bolivar. On May 30, 1999 the ELN abducted a group of 150 persons from the church of La María in Cali.³⁸ Relatives of some of the hostages say large ransoms were demanded for their release. On March 23, 1999 the FARC retained several dozens of persons, including some foreigners, on the via al Llano, and in September 2000 the ELN kidnapped a large number of persons eating dinner at restaurants along a highway west of Cali (known as the 'kilometre 18 incident').

The FARC conducted a commando-like assault on an apartment building in the centre of the city of Neiva in July 2000. A selection was made by the guerrillas from among the persons present. Those persons whose names appeared on the list of the guerrillas were brought over to the *zona de despeje* in Guagan (a zone that was demilitarized by the government on behalf of peace negotia-

tions with the FARC). It is generally assumed that this action is a prelude to a new urban strategy of the FARC that will victimize many more citizens.³⁹

In the year 2000, 354 cases of mass abduction were registered by the Colombian police force.

The abduction of minors

The columns no. 32 and 40 of the FARC, as well as common criminals, have found that kidnapping of minors is yet another way to increase their profits. Parents, in the face of anguish over their child's detention, are less reluctant to negotiate and more willing to pay large sums or ransom in order to prevent the children from suffering. Furthermore, the parents tend not to report the crime because of the death threats made by the kidnapers, and because they seek to protect their children from the rough handling of the media and public curiosity.

During the period 1994-1999, 966 minors were kidnapped, 667 of whom were younger than twelve years old.⁴⁰ In recent years, the phenomenon has grown alarmingly, from 31 cases in 1998 up to 206 cases in 1999.⁴¹

In July 2000, it was revealed that the FARC had taken abducted children to the *zona de despeje* in Gagua, where the young victims remained in captivity until their families paid ransom for their release.⁴² This practice was fiercely condemned by human rights organisations such as Human Rights Watch, the (Colombian) press and the UNHCHR. The latter stated that the kidnapped children were converted into objects of cruel commerce.⁴³ Raul Reyes, the spokesperson for the FARC, in spite of denying the kidnapping of children, promised to provide for a public response on the matter. To date, there has been no response, but the FARC continues to use the *zona de despeje* as a safe haven for hostages. In 1999, the Colombian army counted 21 hostages, minors and adults, that were brought to the *zona de despeje*.⁴⁴

2.8 The principle perpetrators of kidnapping

The various statistics also outline a rather consistent image of the share of responsibility of the various perpetrators of kidnapping during the 1990s.

Most sources indicate quite clearly that the Colombian guerrilla is to blame for the rise of kidnapping since the 1980s. The FARC accounted for almost one third of the kidnappings in 1999 (28%) and the ELN was held responsible for 24% of the kidnappings. The guerrilla groups EPL (6%), the ERP and Jaime Bateman have a minor share in the kidnap industry.⁴⁵ The guerrilla's share in the total number of kidnappings seems to be rising, as, according to País Libre, the ELN and FARC together accounted for 70% of the kidnappings that took place during the first trimester of 2001.⁴⁶

Common criminals occupy the third place in the statistics, with a 10% share of the kidnap cases in Colombia in 1999. The distinction between common criminals and the guerrilla groups is sometimes hard to make, because of the phenomenon of criminals who perform the kidnaps –both on their own initiative and at the request of guerilla contacts– and then sell their victims at marked-down prices to the guerrillas who are experienced in the ‘art’ of ransom negotiations.

Paramilitary groups, some of which have converged from the right-wing organization MAS - *Muerte A Secuestradores* (Death to Kidnappers), can be held responsible for the same crime that they once used to combat. The concrete number of kidnappings accounted for by the paramilitaries is growing every year. They were held responsible for 4-5% of the kidnappings in 1999 and, according to government figures, they committed 203 extortive abductions in 2000.⁴⁷ Their motives are often political as well as economic.⁴⁸ Their victims are often to be found in their own constituency (land owners) that did not comply with their extortion demands.

In October 2001, the Colombian press revealed what seems to be a new motive for kidnapping. In Norte Santander at least 70 persons were kidnapped and forced by the AUC to work in coca production.⁴⁹

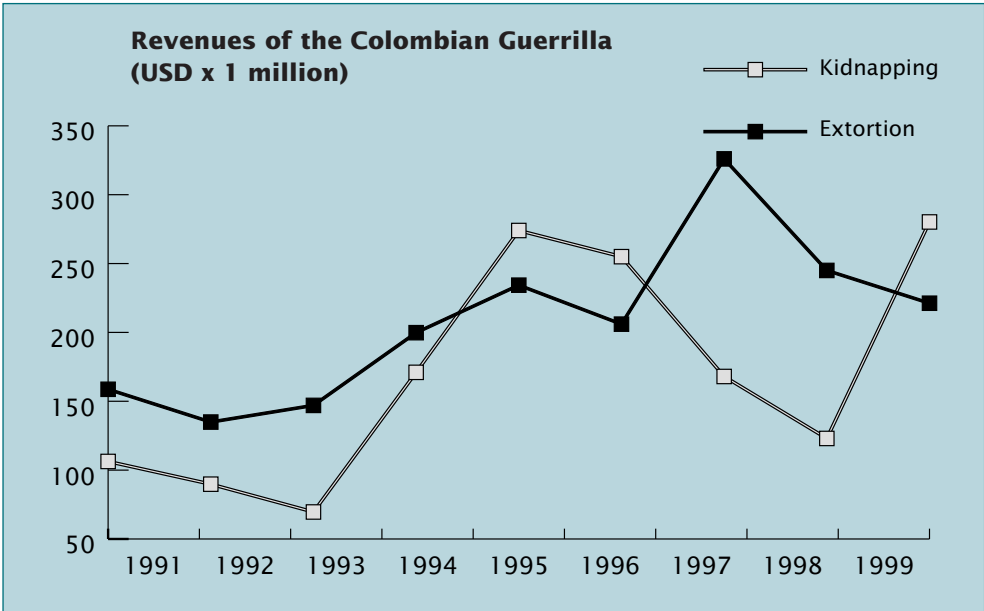
2.9 ***Kidnapping fuels the war machinery***

Kidnapping became the third greatest source of income to the ELN and the FARC in 1990s. The DAS estimated that kidnapping netted the Colombian guerrilla US\$ 1.5 billion between 1991 and 1999 approximately.⁵⁰ The Colombian army and the government’s National Planning Department estimated the ransom revenues of the guerrilla for the years 1991-1998 (one year less) at US\$ 1.2 billion.⁵¹

Unfortunately, figures of this sort are not available for the paramilitary. But given the relatively low number of paramilitary kidnappings, these revenues will probably be much less than their drug and extortion income. However, kidnapping as a source of income is rapidly gaining importance for the paramilitary as well.

The graph below shows the development of income of the Colombian guerrilla from kidnapping and extortion.⁵² Despite some temporary drops between 1996 and 1998, the general picture is one of spectacular growth in revenues derived from extortion and kidnapping for both the FARC and the ELN. Between 1995 and 1998 extortion revenues became more important than the profits of kidnapping. This can be explained by the fact that extortion practices are less labour-intensive than kidnapping. Also, for the potential victim of kidnap-

ping it is often more economic to yield to extortion demands than paying a much higher amount of ransom.



In 1999, the income of the guerrilla groups ELN and FARC from kidnapping suddenly rises steeply and surpasses the profits of extortion. This fluctuation has mainly to do with the fact that the income of the FARC derived from kidnapping diminished from US\$ 137 million in 1996 to US\$ 60 million in 1997, and dipped in 1998 to US\$ 39 million.⁵³ The income of the FARC gained through extortion increased in the same period. Although the revenues of the FARC from kidnapping were relatively low in 1998, the number of kidnappings carried out by the FARC in 1998 amounted to 1135 cases, which at the time was the highest ever. Two possible explanations underlie this discrepancy. The number of hostages in 1998 included almost 400 members of the public forces who were not ransomed. In view of the pending local elections in 1999, a considerable number of (local) politicians were kidnapped by the armed parties, in order to enforce a ‘political arrangement’. Ransom is rarely paid in such cases.

The revenues of the ELN generated from kidnapping decreased somewhat from US\$ 118 million in 1996, to US\$ 122 million in 1997, and to US\$ 84 million in 1998.⁵⁴ However, this decline had mainly to do with the poor exchange rate of the Colombian Peso in 1997-1998. If the income from ransom during these years is expressed in the Colombian currency, it appears practically stable. The growth of income from kidnapping in 1999 can possibly be explained by the sudden increase in the number of kidnappings with an economic motive executed by the guerrilla in that year. The *pescas milagros* played an important role in this growth.

The military growth of the illegal armed parties

It is often rightly argued that the armed conflict in Colombia is partly caused by the socioeconomic and political disparities between the Colombian elite and the vast majority of the marginalized. Other factors that are often mentioned in relation to the growth of the conflict are the incapacity of the national security forces to keep public peace and to gain the monopoly of force in the country, and the incapacity of the judicial system to judge and penalize those who are infringing the law. It is indeed irrefutable that these factors lie at the root of the conflict, as was the fact in many other troubled countries in Latin America. Nevertheless, it is also beyond doubt that the increased revenues of the warring parties have been the decisive factor in their unprecedented military growth in the 1990s.

The new revenues of the illegal armed groups in Colombia soon produced an increase in the number of fronts. The growth of the paramilitary forces has been alarming. In 1987, when the Colombian government denounced for the first time the existence of paramilitary groups in the country, the few paramilitary troops consisted of only 650 men. More than ten years later they developed into an important factor in the military balance of power in Colombia. Between 1998 and 2000 the paramilitary troops grew five times more than the guerrilla and their number of fighters is now estimated at 8,000.⁵⁵

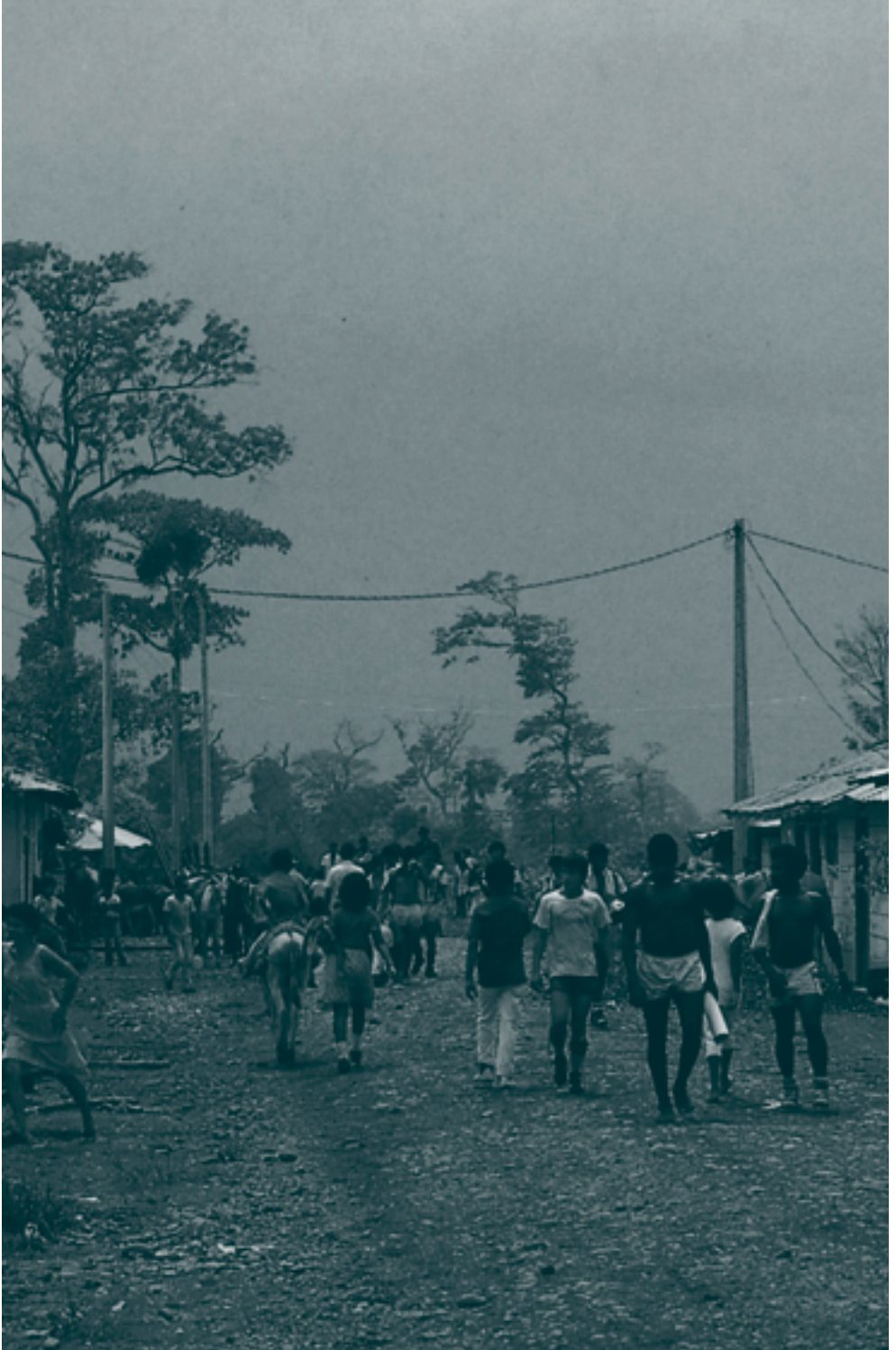
The military growth of the FARC was slower, as their number increased between 1984-1994 from 18 up to 40 fronts. But in recent years the increase has been more pronounced and the FARC is actually considered to account for 74 national columns (more than 15,000 combatants).⁵⁶ The military revival of the ELN took off following the kidnap of a German engineer and two Colombian employees of the German multinational Mannesmann in January 1985. Thanks to profound reorganizations of the guerrilla group and this 'revolutionary action'⁵⁷, the ELN entered a period of strong growth, jumping in less than two years from 3 to 11 fronts.⁵⁸ (For a detailed case study, see the 'Mannesmann case' Chapter 5). In the years following, the ELN experienced steady growth, increasing to 63 columns.

But the number of fighters is not the only indication of the growth of the guerrilla movement. There is also the trade in and use of more sophisticated weaponry such as collar bombs and modern versions of ground-to-air missiles. Also, the weaponry of the guerrilla has become lighter and smaller in size, as this equipment is more suitable for the growing number of minors in the fronts. Sometimes the link between the acquisition of weaponry and the payment of ransom is all too clear. During his captivity, a European kidnapping victim in Colombia overheard his kidnappers (members of the FARC) in a radio conversation in which they were ordering weaponry in Ecuador (weapons stolen from the army) in anticipation of his ransom.⁵⁹

As a consequence of their military strength, the illegal armed groups of Colombia can exert influence and act as the de facto authority in many regions. The activities in their regions of influence range from resolving personal conflicts to acting as full political and administrative authorities, as well as taxing private persons, national companies and multinational enterprises. The military growth maintains the vicious circle of kidnapping, while a larger war machinery requires ever more resources. The destabilizing effect of the growing illegal armed parties also creates a favourable environment for other players, such as common criminals or groups of drug traffickers, and produces even more kidnappings.

- 1 Nixon R., *Le mythe de la paix* (Paris, 1984).
- 2 Meluk, E., *El secuestro en Colombia y las multinacionales Europeas*, survey composed for Pax Christi Netherlands (Santafé de Bogotá, 2000).
- 3 Valencia, M., *Secuestro, extorsión y guerra en Colombia*, Survey composed for Pax Christi Netherlands (Santafé de Bogotá, 2000).
- 4 Peñate, A., "El sendero estrategico del ELN: del idealismo guevarista al clientelismo armado", In: *Reconocer la guerra para hacer la paz*, M. Deas and M.V. Llorente, ed., (Bogotá 1999) 53-98; Peñate, A., *Arauca: Politics and Oil in a Colombian Province* (M. Phil Thesis) (Oxford, 1991).
- 5 Hagedorn Auerbach, A., *Ransom*, 25.
- 6 Adams, J., *Secret armies* (New York 1987). Wood, B., and Peleman, J., *The Arms Fixers – Controlling the Brokers and Shipping Agents* (Oslo 1999). Musa, A., and Koyode Fayemi, J., *Mercenaries* (London, 2000).
- 7 Hagedorn Auerbach, A., *Ransom*, 25.
- 8 Human Rights Watch, "Colombia. Human Rights Developments", in: *World Report 2001*.
- 9 Human Rights Watch, *The Ties that bind: Colombia and military-paramilitary links*, (New York, 2000). Kline. H.F., *State building and conflict resolution in Colombia 1986-1999* (Tuscaloosa, 1999) 26.
- 10 United States General Accounting Office (GAO), *Drug Control. Narcotics threat from Colombia continues to grow*, (June 1999) 1-5.
- 11 Gonzalez, C., "Police finds weapons, rightist uniforms with 1.5 tons of cocaine", in: *Associated Press*, July 4, 2000.
- 12 Forero, J., "Ranchers in Colombia Bankroll their own Militia", in: *New York Times*, August 8, 2001.
- 13 The US embassy in Bogotá claims to be carrying out an investigation on this issue. A publication is to be expected at the end of 2001.
- 14 DAS (Departamento Administrativo de Seguridad) *Temática Cuestionario Pax Christi* (Bogotá 2000). The exchange rates applied in this report are annual average exchange rates; one US Dollar in 1990 is equal to Col. \$ 502; (1991 = 633), (1992 = 759), (1993 = 863), (1994 = 845), (1995 = 913) (1996= 1037) (1997 = 1141) (1998 = 1426) (1999 = 1756) (2000 = 2088). This figure corresponds with the information issued by the Colombian army and the government's National Planning Department (DNP) indicating that the drug income of the guerrilla for the period 1991-1998 amounted to US\$ 2.3 billion. This last figure would be considerably higher if the exchange rate for the year in question had been applied, because the Colombian Peso was 2.5 times stronger in 1991 than it was at the end of 1998. In the year 1999 (not included in the DNP estimate) the Colombian guerrillas achieved extremely high profits from drug trade.
- 15 Rocha, R., *The Colombian economy after 25 years of drug trafficking*. Report of the UNDCP.
- 16 DAS, *Temática Cuestionario Pax Christi*, 3.
- 17 "ELN tiene recursos en el exterior", in: *El Espectador*, September 29, 2000.
- 18 "Rebelión contra la extorsión", in: *El Tiempo*, July 14, 2000.
- 19 "La ley del monte" in: *Revista Cambio*, June 18, 2001.
- 20 DAS, *Temática Cuestionario Pax Christi*, 3.
- 21 Reuters, press release of May 11, 1999 (untitled).

- 22 Peñate, A., "El sendero estrategico del ELN.", In: *Reconocer la guerra para hacer la paz*, 53-98.
- 23 Santos, E., "El flaco del eme", in: *Lecturas Dominicales of El Tiempo*, August 1, 1999, 9.
- 24 Website Conase: www.antisecuestro.gov.co/
- 25 "Secuestro: 18.291 víctimas en 67 años", in: *El Tiempo*, January 6, 2000.
- 26 Fundación País Libre, *Programa nacional de asistencia integral al secuestrado. Proyecto*. (Santa Fé de Bogotá, 1998) 9.
- 27 Fundación País Libre, internet site: www.paislibre.org.co.
- 28 DAS, *Temática Cuestionario Pax Christi*, 9-10.
- 29 Lozano, P., "La industria del secuestro", in: *El País Semanal*, August 2001.
- 30 Presidencia de la Republica de Colombia, *Programa Presidencial para la Defensa de la Libertad Personal, El secuestro en Colombia*. (Bogotá, Julio 2000).
- 31 "Cese al fuego con las FARC está lejano", in: *El Espectador*, January 10, 1999, 5.
- 32 Bamrud, J., "Kidnapping, Inc.", in: *Latin Trade*, February 1996.
- 33 See website Fundación País Libre: www.paislibre.org.co
- 34 See the website of Hiscox Group: www.hiscox.com/frames_corp.htm.
- 35 "Secuestro: 18.291 víctimas en 67 años", in: *El Tiempo*, January 6, 2000.
- 36 Burnham Finney, P., "Business Travel", in: *The New York Times*, November 26, 1997.
- 37 Forero, J., "Prosperous Colombians fleeing, Many to the U.S.", in: *The New York Times*, April 10, 2001
- 38 "International Humanitarian law and the armed conflict in Colombia", in: *Cidec* (Centro de información sobre el desarrollo de la Democracia), June 1999.
- 39 Rangel Suárez, A., "La fase urbana", in: *El Tiempo*, August 3, 2001; "Repudio y temor por plagio masivo en edificio de Neiva", in: *El Tiempo*, July 28, 2001.
- 40 "Los niños del secuestro", in: *Semana*, April 11, 2000.
- 41 "Secuestro de menores, delito mayor", in: *El Tiempo*, March 6, 2000.
- 42 "Despeje no es para consumir delitos", in: *El Tiempo*, July 8, 2000
- 43 UNHCR, *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, E/CN.4/2001/15, February 8, 2001.
- 44 *El Espectador*, January 10, 2000.
- 45 The DAS and the governmental institution Conase use different estimates regarding the total number of kidnappings in 1999 (2937 and 3342 respectively), but their information corresponds as far as the order of the main authors. DAS, *Temática Cuestionario Pax Christi*, and website Conase (Consejo Nacional de Lucha contra el Secuestro y demás atentados contra la Libertad Personal: www.antisecuestro.gov.co/).
- 46 See website Fundación País Libre: www.paislibre.org.co.
- 47 "La guerra de los paras", in: *Semana*, March 26 - April 1, 2001
- 48 In June 2000, the AUC tried to pressure the peace negotiators of the Colombian government by kidnapping the brother of one of them. "Castaño se atribuye secuestro de Valencia Cossio", in: *El Tiempo*, June 22, 2000.
- 49 "AUC estarían secuestrando personas para procesar coca", in: *El Espectador*, October 3, 2001.
- 50 DAS, *Temática Cuestionario Pax Christi*, 3.
- 51 Reuters, press release of May 11, 1999 (untitled).
- 52 The figures are based on information of the DAS (for the years 1991 - 1995 and 1999) and of the Comité Interinstitucional de Lucha contra las Finanzas de la Subversión (for the years 1996-1998). Figures in the graphs: on revenues from kidnapping for the years 1991-1999 (US Dollar x 1 million); 106; 90; 70; 171; 274; 255; 168; 123; 280. Figures on revenues from extortion for the years 1991-1999; 159; 135; 147; 199; 234; 206; 326; 245; 221.
- 53 Valencia, L., *Secuestro, Estorsión y guerra en Colombia*, Survey composed for Pax Christi Netherlands. The figures based on estimates of the Comité Interinstitucional de Lucha Contra las Finanzas de la Subversión.
- 54 Ibidem.
- 55 "La guerra de los paras", in : *Semana*, March 26 – April 1, 2001.
- 56 DAS, *Temática Cuestionario Pax Christi*, 1.
- 57 Medina, C., ELN: *una histotria contada a dos voces*, 150.
- 58 Valencia, L., *Secuestro, extorsión y guerra en Colombia*.
- 59 Interview with a European victim of kidnapping in Colombia by Pax Christi Netherlands, dated February 9, 2001.



3. Five Colombian strategies to combat kidnapping

3.1 The Colombian legal framework against kidnapping

The anti-kidnapping law 1993: payment forbidden

The legislative process against kidnapping and extortion in Colombia was initiated under Decree 1680 of 1991, but the most important landmark was established by Act 40 of 1993, known in Colombia as the 'Law Against Kidnapping'. This Act 40 of 1993 was lobbied by civil initiative, and was based on the Italian anti-kidnapping laws of 1991.¹ Like the Italian anti-kidnapping law, the Colombian Act 40 made it possible to freeze the assets of the family of the victim to prevent them from paying ransom, outlawed the sale of kidnap and ransom insurance policies, and prohibited the support of external negotiators (professional kidnap response negotiators).

Corte Constitucional November 1993: payment for humanitarian reasons permitted

In the eyes of many Colombians, Act 40 was excessively severe and several articles were therefore challenged before the Colombian *Corte Constitucional*.² The *Corte Constitucional* ruled that some of the articles were unconstitutional and imposed conditions on the constitutionality of others on the terms expressed in the respective judgments.³ According to the *Corte Constitucional*, it can be considered a constitutional right of the family of the victims to try to save the life of a relative, and thus payments and negotiations (without economic objectives) received the green light. The overruling thus permitted the payment of ransom on humanitarian grounds, and made the freezing of assets by the government no longer possible. A 1993 decision of the *Corte Constitucional* literally said:

"The payment of ransom is in itself a neutral act, neither good nor bad. It is the intention that determines the moral justification. Thus, someone who intervenes to pay ransom out of necessity to save a life or recover personal freedom, whether their own or someone else's, is following altruistic motives recognized universally as such by law. But in contrast, those who work without being in need, following exclusively vulgar and base motives, for their own enrichment or with the goal of enriching criminals or providing them with economic resources, is committing a crime. And cannot allege or demonstrate any justification. Only in these circumstances can Article 13 of Law 40 of 1993 be exercised and the norms in agreement with it".⁴

In short, the anti-kidnapping law remained in force, but payment of ransom for humanitarian reasons is to be tolerated. To our knowledge, nobody has been condemned for paying ransom from November 1993 on.

1996: The sale of kidnap insurance policies forbidden

Act 282 of 1996 incorporated Act 40 of 1993 (except for the parts that were declared invalid by the *Corte Constitucional*). So, the new Act merely clarified the anti-kidnapping law of 1993 and amplified it with a prohibition on the sale of kidnap insurance policies, since this activity implies a commercial benefit derived from kidnapping.

The anti-kidnapping law: an illusion?

The advocates of strict anti-kidnapping legislation in Colombia kept alive the debate on its possible re-enforcement. Nor did the Colombian legislature give up hope entirely on the return of the strict Act 40. President Pastrana announced in July 2000 that his government wanted to discuss the re-enforcement of the strict legislation despite the overruling of the *Corte Constitucional*.⁵ However, the new legislation of 2000 did not show any significant amendments in this sense.⁶ The anti-kidnapping law did not bring what was expected. The juridical apparatus was not, and is not, sufficiently equipped to combat effectively this crime.

An important question is whether a stricter anti-kidnapping law would indeed be effective. In Italy the official number of kidnappings did go down after the enactment of the anti-kidnapping legislation, but this probably had little to do with the enforcement of the law itself. In fact, the Italians learned to circumvent the law and often refrained from reporting kidnappings. They made covert arrangements to pay ransom abroad, or paid the ransom after the release of the victim through fake transactions. The number of abductions probably decreased as a result of the disbandment of the political terrorist organization Red Brigades.

3.2 *The Colombian institutional framework against kidnapping*

Notwithstanding the overruling of several articles of Act 40 of 1993 by the *Corte Constitucional*, the spirit of the anti-kidnapping law was partly preserved through the decrees and laws that followed it. First of all, the sentences for the crime of kidnapping remained severe. These can be up to 40 years, and in case of related aggravating circumstances, can reach 60 years. Being a crime against humanity, sentences are exempt from plea bargains or parole. The day to day practice of Colombian jurisdiction however, does often not coincide with the theory of these laws.

Secondly, an institutional framework against kidnapping was created by virtue of Act 282 of 1996. This law consolidated the legal, investigative and police provisions, for example through the formation of the governmental institute Conase⁷.

The anti-kidnapping Tsar

The Presidential Program for the Defence of Personal Freedom (PPDLP), known in Colombia as the office of the anti-kidnapping Tsar, was also initiated in 1996.⁸ The Unified Action Groups for Freedom (GAULA)⁹ was to be the anti-kidnapping Tsar's operative arm. The most important objective of the anti-kidnapping Tsar, aided by the GAULA, was to improve the inter-organization coordination between the various state institutions dealing with the fight against kidnapping.¹⁰ However, this didn't really work out, also because of corruption in the GAULA, including asking ransom and organizing kidnappings.

Because of these various coordinating tasks, the anti-kidnapping Tsar earned itself a pivotal position as go-between in the inscrutable and obscure world of kidnapping in Colombia, with all its positive and adverse consequences. There have been continuous rumours that the anti-kidnapping Tsar was susceptible to blackmail, malpractices and giving preferential treatments to cases.

President Andrés Pastrana Arango announced on June 28, 1999 that within the framework of the state's restructuring promoted by his government, the duties of the anti-kidnapping Tsar were to be taken over by the Minister of Justice. It was clear that its autonomy and capacity of incidence had been seriously curtailed. From being an institution in which policies and decisions were coordinated directly with the President of the Republic, it became a ministerial agency with all the implications in terms of autonomy, budget and operational independence.

In 2000, the anti-kidnapping Tsar, or what was left of it, was practically eliminated. Only the financial fund and a few psychologists were integrated into the Ministry of Defence. Some sectors of Colombian society argue that this decision is rather lamentable because the office of the anti-kidnapping Tsar did fulfil an useful role as a coordinating institution. However, the army hierarchy considers it the responsibility of the National Security Forces, because kidnapping is a law enforcement matter.

3.3 *National peace negotiations*

Various Colombian governments in the past have negotiated with the guerrilla groups the application of international humanitarian law with regard to kidnapping. At first sight it seems as if significant achievements were made, since both the FARC-EP and the ELN made promises in the past to stop their kidnap practices. But on closer investigation these accords on kidnapping, often a component of a larger humanitarian or peace accord, turned out to be false promises and undermined the absolute character of the international humanitarian law.¹¹

In the accords reached on March 28, 1984 between the National Peace Commission of the Betancurt-government and the FARC in Mesetas (Meta), the latter gave its word to stop taking hostages. But the promises were not fulfilled. On the contrary, the FARC proceeded to increase the number of kidnappings, and institutionalized the extortion practices by issuing the aforementioned *Ley 002*.

In July 1998, at the end of the term of President Samper, the National Peace Commission reached a provisional and partial agreement with the ELN in Germany, known as the *Acuerdos de Puerta del Cielo* (Gates of Heaven Accords). The offer was simple: the ELN ends kidnapping and economic extortion on the road to peace and the German government guarantees an office with diplomatic status in Germany and a substantial amount of money to finance activities towards a negotiated end to the armed conflict. In article 9 of these accords the parties agreed that: “the ELN will bring to an end the retention and deprivation of the liberty of persons for economic motives, under the condition that sufficient funds can be found by other means, so that the ELN will not incur – until the culmination of the peace process with this organization – any strategic weakening”.¹² Shortly after that, Andrés Pastrana was elected president of Colombia, and during his term the accords were drawn out to the benefit of the ELN and the anti-kidnapping agreement was left up in the air. Even the unconditional promise of the ELN not to kidnap young children, old people and pregnant women was broken soon after the agreement had been reached.

The current Pastrana government is also of the opinion that the best way to battle kidnapping and extortion is through peace negotiations on a national level, which may also lead to an accord on kidnapping as an additional element of a total peace accord. The Pastrana government started discussions with the rebels immediately after it took power and entered into a formal peace process with the FARC.

Making use of his constitutional powers¹³, the president centralized all aspects relating to the management of kidnapping and extortion of subversive origin under the government's peace commissioner. This decision reaffirms the current government's preference for peace negotiations with the rebellious forces over a mobilization of the anti-kidnapping Tsar.

So what have these peace talks with the guerrilla yielded until now?

The government made a considerable concession with its formal removal of forces from a part of the Colombian territory on behalf of the FARC. Yet after almost three years of exhausting peace conversations it has to be concluded that the peace talks remain at a standstill. The FARC is unwilling to fulfil its former promise regarding kidnapping, nor have the peace negotiators been able to establish a new accord on kidnapping. The liberation of the sick 363 servicemen of the national security forces in exchange for some ill imprisoned guerrilla fighters by the FARC in June and July 2001 was not so much a humanitarian gesture as a strategic move to make available an estimated number of 1,000 to 1,500 rebels for the launching of their urban offensive.¹⁴ Only shortly after the prisoner exchange, the FARC continued its kidnapping practices.

The peace negotiations with the ELN never got off the ground. The ELN continued its kidnap practices during the talks about feasible peace talks. The remarks by members of the ELN made in a meeting with the ICRC reflect their way of thinking in this respect. One of the fighters stated the hypothesis that: "If the middle classes were to wish to finance our revolution we would stop taking hostages".¹⁵ On August 7, 2001 the attempts came to a deadlock as the president announced the suspension of dialogue with the ELN, also because of the strong paramilitary opposition to a new demilitarized zone for the ELN in northern Colombia.

The public debate regarding a negotiated accord on kidnapping

The Colombian public, however, has never stopped urging the humanization of the war through a cessation of hostilities, including the suspension of kidnapping and extortion. Nor was the public debate silenced with regard to the possible creation of a fund for the guerrillas to guarantee the rebels an income during such a cessation of hostilities. The Roman Catholic Bishop Jaime Prieto of Barrancabermeja announced in September 2000 that he was in favour of such a fund, and even the presidential peace envoy Camilo Gomez stated that his government might consider such a fund if the rebels stopped kidnapping for ransom and agreed to a cease-fire.¹⁶

Notwithstanding a number of international legal limitations¹⁷, funds have been created in the past for guerrilla groups such as the Colombian guerrilla group CRS (as well as the FMLN in San Salvador) in order to facilitate the peace process. However, the FARC and ELN have given no evidence so far of any willingness to enter into serious peace negotiations. Starting an anti-kidnapping fund for the guerrilla under these circumstances would probably not facilitate the peace process, but merely mean the official funding of the continuation of the armed conflict.

3.4 The affidavit of non-payment; a realistic option?

After forty years of civil war in Colombia, the vast majority of the Colombians recognize that none of the armed combatants has the capacity to win the confrontation by military means. The war just drags on at their expense. They also generally recognize that payment for kidnappings and yielding to economic extortion have a perverse side-effect. It strengthens the military capacity of the illegal armed forces and guarantees the continuity of the armed conflict in Colombia and of the kidnapping practices.

According to the Colombian press, the board of directors of the Federation of Cattle-breeders officially concluded in the early 1990s that in the event that one of its members were to be kidnapped, no ransom would be paid. The members complied with this agreement strictly, even when their president José Raimundo Sojo had to pay for this fundamental stand with his life.¹⁸ Some members of the Federation believed that if carried through consistently, the strategy of non-payment would show positive results. Since kidnapping operations take considerable investment in terms of money, time and labour, potential kidnappers would think twice before kidnapping. Some years later, it turned out that the Federation had abandoned this position of non-payment.¹⁹

In 1997 the founder of the Fundación País Libre, Francisco Santos, who himself had been kidnapped for many months by the drugs baron Pablo Escobar, called upon the European investors in Colombia to stop ransoming their employees, in order to inflict the kidnap industry a final blow.²⁰ Some of the European multinationals indeed applied this strategy.

During the kidnapping of 150 persons by the ELN at La María church in the south of Cali on May 30, 1999, the public debate on a policy of non-payment was brought back to life. The 39 families decided, on their own behalf and without any legal pressure, not to yield to the economic demands of the guerrilla forces in order to liberate their relatives. The majority of them signed an official '*compromiso de no-pago*' (affidavit of non-payment).²¹

During the next mass abduction in a restaurant in July 2000, known in Colombia as the 'kidnapping of Kilómetro 18', the idea surfaced again. The press paid a lot of attention to it, so as to promote a favourable climate for the non-payment movement. They conducted a poll among the Colombian population that showed that 43% saw the non-payment stand as an efficient measure to fight kidnapping.²² But as described in the following paragraph, the guerrilla managed to divide the families of the hostages.

Fundación País Libre anticipated this public attention and started to discuss the launching of a national campaign designed to rally forces behind the various isolated initiatives of families and companies. They advised the Colombian people to make their wish officially known through a notarized document. Moreover, the Colombians in possession of an affidavit of non-payment should make their position widely known by means of, for example, stickers on the back of their car. The director of País Libre admitted that strict compliance with the policy of non-payment would claim many lives but is convinced that it is the only possible way of breaking the vicious cycle of kidnapping, ransoming, intensification of the conflict and of even more kidnapping.

The human dilemma

The non-payment movement is an important social movement in the sense that it gives voice to the unuttered repugnance to the kidnapping practices. The movement also increased the consciousness regarding the possibilities of the civil resistance against kidnapping, whereas civilians often felt powerless in respect of their own safety.

Yet, the mass abduction of La Maria church demonstrates clearly how hard it is to persist in a strong stand against kidnapers when matter becomes personal, even for those who oppose paying ransom in principle. After the liberation of the hostages of the La María church, the commander of the ELN, Antonio Garcia, affirmed publicly that ransom had been paid. So various families, despite their former statements, did negotiate with the ELN, in secret and independently of each other. It also reveals the vulnerability of the family of the victims to the manipulation of kidnapers. The code of silence is always in force, even among the families whose loved ones were victimized in the same mass kidnapping.

A kidnap case usually produces an almost irresistible urge among the relatives of the victims to protect their loved ones. And in times of great despair, these strong personal feelings will almost always prevail over the notion that not paying ransom serves the common interest. It is obvious that the number of kidnappings will decrease if the families and associates stop paying ransom. But who will actually be prepared to pay that price? And how many hostages will have to be sacrificed before this policy produces the intended effect?

Other civil initiatives

The social movement '*Mandato por la paz, la vida y la libertad*' (mandate for peace, life and liberty) in 1996 was the most bruising democratic expression of civil protest focussing on international humanitarian law. It mobilized almost ten million Colombians to vote against kidnapping and violence. In 1999 successive marches took place in 15 cities with more than one and a half million persons, and in October of that year the great national march called "*No Más!*" (No More) involved the participation of more than 12 million people. This kind of civil protest also implies danger for those who choose to advocate it. The champions of the civil movement *No Más* had to fear for their lives, and some of them fled the country after the public protests.

3.5 ***International humanitarian law and the international criminal court***

During the 1990s, it became clear to the Colombian legislature that kidnapping and extortion practices in Colombia were fomenting the internal armed conflict. Since international humanitarian law prescribes respect for the non-fighting population within a war of internal conflict, the Colombian legislature decided to focus ever more on its application. The Article 3 common to the 1949 Geneva Conventions and the Protocol II of 1977 additional to the Geneva Conventions are the two international agreements within international humanitarian law that prohibit the taking of hostages by warring parties. Both Article 3 and Protocol II were ratified by Colombia.

The International Criminal Court, once in operation, could open new perspectives regarding the effective prosecution and adjudication of rebellious groups for the crime of kidnapping. Colombia signed the Statute of the International Criminal Court in December 1998, but the Statute is still in the process of ratification by the Colombian parliament. However, the Colombian government argued that some clauses are unconstitutional. A constitutional reform is indeed required for the ratification of the Statute. It is to be hoped that the Colombian parliament will be able to counteract the pressure from the opponents of the ratification. This group of opponents includes: the FARC, who declared themselves opposed to extradition and who are able to put pressure on the government by suspending the 'peace talks', the drug mafia, which has always opposed extradition, and the U.S. government, which refused to sign the statute itself.

The next chapter seeks to explore the possibilities regarding the accountability and prosecution of (members of) armed opposition groups in Colombia for the crime of kidnapping within the context of international humanitarian law.

-
- 1 One of the principle promoters of this law was the Fundación País Libre. That is why the Colombians colloquially refer to this law as the 'ley Pacho', after the founder of the Fundación País Libre, Francisco Santos.
 - 2 The *Corte Constitucional* is comparable to what in many countries would be called the Supreme Court. However, the Corte Constitutional is not to be confused with the Colombian Corte Suprema.
 - 3 See judgments C-542/93 (November 24, 1993), C-069/94 (February 23, 1994), C-213/94 (April, 28, 1994) of the Colombian *Corte Constitucional*.
 - 4 Judgment C-542/93 de Noviembre 24 de 1993. Unofficial English translation by Pax Christi Netherlands.
 - 5 "Cuestión de honor", in: *Semana*, July 3, 2000.
 - 6 El nuevo Código Penal Colombiano, Act 599 of 2000, (enacted in 2001)
 - 7 Original Spanish name of the Conase: Consejo Nacional contra el Secuestro (National Council against Kidnapping). Programa Presidencial para la Defensa de la Libertad Personal, *El Secuestro en Colombia* (Santafé de Bogotá, July 1999) 43. The Conase creates special groups in charge of actions against the perpetrators and accomplices of kidnapping and extortion, confers special powers to the attorneys and the GAULA and regulates all other aspects of their work.
 - 8 By virtue of the Decreto 67 of 1996.
 - 9 The Spanish name of the GAULA is: Grupos de Acción Unificada por la Libertad Personal y Antiextorción.
 - 10 The anti-kidnapping Tsar had at its disposal a fund that channelled financial resources from institutions other than the national security forces, called FONDELIBERTAD. Furthermore the anti-kidnapping Tsar and the GAULA were to carry out matters of technical intelligence and rescue operations, and were to bring perpetrators before the court. But also the victims and their families were able to make an appeal to the anti-kidnapping Tsar to negotiate ransom on their behalf or to get psychological assistance.
 - 11 For more details about international humanitarian law, see chapter 4.
 - 12 Unofficial translation of the Spanish text of the Gates of Heaven Accords.
 - 13 In conformity with the competencies provided by the Law 418 of 1998.
 - 14 "Colombia's wars; don't celebrate yet", in: *The Economist*, July 5, 2001.
 - 15 Gordon-Bates, K., *Testimonios sobre la guerra: Los guerrilleros hablan sobre el enfoque que el movimiento insurreccional tiene acerca del derecho internacional humanitario*, on the internet site of the International Committee of the Red Cross: www.icrc.org/icrcspa.nsf.
 - 16 The Associated Press, *Colombia Considers Fund for Rebels*, press release of September 21, 2000.
 - 17 "El dedo, en la llaga del secuestro", in: *El Tiempo*, October 3, 2000. In Act 40 of 1993 it is stated that the crime of kidnapping is not to be pardoned under any circumstances. Accords with the guerrilla that include an amnesty regarding kidnapping, would therefore be contrary to the national legislation. The negotiating possibilities of the state of Colombia are also restricted to the terms of international humanitarian law.
 - 18 "Portada", in: *Cambio*, July 5, 1999. 16-17.
 - 19 Information published in: *El Tiempo*, October 3, 2001.
 - 20 Koning, de P., "Francisco Santos: Niet langer betalen", in: *Vrij Nederland*, 7 juni 1997, 27.
 - 21 Ibid., 16-17.
 - 22 Ibid., 22.



4. *Kidnapping by armed opposition groups in a legal perspective*

LIESBETH ZEGVELD¹

EXECUTIVE SUMMARY

Dilemmas:

- Is international humanitarian law applicable to Colombian armed opposition groups?
- Can armed opposition groups in Colombia or its individual members be held accountable for kidnapping?
- Can they be brought to an international court?

By now, the armed conflict in Colombia has been going on 35 years. During the last decades, the armed opposition groups, the Armed Revolutionary Forces of Colombia (the FARC) and the Army of National Liberation (the ELN), have created extensive strongholds on Colombian territory. In November 1998, the Colombian Government turned 40.000 square kilometres over to effective control by the FARC.

One of the main sources of income of these groups, is kidnapping. The question to be discussed here is what international humanitarian law could do about this. Does it apply, and, if so, who could apply it?

Article 3 of the Geneva Conventions and article 4/6 of Additional Protocol II to the Geneva Conventions, to both of which Colombia is a party, oblige states to treat humanely all persons outside combat and who have fallen into their hands and to protect them from abuse of power. This includes a prohibition to take hostages. Since the FARC and the ELN operate autonomously on the territory of Colombia and are the political counterparts in official peace dialogues with the Colombian state, it is argued that they are also bound by these rules. The fact that armed opposition groups therefore are bound by humanitarian law in itself is not enough, though. The problem here is how this may be applied in practice. Groups are abstractions, physically speaking they cannot act themselves. Only individuals can act. The problem thus becomes a problem of attribution. How, in what circumstances can acts of individuals be attributed to groups? It is here that the problem of group accountability lies: When should we attribute the act of an individual to an armed group? International humanitarian law does not provide any firm guidance on this point. The rudimentary state of the law on this issue is partly due to the fact that there is no international organ, judicial or otherwise, which is competent to review compliance with international humanitarian law by armed groups.

Accountability of the individual, rather than of the group, seems to offer more possibilities. The Statutes and practice of the Rwanda and Yugoslavia Tribunals and the Statute of the International Criminal Court indicate that a non-state individual can be held individually responsible for his own acts. Leaders may be held responsible for acts they ordered or for their failure to prevent or punish violations of humanitarian law. There are two types of crimes giving rise to individual responsibility: *war crimes* and *crimes against humanity*.

War crimes are offences against particular norms of international law, such as Article 3 of the Geneva Conventions and article 4/6 of the Additional Protocol II, mentioned earlier. Although these articles were written for application to armed opposition groups and do not specifically address individuals, the case law of the Yugoslavia and Rwanda Tribunals demonstrates that individuals can be held accountable for violation of those articles. The notion of individual criminal responsibility for war crimes has now even been stretched to such an extent that no link to any particular party to the conflict needs to be shown. The only condition for holding an individual personally responsible is that the crime is committed in the context of an armed conflict.

Crimes against humanity are defined in the Statute of the International Criminal Court as attacks against any civilian population pursuant to a *policy* to commit such an attack. Whereas war crimes may be isolated incidents, crimes against humanity have to form part of a much bigger plan. The Statute of the International Criminal Court qualifies as a crime against humanity amongst others, the 'enforced disappearance of persons', which also covers kidnapping.

Having set out that individuals may indeed be held accountable for violations of humanitarian law, the final question is who, what body or agency, should prosecute members of the FARC and ELN who have committed these offences.

First and foremost it is of course the responsibility of the Colombian State. The human rights treaties to which it is party oblige it to prosecute and punish violations of human rights, also when committed by non-state individuals. In view of the actual rate of impunity of more than 90%, it seems very unlikely that the Colombian state will be able to prosecute the members of armed parties for kidnapping.

Another possibility would be prosecution by third states, on the basis of the principle of universal jurisdiction. At present that is still a remote possibility, the principle of universal jurisdiction being only applicable to the so called 'grave breaches' provisions of the Geneva Conventions, which are only applicable in *international* conflicts. However, this rule is not set in stone and there are developments which seem to indicate that that may change in the not too distant future. A final possibility is jurisdiction by the International

Criminal Court. Once in function, it will have jurisdiction over the hostage taking by members of the FARC and the ELN, provided Colombia has ratified the Statute or accepted jurisdiction by the Court.

4.1 *Introduction*

1. Notwithstanding several cease fire agreements, there has been an armed conflict in Colombia for 35 years. It is a complex and diffused situation, with multiple wars going on. There is no real front. The major armed opposition group of Colombia, the Armed Revolutionary Forces of Colombia (FARC), and the second-largest armed opposition group, the Army of National Liberation (ELN), have created extensive strongholds in many areas of the country during the last decade. In November 1998, in order to make peace negotiations possible, the Colombian Government decided to clear 40,000 square kilometres of Colombian territory of police and security forces, including the entire judiciary in favour of the FARC. In these co-called 'zonas de despeje' the Government transferred temporarily part of its authority to the FARC.² Deliberations between the Government of Andrés Pastrana and the guerrilla group ELN, in order to reach a similar agreement for this group with the demilitarization of a 1,860 square-mile territory in the northern region, were suspended in September 2001.

2. Since the eighties, the financing of the war activities of the Colombian armed opposition groups have been based on three main sources of income: drug trade, extortion and kidnapping. Although extortion and kidnapping practices are often interrelated directly or indirectly, this contribution will focus only on the international legal aspects of kidnapping. As was stated in the previous chapters, the number of abductions in Colombia grew epidemically during the last ten years. In 1990, the number of abductions surpassed a thousand cases a year, and only ten years later, in 2000, more than 3000 cases of abduction were reported. Nowadays, Colombia counts on a dramatic average of 8 abductions a day. The Colombian armed opposition groups usually deny their involvement in a kidnapping or tend to justify the crime by describing the income derived from the kidnapping as 'war tax' or "revolutionary tax". The need for international legal restraints on and international accountability of the Colombian armed opposition groups is clear.³ 'Taxing' Colombian and non-Colombian individuals that take no part in the armed conflict, can then only be addressed by holding these groups themselves or their leadership accountable under international law.

3. Paramilitary groups have been active on a structural basis in Colombia since the eighties. Because of the ties between paramilitary groups and some local army regiments, the paramilitary is not accepted at the negotiation table. It has been reported that also paramilitary groups, which emerged often as a reaction to the extortion and kidnapping practices of the armed

opposition groups, are increasingly kidnapping Colombian nationals in order to finance their war. But, although individual members of the paramilitary can be held accountable for their crimes under international law, this does not hold for the paramilitary as an entity. The reason being that the paramilitary maintains direct links with some local regiments of the Colombian army.⁴ The responsibility for their acts rests with the Colombian Government. Should the paramilitary start to operate autonomously in the future, then international law will be directly applicable to them as well. This contribution will not deal with the paramilitary, covering these groups would require another paper.

4. In this contribution, I will deal with a major question arising in the Colombian conflict which concerns the accountability under international law for the acts committed by the Colombian armed opposition groups or for the failure to prevent or repress these acts. I will examine two levels of accountability: accountability of the Colombian armed opposition groups as a collectivity and accountability of the individual members and leaders of these groups. But first of all, I will examine the substantive law applicable to the Colombian armed opposition groups.

4.2 *Legal restraint on the Colombian armed opposition groups*

5. The conflict in Colombia unquestionably qualifies as an internal armed conflict within the meaning of *international humanitarian law*. The Inter-American Commission on Human Rights, along with other international bodies, considered the Colombian conflict to be covered by international humanitarian law applicable to internal armed conflict.⁵ The Colombian Government has always agreed with these qualifications.⁶

6. Humanitarian law applicable to this type of conflict and imposing obligations on the Colombian armed opposition groups consists of Article 3 common to the 1949 Geneva Conventions and Protocol II of 1977 additional to the Geneva Conventions.

7. As the Geneva Conventions and Additional Protocol II are international agreements concluded between states, the question arises as to the origin of the obligations of armed groups under these instruments. The Colombian armed opposition groups have not ratified or acceded to these treaties, nor are these groups able to become parties to the Geneva Conventions or the Additional Protocol.⁷ However, the applicability of common Article 3 and Additional Protocol II to armed opposition groups does not depend on an express declaration by those groups that they consider themselves bound by these rules. The Colombian armed opposition groups derive their rights and obligations contained in common Article 3 and Additional Protocol II through the Colombian State on whose territory they operate.⁸ As Colombia has rati-

fied the Geneva Conventions and Additional Protocol II,⁹ the Colombian armed groups operating on its territory become automatically bound by the relevant norms laid down therein. However, clearly, in view of the fact that humanitarian law has great difficulty in regulating the behaviour of armed opposition groups, the lack of consent of these groups to the relevant norms constitutes a serious problem.¹⁰ The Colombian Government appears to acknowledge the problem of the origin of the obligations of the Colombian armed opposition groups under the multilateral treaties in question. It has supported the conclusion of *ad hoc* agreements with the FARC and the ELN, these groups thereby expressly giving their consent to the applicability to them of the relevant international norms.¹¹

8. Common Article 3 and Articles 4 to 6 of Additional Protocol II oblige the Colombian armed opposition groups to treat humanely all persons outside combat and who have fallen in their hands and to protect them from abuse of power. The general prohibition of inhumane treatment consists of several specific prohibitions including taking hostages.¹² In its 1996 Annual Report, the Inter-American Commission applied this norm to the Colombian armed opposition groups. The Commission stated:

*The extremely difficult conditions caused by the various guerrilla movements in Colombia continued in 1996. These groups committed numerous violent acts, many of which constitute violations of humanitarian law applicable to the internal armed conflict in Colombia. These acts included killings outside of armed conflict, kidnapping for ransom.*¹³

Similarly, in a case involving hostage taking by a Colombian armed opposition group and the threat of the group to execute the hostage, the Inter-American Commission considered that ‘violations of [the right to life] cannot be justified even in reprisal to violations of any kind committed by the other side in a conflict’.¹⁴

9. The obligation to guarantee humane treatment protects all persons taking no active part in the hostilities.¹⁵ Accordingly, the Colombian armed opposition groups are prohibited from taking hostage *any* person not involved in the hostilities and falling under their control. This norm is confirmed by the Yugoslavia Tribunal, which determined in the *Tadic* case (Merits) that the test to be applied to establish if a person is protected under common Article 3 is:

*to ask whether, at the time of the alleged offence, the alleged victim of the proscribed acts was directly taking part in hostilities, being those hostilities in the context of which the alleged offences are said to have been committed. If the answer to that question is negative, the victim will enjoy the protection of the proscriptions contained in Common Article 3.*¹⁶

Accordingly, the Inter-American Commission stated in its Third Report on Colombia:

The Commission is extremely concerned (that the deliberate targeting of civilians has become a routine, if not systematic, tactic employed by all the parties to the conflict in Colombia in varying degrees. ([T]he FARC, the ELN and their allied groups have attacked, executed and abducted or taken hostage government officials, including local mayors and council members, and other civilians whom they believe are part of the State's 'repressive' apparatus or are otherwise dangerous to the security of their combatants and sympathizers. Thus, for example, the ELN has admitted that it carries out 'political detentions of persons who have been implicated in acts of administrative corruption or who have taken part in the dirty war as promoters of political groups referring to paramilitaries'. Given the practice of the ELN, it must be assumed that the organization applies an extremely broad definition to the term 'promoters of the paramilitaries', including all those individuals believed to have some connection to paramilitary groups, including family members of paramilitary group members. The ELN states that the persons it detains are subjected to 'popular revolutionary trials' where they are convicted or acquitted. In each of these cases, the responsible parties have erroneously equated the vocations and/or the non-hostile activities of their victims with actual participation in hostilities, thereby justifying attacks against them. Acceptance of such claims for attacking these and like civilians would not only obliterate any meaningful distinction between civilians and combatants, but could also lead to total unregulated warfare in Colombia. The Commission believes, therefore, that it is necessary to clarify the distinction between 'direct' or 'active' and 'indirect' participation by civilians in hostilities in order to identify those limited situations where it is not unlawful to attack civilians.¹⁷

Furthermore, the prohibition of taking hostages by the Colombian armed groups applies to the entire Colombian territory, irrespective of whether actual fighting is taking place at a particular place or time. In its Third Report on Colombia, the Inter-American Commission stated:

The Commission ... wishes to emphasize that, in internal armed conflicts, humanitarian law applies throughout the entirety of national territory, not just within the specific geographical area(s) where hostilities are underway. Thus, when humanitarian law prohibits the parties to the conflict from directing attacks against civilians or taking hostages in all circumstances, it prohibits these illicit acts everywhere. Thus, such acts of violence committed by the parties in areas devoid of hostilities are no less violative of international humanitarian law than if committed in the most conflictive zone of the country.¹⁸

10. Finally, a word should be said about the applicability of *human rights norms* to the Colombian armed opposition groups. According to their wording, multilateral human rights treaties impose obligations only on the state. Article 2 of the International Covenant on Civil and Political Rights stipulates: '*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant*'. [emphasis added] Hence, the Covenant, like the American Convention on Human Rights, does not bind the Colombian armed opposition groups. There is some authority, however, for the proposition that these instruments do govern armed opposition groups exercising governmental functions over portion of the Colombian territory or population. Such groups, for example the FARC, can be equated with the Colombian government. In these cases it makes no sense to demand that armed opposition groups must be recognized as the government of the state, or even that they must function as the sole *de facto* government in the state territory in order to hold them accountable under human rights treaties.

11. Having laid out the substantive obligations resting upon the Colombian armed opposition groups, I will now turn to the accountability to which violation of these rules gives rise.

4.3 *Allocation of accountability*

Accountability of the Colombian Armed Opposition Groups as a Collectivity

12. There is widespread international practice demonstrating that armed opposition groups can be held accountable for violations of international humanitarian law.¹⁹ Practice of international bodies further shows that armed opposition groups can be monitored according to standards in international treaties and customary law.

13. In order to be held accountable under international humanitarian law, armed groups must at least be organized and actually engage in military operations. The Yugoslavia and Rwanda Tribunals and the Inter-American Commission on Human Rights have required armed opposition groups to have a minimum of organization and effective military power in order to be held accountable under international humanitarian law. There can be little doubt that the Colombian armed groups meet these requirements.²⁰

14. While the principle that armed opposition groups may be held accountable for wrongful acts committed by them has been recognized,²¹ effectuating this accountability raises a host of problems. The international accountability of armed opposition groups law is primitive. For one thing, international bodies have failed to define the rules of attribution of acts and omissions of individuals to armed opposition groups. Armed opposition

groups are abstractions, unable to act themselves, physically speaking. Like states, they act only through human beings. Holding a group accountable presupposes that an act of a human being is attributed to the group. It is hardly discernable from international practice which conduct is capable of being attributed to armed opposition groups. While the Draft Articles on State Responsibility may be applied by analogy to *de facto* governments or other large, well-organized armed opposition groups and in that respect resemble a state, this may not hold for small armed opposition groups lacking a clear organizational structure. In order to hold the latter category responsible for violations of international humanitarian law, it may be necessary to compose other rules, adapted to the special characteristics of these groups. Such rules could be based on effective control rather than presumptions of the internal organization of these groups. For example, in its Third Report on Colombia, the Inter-American Commission on Human Rights established numerous violations of international humanitarian law by the Colombian armed opposition groups. It recommended that these groups should 'through their command and control structures, respect, implement and enforce the rules governing hostilities set forth in international humanitarian law'.²² This statement suggests that attribution of acts or omissions to the Colombian armed groups is based on actual control of these groups over individuals, rather than on a defined prescription of group authority.

15. Another open question concerning group accountability is: in what kind of forum could claims against Colombian armed groups be prosecuted? Certainly not the International Court of Justice, which is reserved for states. In fact, there is no international body that is expressly mandated to monitor compliance of armed opposition groups with the applicable law.²³ States have been reluctant to supplement the relevant rules with any means to scrutinize compliance. They feared that supervision might provide a basis for international interference.²⁴ Although not explicitly mandated, several international bodies have on their own initiative extended their mandates to actions of armed opposition groups. These are the Inter-American Commission, the UN Security Council, and the UN Commission on Human Rights. However, the absence of international bodies formally competent to review armed opposition groups' compliance with international humanitarian law accounts, in part, for the primitive state of the accountability of these groups under international law.

Accountability of Group Members and Leaders

16. More promising than group accountability is the accountability of the individual members and the military and civilian leadership of the Colombian armed opposition groups and paramilitary for acts committed by these groups. Criminal responsibility of non-state individuals has long been ignored in international law. The international tribunals at Nuremberg and Tokyo only held the leaders of the defeated Axis powers responsible for crimes which had all been committed during or in connection with an international armed conflict, the Second World War. The accused were either state

officials or private individuals acting in collusion with the state.²⁵ The establishment of the Yugoslavia and Rwanda Tribunals has changed the legal situation. The Statutes and case-law of these Tribunals accept responsibility for non-state individuals and leaders, whether in a purely military context or not. According to the practice of these Tribunals, ordinary members of armed opposition groups can be held responsible for their own acts. Responsibility non-state leaders can arise both from ordering violations of international criminal law committed by their subordinates as well as failure to prevent or punish such violations. The Statute of the Special Court for Sierra Leone (4 October 2000, not yet in force)²⁶ reflects a similar tendency. Indeed, the Sierra Leone Court will be established with the particular aim of prosecuting the leadership of the Revolutionary United Front (RUF), the armed opposition group involved in the conflict in Sierra Leone since 1991. Finally, the Statute of the International Criminal Court (signed on 18 July 1998, not yet in force) is the first general criminal law treaty incorporating individual responsibility of members and leaders of armed opposition groups.

17. The crimes giving rise to the responsibility of ordinary members and military and civilian leadership of the Colombian armed groups consist of war crimes and crimes against humanity. **War crimes** are offences against particular norms of international humanitarian law. Until recently, the common belief was that war crimes could not be committed in internal armed conflict by persons not linked to a state. Common Article 3 and Additional Protocol II, which have been specifically written for application to armed opposition groups, do not expressly address individuals. These provisions refer only to the parties to the conflict.²⁷ At present, however, although international practice has occasionally been inconsistent, it is safe to say that serious violations of common Article 3 and part of Additional Protocol II entail, both as a matter of treaty and customary law, individual criminal responsibility of members and leaders of the Colombian armed opposition groups. For example, in the *Furundzija* case, the Yugoslavia Tribunal considered:

The treaty and customary rules referred to above [inter alia common Article 3 and Additional Protocol II] impose obligations upon States and other entities in an armed conflict, but first and foremost address themselves to the acts of individuals, in particular to State officials or more generally, to officials of a party to the conflict or else to individuals acting at the instigation or with the consent or acquiescence of a party to the conflict. Both customary rules and treaty provisions applicable in time of armed conflict prohibit any act of torture. Those who engage in torture are personally accountable at the criminal level for such acts.²⁸

As common Article 3 and Additional Protocol II prohibit taking of hostages, violation of these norms constitutes a war crime for which members and leaders of the Colombian armed opposition groups can be held individually criminally responsible. That hostage taking in internal conflict is a war crime

for which non-state individuals can be held individually responsible, also follows from Article 3 of the Statute of the Sierra Leone Court, which criminalizes this act. Furthermore, Article 8(2)(c) of the Statute of the International Criminal Court explicitly classes hostage taking as a war crime.²⁹

18. It would seem that in order to convict a person of war crimes, he or she needs to have no demonstrable link with a party or state party to the conflict – e.g. – an armed opposition group. All that is needed is that the crime must be committed in the context of an armed conflict. The practice of the Yugoslavia Tribunal affirms that the concept of parties to a conflict is of minor relevance for command responsibility and individual criminal responsibility in general. Similarly, Judge Rodrigues noted in his dissenting opinion to the *Aleksovski* case: ‘International humanitarian law has, to a large extent, grown beyond its state-centered beginnings. (The principle is to prosecute natural persons individually responsible for serious violations of international humanitarian law irrespective of their membership in groups’.³⁰

19. To the extent that war crimes are committed not as isolated acts, but result from an intentional attempt to attack the civilian population, members and leaders of the Colombian armed opposition groups can be held individually responsible for crimes against humanity. The predominant view of the past was that **crimes against humanity** require the involvement of the state.³¹ However, recent international practice recognizes that members and leaders of armed opposition groups can incur individual criminal responsibility for committing these crimes or, in the case of leaders, for ordering them or for failure to prevent or repress them.³² With the adoption of the Statute for the International Criminal Court, crimes against humanity are for the first time laid down in a treaty with a general scope. Article 7 of the Statute gives the International Criminal Court jurisdiction to prosecute crimes against humanity in internal conflict. Unlike the Statutes of the Yugoslavia and Rwanda Tribunals, the Statute of the International Criminal Court explicitly stipulates that members of non-state entities may commit this kind of crimes. It defines crimes against humanity as attacks committed against any civilian population ‘pursuant to or in furtherance of a state *or organizational policy* to commit such attack’. ‘Organizational policy’ is intended to include armed opposition groups.³³ The Statute for the International Criminal Court lists as a crime against humanity ‘imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law’ which crime seems to cover taking of hostages. Hostage taking may also be brought under Article 7(1-i) of the Statute, qualifying as a crime against humanity ‘enforced disappearance of persons’, which is defined as among others ‘abduction of persons’ followed by a refusal ‘to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time’.³⁴

4.4 *Who should prosecute these offenders?*

20. Having explained the individual accountability of the members and leaders of the Colombian armed groups for violations of international humanitarian law, another question is: who should prosecute these offenders? A first option would be prosecution by the Colombian armed opposition groups themselves. Common Article 3 and Additional Protocol II do not expressly oblige armed opposition groups to prosecute violations of these norms by members of these groups or other persons under their control. Such an obligation may be deduced from Article 1 common to the Geneva Conventions, which obliges the States Parties to 'ensure respect' for the Conventions 'in all circumstances'. As this article also applies in internal armed conflicts, it may be inferred that it applies equally to armed opposition groups involved in these conflicts. International practice provides, however, little support for the obligation of armed opposition groups to prosecute violators of humanitarian standards. The general feeling expressed by Plattner, that 'it is difficult to conceive of international humanitarian law giving insurgents the authority to prosecute and try authors of violations', thus finds recognition in international practice.³⁵

21. A survey of international practice shows that the duty to prosecute members and leaders of the Colombian armed opposition groups for crimes committed by them rests first and foremost on the **Colombian State**. Human rights treaties, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, oblige Colombia to effectively investigate, prosecute and, when appropriate, punish violations of human rights also when committed by non-state individuals.³⁶

22. **Prosecution by third states** raises more difficult questions. This would require foreign courts to exercise jurisdiction on the basis of the principle of universality, as it concerns crimes committed by non-nationals outside the state's territory. Under the Geneva Conventions only the grave breaches provisions, applicable in international conflicts, entail universal mandatory criminal jurisdiction for national courts.³⁷ The Yugoslavia Tribunal, following the UN Secretary-General, considered the grave breaches not to be applicable in internal conflicts, precisely for the reason that the principle of universal jurisdiction did not extend to these situations.³⁸ While there is thus at present no obligation for foreign national courts to prosecute members or leaders of Colombian armed groups, on the basis of some international practice, it is arguable that a right to do so is evolving. First, the Yugoslavia Tribunal did not wholly exclude, at some point in the future, extension of the grave breaches provisions to internal conflicts.³⁹ Second, the UN Commission on Human Rights accepted the applicability of the grave breaches provisions in internal conflict. In 1999, it adopted a resolution qualifying the acts of torture and wilful killing committed in the conflict in Sierra Leone, which the Commission explicitly qualified as an internal conflict, as grave breaches of

international humanitarian law, obliging all states to prosecute such persons before their own courts, regardless of their nationality.⁴⁰ Finally, on 11 November 1997, the *Hoge Raad* (Supreme Court) of the Netherlands, in the *Knezevic case*, ruled that war crimes committed in internal conflict could be tried by a Dutch court on the basis of universal jurisdiction.⁴¹

23. Another possibility is to prosecute members and leaders of the Colombian armed opposition groups by **international tribunals**. The jurisdiction of the Tribunals for the former Yugoslavia and Rwanda is restricted to the conflicts in the respective states. But the International Criminal Court, once in function, will have jurisdiction over the hostage taking by members and leaders of the Colombian armed opposition groups committed after the entering into force of its Statute and provided that Colombia has ratified the Statute or accepted the jurisdiction of the Court.⁴²

4.5 **Conclusions**

24. In this paper, I have shown on the basis of practice of international bodies that when the Colombian armed opposition groups involved in the internal conflict in Colombia take hostages in violation with international humanitarian law, and to a lesser extent human rights law, these groups as collectivities may be held accountable under international law for these acts as well as the members and leaders of these groups.

25. The international practice holding the Colombian armed opposition groups as such accountable is significant when one realizes that there are no supervisory mechanisms having been explicitly empowered to monitor the behavior of the Colombian armed opposition groups. Notwithstanding the absence of formal competence, two international bodies, including the Inter-American Commission and the UN Commission on Human Rights, have taken it upon themselves to review the acts of the Colombian armed opposition groups.

26. At the same time, the absence of a mechanism formally mandated to apply international humanitarian and human rights law to the Colombian groups accounts, in part, for the primitive state of the accountability of these groups under international law. An example is provided by the problem of attribution. The attribution of acts and omissions by individuals and agencies to armed opposition groups is a difficult but vital aspect of the accountability of these groups. Armed opposition groups are fictive entities; they can only act through individuals. However, international bodies have almost completely failed to address the issue of attribution.

27. The lack of effective enforcement mechanisms poses serious limitations to further development of the international accountability of the Colombian armed opposition groups. What may be considered in the future is the creation of an individual complaints procedure for violations of international

humanitarian law committed by armed opposition groups, including the Colombian groups.

28. I have shown that there is an increasing concern in international law to hold members and superiors of armed opposition groups individually responsible for crimes committed by them or by their subordinates. This development has great potential for the enforcement of international law applicable to Colombian armed opposition groups.

29. However, the prospects for actual prosecution are limited. The conclusion, pointing out the accountability of leaders of armed opposition groups, rests primarily on the Statutes and jurisprudence of the Yugoslavia and Rwanda Tribunals. These Tribunals are *ad hoc* in nature, and concerned with only two internal conflicts – e.g. – the Yugoslav and Rwandan conflicts. Moreover, so far, there have been few trials charging leaders of armed opposition groups with international crimes. The establishment of the International Criminal Court and the Special Court for Sierra Leone are certainly welcome developments in this respect, enhancing the prospects for prosecution of members and leaders of the Colombian armed opposition groups.

30. In any case, prosecution by international tribunals will be a rare event. The question is therefore legitimate whether there are other possibilities for prosecution of leaders of armed opposition groups. International humanitarian law as it currently stands does not explicitly oblige the Colombian groups to prosecute violators of this law. An alternative solution may be prosecution by the Colombian state. But the Colombian Government might prefer to prosecute leaders of the Colombian armed groups as mere criminals rather than as violators of international humanitarian law.

31. One may ask how satisfactory this state of affairs, just outlined is, and whether there is any prospect for some further alternative to emerge? Would it, for example, be possible that third states would be allowed to prosecute leaders of armed opposition groups for violations of international humanitarian law on the basis of universal jurisdiction? This would imply that the grave breaches enforcement regime would evolve under customary law, to cover internal conflicts. As I explained, at present, the Yugoslavia Tribunal still takes the position that the grave breaches regime is not applicable in internal armed conflict. However, the Yugoslavia Tribunal as well as the UN Commission on Human Rights have made clear that prosecution by third states of violations committed in internal conflict on the basis of universal jurisdiction is not wholly inconceivable in the future.

-
- 1 Liesbeth Zegveld, PhD Erasmus University Rotterdam, Netherlands, practices as an international and criminal lawyer in Amsterdam, Netherlands. The executive summary by independent legal expert
 - 2 M. van Royen, 'Guerrilla Tart Geduld Regering Colombia', *NRC Handelsblad*, 6 (Rotterdam, 10 November, 1998).
 - 3 Even more so, as it is unclear whether the Government is able to effectuate its assertions that if the FARC do not respect human rights in the transferred areas, the Government will reverse the transfer and retake its factual authority there. K. DeYoung, 'Colombia's Quagmire Deepens', *International Herald Tribune*, 2 (7 July 1999); S. Alonso, 'In Noord-Ierland gaat het nog veel trager', *NRC Handelsblad*, 6 (Rotterdam, 26 October 1999) (interview with Andrés Pastrana, President of Colombia).
 - 4 'The Ties that bind: Colombia and the Military and Paramilitary Links', *Human Rights Watch* (February 2000)
 - 5 Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, at 77, para. 20 (26 February 1999).
 - 6 F. Kalshoven, 'Protocol II, the CDDH and Colombia', in: *International Law: Theory and Practice* 597-622 (K. Wellens, ed., Kluwer Law International, The Netherlands, 1998).
 - 7 The Geneva Conventions admit as 'High Contracting Parties' only states in the traditional sense. Article 1 common to the Geneva Conventions stipulates that 'the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances', the notion 'High Contracting Parties' refers to the states for which the Conventions are in force. The same holds for Additional Protocol II, since only the State Parties to the Geneva Conventions can become parties to the Protocol, Articles 20 and 22 of Additional Protocol II, S-S. Junod, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* at 1338 (Sandoz, Y. et al. (eds.), Martinus Nijhoff, Geneva, 1987); see also: M. Takemoto, 'The 1977 Additional Protocols and the Law of Treaties', in: *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, 249-260 (C. Swinarski, ed., International Committee of the Red Cross, Martinus Nijhoff, Dordrecht, 1984).
 - 8 A/7720, para. 171 (Report of the UN Secretary General, 'Respect for Human Rights in Armed Conflicts', 20 November 1969); see also S-S. Junod, *Commentary Additional Protocols*, supra n. 8, at 1345.
 - 9 Colombia ratified the Geneva Conventions on 8 November 1961; it acceded to Additional Protocol II on 14 August 1995.
 - 10 L. Zegveld, *Armed Opposition Groups in International Law: the Quest for Accountability*, 107-111 (doctoral thesis, 2000, to be published by Cambridge University Press in summer 2001).
 - 11 F. Kalshoven, supra n. 7, at 605 and 609.
 - 12 Common art. 3 (1-b) and art. 4(2-c) of Additional Protocol II.
 - 13 Annual Report 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., at 662, para. 53 (14 March 1997); see also Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.84, at 219 (4 October 1993).
 - 14 Annual Report of the Inter-American Commission on Human Rights 1996, supra n. 14, at 818.
 - 15 Common article 3 stipulates that it protects 'Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause'. Article 2 of Additional Protocol II provides that it applies to 'all persons affected by an armed conflict as defined in Article 1'.
 - 16 *Prosecutor v. Dusko Tadic*, No. IT-94-1-T, para. 615 (7 May 1997) (Merits); see also Yugoslavia Tribunal, *Prosecutor v. Kupreskic et al.*, No. IT-95-16-T, paras. 522-524 (14 January 2000). The Inter-American Commission applied a similar test in the *Tablada* case, Rep. No 55/97, Case No 11.137 (Argentina), para. 189 (30 October 1997).
 - 17 Third Report on Colombia, supra n. 6, at 84-86, paras. 47, 51-53.
 - 18 Supra n. 6, at 95, para. 83.
 - 19 In *Military and Paramilitary Activities In and Against Nicaragua*, the International Court of Justice observed that the acts of the *Contras*, fighting against the Nicaraguan Government, were governed by the law applicable to armed conflict not of an international character, i.e. common article 3, (*Nicaragua v. U.S.*), at 114, para. 119 (Judgment of 27 June 1986) (Merits) 1986 ICJ Rep. 14. Similarly, in the so-called *Tablada* case, the Inter-American Commission considered: 'Common Article 3's mandatory provisions expressly bind and apply equally to both parties to internal conflicts, i.e., government and dissident forces. Moreover, the obligation to apply Common Article 3 is absolute for both parties and independent of the obligation of the other. Therefore, both the MTP attackers [armed opposition group

- fighting in the conflict in Argentina at that time] and the Argentine armed forces had the same duties under humanitarian law, *supra* n. 17, para. 174; *see also* Report No 26/97 Case No 11.142 (Colombia), para. 131 (30 September 1997). Also the UN Security Council and the UN Commission on Human Rights, in the context of various internal conflicts, called upon all parties to the hostilities -i.e. the government armed forces and armed opposition groups- to respect fully the applicable provisions of international humanitarian law, including common Article 3, UN Security Council, Res. 1193 (1998), para. 12 (28 August 1998) (on Afghanistan); UN Security Council, Res. 812 (1993), para. 8 (12 March 1993) (on Rwanda); UN Security Council, Res. 794 (1992), para. 4 (3 December 1992) (on Somalia); UN Commission on Human Rights, Res. 1999/18, para. 17 (23 April 1999) ('[c]ondemns abuses by elements of the Kosovo Liberation Army, in particular killings in violation of international humanitarian law'); UN Commission on Human Rights, Res. 1997/59, para. 7 (15 April 1997) (on Sudan); Commission on Human Rights, Res. 1998/67, para. 6 (21 April 1998) (on Sudan).
- 20 Joint Report of the Special Rapporteur on Question of Torture, N.S. Rodley, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary, Bacre Waly Ndiaye, E/CN.4/1995/111, para. 35 (16 January 1995). (stating with regard to the armed opposition groups in Colombia: 'In certain areas, the guerilla groups are said to have replaced the State administration and exercise complete control').
- 21 Article 14 (3) of the ILC Draft Articles on State Responsibility provisionally adopted by the Commission on first reading, A/51/10 (1996) provides: 'Similarly, paragraph 1 is without prejudice to the attribution of the conduct of the organ of the insurrectional movement to that movement in any case in which such attribution may be made under international law'. This paragraph has been deleted in the Draft Articles provisionally adopted on second reading by the Drafting Committee in 1998, UN Doc. A/CN.4/L.569 (4 August 1998). The reason is, according to the report of the Special Rapporteur, that this provision is concerned with movements, which are, '*ex hypothesi*', not states. Therefore it falls outside the scope of the Draft Articles. The Rapporteur observed that, while the responsibility of insurrectional movements can be envisaged, for example, for violations of international humanitarian law, it can be dealt with in the commentary to the Draft Articles, First Report on State Responsibility by James Crawford, Special Rapporteur A/CN.4/490 (1998).
- 22 *Supra* n. 6, at 158, recommendation 1.
- 23 The competence *ratione materiae* of international bodies to apply international humanitarian law does not affect their competence *ratione personae*. For example, while the Inter-American Commission on Human Rights considers itself competent to apply international humanitarian law in the individual complaints procedure, it found that evaluation of behaviour of armed opposition groups under international humanitarian law fell outside its mandate, Second Report on Colombia, *supra* n. 14, at 3; Third Report on Colombia, *supra* n. 6, at 72, para. 5.
- 24 During the negotiations on Additional Protocol II, it was argued that armed opposition groups might use provisions on supervision to call for assistance by an international body, even against the objection of the established authorities. This, states were afraid, would internationalize the conflict, A. Eide, 'The New Humanitarian Law in Non-International Armed Conflict', in: *The New Humanitarian Law of Armed Conflict*, 277, at 297 (A. Cassese, ed., Editoriale Scientifica S.r.l., Napoli, 1979). The inclusion in Additional Protocol II of the provision that 'nothing in this Protocol shall be invoked as a justification for intervening directly or indirectly, for any reason whatever (...)' (Article 3(2) Additional Protocol II), has clearly not removed these fears.
- 25 Article 6 of the Charter of the Nuremberg Tribunal, *reprinted in* Schindler & Toman, *Laws of Armed Conflicts* 826 (Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis) (which gave the international tribunal the authority to punish persons 'acting in the interests of the European Axis countries, whether as individuals or as members of organizations'); Article 5 of the Charter for the International Military Tribunal for the Far East, Special Proclamation of the Supreme Commander for the Allied Powers of 19 January 1946, *reprinted in* Department of State Bulletin, Vol. XIV, No. 349 (10 March 1946).
- 26 UN Security Council Resolution 1315 on the Establishment of a Special Court for Sierra Leone (14 August 2000). For the texts of the Statute of the Special Court and the Agreement between the UN and Sierra Leone, *see* annex to the Report of the UN Secretary-General, S/2000/915 (4 October 2000) (Report of the Secretary-General on the establishment of a Special Court for Sierra Leone).
- 27 The commentaries to common Article 3 and Additional Protocol II do not make any reference to the criminal character of these provisions; *see also* D. Plattner, 'The Penal Repression of Violations of International Humanitarian Law Applicable in Non-International Armed Conflicts', 30 *IRRC*, 409, at 414-417 (1990).

- 28 *Prosecutor v. Furundzija*, case No IT-95-17/1-T, para. 140 (10 December 1998); *see also* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, No. IT-94-1-AR72, para. 134 (2 October 1995); Yugoslavia Tribunal, *Celebici Case, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, Esad Landzo*, No. IT-96-21-T, para. 308 (16 November 1998). Similar evidence can be found in the Statute and case law of the Rwanda Tribunal and in the work of the International Law Commission Article 4 of the Statute of the Rwanda Tribunal gives the Tribunal jurisdiction to prosecute violations of common Article 3 and Additional Protocol II; *see also Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, paras. 613-615 (2 September 1998); *Prosecutor v. Rutaganda*, No. ICTR-96-3, para.88 (6 December 1999); International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind, A/51/10, Supp. No. 10, Article 20 (f) and Commentary (War crimes) (1996); *see also* T. Meron, 'International Criminalization of Internal Atrocities', 89 *AJIL* 554, at 561-562 (1995); S.R. Ratner, J.S. Abrams, *Accountability for Human Rights Atrocities in International Law*, at 94-99 (Clarendon Press, Oxford, 1997). Notwithstanding the practice of the two *ad hoc* Tribunals and the International Law Commission, maintaining the applicability of the principle of individual criminal responsibility to persons violating of common Article 3 and Additional Protocol II as a matter of treaty and customary law, there is also contrary evidence. The Commission of Experts for the Former Yugoslavia and the Secretary-General in his report on the Statute of the Rwanda Tribunal, adopted a restrictive approach as to the customary law applicable to internal armed conflicts. These bodies found that it was still necessary to distinguish between customary law applicable to international conflicts and to internal conflicts, and they considered the customary law for internal conflicts 'debatable' and not incorporating individual criminality, Final Report of the Commission of Experts S/1994/674, Annex, at 13, para 42, and at 16, para 52 (27 May 1994); Report of the UN Secretary-General, S/1995/134, para. 12 including footnote 8 (1995); *see also* D. Shraga, R. Zacklin, 'The International Criminal Tribunal for the Former Yugoslavia', 5 *EJIL* 360, at 366 footnote 22 (1994). However, notwithstanding this contrary practice, it would appear that the practice of the Yugoslavia Tribunal and Rwanda Tribunal and the work of the International Law Commission can be considered to be the accurate reflection of the state of the law applicable to internal conflicts. The contrary evidence dates from before the decisions of the Yugoslavia and Rwanda Tribunals determining criminal responsibility under common article 3 and Additional Protocol II. Significantly, the International Law Commission has changed its position, denying the criminal character of these provisions under customary law, pursuant to the adoption of the Statute of the Rwanda Tribunal and the judgment of the Yugoslavia Tribunal in the *Tadic* case (1995 Interlocutory Appeal on Jurisdiction, *supra*); *compare* B. Simma, A.L. Paulus, 'The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View', 93 *AJIL* 310-313 (1999) discussing the criminal law status of violations of international humanitarian law in internal conflicts).
- 29 Article 8(2)(e) sub i, vii, viii has been copied from Additional Protocol II; *see* M.H. Arsanjani, 'The Rome Statute of the International Criminal Court', 93 *AJIL* 22, 32 (1999).
- 30 *Prosecutor v. Aleksovski*, No. IT-95-14/1-T, Dissenting Opinion of Judge Rodrigues, para. 31 (25 June 1999).
- 31 The Nuremberg Charter, which marked the birth of the modern notion of crimes against humanity addressed crimes against humanity committed during international armed conflict. Further, the Nuremberg Charter required that the persons prosecuted and punished were connected with the state. Article 6 of the Charter gave the international tribunal the authority to punish persons 'acting in the interests of the European Axis countries, whether as individuals or as members of organizations'.
- 32 In its Final Report, the Commission of Experts for Rwanda suggested that the RPF (the armed group involved in the internal conflict in Rwanda in 1994) was legally capable of committing crimes against humanity, *supra* n. 29, Annex para. 98; *compare* J.C. O'Brien, 'The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia', 87 *AJIL* 639, 648-649 (1993). Both the Yugoslavia and Rwanda Tribunals have made clear that crimes against humanity as defined in their Statutes can, as a matter of customary law, be committed in internal armed conflicts *Tadic Interlocutory Appeal, supra* n. 29, para. 141; Rwanda Tribunal *Akayesu* case, *supra* n. 29, para. 565. The Statute of the Sierra Leone Court, in article 2, gives the Court jurisdiction over crimes against humanity. As this Court will be established with the particular aim to prosecute the leadership of the RUF, the armed opposition in the conflict in Sierra Leone, there can be little doubt that non-state individuals can commit crimes against humanity.
- 33 M.H. Arsanjani, 'Rome Statute', *supra* n. 30, at 31.
- 34 Art. 7(1-i) juncto art. 7 (2-i) Statute of the International Criminal Court.

- 35 D. Plattner, 'Penal Repression', *supra* n. 28, at 415. See UN Security Council Res. 1325 paras. 10, 11 (13 October 2000) (calling on 'all parties to armed conflict' to take special measures to protect women and girls from gender-based violence (...)', emphasizing 'the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes' [emphasis added]). See further, L. Zegveld, *Armed Opposition Groups in International Law: the Quest for Accountability* *supra* n. 11, at 183-184.
- 36 See, for example, European Court of Human Rights, *Yasa v. Turkey* (Judgment of 2 September 1998) 88 Reports (1998-VI) at 2411, paras 98-100, where the European Court points out the obligation of Turkey to carry out effective criminal investigations of the armed assault on the applicant, which assault was, according to the Turkish Government, carried out by the PKK.
- 37 The 1949 Geneva Conventions qualify as grave breaches a number of acts committed against persons or property protected by these Conventions, including wilful killing, torture, wilful deprivation of the rights of fair trial, see e.g., Article 147 of the Fourth Geneva Convention. These norms overlap to a great extent with common Article 3 and Additional Protocol II. An important difference between grave breaches and serious violations of common Article 3 and Additional Protocol II, however, is that the grave breaches provisions entail universal mandatory criminal jurisdiction for national courts. It was this difference which made the Yugoslavia Tribunal, following the UN Secretary-General, to decide that grave breaches are not applicable in internal conflicts.
- 38 Tadic Interlocutory Appeal, *supra* n. 29, para. 80; Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, para. 37 (3 May 1993). The Tribunal reinforced its standpoint in several other cases, see e.g., Prosecutor v. Dusko Tadic, Case No. IT-94-1-A, para. 80 (15 July 1999) (Appeal on Merits); Celebici case, *supra* n. 29, para. 317.
- 39 Tadic Interlocutory Appeal, *supra* n. 29, para. 83; see also Aleksovski case, *supra* n. 31, Dissenting Opinion of Judge Rodrigues, para. 44 ('I consider that the development of the rules of customary law since 1949 tends to advocate the extension of the grave breaches system to internal conflicts and, accordingly to reinforce the autonomy of Article 2 of the Statute in relation to the Geneva Conventions'); *Prosecutor v. Dario Kordic, Mario Cerkez*, Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, Case No. IT-95-14/2-PT, para. 15 (2 March 1999); see also UN Security Council res. 1193 (1998) para. 12 (28 August 1998) (reaffirming that 'all parties to the conflict [in Afghanistan] are bound to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches'); *Tadic Interlocutory Appeal*, *supra* n. 29, Separate Opinion of Judge Abi-Saab, at 5-6; T. Meron, 'International Criminalization of Internal Atrocities', *supra* n. 29, at 569-70 (suggesting that we should take a new look at the question of universal jurisdiction in internal conflicts. In his view article 1 of the Geneva Conventions obliging states to respect and ensure respect could be a proper legal basis); T. Meron, 'Crimes under the Jurisdiction of the International Criminal Court', in: Reflections on the International Criminal Court, 47, at 48 (H.A.M. von Hebel et al., eds., T.M.C. Asser Press, The Hague, 1999). (arguing that Articles. 6 to 8 of the Statute of the International Criminal Court 'may become a model for national laws to be enforced under the principle of universality of jurisdiction'). Since parties to an internal conflict are entitled, under common article 3 'to bring into force by means of special agreements, all or part of the other provisions of the present Convention', it would appear that, if the parties agree in concrete cases to try and punish those responsible for grave breaches, such an agreement provides a international legal basis for their individual accountability for such breaches, *Tadic Interlocutory Appeal*, *supra* n. 29, paras. 89, 136; see also *Tadic Interlocutory Appeal*, *supra* n. 29, Separate Opinion of Judge Abi-Saab, at 6.
- 40 Res. 1999/1, para. 2 (6 April 1999) (reminding 'all factions and forces in Sierra Leone that in any armed conflict, including an armed conflict not of an international character, the taking of hostages, wilful killing and torture or inhuman treatment of persons taking no active part in the hostilities constitute grave breaches of international humanitarian law, and that all countries are under the obligation to search for persons alleged to have committed, or ordered to be committed, such grave breaches and to bring such persons, regardless of their nationality, before their own courts').
- 41 *Prosecution v. Darko Knesivic*, Supreme Court of the Netherlands, 11 November 1997, NJ 1998, 463, English translation in 1 YIHL 601-607 (1998). See on this case, R. van Elst, 'De Zaak Darco Knezevic: Rechtsmacht over Joegoslavische en Andere Buitenlandse Oorlogsmisdadigers', 35 *NJB* 1587-1593 (1998). Grave breaches are, however, not included in the Statute of the Sierra Leone Court.

- 42 Colombia has signed the Statute at 10 December 1998; so far it has not ratified this instrument. Conditions for the exercise of jurisdiction by the International Criminal Court are that the state on whose territory the crime is committed is a party to the Statute or has accepted the jurisdiction of the Court, or that the state of nationality of the accused is a party to the Statute or has accepted the jurisdiction of the Court, Art. 12 Statute of the International Criminal Court. An exception concerns the case that is referred to the Court by the UN Security Council, acting under Chapter VII of the UN Charter. Then no state consent is required: the Court will have jurisdiction over the crimes even if committed in non-state parties by nationals of non-state parties and in the absence of consent by the territorial state or the state of nationality of the accused, Art. 13 Statute of the International Criminal Court.



5. *Foreigners; the most favoured prey*

THE INVOLVEMENT OF FOREIGN INVESTORS IN THE COLOMBIAN CONFLICT

The Colombian news frequently contains reports of burning cars and trailers and the explosion of oil pipelines belonging to foreign multinationals. They are the most noticeable manifestations of a phenomenon that many foreign companies have to deal with: the extortion and kidnapping practices of the illegal armed parties. Even before a foreign company starts to work in a certain region, it is not uncommon for one of the illegal armed forces to start the economic extortion simultaneously. If the foreign company refuses to yield to the demands of the extortionists, the kidnapping of personnel or sabotage of equipment or infrastructure will take place. The official state security, as offered by the various state organizations, has proved to be insufficient for expatriates and Colombian civilians alike.

Many foreign investors feel forced to give in to the extortive demands. They feel responsible for the wellbeing of their employees, the continuity of their business and the safeguarding of their investments. Sometimes they pay to all the (ideologically opposing) regional illegal armed forces at the same time. On the other hand, it cannot be denied that their substantial ransom and extortion payments provide the warring parties with the possibility to realize military growth and fuel further violence. The first signs of this dilemma became apparent in the 1980s.

5.1 *The kidnapping of foreigners; a new phenomenon emerges*

In the 1980s guerrilla groups started to ask multinational enterprises for social development projects in the region where their firm had its base. But companies such as BP Amoco, Skanska and Mannesmann soon experienced that those projects were not enough to stop the guerrilla.

The rebel forces tried to gain popular support by taking all the credit for the projects. Soon afterwards, the guerrillas started to request cash payments from foreign companies to sustain their war machinery, as is evident from this quote: "At the beginning they (the ELN) asked for social projects; a bridge, the paving of a road and, especially, health centres because most of the population died of unattended malaria, contagious diseases and snake bites. The company

(Mannesmann) did contribute with plenty of social projects, but afterwards the guerrilla started to threaten them by saying that if the projects were not realized, they would destroy their machinery; and later, they started asking for cash.”¹

The guerrilla groups and common criminals soon came to realize that the extortion of multinational enterprises and the kidnapping of its employees, especially its expatriates, opened up unprecedented opportunities. In the first place because in many countries the citizens are very sensitive to the kidnapping of their countrymen abroad, and it often leads to public opinion campaigns demanding a quick solution from the government and the company. In the second place, guerrilla groups could justify the kidnapping of foreigners more easily, by pleading their anti-western, anti-capitalist nationalism as an excuse. But the major advantage of the kidnapping of a foreigner was economic. It had not remained unnoticed that multinationals in Colombia usually made large-scale investments and disposed of considerable liquid assets. The guerrillas counted on higher amounts of ransom and asserted that foreign companies and institutions would pay more easily and in hard currency, such as American dollars.

The first case of massive extortion; Mannesmann Anlagenbau AG

One of the first talked-about kidnapping cases was the kidnapping of a German engineer and two Colombian employees of the German multinational enterprise Mannesmann Anlagenbau AG in January 1984. In the early eighties, the Colombian government commissioned the construction company Mannesmann to build the necessary 278 kilometre pipeline to lead from the oilfields in the northeast, through the Andean mountains to the Caribbean coast.⁽²⁾ It was agreed to build the complicated construction for an amount of US\$ 169 million, under the condition that it be finished within one year, an extremely short period given the technical circumstances and the political fact that part of the region was controlled by the ELN. According to the German former project manager, they were advised by the state owned oil company Ecopetrol and the US oil company Oxy (Occidental Oil) to come to terms with the rebels and find a *modus vivendi*, as the oil companies had done in the region for years. Yet, at that time, the ELN was a relatively insignificant and small armed group that had rejected peace agreements with the then government of president Betancur (unlike M-19 and EPL).

In order to complete the construction within the term set in the contract, Mannesmann yielded to the extortion and kidnapping demands of the ELN. The three hostages were released only after four months (mid February) when Mannesmann finally paid the requested money and met with the other conditions. The construction of the pipeline was completed in 1985, within the term that was defined in the contract: one year.³

According to the Mannesmann project manager, the company paid an amount of two million dollars to the ELN for the release of the hostages.⁴ But a former high ranking member of the ELN (member of the COCE) declared that the ELN received in this period a total amount (extortion and ransom) of US \$ 20 million from the German company.⁵ This amount coincides with the statements of the then leader of the ELN, 'father Manuel Perez'.⁶ The same Manuel Perez has furthermore confirmed that the Italian subcontractor working on the same project also paid two million dollars in extortion.⁷

The ELN experienced a rapid growth of their number of soldiers, and grew from 3 fronts in 1983 up to 11 fronts in 1986. This was confirmed by Manuel Perez, who stated that the ransom and extortion money of Mannesmann produced the 500% growth of the ELN during these years.⁸

5.2 'Few Victims', astronomical gains

The Mannesmann case was soon to be followed by new kidnappings of foreigners, often employees of foreign multinationals. In an interview on Colombian national television in 2000, a commander of the ELN made no secret of the fact that his organization actually acquires part of its income and resources through the extortion of multinational companies and kidnapping the employees of these companies. In the same interview he revealed that part of the ransom and extortion money is held in foreign bank accounts abroad.⁹

The principal perpetrators of the kidnapping of foreigners are the guerrilla groups FARC and ELN. The estimates range from 40% to 70%. According to the DAS, the guerrilla can be held responsible for 60% of the kidnapped foreigners over the period 1995-2000.¹⁰ The paramilitary accounted for one case during the same period.¹¹ The rest of the kidnapping of foreigners is done by (drug) mafia and other common criminals.

Few victims (compared to Colombians)

Depending on the nature of the source that one uses, the estimates on the number of kidnapped foreigners range from 45 to 80 persons annually.

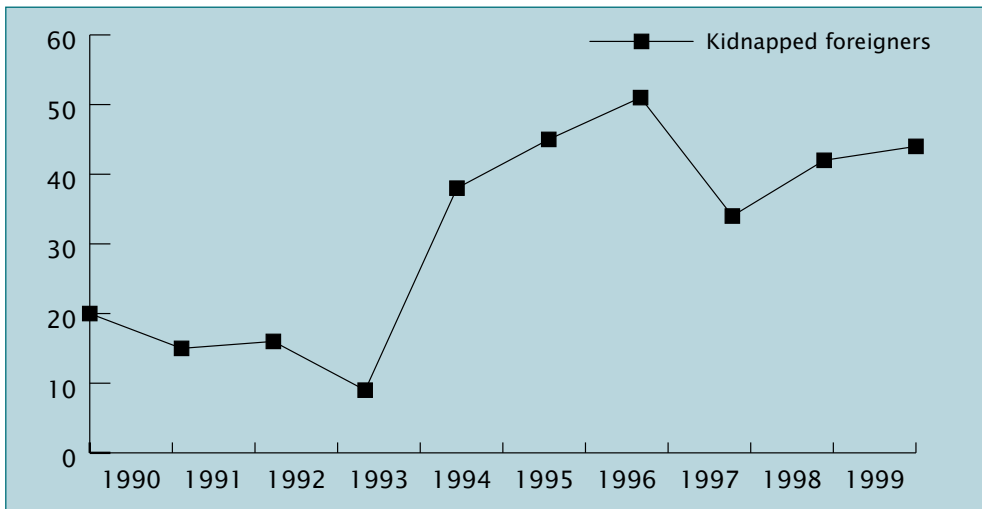
The DAS counted 408 cases of kidnapped foreigners in the period 1995 until 2000, or an average of 81 cases annually. Or to put it in different terms; according to the DAS one foreigner is kidnapped in Colombia every 4 days.¹² The former anti-kidnapping Tsar stated that over the years 1993-1998, 365 foreigners were kidnapped, which indicates an average of 65 kidnappings a

year.¹³ According to the Colombian army, 144 foreigners were abducted between 1996 and 1999, which leads to an average of approximately 48 cases a year.¹⁴ The estimates of the Fundación País Libre are slightly lower. According to them, an annual average of 45 foreigners were kidnapped in Colombia between 1994-1998.¹⁵

Information derived from the statistics of Fundación País Libre indicates that approximately 50% of the kidnapped foreigners are Europeans.¹⁶ A former anti-kidnapping Tsar, after departing from his duties in 1998, analyzed the years 1993-1998 and came to the conclusion that 30% of them were of European origin (especially Italian, German and Spanish citizens) and that 52% of these foreign victims came from the Americas (such as Venezuela at 25% and United States at 13%).¹⁷

In the mid 1990s the guerrilla intensified the practice of '*pescas milagrosas*' (miraculous catches: erecting road blocks in order to single out the most lucrative passengers; see chapter 2). The guerrilla forces turned out to be after foreigners and well-to-do Colombians in particular. They constantly tracked down the whereabouts of foreign companies, the routines and unexpected inconveniences of their employees, and according to the information gathered, they set up the checkpoint. Since the mid 1990s a considerable number of foreigners have been caught in the guerrilla's net.¹⁸ But this phenomenon did not lead to the same dramatic growth in the number of kidnapped foreigners as it did in the number of kidnapped Colombians.

The graph below shows a small increase of the actual number of foreigners kidnapped in the 1990s.¹⁹ Yet, this growth depends on how you look at it. Compared with the total number of kidnappings in Colombia, the percentage has remained more or less stable at 2-3%. The bulk of the victims are Colombians, mostly cattle farmers, local business executives and local managers of foreign multinationals.



Security measures keep the numbers low

The relatively low numbers of kidnapped foreigners in Colombia can be explained to a large extent by the strict security measures set up by foreign investors and institutions. Today, foreign companies forbid their employees transport over land. Mobilization to the rural areas is done by air, often using helicopters or private airplanes. This can never secure the employees completely from being kidnapped. There are always last minute inconveniences that force a land trip, jobs to be done in remote and unprotected areas, or overconfident employees who neglect security advice.

National Subcontractors; discrimination?

Foreign investors also tend to hire as few expatriates as possible because of the safety risks. This does not solve the entire problem either. The local staff and Colombian subcontractors are seen by the potential kidnappers as employees of a multinational and are also an obvious target, although much less is usually paid for them. But foreign companies, perhaps because of the risks to their reputations, increasingly accept responsibility for their local personnel and subcontractors.²⁰

Astronomical gains

The presuppositions of the guerrilla that foreign companies tend to pay higher amounts of ransom and usually pay it more easily are indeed often corroborated by the sparse information that emerges from concrete cases. After all, foreign investors often have far more liquid assets at their disposal than Colombian companies and often also engage insurance companies. The negotiation process is also expedited by the fact that many foreign enterprises are in the habit of factoring these ransom and extortion payments as 'incidental expenses' into the annual budget.

Some well-informed sources²¹ state from their experience that the guerrilla usually starts by demanding US\$ 10 million dollars for a foreign middle ranking employee associated with a multinational company, and ends up negotiating for approximately 10% of that sum.

This would indicate an average ransom amount of US\$ 1 million per kidnapped foreigner. However, these estimates seem to be conservative and outdated. Reportedly, in October 2001 in the Colombian congress was denounced, that in one month only (September) two foreigners had been ransomed for US\$ 9.5 million and US\$ 7.5 million respectively.

5.3 A code of silence maintained by all

Why does everyone keep silent?

A wall of silence is erected, especially when the kidnapping concerns a foreigner. Each group, person or entity involved in a kidnapping case has reasons of its own to keep the information inside. **The judicial authorities** refrain from providing any information about kidnappings, arguing that process confidentiality forbids it. **Military authorities** and security organizations give security reasons for not revealing any further details about the kidnapping or how the investigation is proceeding.

Foreign entities that have to do with a kidnapping case in Colombia are, just as Colombians, obliged by law to report the crime to the Colombian authorities. In today's practice it is observed that the diplomatic representatives and the affected European enterprises often merely report to the Colombian anti-kidnapping authorities without their further involvement. The amounts of ransom paid for the victims seldom become known. Often it is reported to the *Fiscalía General de la Nación* (General Attorney's Office) that the victim was released for humanitarian reasons. Or a false amount of ransom is reported, less than the real one, and this is passed on to the media.²²

Usually, it is in the interests of the **foreign companies and the diplomatic representatives** of the victim to keep silent on the case. Too much openness can result in reprisals by the kidnapping parties. Furthermore, the companies risk losing their permit to operate in the country if they violate the anti-kidnapping law. The situation is even more precarious for the private companies that are partners in profit sharing agreements with the Colombian state.

The private (foreign) oil companies, for example, all operate in joint ventures with the state oil company Empresa Colombiana de Petróleos (Ecopetrol). Consequently, all contracts between private companies and the Colombian state must comply with the clause of Act 104 (1993) that invalidates the con-

tract if the contracting companies are seen to pay extortion or ransom money to illegal armed groups.²³ All private companies that enter into a contract with Colombian state entities can be sanctioned by this mechanism.

Colombian middle-level employees associated with European companies (in the mining, energy and chemical sector) interviewed by a Colombian researcher on behalf of this report, all commented that they knew that their employer was paying extortion and/or ransom money to one or another illegal armed group. They either participated directly in the negotiations or received this information at first hand. All of them requested their names be kept confidential. But the current high unemployment rate (20%) in Colombia is a good reason to avoid involvement. Also, there is the need of protecting one's life and family.

But the lack of information on kidnapping cases of foreigners can also be blamed on **the Colombian authorities** themselves. They often connive with the foreign companies to handle the case with a low profile, so as to secure the completion of the project in which the company is involved. Furthermore, too much publicity on kidnapping and extortion does not serve the authorities, because it could scare off potential foreign investors. Moreover, corruption plays a negative predominant role.

The **representatives of the Catholic Church and NGOs** with acknowledged integrity and neutrality that are asked for help in kidnapping cases, often remain uninformed on the details of the money transfer. They are requested either to receive the victim or to validate the 'humanitarian act', while the payment of the ransom is being done through paths unknown to the humanitarian. This kind of manipulation of the church and humanitarian institutions is called in the kidnapping jargon the 'el gancho ciego' (the blind hook/spot).

5.4 **The involvement of the foreign investor in Colombia**

The European Union; the major foreign investor in Colombia

In the year 2000, the European Union became the major investor in Colombia (to an amount of US\$ 528.6 million), while North American companies invested in the country to an amount of US\$ 158.2 million.²⁴

The statistics of the historical accumulation of direct foreign investment during the period 1995- June 2000 show that **Spain** was the major European investor in that period (9.9%), followed by **the Netherlands** (7.5%), **Germany** (2.5%) and **France** (2.3%). Both Spain and the Netherlands were quite modest investors in 1995.²⁵

Violence in Colombia endangers foreign investment

*The increase of Spanish and Dutch investments in Colombia is nevertheless an exception to the rule. It is undeniable that the poor security situation in Colombia has had a dramatic effect on the general investment climate in Colombia. European foreign investment in Colombia for 2000 decreased by 54% compared to the year before.*²⁶

Given the gravity of the security situation, one may consider it a small miracle that the country continues to be relatively attractive for foreign corporate investors. Most of them have serious safety concerns, as surfaced during a meeting of 220 representatives of multinationals operating in Colombia with President Pastrana on October 4, 2000.²⁷ The businessmen declared that they suffered from attacks on infrastructure, extortion and kidnapping. The general manager of the multinational company Hewlett Packard said that he considered an increase of investment under these circumstances very difficult. And the president of Comcel made public that the company lost three million dollars that year, as a result of attacks on telecommunication towers. Visits by directors from the home offices had become almost impossible.²⁸

Potential investors have also withdrawn from major business negotiations in the past, out of fear of threats, sabotage or kidnapping. The city of Bogotá for example in September 2000, had hoped to sell the phone company ETB for over US\$ 700 million to the Spanish and Italian companies Telefonica and Telecom Italia. According to the then mayor of Bogotá, the increasing violence in the country, such as the kidnapping and bombing of electricity pylons, prompted the potential investors to pull out.²⁹

Positive and negative effects of foreign investment in Colombia

Multinational companies located in poor rural zones can have a positive impact on the (economic and social) development of the region. Their presence sometimes produces an increase of low-skilled employment opportunities and an increase in the departmental government income through royalties. Unfortunately, the presence of foreign investors in rural zones also automatically implies the militarization of the area and an increase in violence. On being confronted with a strong guerrilla or paramilitary presence, foreign investors tend to submit to extortive threats and ransom demands from these illegal armed parties.

Several economic and sociological³⁰ studies have shown that accelerated economic growth as a consequence of (foreign) investment is a major factor in the increase in violence in a region.³¹ A detailed analysis of various cases of foreign investment in Colombia in rural areas shows that there is a clear relationship between the (temporary) presence of the multinationals in the region and the growth of the number of fighters, the number of attacks of illegal armed groups and their military growth.

Not infrequently, enormous foreign projects end up being a spur to the internal conflict. Examples of this are to be found in Cesar and Guajira, where there are coalmines (Drummond); in Urrá (Cordobá) where a hydroelectric plant is being built (Skanska); in the south of Bolivar where the largest auriferous reserve in Latin America is located (Placer Domme); in the east of Antioquia where the industrial sector is booming (FL Smith); in Arauca, Casanare, North of Santander, Putumayo, where the petroleum fields and the infrastructure to transport the crude oil are located (BP exploitation, Tipiel, Sicim, etc.).

Another danger related with foreign investment emerges when foreign companies start to invest in social projects in order to get approval from the local population. It is not unusual that illegal armed parties and corrupt politicians try to take advantage of the political capital generated by the foreign companies. A party that manages to present the zone's development as the result of its own effort is able to use this as a way to increase its social acceptance. Even more so when the foreign company accepts this party as an 'employment office', an unofficial intermediary between the foreign company and the unemployed people in the region that can decide on who will work on the project and who will not.³²

Example 1: The construction of the Bogotá-Villavicencio highway

A very telling example of how foreign investors operating in a rural area can bring about more violence by yielding to extortive demands, is the following case-study of the construction of the Bogotá-Villavicencio highway.³³

In 1994, the enlargement and reconstruction of the Santafé de Bogotá-Villavicencio highway was allocated to three different firms by virtue of a public tender: the first stretch of the highway, Santafé de Bogotá – Cáqueza, to the Spanish firm Dragados, the second stretch, Cáqueza – Pipiral, 33 kilometres, to the Brazilian firm Andrade Gutierrez, and the last one, Pipiral-Villavicencio, to the Italian firm Grandi Latori.

It is a well known fact in Colombia that the highway crosses zones controlled by the FARC (fronts no. 53, 52 and 51).

The firm Andrade Gutierrez was the first to start working on the enlargement and reconstruction of the highway in the zone. Shortly after having started the construction, the guerrilla commander of the 53rd front notified the company that they had to pay a *vacuna*, if they wanted to continue with their work. The management of Andrade Gutierrez refused. In order to step up the pressure on the company, the 53rd front kidnapped two Brazilian engineers who were working on the project on August 14, 1996. The ransom demands of the FARC amounted to US\$ 8 million. After eight months of negotiations, during which period the political tensions between Brazil and Colombia mounted, the ransom was agreed upon at US\$ 1.8 million.

The ransom was paid in cash, using old US\$ 100 bills. The money was brought over from abroad and picked up at the airport of Villavicencio, without any record of the transfer. Worse still, the Colombian authorities were not informed about the transport. The money transaction left no traces. Surprisingly, the two engineers were not released after the payment. Two days later, the negotiator of the FARC's 53rd front made an additional demand of US\$ 100,000.³⁴ Two weeks later, on March 7, 1997, the two engineers were ransomed for the additional amount.³⁵ After the two engineers were finally released in 1997, the victim's negotiators informed the farc's *Alto Secretariado* (executive board) about the additional amount that had to be paid to the 53rd front for the release. In reprisal, the 53rd front, blew up the Andrade Gutierrez' infrastructure of asphalt and crushing plants, as well as their vehicle storage facility, close to Guayabetal.³⁶ The losses were estimated at US\$ 10 million, compelling the company to suspend their work and resign from the contract.

During the construction of the third stretch of the same highway, the Italian firm Grandi Lavori was confronted with the kidnapping of a French engineer in October 1996. He was released on October 26. The Colombian army informed the public that the family of the victim had paid ransom, without specifying the amount paid. Grandi Lavori refused to make any statement on the subject, arguing that the engineer was not on their payroll, as he was the employee of a subcontractor.³⁷ However, two European companies Dragados and Grandi Lavori, continued working on the highway. No new guerrilla harassment was reported. The tunnel, part of the second stretch of the highway, was completed by Dragados on time, according to the terms and conditions of the contract.

However, this last success story produced scepticism among well-informed public observers because the same fronts of the FARC remain in control of the region. Their political and military position became even more favourable with the *zona de despeje* (demilitarized zone) at a short distance from the zone where European companies are working. It seems more plausible to presume that the companies, in tacit agreement with the authorities, have given in to the extortive demand, and that the wall of silence has been erected once more.

Example 2: Occidental and the U'wa Indians

Another – very cynical – example of how foreign investors operating in a rural areas generate (more) violence by yielding to extortive demands, is the tragic case of the oil company Occidental in the U'wa territory. Some fronts of the FARC, viewing developments in the drug business with apprehension, increased the extortion of multinational companies. It is assumed by insiders that the oil company Occidental (Oxy), which aimed at exploring oil fields in the FARC dominated region, made previous agreements with the rebels (front 'Samoré') allowing the American company to operate in the region between Arauca and Boyacá. The U'wa indigenous communities, to whom the territory historically belonged, objected to the invasion of the oil company in their

'holy' native lands. This resistance of the U'wa communities was backed by the ELN, which also claimed dominance over the area.

In order to safeguard their 'oil business', in 2000, the FARC killed the ELN envoys that came to negotiate the fact that the FARC was operating in their sphere of influence. Many international protests surfaced when the FARC had the audacity to kill American environmental activists who were defending the U'wa.³⁸

5.5 **The energy and engineering sector**

Legal defence, against illegal actors?

Foreign companies in the oil, energy, mining and road engineering sectors in rural areas – usually not under the control of the national security forces – are especially prone to sabotage, extortion and kidnapping. The crude oil export pipeline Caño Limon-Covenas was bombed no less than 79 times in the year 1999.³⁹

From negotiation to security measures

The common policy of the oil companies in the seventies/eighties to counteract kidnappings and sabotage attempts, was to negotiate with the guerrilla groups. But later they added the fortification of their internal security systems to this policy, in cooperation with the Colombian state, and since the protection did not suffice they sought the protection of private security organizations.

At the end of the eighties their security measures had reached an acceptable level, and the negotiations were pushed into the background. The oil and mining companies focussed on defence and security measures and included a fixed entry for security expenses in their annual budget as well as for repair costs related to acts of sabotage and ransom money. A spokesman of state company Ecopetrol stated that the company allocates US\$ 600,000 dollars daily to these kinds of costs and estimated that each foreign oil company spends more or less the same amount on security.⁴⁰

Extra protection through war tax

Traditionally, foreign oil and mining companies had to pay the so-called 'war-tax' to the Colombian state. The tax entitled these companies' installations and personnel to extra protection from the Colombian national security sector.⁴¹ The total number of members of the public forces dedicated to guarding oil sites in Colombia, grew

*enormously in the 1990s. It was stated that in 1996, 10,000 Colombian soldiers, out of a standing army of 120,000 soldiers, were allocated to this task alone.*⁴²

The war tax arrangement between foreign companies and the Colombian state soon gave rise to controversy. The largest single foreign investor in Colombia, BP (British Petroleum) Amoco started to operate in northern Colombia in the 1989. BP turned to the army for extra protection against guerrilla threats and attacks and came to an agreement with Ecopetrol (here in the capacity of BP Amoco's state-owned partner) and the Ministry of Defence. It was alleged by human rights groups that BP failed to stipulate that the local army regiments would refrain from human rights abuse. According to them, members of the local civil protest movement became targets of army violence and accusations surfaced that BP security personnel had handed over photographs of community protest meetings (against the environmental damage caused by the oil company) to the army.⁴³ Human Rights Watch and several other NGOs went as far as claiming BP's Colombian office was complicit in murder, torture and intimidation by employing state security forces.⁴⁴

These and similar critiques did not fail to generate an effect. The company began to communicate more openly and proactively with key stakeholders in the region on matters of security, environment and social policy.⁴⁵ A new agreement between BP Amoco, Ecopetrol and the Ministry of Defence was developed, in consultation with human rights NGOs. This agreement contains human rights and auditing provisions.⁴⁶ BP was one of seven US and UK oil and mining companies to sign a voluntary code of conduct in December 2000, pledging that their security operations would meet minimal human rights standards.⁴⁷

Extra protection through private security

Because the official military protection of the national army was insufficient to scare off the guerrilla aggression, the companies decided to strengthen the increased state protection with private security services. Controversy on the role of private security companies soon followed. Much commotion surfaced relating to the contracting by foreign oil and mining companies (BP, Total and Triton Corporation in combination with Ecopetrol⁴⁸) of the private security company Defence Systems Colombia (DSC).⁴⁹ A first such contract concluded in 1992 "was to train a 540-strong police unit, provided by the Colombian National Police (which in 1996 signed a US\$ 2 million three-year agreement with BP) to protect the oil rigs". DSC, with BP's security division, trained this unit in 'defensive tactics' such as safety, first aid and liaison with public forces.⁵⁰

BP, however, maintains that DSC did not 'train' the police unit, but that the private security company was only hired to provide security advice: DSC "was to

detect that the police members assigned to the protection of the oil infrastructure needed better training from their institution (the National Police). The Colombian National Police provided this training to their men and women assigned to protect the oil installations... To *provide* military training is illegal in Colombia for nationals who are not members of the armed forces, or for foreigners acting without a public assistance agreement between governments. This and all other allegations against DSC... have been investigated by the Colombian Human Rights Prosecutor, after petition of BP, who found no truth in those allegations".⁵¹ However new allegations against BP Oil have been brought up in the press, accusing the company of cooperation with paramilitary groups.

The very character of the Colombian conflict creates the dilemma foreign companies are confronted with; how to abide the law and protect oneself in a legal way against an illegally operating armed force?

5.6 **Towards a code of conduct for European investors?**

The extreme reservedness of European investors

Questionnaire among European investors in Colombia

On the authority of Pax Christi Netherlands, the Belgian research institution IPIS conducted a survey into the experience of European investors in Colombia in the areas of extortion, kidnapping and general security. Based on an official list of the Colombian state institute COINVERTIR, a questionnaire was sent to the almost 200 registered European investors in Colombia in 2000.⁵² All companies had been assured that these questionnaires were being handled as strictly confidential. The companies could skip questions or fill in the form anonymously. The companies that did not respond were contacted directly by e-mail or phone so as to confirm that the questionnaire had found its way to the right desk.

Out of the 200 European investors in Colombia, 43 companies responded to our attempts to establish contact. In the end, 14 companies – that is only 7% of the total number of European investors in Colombia in 2000 –, were prepared to reveal part of their experience through the questionnaire or in another way.

Five companies declared openly to have witnessed threats, extortion and/or kidnapping in the past. The majority of the 14 companies claimed not to have experienced any security problems so far, or did not answer the questions 'because of security reasons'. However, approximately half of the 14 companies stated they take special security measures, such as private security arrangements, kidnapping insurance and extra support of the local public security forces.

A minority of the European investors in Colombia that were approached say they are not in favour of a public debate about a Code of Conduct on kidnapping and extortion for European investors in Colombia. One of the companies stated that “such issues are best left to individual companies to resolve and that a Code of Conduct would of little use”. Nevertheless, a majority of the companies involved (9) clearly stated that they welcome the development of a Code of Conduct. A company pleaded that “it is important that such a discussion will not be led by vulnerable private companies with interests in Colombia, but by NGOs that can present themselves as advocates of the common good of the international community”.

European investors and the policy of non-payment

As was stated in chapter 3, civil movements in Colombia have advocated the idea that foreign investors in Colombia should adopt a common policy of non-payment, since their ransom and extortion payments are considered to be a major incentive for further kidnapping and violence.

British Petroleum (BP), that operates a major part of Colombia's oil exploitation infrastructure, is an example of a European multinational that makes it an explicit policy commitment not to bargain or give in to extortionist demands.⁵³ BP's option not to yield to the guerrilla's extortion campaigns in Casanare has been 'reprimanded' in several ways. The company and its local subcontractors have effectively been facing extortionists' demands, and personnel has actually been kidnapped near the premises of BP's compound in Casanare.⁵⁴ “Several explosive devices have been set against the wells (...) and many employees have received threats. Since 1988, 15 men of the army and police assigned to the protection of the oil infrastructure that we operate, have been killed while protecting these installations. More than 20 have been injured”.⁵⁵

BP's explicit policy to strictly comply with Colombian governmental policies are meant to be seen as a clear signal to common criminals and guerrilla active in the region of Casanare that it will not easily yield to their demands. But it could also partly be explained by the fact that BP risks losing its contract with the state company Ecopetrol, if the state should find out about payments to the illegal armed parties. A practice that once was common, according to a former Mannesmann project leader. It is also being alleged that despite this formal corporate policy of non-payment, ransom money is reimbursed to the family of kidnapped employees.

Towards a European Code of Conduct?

Foreign investors and Colombian civil society have a common interest: to promote a healthy investment climate. This implies discouraging violence, kidnapping and extortion.

A possible code of conduct for European investors in Colombia to discourage kidnapping and extortion, include guidelines, standards and procedures agreed upon by all groups involved. The parties involved (such as European companies, authorities, NGOs as well as representatives of Colombian civil society) will face the following issues, dilemmas and challenges.

- **The investment dilemma in countries in conflict**

Investment in countries with an internal armed conflict raises complicated dilemmas regarding the security guarantees of employees. An increased tendency can be observed among multinationals to rely on the services of private security organizations or illegal armed groups. With respect to the employment of illegal armed forces, this creates serious problems in the field of human rights.

- **To pay or not to pay?**

Foreign investors feel responsible for the wellbeing of their employees and their families and tend to yield to extortive demands. At the same time they could realize the devastating consequences of ransom and extortion payments, that keeps the war industry going.

- **Anti-kidnapping insurance (chapter 6)**

- Is there a causal relationship between anti-kidnapping insurance and the increase of amount of ransom payments?
- Should foreigners be permitted to circumvent Colombian legislation of non-insurance?
- Is the fact that foreigners are in the economic position to obtain an anti-kidnapping insurance, discriminating for Colombians who lack the economic potential to buy the same services?

- **Fostering participation**

A code of conduct is a voluntary agreement. But if not all investors adhere to the (same) code, perpetrators will always be able to play off countries and companies against one other, as is common practice today.

- **Monitoring the possible code of conduct**

Few companies will be sincerely in favour of external monitoring. National NGOs are in a vulnerable position for this task and moreover not infrequently viewed as partial. Without effective external monitoring, a code of conduct could easily result in an instrument for corporate propaganda. Could international monitoring be an alternative?

-
- 1 Quoted by Gómez I., *La última misión de Werner Mauss*. (Santafé de Bogotá, 1998) 115.
 - 2 In the early eighties, huge new oilfields in the northeast Colombian region of Arauca were discovered, where guerrillas of the ELN were active. The American oil company Occidental Petroleum, present in Colombia since the early eighties, got the concessions for operating the Oilfields, the future yields of which were estimated at 200,000 barrels a day, according to the above-mentioned Mr Zipfel.
 - 3 At the end of 1989, Oxy would sell the pipeline and the licence to Shell for two billion dollars. The American company then left Colombia and another European oil company came in: British Petroleum.
 - 4 Letter of Mr. Georg Zipfel, ex-employee of Mannesmann Anlagenbau AG, to the German bishop Dr. Karl Lehman, dated March 20, 1999. In a letter to the German bishop Dr Karl Lehman, dated March 20, 1999, Mr Georg Zipfel, ex-employee of Mannesmann Anlagenbau AG, gave testimony of his experiences with Mannesmann in the period that the kidnappings took place.
 - 5 Valencia, L., *Secuestro, extorsión y guerra en Colombia*, Survey composed for Pax Christi Netherlands (Bogotá 2000) 4. The discrepancy between the testimonies of the former project manager on the one hand and the ex-member of the ELN and father Manuel Perez on the other hand, is probably due to the fact that the German manager left Mannesmann in 1984, before the end of the kidnapping ordeal.
 - 6 Medina, C., ELN: *una historia contada a dos voces* (Santafé de Bogotá 1996) 150.
 - 7 The former 'right hand' of ELN commander Perez stated to Pax Christi that during the eighties the ELN negotiated with Oxy the payment of 70 million dollars in extortion, a 'non-aggression agreement' for which—at the proposal of Oxy—the Cuban leader Fidel Castro would serve as a guarantee. But because of a gradual change of policy of the Colombian government as well as the multinationals, the policy of tacit cooperation with the guerrilla turned into seeking security and fighting the guerrilla, and thus the negotiation finally failed. Castro never believed that the ELN did not receive that money.
 - 8 Medina, C., ELN: *una hisotria contada a dos voces*, 150.
 - 9 "ELN tiene recursos en el exterior", in: *El Espectador*, October 29, 2000.
 - 10 DAS (Departamento Administrativo de Seguridad) *Temática Cuestionario Pax Christi* (Bogotá 2000)
 - 11 DAS, *Temática Cuestionario Pax Christi* (Bogotá 2000) 10.
 - 12 Ibidem.
 - 13 The former kidnapping Tsar referred to is Mr. Dario Ramirez. Gómez Maseri, S., "Secuestro en Colombia golpea al mundo", in: *El Tiempo*, March 29, 1999.
 - 14 Article in the newspaper *El Espectador*, June 10, 1999, page 6A.
 - 15 Valencia, L., *Secuestro, extorsión y guerra en Colombia*, Survey composed for Pax Christi Netherlands.
 - 16 Fundación País Libre, *Secuestros de extranjeros en Colombia durante los años 1996, 1997, 1998, 1999* (Boletín de prensa). "Extranjeros secuestrados por las FARC." In: *El Espectador*, January 1, 2000.
 - 17 Gómez Maseri, S., "Secuestro en Colombia golpea al mundo", in: *El Tiempo*, March 29, 1999. Their sources are the former anti-kidnapping Tsar Rubén Darío Ramírez and the Fundación País Libre.
 - 18 This explains the remark by Demetrio Piras, an official of the Italian police forces, who stated that between 1994 and 1999, 29 Italians were kidnapped in Colombia, while in that same period of time only 5 persons were kidnapped in Italy. "In Colombia more Italians are kidnapped than in Italy", in: *El Tiempo*, September 10, 1999.
 - 19 Sources for the information in this graph: Fundación País Libre (1990 - 1994; 1996 - 2000) and the Colombian Ministry of Justice (1995).
 - 20 Information obtained through an interview with Mr. E. Westropp, dated November 11, 2000.
 - 21 Information obtained from a person (active in a humanitarian project) who has participated in the mediation of eight kidnap cases involving foreigners, and other persons who mediated sporadically in kidnap cases.
 - 22 There are other reasons why it is so hard to trace down the amounts of ransom paid by foreign companies and organizations. Payments are made in cash, or through operations abroad disguised as legal operations, in which Colombian authorities have no competence to investigate. Sometimes the cash arrives from abroad in an airplane rented for the occasion and further transported by helicopter to the negotiators, who will carry it on to the guerrilla force at an agreed meeting point.
 - 23 By article 45 of law 104 of 1993, (altered by Ley 241 of 1995).
 - 24 Direct European investment in Colombia, excluding portfolio investments and oil investments. Comisión Europea en Colombia, *Evolución de las relaciones comerciales Colombia-Unión Europea*, (Santafé de Bogotá 2001) 19.
 - 25 The investment percentages of Spain and the Netherlands in 1995 were 1.3% and 2.6%, respectively. Comisión Europea en Colombia, *Evolución de las relaciones comerciales*, 20.

- 26 “Cumbre/ Pastrana solicita confianza en el País”, in: *El Tiempo*, October 5, 2000. Comisión Europea en Colombia, *Evolución de las relaciones comerciales*, 19.
- 27 Oficina de Prensa “De avances en proceso paz depende mayor inversión: multinacionales”, October 5, 2000.
- 28 El Tiempo, “Cumbre/ Pastrana solicita confianza en el País”, October 5, 2000.
- 29 “Colombia Considers Fund for Rebels”, in: *The Associate Press*, September 21, 2000.
- 30 On this respect, see: Bejarano, J. *Colombia: inseguridad, violencia y desempeño económico en las áreas rurales*. (Santafé de Bogotá, 1997). Deas, M., and Gaitán, F., *Dos ensayos especulativos sobre la violencia en Colombia*. (Santafé de Bogotá 1995). Rubio, M., *Crimen e impunidad. Precisiones sobre la violencia* (Santafé de Bogotá 1999).
- 31 Bejarano, J., Colombia (Santafé de Bogotá 1997) 22.
- 32 The ELN, for example, set itself up as intermediary between Mannesmann and the local communities in the region in the 1980s and made Mannesmann accept their ‘indications’ regarding the recruitment of personnel and the communitarian development aid. As the members of the local communities depended highly on the new economic activities in the region and the development aid, they also accepted the role of the ELN as go-between, and were even prepared to follow some of their more concrete instructions. Peñate, A., “El sendero estrategico del ELN”, in: *Reconocer la guerra para hacer la paz*, 53-98.
- 33 Abstract of Meluk, E., *El secuestro en Colombia y las multinacionales Europeas*, survey composed for Pax Christi Netherlands (Santafé de Bogotá, 2000).
- 34 In Colombia, this kind of non-compliance with a verbal agreement is known as *hacer conejo* (literally: ‘to make a rabbit’, but it means ‘to swindle’).
- 35 In that time only a Sao Paulo newspaper confirmed the second payment. “El viacrucis de dosbrasileños secuestrados”, in: *El Tiempo*, March 16, 1997, 9.
- 36 “Espanto en la vía al Llano”. *El Tiempo*, April 14th 1997, p. 9A.
- 37 Colombian National Army, *Epitafio de los Inocentes*. Human Rights Office. Fifth Division (Santafé de Bogotá 1998).
- 38 Valencia, L., *Secuestro, Extorsión y guerra en Colombia*.
- 39 Reuters, *1999 was record year for Colombia petro-guerrillas*, Press release January 4, 2000.
- 40 Valencia, L., *Secuestro, extorsión y guerra en Colombia*, 6.
- 41 Today this tax is no longer in force.
- 42 Stated by Dr Merlano, vice-president for social development of Ecopetrol (the Colombian state owned oil company) in 1996. Valencia, L., *Secuestro, Extorsión y guerra en Colombia*, 6.
- 43 McDonald, G., *Exploring natural resources as a fuel for conflict*, Internal SCIAF document, draft, June 1, 2001, 13.
- 44 Atkinson, M., “BP pressed to vet army protectors”. In: *The Guardian*, 21/04/1998.
- 45 As evidenced by Aidan, Davy et al., *BPXC’s Operations in Casanare, Colombia: Factoring social concerns into development decision-making*. Social Development Papers n° 31, The World Bank, July 1999.
- 46 Frankental, Peter & House, Frances, *Human rights: Is it any of your business?* London: Amnesty International/ The Prince of Wales Business Leaders Forum (2000) 114.
- 47 This voluntary code of conduct resulted from a dialogue between the US State Department, the British FCO and human rights NGOs and unions. The seven companies were: Chevron, Texaco, Conoco, BP, Shell, Rio Tinto and Freeport MacMoran.
McDonald, G., *Exploring natural resources as a fuel for conflict*, Internal SCIAF document, (draft) June 1, 2001, 16.
- 48 This joint venture develops and operates the Santiago de las Atalayas oil fields and transports crude oil by way of the Ocesa pipeline system.
- 49 DSL’s Colombian subsidiary (see chapter 6).
- 50 Goulet, Y., “DSL: serving states and multinationals”. In: *Jane’s Intelligence Review*, June, 2000, 47.
- 51 E-mail from BP London headquarters, September 28, 2000.
- 52 COINVERTIR, *Compañías Extranjeras en Colombia*. The total number of foreign investors on the COINVERTIR list was 417.
- 53 Information obtained from BP staff at BP’s London headquarters.
- 54 Peñate, Andrés, *Arauca: Politics and Oil in a Colombian Province*. (Oxford 1993)
- 55 Information obtained from BP by e-mail June 1, 2000.



6. *Controlling the risk?*

DISCUSSIONS ON PRIVATE SECURITY ARRANGEMENTS AGAINST KIDNAPPING¹

Colombia has a large variety of official state-funded organizations responsible for the security of individuals and organizations. Unfortunately, these organizations are totally unable to provide for the safety of Colombian citizens and companies operating in Colombia. This is a result of the lack of state security structures in the countryside and the fact that these organizations have proved to be insufficiently equipped to deal with the severity of the security problem. The effectiveness of these institutions is also undermined by corruption.

It is therefore no surprise that many in Colombia, especially foreign corporations, turn to private security contractors as a way of complementing state-assured security. The fact is that the Latin American market for private security, including Colombia, was estimated to have grown by 12% annually in the mid 1990s, making it the world's second-fastest growth region after Eastern Europe.² This market is served by a variety of companies whose size ranges from the very modest (e.g. local companies that guard buildings and private individuals) to large multinational business groups.³ The larger private security service providers are often part of a larger holding with an arms manufacturing subsidiary, or with links to insurance companies offering special packages for minimizing personal and financial risks.

This vast market for corporate security services in Colombia is addressed by many different providers. Defensive security services seek to provide protection to private persons, employees, installations and assets through surveillance, deterrence and protection. However, these kinds of private security services are beyond the scope of this paper. The following three sectors of the private security market deal with kidnapping and extortion problems:

- a. risk assessment, including all manner of consultative services;
- b. the kidnap and ransom insurance services (including kidnap and ransom packages);
- c. 'curative' services, such as crisis management and kidnap response services, which are rendered to resolve an actual crisis.

Insurers and private security companies tend to stress the positive effects of their services. But the question is whether the fast growth of the private security market will indeed lead to a significant improvement of the safety situation in Colombia in the long term. Or will these services just fuel kidnapping and extortion practices, because potential kidnapper and terrorists are assured of easy payment? These questions seek to stimulate the discussion among corporate executives, civilians, private security companies, insurance companies and politicians.

6.1 Risk assessment

Risk assessments include all kinds of consultative services that seek to prevent kidnapping and extortion. A well-known form of risk assessment is known as the information service on actual security developments in the country. Kroll Inc., for example, issues 'country risk assessment reports',⁴ that are bought by governments and by (multinational) corporate groups in order to minimize risks for their staff and installations. The Ackerman Group provides relevant security information, actual developments and detailed studies of former cases through a 'Risk Net Service'. The subscription fee is US\$ 8,500 per year (in 2000).

Other kinds of risk assessment offered by private security companies are customized advice on preventive security measures, training in 'defensive tactics', and security advice for personnel.⁵ For many European and American private security firms currently operating in Colombia, assessments of this kind are their core business.

6.2 Kidnap and ransom insurance services

Lloyd's of London began selling kidnap and ransom insurance after the Lindbergh kidnapping in 1932.⁶ Nowadays, the Hiscox Group at Lloyd's writes approximately 5000 policies a year, amounting to 60% of all world business, and is said to control 50% of the kidnap insurance market in Latin America.⁷ It is understood that Hiscox (Lloyd's) pays out for about thirty kidnappings a year, but the group itself refuses to release names or details of ransom payments made in the past. The American insurer AIG is the second largest kidnap and ransom insurer in the world, followed by the New Jersey-based Chubb. Some of the insurance policies on offer from these companies cover a possible extortion demand as well.

Since Colombia is considered to be a high-risk country, the premiums imposed by the insurance companies are among the highest in the world. An annual premium for a family of five ranges from US\$ 18,000 to US\$ 30,000 a

year, and would cover up to a US\$ 1 million ransom request. Premiums of US\$ 70,000 would provide cover for US\$ 5 million. AIG claims that cover is even available for US\$ 50 million per insured loss in the event of a kidnap or extortion incident.⁸

Kidnap and ransom insurance forbidden under Colombian law

Lloyd's of London considers kidnap and ransom insurance to be a legitimate insurance product. "Societies faced by the threat of assassinations, kidnappings, or other misfortunes, whether politically or criminally inspired, look to governments for protection (...), then realizing that total security is not possible and is very expensive, they seek to shift the losses of the few to the shoulders of the many by means of insurance".⁹ The insurance company fails to add that it is actually forbidden in Colombia to sell kidnap insurance policies. Colombia's legislation (see chapter 3) actually penalizes vendors of kidnap and ransom insurance in Colombia. The Colombian *Superintendencia de Sociedades* from which insurers must obtain a license to operate in Colombia, have the power to effect a sanction.¹⁰

Insurance companies circumvent Colombian legislation

Confronted with this law, insurance brokers began to evade it by contacting the potential clients in Colombia and selling them insurance policies outside Colombia. After contacting the potential client in Colombia, through an insurance salesman, and after agreeing the type of the insurance policy, the company pays for the journey abroad necessary for signing the documents.

The insurance policy is always paid in American dollars.¹¹ Initially this business was done in Panama, later in other Central American countries and Miami, and finally in Europe itself.¹² The Miami-based company Seitlin & Company Insurance, for example, operates in this roundabout way, and has become one of the most successful sellers of kidnap and ransom insurance in Colombia, which they call 'Special Insurance of Indemnification'.¹³ The above-mentioned Lloyd's of London operates in Colombia in the same way, doing business as 'Nicholson Leslie Group Special Risks'.¹⁴

Most foreign companies that send their employees to Colombia, circumvent the Colombian law by buying insurance in the country where the insurer is based. In other words, the employee arrives in Colombia insured. Legally, the multinational companies cannot be prevented by the Colombia state from insuring their expatriates in this way. Likewise, foreign companies cannot be prevented from insuring their Colombian national employees under their corporate kidnap and ransom insurance.¹⁵ Some multinationals have an explicit policy of non-insurance. The oil company British Petroleum (BP), for example, claims not to insure their employees against kidnapping.¹⁶

How safe are kidnap insurances?

A spokeswoman for Hiscox (Lloyd's) admits that "if it becomes common knowledge that a person has kidnap insurance, then this person is much more likely to become a target".¹⁷ Therefore, kidnap and ransom insurance clients are asked to keep a low profile, and to withhold information on actual ransom payments, so as not to wet potential kidnappers' appetites for more insured hostages. As part of the kidnap and ransom agreement through Lloyd's, the underwriters or the insured individual are not permitted to reveal to anyone that they have such cover.¹⁸ Kidnap and ransom insurance packages offered by other insurers contain similar confidentiality clauses.

To secure the anonymity of the policyholder, it is also common practice for companies not to insure their employees as private persons, but merely to insure their position as an employee. The employee concerned is often even unaware whether his or her position is insured. In any case, whether the client is a private person or a company, the policies never carry names, but a secret code instead. This secret code is supposed to be known only by the insurance company and the client's senior management.

However, despite the security measures, the system is not perfect. Several cases in the past have shown that the kidnappers had access to detailed information on their victim's insurance policy. Are there 'spies' operating in the companies?

For example, when the wife of a former president of BASF, a German multinational corporation, was kidnapped in Medellín in 1996, the first communication sent by the kidnappers referred to the fact that the hostage was insured for US\$ 6 million.¹⁹

Evidence of leaks was also revealed in a case involving the members of the Colombian Jewish community. In 1984, the M-19 and ELN guerrilla groups started to abduct rich businessmen and industrialists of the Jewish community, who had taken out individual kidnap and ransom insurance for themselves from English companies. Apparently, guerrilla factions had succeeded in infiltrating the insurance file-keepers through a member of the Jewish community, and actually obtained names and information on the amount covered by their kidnap and ransom insurance. From 1984 to 1989, there were more than 40 kidnapping cases, one after the other, of insured members of the Jewish community. In all these cases the negotiator and mediator between the family and the kidnappers was the same man, Víctor Sassón. These suspicious extortions eventually came to an end after the assassination of Sassón, who was suspected of having provided the information to the guerrillas in the first place. The assassination is attributed to the Israeli secret service Mossad.²⁰

6.3 *Crisis management* (including kidnap response services)

Kidnap and ransom insurance packages

All three major insurance companies Hiscox (Lloyd's), AIG and Chubb offer special insurance packages against kidnapping and extortion, which are known as kidnap and ransom insurance packages. These packages always include risk assessment, kidnap insurance and crisis management services as a bundle. The insurance companies usually enlist specialized crisis management companies that have to deal with the kidnapping or extortion. The insurer Hiscox uses the London-based Control Risks Group (CRG), the insurance company AIG uses Kroll, and Chubb uses the Miami-based Ackerman Group. The insurance consortium PIA-Nassau Europe, in turn, offers insurance arrangements that are linked to Corporate Risk International (CRI).

Crisis management services

Some private security companies advertise that they provide expertise on "how to respond at the start of a kidnapping and/or extortion incident". The services they render with regard to such incidents are usually referred to as crisis management. The kidnap response is a special form of crisis management that aims to solve the acute crisis of the kidnapping.

Kidnap response services may include four kinds of operations: contacting the authorities and helping them apprehend the kidnapers, contacting the kidnapers in order to negotiate the ransom, assisting with the delivery of the ransom to Colombia, and actually handling an effective exchange of the ransom for the kidnap victim.²¹ Crisis management is a 'milder form' of kidnap response service, in which the security company does not negotiate directly with the kidnapers. The crisis management (and kidnap response) teams concerned work either directly for the client in distress or for the insurance company that provides the victim's kidnap and ransom cover.

Private security companies that render crisis management services

The largest company in this segment of the private security industry is **Kroll Inc.**, established in New York in 1972 as Kroll Associates. Kroll Inc. has no office in Colombia, but sends out personnel to perform kidnap response operations.²²

Kroll's main competitor in this market segment is the **British Control Risks Group (CRG)**. CRG was founded in 1975 in London.²³ Today's CRG kidnap team renders crisis management services to kidnap and ransom insurance contracts written by Hiscox of Lloyd's. CRG has been active in Colombia since the eighties and since then it has dealt with more than 103 abductions and 43 extortion cases.²⁴ This Colombian branch office opened on March 22, 1985 under the name of Control de Riesgos. The date coincided with the arrival of Mr Werner Mauss (a German private detective and kidnap negotiator sponsored by the Kohl government, see chapter 7) in December 1984.

A few smaller private security companies that also render kidnap response services claim to maintain ‘an insurance partnership’ with reputed insurance companies. From 1978 onwards, former CIA agent **Mike Ackerman’s** firm from Miami dispatched response professionals to recover hostages insured by the Chubb Insurance company.²⁵ Ackerman is well known as a hostage negotiator, but also renders other counterterrorism services. Ackerman’s clients are said to “include some 65 of America’s top 100 multinationals, along with numerous European and Japanese companies”.²⁶ Corporate Risk International (CRI) is a relative newcomer to kidnap response and is based in Fairfax, Virginia.²⁷

The kidnap response firms charge considerable fees per day for their operations. Ackerman charges US\$ 2,000 per day plus expenses (1996). If a second agent is needed they bill an additional US\$ 1,350 per day.²⁸ Considering the fact that hostage negotiations can last several months, the total bill can rise to well over one hundred thousand dollars. CRG works on a fee-paying basis of about US\$ 2,000 a day plus expenses.

Kidnap response activities under Colombian Legislation

Kroll states that the anti-kidnapping law (1993) “did little to diminish abductions or the payment of ransoms, and has since been modified in several ways. In short, Colombian courts have ruled that individuals or organizations acting on behalf of the best interests of a kidnapping victim are within the bounds of the law if they comply with government procedures and protocols.”²⁹

This statement by Kroll in itself is correct, but it does not correspond in all respects with the official reading of the Colombian anti-kidnapping law, and of relevant Corte Constitutional rulings. As was stated above in Chapter 3, this law, as a rule, forbids ransom payments and the handover of ransom to terrorist organizations. The law only provides for a very limited number ‘*causales de justificacion*’ (justified causes) to detract from that rule. Payments are actually allowed only on humanitarian grounds.³⁰ So, according to the law, every person who is seen to obtain a profit from the transaction of ransom is committing a crime. This leaves a very narrow margin in which kidnap victims and their relatives can act and can receive assistance in resolving a kidnapping case.³¹

Private security companies operating in Colombia are not allowed to negotiate directly with kidnappers for ransom. The fact that some private security companies insist on calling their services ‘crisis management’ instead of kidnap response services, implies that they are well aware of this. However, there is no legal way to prevent these private companies from advising clients to pay ransom.

Control Risks claims that they stick to crisis management services in Colombia, and that this does not include kidnap response services. This means that they do not directly negotiate with the kidnapers, nor deliver ransoms, but rather advise the family and companies on how to deal with the crisis.³² In practice, however, there is little difference, because the advisor will very often recommend hiring a negotiator, who he will work closely with.³³

6.4 *Kidnap insurance and response; the discussion*

As of the mid 1980s, both the selling of K&R insurance policies and crisis management services have been severely criticized. A series of initiatives that sought to alter the situation were launched as a direct consequence of the 1986 high profile kidnapping of Jennifer Guinness. Ms Guinness was kidnapped by criminals who were suspected of having ties with the Irish Republican Army, and they demanded a US\$ 2.6 million ransom. When newspaper articles made it public knowledge that CRG was working this case, British members of Parliament called for the prosecution of CRG and of its kidnap and ransom insurance underwriter for breaching prevention of terrorism laws. A top police official told the press: "Private security firms such as the one called on in the Guinness kidnappings are operating at the very frontiers of official tolerance".

The Irish government, making the charge that the availability of kidnap and ransom insurance was an incentive to kidnapers, lobbied the European institutions for a Europe-wide ban on kidnap and ransom insurance.³⁴ This initiative was not taken up, but the discussion on kidnap insurance and on the legitimacy of kidnap response services has not been silenced.

Objections to kidnap insurance services

In Colombia, NGOs such as País Libre, the authorities and journalists have stated that the kidnap and ransom insurance business has several negative effects. The following arguments were put forward.

In the first place, these services are deemed by Colombians to be **an incentive for more kidnappings and easy payment**. In spite of the fact that Colombian law actually forbids taking out kidnap and ransom insurance, it is beyond doubt that the kidnap and ransom insurance trade boomed towards the end of the 1990s. According to Kroll Inc., nearly all top-level foreign executives in Latin America are covered by kidnapping and ransom insurance. Of the local managers employed by foreign investors, about 50% are assumed to be covered.³⁵ Several incidents have proved that standard confidentiality measures are unsuccessful in preventing information on kidnap and ransom-insured clients from leaking out of the insurers' vaults. Once kidnapers are aware that their victim (or potential victim) is insured, the likeli-

hood of a kidnapping and the size of the ransom negotiated are both sure to rise.

But even without the leaking of information, it is clear that the mere knowledge that the majority of foreign investors are insuring their employees (foreign as well as national) makes them a rather lucrative prospect for potential kidnappers. They know that the kidnapping of these employees (whether insured by a commercial insurance policy or by 'internal insurance') guarantees the payment of a considerable ransom.

Secondly, kidnap and ransom insurance can also lead to *autosequestro* (the kidnapping of oneself). In that case an employee or private person with kidnap insurance contacts the potential kidnapper to arrange to be kidnapped in exchange for a part of the insurance money. This is no hypothetical risk, because such *autosequestros* have indeed taken place. A telling example of *autosequestro* took place in 1997, on a cruise ship moored in the harbour of Santa Martha. A ransom of US\$ 5,000,000 was paid.³⁶

Furthermore, some Colombian organizations have pointed out that they consider the K&R insurance **discriminating for Colombians**. Strictly speaking, those who obtain kidnap and ransom insurance outside Colombia do not violate Colombian law, but do participate in a system that undermines Colombian anti-kidnapping policy. This system excludes the vast majority of Colombians, who are in no position to circumvent legal obstacles to obtaining kidnap and ransom insurance packages abroad. The premiums of the insurance policies are far beyond their reach. Others may well be in a position to afford kidnap and ransom insurance, but they or their families will never benefit from privately contracted kidnap and ransom packages by virtue of being an employee of a state institution or a company that operate on contracts with Colombian state entities (such as Ecopetrol).

Arguments issued by the insurance companies

The insurance industry has come forward with several arguments to clarify their activities. They argue that it is unlikely that the insurance business fuels the kidnapping industry, because **only 5% of all victims are likely to be insured**.³⁷ According to them the question of whether companies are or are not insured against kidnapping and extortion is not relevant. Kidnappers are being attracted by the wealth of the company, and not by an insurance policy. Many multinationals do not even carry such insurance, but they set aside a certain amount of their annual budget to cover the costs of a possible kidnap or extortion incident. For large companies this 'internal insurance' turns out to be more economical than commercial insurance cover.³⁸

They also consider the chance that the names of insured clients will leak out to be almost zero, since the insurers handle their kidnap and ransom product with maximum confidentiality and oblige their clients to do the same.

Discussion on crisis management; arguments of the security companies

With respect to management and kidnap response services, the private security companies argue that the mortality rate among kidnap victims is much higher among the uninsured than the insured. This claim is based on the notion that consultants of private security firms are considered to be **professionals**. Relatives of the victim trying to deal with the kidnapping on their own are more likely to commit fatal errors. For example, professionals feel less time pressure than the family of the victim and a common strategy they use is to prolong the negotiations for at least three months. After this period the ransom demands tend to go down drastically. According to CRG, human rights organizations and other groups that work on a non-profit basis are simply less experienced than the consultants of private security companies.³⁹ Notwithstanding this opinion, CRG does occasionally co-operate with NGOs and other organisations such as the church. Pax Christi Netherlands knows from their own experience that CRG has also rendered non-profit services to private families.

Another argument raised by private security companies is that crisis management services are more likely to result in **less money getting into the hands of terrorist organizations**, because of the professionalism of the negotiators and consultants. Their mission is to recover hostages at the least possible cost. The insurer exacts this last condition - cost effectiveness - by awarding the kidnap response team a larger bonus the lower the ransom to free the hostages.

The crisis management consultants see the fact that they will **inform the authorities** (local or national) as an advantage to their work. The family of the victim often refuses to inform and cooperate with the local authorities, fearing that the rescue attempts will be bungled. This fear is based on the fact that of all hostages that eventually did not survive their kidnapping, 97% died during a rescue attempt. According to the private security companies, the practice of calling in professional negotiators can help eliminate the possibility of a family transferring the ransom money before the police are even aware that a kidnap has taken place.

Crisis management and kidnap response services; the drawback

The activities regarding crisis management and kidnap response meet with scepticism in Colombian civil society. They are of the opinion that private security business routinely performs tasks that could also be performed by church representatives and non-profit organizations such as the Red Cross and País Libre.

Many Colombians consider the argument that these institutions are less experienced unfounded. They argue that some of the church and non-profit organizations are very capable and are willing to spend time and resources supporting the family, maintaining the contact between family and the victim and mediating with the kidnappers. **They know the language, Colombian culture, differences between geographical regions, and behaviour of illegal armed groups and criminals** better than any foreign consultant.

Church representatives (often with extensive experience in this area), NGOs and government agencies work on a humanitarian basis only, **without charging fees, the cleanest way to deal with a kidnapping case**. In this sense, they can perform their activities without violating the spirit and intent of the Colombian anti-kidnapping legislation.

-
- 1 Part of the information in this chapter was gathered by An Vranckx of IPIS (International Peace Information Service) in Antwerp, Belgium.
 - 2 Lock, P., "Privatisierung von Sicherheit im Zeitalter der Globalisierung - Das Beispiel Lateinamerika". In: *Lateinamerika Analysen - Daten - Dokumentation*, 15 (1998) 13-28.
 - 3 An overview of the larger players on the private security market is provided by Lewis, William & Edgecliffe-Johnson, A., *Corporate Security: The masked man's guide to the industry*. On: www.glob-alarchive.ft.com, 2000.
 - 4 Kroll information service K.I.N.S. displays a sample of its regularly updated country risk reports, which actually focuses on Colombia, on its website at www.krollworldwide.com.
 - 5 Woellert, L., "New weapons for scary world - Services provide security with brains, technology, not arms". In: *Washington Business Times*, 5/5/1997.
 - 6 Radcliffe, J., quoted in: A. Hagedorn Auerbach, *Ransom: The untold story of international kidnapping*. (New York 1998) 212.
 - 7 Boggan, S., "Kidnap policies pay out millions". In: *The Independent*, 09/10/1998, 9.
 - 8 Bamrud, J., "Kidnapping , Inc." In: *Latin Trade*, February 1996.
 - 9 Radcliffe, J., quoted in: A. Hagedorn Auerbach, *Ransom*, 212
 - 10 Information obtained from the Colombian mission in Belgium.
 - 11 Meluk, E., *El secuestro en Colombia y las multinacionales Europeas*, survey composed for Pax Christi Netherlands (Bogotá 1999), 23.
 - 12 In Panama, the representatives of the insurance company maintained good relationships with government officials and officers of the national army, which facilitated the circulation and laundering of money. Valencia, L., *Secuestro, extorsión y guerra en Colombia*, survey composed for Pax Christi Netherlands.
 - 13 Time, June 12, 1995, no. 23, Edición para America Latina, pags. 20-21.
 - 14 Meluk, E., *El secuestro en Colombia y las multinacionales Europeas*, survey composed for Pax Christi Netherlands, 23
 - 15 Ibidem.
 - 16 Information obtained from employees at the BP head office in London.
 - 17 Wilson, J., "Kidnaps for ransom reach worldwide high". In: *The Guardian*, April 21, 2000.
 - 18 Hagedorn Auerbach, A., *Ransom*, 203-204.
 - 19 Rienhardt, J., "Agent aus Liebe", in: *Stern*, June 28, 1997, 55.
 - 20 Valencia, L., *Secuestro, extorsión y guerra en Colombia*.
 - 21 Meluk, E., *El secuestro en Colombia y las multinacionales Europeas*, 24.
 - 22 Lee, I., "El dinero siempre deja huellas", in: *Cambio 16*, July 11, 1994.
 - 23 Hagedorn Auerbach, A., *Ransom*, 201-219.
 - 24 Information obtained in an interview with Mr E. Westropp, dated November 11, 2000.
 - 25 Williams, H., "Kidnap and Ransom Insurance to the Rescue". On: insure.com.

- 26 The Ackerman Group, *Information brochure*.
- 27 CRG, the 'more established' in risk assessment and kidnap response, sued newcomer CRI for trademark infringement, arguing the similar acronyms were intended to confuse clients.
- 28 Bumrad, Joachim, "Kidnapping Inc.", in: *U.S./Latin Trade*, February 1996
- 29 KINS, Country Risk Reports: Colombia, www.kinsonline.com/ccr1.cfm (updated October 2001).
- 30 Information obtained from the Colombian mission in Belgium.
- 31 Meluk, E., *El secuestro en Colombia y las multinacionales Europeas*, 23-24.
- 32 Valencia, L., *Secuestro, extorsión y guerra en Colombia*.
- 33 An employee of Pax Christi Netherlands was contacted by CRG, at the request of the FARC (via the Swedish government) to cooperate in the Skanska case in 1995. They wanted Pax Christi to be present at the handover of two Swedish engineers, captured by the FARC. When the release was frustrated, CRG played an advisory role in the ongoing negotiations.
- 34 Hagedorn Auerbach, A., *Ransom*, 215-217.
- 35 Bamrud, J., "Kidnapping , Inc." In: *Latin Trade*, February 1996. Also Mr E. Westropp confirmed in the interview dated November 11, 2000 that this percentage among foreigners in Colombia is much higher.
- 36 "Interview met Meluk door Edwin Koopmans", July 1999, fax from Pax Christi.
- 37 Information obtained in an interview with Mr E. Westropp, dated November 11, 2000.
- 38 Ibidem.
- 39 Ibidem.



7. Towards a common European policy on kidnapping?

7.1 Efforts made by the international community

The guidelines of the G-7/G-8

A 1979 UN convention criminalized hostage-taking in general, saying that 'the taking of hostages is an offence of grave concern to the international community and that (...) any person committing an act of hostage taking shall either be prosecuted or extradited'. The convention did not ban ransom payments.¹

In December 1995 the G-7 partners issued a declaration stating that 'we are united in our determination to work together with the entire international community to combat terrorism in all its forms'. Regarding the taking of hostages, the G-7 called upon all states to 'refuse to make substantive concessions to hostage-takers', 'deny to hostage-takers any benefits from their criminal acts' and to 'bring to justice those responsible'.² In this declaration the G-7 disapproved of ransom payments.

*In 1998 the UK used its chairmanship of the G-8 to convene a working group of officials on the issue of hostage-taking. The result was a G-8 consensus between civil servants, not ministers, on 'best practice' in kidnapping situations, including refusal to pay ransom.*³

On ministerial level a, more vague, declaration of intentions was issued. The foreign ministers stated that a 'united front against ransom payment is essential to deter hostage-takers'. To promote a common approach they agreed a set of principles and proposed to advise organizations operating in high risk countries.⁴

In a September 2000 statement the G-7 further promised to integrate national action plans to freeze the assets of terrorists and their associates and to pursue a comprehensive strategy to combat terrorist funding around the world.⁵ The US and the EU have also broadcast their intentions to develop new strategies and legislation to combat money laundering of terrorist groups.⁶ The illegal armed groups of Colombia are believed to abuse the legal financial infrastructure of the US and the EU, often in tacit agreement with the banking institutions. Both the paramilitary (AUC) and the major guerrilla groups (ELN and FARC) are on the FBI list of international terrorists. The EU would have to do the same in order to make a common strategy possible.

EU policies

The European convention on the suppression of terrorism (Strasbourg, January 27, 1977) states that the European Member States of the Council of Europe agree that kidnapping and hostage-taking shall not be regarded as a political offence, herewith making extradition between the states possible. The convention does not mention a policy of non-payment.

The UK, holding the presidency of the EU in 1998, discussed the G-8 principles regarding kidnapping and proposed to adopt the G-8 best principles, including refusal to pay ransom, as part of its common foreign policy. According to Mr Blumberg of the UK Counterterrorism Policy Department, the outcome of this proposal was inconclusive.⁷

In September 2000, as a result of the hostage-taking of European and US citizens in the southern Philippines, it became clear once more that the subject of non-payment is a very sensitive issue for EU member states. The US that did not want to preclude military force to release the hostages, accusing the EU countries involved (Germany, France and Finland) of encouraging further hostage-taking by allowing huge ransom payments. The UK, the promoter of common 'best practices' on kidnapping, would not pass judgement on the European countries involved, and an EU official stated: "we are keeping our heads down on this [the ransom payments], because it is so sensitive".⁸

Yet, there is another contrast of policy between the US and the EU. Various Member States of the EU supply visas to members of Colombian illegal armed groups and receive these members officially (on various governmental levels), whereas the US has placed these groups on a list of terrorist groups.

Other initiatives were also taken to combat kidnapping. Recently (January-February 2001), a European conference on terrorism was held in Madrid, resulting in the 'Document of Madrid'. One of the seven proposals of this document was the intention to develop a common strategy on the kidnapping of EU citizens outside the EU.⁹ In previous conferences, such as the Extraordinary European Council in Tampere, Europol had already been tasked by the Member States of the European Union to develop operational tasks to combat terrorism.

Furthermore, the European Commission wrote a proposal to the European Council regarding the combat of terrorism. This will be discussed in December 2001. The European Commission proposes to adopt a common EU definition of terrorism (including kidnapping), and to apply this definition to the national legislations of the various Member States. The proposal seeks to facilitate the detention of terrorists in the EU, the extradition of terrorists and aims for the formulation of a common visa and asylum policy with respect to terrorists.¹⁰

7.2 *No common european guidelines on kidnapping*

Lacking a formal common strategy to handle a kidnapping case, each EU Member State tends to deal with a case in its own way. Some countries, at least formally, have explicit no-concessions policies, whereas other countries have less explicit policies or have no policy at all. There is no EU discussion on general kidnapping strategies or strategies used in previous kidnap cases, let alone on the ransom payments.

The (lack of) formal policies

Pax Christi Netherlands approached the various EU Member States with a request to define their national policy if faced with the kidnapping of a national citizen outside the EU. Some European states were willing to speak about their guidelines, but a number of them refused or simply stated that they had no guidelines.

The UK handles a formal policy of non-payment and not making political concessions, following the 1998 G-8 principles (as described above). These guidelines and best practices are laid down in a semi-restricted document that has been sent to all UK embassies. In the event of a kidnapping abroad, the embassy repeats this formal policy and tries to discourage ransom payment. At second sight, this policy is less strict than it appears, since third parties are free to negotiate and pay ransom. The embassy involved will do nothing to stop them actively.¹¹

The **Dutch guidelines** prescribe that a Dutch embassy always contacts the local authorities to handle the case. The embassy will maintain in contact with the Colombian authorities, while the Ministry of Foreign Affairs in The Hague will support the family of the victim in Holland.¹² The Dutch authorities claim never to pay ransom and to discourage the family from paying ransom.¹³

Italy, the country that has a very strict national anti-kidnapping legislation that was copied by the Colombians, does not forbid its citizens to pay ransom in Colombia. According to Mr Piras of the Italian Embassy in Colombia, Italian state representatives will not facilitate in that process. They are only allowed to give moral support to the family of the victim and to advise them regarding possible mediation.¹⁴

The **Belgian authorities** in Colombia stated that in the event of the kidnapping of a Belgium citizen, they are required to contact the Ministry of Foreign Affairs in Belgium, because if there are certain directives to be handled, the embassy in Colombia is not aware of them until the situation is presented.

The German authorities did not respond to the questions regarding their national policy, but Germany did outlaw kidnap insurance in its national leg-

isolation.¹⁵ Referring to the recent release of two German hostages by the FARC, the Ministry of Development Cooperation in Berlin stated that the official policy is no-payment. The **Swedish** Ministry says that, in the event of a kidnap crisis, they try to use 'common sense' in the first place. **Finnish citizens** that are kidnapped in Colombia can resort to any set of guidelines seen as suitable by them, unless Colombian law says otherwise.

Informal practices versus formal policy

Since 1992, Pax Christi has been approached for help in the resolution of almost 30 guerrilla and paramilitary kidnappings, of foreigners and Colombians alike. The following cases refer to only some of the European examples with which Pax Christi has been involved, or cases for which detailed inside information came into Pax Christi's possession. What becomes clear, amidst all the confusion and lack of clarity, is that the European answer to kidnapping of their nationals in third countries does not comply with a common policy and depends on the (economic) interests and dilemmas that are at stake in each individual case. The confidential information in the following overview has been confirmed by a wide variety of different sources.

1975; the Dutch consul and employee of the Colombian company 'reforestaciones Ltda', Eric Leupin, was kidnapped near Cali by the FARC in February 1975. Ransom was demanded. After 20 months he was released. It is unknown how much was paid and by whom.

Policy as well as practice: unknown.

1988; on February 19, two Dutch employees of the Bogotá based Dutch firm Holanda Colombia, a subsidiary of Holland Chemical International (HCI), were kidnapped in Bogotá, supposedly by the M-19. The firm's activities consisted of stocking and selling chemical products whose production is prohibited in Colombia. Dutch firms such as Shell, Akzo Nobel and DSM were among the providers of raw material.

According to unofficial information from a then HCI supervisory director, a ransom payment of US\$ 80 million was requested. After four months, in July 1988, ransom was paid by the company (a final amount of US\$ 10 million has been mentioned) for which one employee was released, but a new amount was demanded for his colleague. The second man was finally liberated by the army, in October 1988. The Dutch embassy, which was aware of the dubious character of the firm, facilitated in the payments. It was generally known in Dutch circles in Colombia that HCI was selling chemical ingredients to the narcotics business for the production of cocaine. The Colombian head of national police, general Miguel Padilla, and his successors, as well as the Minister of Justice, Lara, (killed by the drug mafia in 1984) and the DEA, had more than once accused the firm. But legal steps were taken only five years afterwards, without success.

During the kidnap period, the M-19 kept silent and never claimed responsibility for the kidnapping. Nowadays, its former leaders deny their involvement. In fact, the kidnapping was part of a settlement in drug mafia circles. In December 1989, questions were raised about the HCI in Dutch parliament, but the Ministry of Economic Affairs never handed out the requested information. Afterwards, the law on the controlling of exports of certain chemicals to cocaine producing countries was sharpened.

Policy: no pay. Practice: pay

1992; on February 16, a Dutch tourist was kidnapped by the FARC in the region of Urabá. Initially, the FARC suspected the young man of being a CIA agent, searching for sites of coca industry. When they discovered that he was a simple Dutch gardener, the Dutch embassy was contacted and US \$ 2 million ransom was demanded. The embassy answered that the gardener's family could not pay so much, but would try to collect a more modest amount. They also informed the kidnapers that the Dutch embassy had to follow the official no-payment policy. Police assistance was requested by the Dutch embassy and afterwards negotiations came to a standstill. After many weeks, neither the Colombian nor the Dutch police authorities were advancing to a solution, and the family desperately turned to Pax Christi for help.

After six weeks of preparations and deliberations with the FARC, Pax Christi travelled to Urabá (May 1992). The promise was made, supposedly via the Dutch embassy (according to the then Colombian ambassador in The Hague), that the Dutchman would be handed over to Pax Christi as a gesture of good will. However, this all proved to be false. It would be years before it emerged that the hostage had already been killed by his kidnapers before the arrival of Pax Christi. The reason -according to the victim's former guards- had been that the embassy had involved the police (contrary to their instructions) and that finally no substantial payment was to be expected.

Policy: no pay (government). Practice: pay (family).

1995; in December 1994 two Swedish topographers from the Swedish hydro-electric company Skanska were abducted by the FARC. In March of the following year, the Swedish government asked Pax Christi to be present at the handover of the two hostages at the request of the FARC. The release had to be considered as a political gesture of goodwill in the context of the peace dialogues, and no ransom was at stake. However, the attempt was frustrated for military reasons. Finally, they were released in May 1995 with help of the church in Urabá.

The Swedish government, the hired security firm Control Risk and the company Skanska all claimed no ransom was paid, but the Colombian authorities, the national press as well as insiders declared the contrary and confirmed that US \$ 6 million was paid for the two Swedes.

Policy: no pay. Practice: pay.

1995; in September 1995 an English diplomat was kidnapped by the guerrilla group Jaime Bateman. The British ambassador turned to Pax Christi with the request to facilitate the release, assuming that the guerrilla group would be interested in the opportunity to make a positive political gesture. At the time, the Colombian government was eagerly seeking peace negotiations with this group because dialogue with all other armed groups had failed. After some exploratory contacts, Pax Christi decided to break off discussions with Jaime Bateman because of its unreliability, its ties with the Cali drug mafia and its evident unwillingness to stop kidnap practices.

However, towards the end of the year, the diplomat was released under circumstances that still remain unclear. The (religious) persons who claim to have been involved in the mediation declared that ransom was paid by the family (with knowledge of the British government); money that they themselves had delivered in cash to the kidnapers. The British government, however, denies that any payment is made. The Colombian army claimed the Englishman was freed by military action alone and showed photographs of the event; a fake demonstration of military success, according to different parties involved. Insiders say that the real background of the mysterious kidnapping is to be found in the '*proceso 8000*', the criminal investigation against the then president Samper who was accused of accepting drug money for his electoral campaign.

Policy: no pay. Practice: pay.

1998; three Colombian employees of a technical agrarian project (of Cega/Corpoica) in the northeast of Colombia, which was partly financed by the Dutch governmental office for international development cooperation, were kidnapped by the FARC. A Dutch ex-employee of the project asked Pax Christi for help, but the efforts remained without success. When the Colombians were released a year later, a Dutch civil servant who had been involved admitted that they had given in to some of the FARC's demands in the area of financial support to some minor, specifically requested, development projects in a FARC dominated region. But insiders, well informed on this case, claim that initially US\$ 4 million was demanded, but that after long negotiations the agreed amount was reduced to US\$ 500,000.

Policy: no pay. Practice: pay?

2000; in October 2000, a Dutchman was kidnapped by the FARC in the city of Cali. According to the Colombian National Police, US\$ 5 million dollars was demanded for his release. The National Police also stated that the man had strong ties with the Cali drug mafia. Personnel of the Dutch embassy were involved in secret mediation. The Ministry of Foreign Affairs warned an influ-

ential Dutch daily newspaper not to publish information on the case “because it would put the hostage’s life in danger”, appealing to the paper’s moral responsibility. After 10 months the Dutchman was released and returned to the Netherlands. Sources inside the Colombian national Police confirmed afterwards that the release would not have been possible without a huge ransom payment. Civil servants of the Dutch Ministry of Foreign Affairs claimed to have no information on the matter, in spite of the fact that they are politically co-responsible. To our knowledge, the Department of Justice did not undertake further action against the supposed drug dealer.

Policy: no pay. Practice: pay.

The German kidnapping policy until 1998: the business of a private detective¹⁶

The German government led by President Helmut Kohl (until October 1998) was eager to secure German investments in Colombia. In its pursuit, the government went as far as to allow a German private detective Werner Mauss and his wife to mediate between German multinational companies, the German and Colombian governments and the Colombian guerrilla. At its centre loomed the kidnap trade, and more particularly, some of the kidnappings committed by the ELN guerrilla movement.

The German Kohl government handled a (unofficial) policy of negotiation and payment of ransom. It not only allowed the couple Werner and Ida Mauss to carry out their obscure operations, they also turned a blind eye to major ransom payments to the ELN. The German government facilitated in this process, for example by supplying the Mausses with ‘camouflage identity papers’. Furthermore, the German government allowed the Mauss couple to influence the German political agenda regarding the Colombian armed parties in conflict. The Mr Mauss’s opposite number in the German government was the Staatsminister Bernd Schmidbauer.

To date, far from all details of the affair have been clarified. The case is highly complex, because Mauss operated on different levels at the same time, and the people he dealt with were only partially informed on the whole range of his activities. Moreover, the silence of those who do know more details – and particularly details of ransom transactions – leaves substantial room for speculation. The activities of Mauss can be put into the following three categories, which nevertheless overlap in several respects.

1. Mauss offered consulting and lobby services to multinationals that operated in Colombia, such as Siemens and Mannesmann.
2. He worked as a negotiator to resolve kidnap crises, especially the kidnaping of foreigners that were employed in Colombia by multinational cor-

porations. Most of the kidnap cases that he worked on were committed by the ELN. Often, the German government knew about his activities or even handed the case over to him.¹⁷ The indications presented by German and Colombian journalists are sufficient to conclude that the payment of large amounts of money, - either in cash or on foreign accounts held by the ELN –coincided with the liberation of certain hostages. In an interview, however, Werner Mauss claimed that he knew of one case only, where US\$ 2 million in cash had actually been paid in ransom.¹⁸

3. Werner Mauss was also assigned other activities that brought ‘political’ aims to the fore. With the kidnapping of senator Carlos Espinosa, the ELN presented political demands to the Colombian government, demanding that better care be taken of internal Colombian refugees. In the case of the kidnapping of a German tourist, the ELN demanded that the new German government commit itself to the Colombian peace process. The strong political-tactical nature of the recent collective kidnap cases is also evidenced by the demand that the press massively attend the liberation of hostages, and thereby avails itself as an instrument for guerrilla propaganda.

Mauss tried to get a sort of peace process going between the Colombian government and the ELN guerrilla movement, not in the last place for propaganda purposes. He was the main organizer of the various meetings in Germany of the ELN with representatives of Colombian civil society. ELN used this as a way to improve its public image as a peace-interested partner. In order to achieve this, they took advantage of European partners – and especially of churches and their representatives. The German Kohl government was involved in the preparatory steps that he was taking, and the peace plan was even envisaged to be patronized by Germany.

On November 17, 1996 Ida and Werner Mauss, travelling under the names Mr And Mrs Möllner, were arrested in Colombia by the governor of Antioquia, Alvaro Uribe Vélez. The couple had been working on the kidnapping case of the wife of the former BASF corporation area manager (Mrs Brigitte Schöne) who had been kidnapped by the ELN. They were accused of involvement in an act of extortive kidnapping.¹⁹

Werner Mauss later accused the competing British private security firm Control Risks Group (CRG) of having caused “the intrigue that lead to his arrest”.²⁰ CRG contested his accusation.²¹ The governor of Antioquia, responsible for the arrest of Ida and Werner Mauss, stated publicly and privately in conversations with Pax Christi that CRG was first put on the case, and that later the German diplomatic mission and Schmidbauer brought Mauss into the negotiations. The governor claimed that after the involvement of Werner Mauss, the ransom demands of the ELN increased. It is not clear whether a ransom was paid for the liberation of Brigitte Schöne. *Der Spiegel* reported

that her husband Ulrich Schöne paid about one million dollars.²² *Der Stern* later wrote that Schöne's former employer, the BASF corporation, paid "several millions" in ransom, and added that "the money had had to be transferred to the account of Barclay Continental, a Luxembourg brass-plate company".²³

The Mausses were kept in custody during the investigations, in which the German government tried to intervene. They were set free in July 1997 as the prosecutors failed to come up with sufficient proof for the charges initially formulated, but were required to stay in Colombia during the further investigations. But in May 1998, the Mausses were allowed to leave Colombia because the prosecutor eventually stopped the investigations. In Colombian law, this decision of the Antioquia's prosecutors office in Medellin means an effective verdict of not guilty. Mauss sees himself as being fully rehabilitated by the judge.

7.3 ***Growing political pressure of the EU on warring parties?***

The armed conflict in Colombia has continued for 40 years without resolution on the military front. Despite major concessions by the Pastrana government, such as the demilitarization of an area in southern Colombia, the actual peace dialogues will probably have the same outcome. The increasing number of kidnappings since the demilitarization of the zone is self-evident.

It is not that dialogue in itself is an inappropriate method. But according to international standards, negotiations between illegal armed groups and the Colombian state should be based on a sample statute which the parties of the armed conflict should adhere to: international humanitarian law. During the negotiation process, it was initially agreed that the parties involved would foster the vigilance and verification of the international (or European) community. This never worked out.

Since mid 2000, the importance of European countries and the international community in the Colombian armed conflict has made headway. On June 29, 2000, 21 representatives of foreign governments, among them the Vatican, Britain and Belgium, participated in the *Corregimiento of Los Pozos* in discussions with the FARC. All delegates emphatically rejected the massacres, extortion and kidnappings they commit. "A kidnapping is a kidnapping, even if it is called a detention" explained Mr. Jean Paul Warnimont, the Belgian ambassador to Colombia. This was an important showing by the European Member States, since, referring to kidnapping, they tended to go along with the Pastrana government in the use of euphemisms.

At the beginning of December 2000, Mrs Mary Robinson, the United Nations Commissioner for Human Rights was in Bogotá. She emphasized the need for a global accord on human rights and international humanitarian law proposed by either side, civil society, or by facilitators and mediators of the process to be signed. The accord would be a commitment to concrete acts verifiable by third parties convened beforehand. This would include, for example, that the guerrilla end kidnapping and extortion of nationals and foreigners and the state combat paramilitaries effectively. It is known that the European Union looked positively upon the proposal of the Commissioner and was willing to support her.

In the meantime, Europe will have to take a common stand on concrete kidnapping cases (through the development of a common European policy) involving European citizens. It is the international community's showing against kidnapping, also in concrete cases, that makes it possible for national pressure to have an impact on guerrilla kidnappings. The subversives fear being exposed as criminals before the world, since this would have an impact on their objective to be recognized as a belligerent force, as well as the margin of legitimacy still recognized by some international organizations.

Does political pressure pay off?

On July 18, 2001 three German citizens were kidnapped by the FARC in the department of Cauca. Two of them were employees of GTZ, the German Department for Technical Cooperation, who were working on social development projects for the indigenous population of the region. The third man was visiting his brother, who was a GTZ employee. The FARC stated that their motive for the abduction was the need to investigate the role of GTZ in the field of development cooperation. Later on the FARC declared that in future they would consider any foreign development project in Colombia to be part of the American inspired 'Plan Colombia'. This allegation makes no sense, because the EU has publicly disassociated itself from the military part of Plan Colombia.

The EU backed the German government unanimously in its efforts to bring about the release of the other two hostages. The European pressure extended to several issues. In July, the EU announced that as a consequence of these kidnappings, Colombia risked forfeiting EU aid (especially the planned US\$ 293 million) and stood to lose the international support for the peace process (in which several European states were participating as '*grupo de países amigos con Colombia*').²⁴ In September, the EU ('Brussels') froze the future support to humanitarian projects in Colombia carried out by NGOs.⁽²⁵⁾ The FARC, though officially committed to social development, did not appear to be impressed by this form of pressure. Obviously, the process of '*Verelendung*' makes the poor more dependent on them as the sole authority in the region, and this serves their political agenda.

In October 2001, an EU message was sent to the FARC: either the FARC releases the hostages or the EU will take more drastic measures, such as refusing to issue visas to FARC members, closing their offices and freezing their bank accounts. The release of the hostages may also have been accelerated as a result of the terrorist attacks in the USA on September 11, 2001, and the USA's announcement of the 'war on terrorism'. Today, the FARC is included in the FBI list of terrorist groups (as are the ELN and the paramilitary AUC). But although the German government claimed to have paid no ransom, Colombian experts on the scene doubt that there was no form of 'payment'.

This leaves the European community with a number of pressing questions regarding its relationship with the Colombian government, and its relationship with the government's adversary, the FARC.

- Now that the German hostages have been released, does this imply that the EU will continue to grant visas and residence to the FARC, to leave their bank accounts untouched and to receive their representatives in government offices? It leaves a bitter taste that the kidnapping of three German citizens finally moved the EU to take concrete measures against the Colombian insurgents, whereas the kidnapping of thousands of Colombians had had no such effect. A complicating detail is that the request to EU Member States to receive FARC representatives at departmental level came from the Pastrana government itself, in the context of European support to the Colombian peace dialogue.

Recently, Mexico's president Fox forced the FARC to call an immediate halt to the abduction of Mexican nationals in Colombia by announcing that FARC representatives would be ejected from the country if their aggression against Mexicans continued. The EU working group on Latin America (Colat) will discuss the possibility of this kind of measures in October 2001.

- Will the EU continue its development cooperation with Colombia, or has the FARC succeeded in frightening us off?

1 International Convention against the taking of hostages, Signed at New York on 18 December 1979.
2 Ottawa Ministerial Declaration of Countering Terrorism, December 12, 1995.
3 On 5-6 March 1998 a G-8 Counterterrorism Experts Meeting took place in London. No documents have been made public. The assertion that the G-8 civil servants reached consensus on a policy of non-payment was published in The Financial Times. Filder, S. and Williamson, H., "US blames allies for holding policy to ransom", in: The Financial Times, September 1, 2000.
4 www.library.utoronto.ca/g7/foreign/. Conclusions of the meeting of Foreign Ministers in London, May 9, 1998 (Conclusions 27 and 28).
5 Statement of G-7 Finance Ministers (Department of the Treasury), September 25, 2001.
6 Reuters/AFP, "Campaña de EU y otros países contra el lavado de dinero", in: *La Jornada*, September 20, 2001.

- 7 Interview with Mr Blumberg, U.K. Foreign & Commonwealth Office, Counterterrorism Policy Department, (November, December dated).
- 8 Filder, S. and Williamson, H., "US blames allies for holding policy to ransom", in: *The Financial Times*, September 1, 2000.
- 9 www.mir.es/policia/prensa www.mir.es/policia/prensa. Documento de Madrid (Madrid, February 2, 2001).
- 10 Commission des Communautés Européennes, *Proposition de décision-cadre du Conseil relative a la lutte contre le terrorisme*, Bruxelles October 19, 2001 (COM(2001) 521 final).
- 11 Interview with Mr Blumberg, U.K. Foreign & Commonwealth Office, Counterterrorism Policy Department, (November, December dated).
- 12 Various sources (family of victims) have informed Pax Christi that they considered the support of the Ministry in The Hague rather poor.
- 13 Interview with Ms J. Faber of the Ministry of Foreign Affairs in The Hague (DPC department), on January 26, 2001.
- 14 Interview Mr. Demetrio Piras on August 15, 2001.
- 15 Hagedorn Auerbach, A., *Ransom*, 248.
- 16 This paragraph is based on information from an article written by the *German journalist Peter Schumacher*. Schumacher, P., *German involvement in the Colombian kidnap industry* (2000). He is also an author (together with Ignacio Gómez) of the book: *La ultima misión de Werner Mauss* (Bogotá 1998).
- 17 17 That is, the CDU-led government headed by Helmut Kohl. Quite by contrast, the Gerhard Schröder government that came into office in October 1998, repeatedly distanced itself from Mauss and from his opposite number in the German government, *Staatsminister* Bernd Schmidbauer (cfr. infra 13).
- 18 *Tageszeitung*, July 13, 1998, p. 10.
- 19 Eckart Spoo: "Einer, der oft für Verwirrung sorgt", in: *Frankfurter Rundschau*, November 20, 1996; "Skandal um Deutsches Lösegeld in Kolumbien", in: *Neue Zürcher Zeitung*, November 22, 1996; Jean-Paul Picaper, "Un James Bond 'made in German'", in: *Le Figaro*, November 22, 1996; Ludwig Greven "Aus die Mauss!" in: *Die Woche*, November 29, 1996; "Les tribulations d'un "agent privé" allemand en Colombie", in: *Le Monde*, November 30, 1996; "Die Chronologie der 'Affäre Mauss' – Bundesregierung durch Agent in Kolumbien unter Druck", in: *Agence France Presse*, December 3, 1996; "Arroganter Einzelgänger", in: *Focus*, November 25, 1996; "Hansdampf in Macondos zwielichtigen Gassen" in: *Neue Zürcher Zeitung*, February 28, 1997.
- 20 "El ELN debe dejar el secuestro", in: *Cambio*, June, 21, 1999. The article literally has him say: "La empresa Control Risk (sic) fue responsable para las intrigas que llevaron a nuestra detención." Also Heinz Vielain, "Privatagent Mauss offenbar Opfer eines Komplotts", in: *Welt am Sonntag*, February 23, 1997; Rienhardt, J. "Agent aus Liebe", in: *Stern* 27/1997, June 28, 1997. Mauss presents his own view on the events in Karl-Ludwig Günsche and Hans-Werner Loose: "Das System Mauss", in: *Die Welt*, July 31, 1998.
- 21 Schröm, O., "Der Agent trieb die Preise hoch", in: *Stern* 51/1996, December 12, 1996.
- 22 "Das Ende von 007", in: *Der Spiegel* 48/1996.
- 23 Müller, L. and Wirtgen, K., "Deckmantel für kriminelle Geschäfte", in: *Stern* 49/1999, December 2, 1999.
- 24 "Farc ponen en peligro ayda de la Unión Europea", in: *El Tiempo*, August 12, 2001.
- 25 "ONG suspenden ayuda en Colombia", in: *El País*, September 28, 2001.

Main issues of the anti-kidnapping campaign

(November 2001- November 2002)

CONSIDERING THAT:

Kidnapping fuels war

Colombia's internal war is waged by paramilitary and guerrilla groups that finance their military actions by criminal practices that include drug traffic, extortion and kidnapping. This lucrative business has enabled the military powers to become almost uncontrollable. In a climate of chaos and lawlessness the effect of these powers is to ensure the continuation of kidnapping of unarmed, defenceless civilians.

In view of the insurgent's comfortable financial and military position, it seems unrealistic to expect serious results from the current peace negotiations of the government with the main guerrilla organization FARC. As an official negotiating party the FARC should comply with the International Humanitarian Law that implies no aggression to defenceless civilians (Article 3 common to the 1949 Geneva Conventions, and Protocol II of 1977 to the Geneva Conventions), but evidently does not.

The personal dilemma

When ransom demands are at stake, the family of the victim faces an impossible dilemma; no payment probably leads to the certain death of their loved one, while payment generates ever more kidnappings. A vicious circle.

Colombian responsibility

The Colombians themselves bear primary responsibility for the solution to their violence and impunity problem. The continuation of kidnapping and extortion practices by illegal armed groups is a result of the lack of military and legal tools, but above all of the lack of political will to combat the widespread corruption and clientelism.

European responsibility

Colombian civil society as well as the government have turned to 'Europe' for support for the national peace process, including European pressure on the warring parties to come to a humanitarian accord. However, until now, Europe's policy towards Colombia has been vague and inconsistent. This applies to official EU policy, the State members, NGOs and investors.

While verbally adhering to peace initiatives, Europe contributes at the same time to the increase of war. In common with most multinationals, European

investors in Colombia also tend to tacitly comply with the informal rules of paying extortion to various illegal armed groups. When Europeans are kidnapped, huge amounts of ransom are usually paid to the warriors, directly or via insurance companies. These ransom revenues are not infrequently laundered through the European financial infrastructure.

The code of silence on the subject we all -Colombians and foreigners alike- tend to submit to, makes us all accomplices in the ordeal of the Colombian citizens.

THE FOLLOWING SHOULD BE DISCUSSED:

Provisional strategies to combat kidnapping in a common way

- **Break the code of silence.** If all parties involved start speaking out, it will be the beginning of the end of the business.
- **International Humanitarian Law (IHL).** The kidnapping of civilians in the context of civil war is a severe violation of the IHL . It is not only state institutions that have been far too silent on this crime, but also international human rights NGOs. The crime of kidnapping should be put more prominently on the various international agendas.
- **International Court.** The international community should facilitate the inter-nation prosecution of illegal armed groups that practice kidnapping as an instrument of war. An international court could serve as a deterrent, as well as a mechanism to accelerate peace negotiations. The International Criminal Court, once in function, will have jurisdiction over hostage taking by illegal armed groups, provided that Colombia has ratified its statutes.
- **A humanitarian accord,** including a ban on kidnapping, could generate a decrease in the number of kidnappings in Colombia. However, this would require a consistent Colombian government policy towards the warring parties, based on IHL, combined with firm international pressure on all parties involved.
- **A common European policy** prevents governments, multinationals and civilians from being played off against each other by Colombian kidnapers. The following issues need to be put on the EU political agenda in order to come to a comprehensive policy:²
 - the actual (lack) of policy on ransom payments;
 - the role of anti-kidnap insurance policies;
 - money laundering in the EU by Colombian illegal armed parties;
 - the issuing of visa to representatives of Colombian illegal armed groups.

- **EU guidelines on investment** in countries such as Colombia must include 'best practices' on ransom and extortion payments. In addition to that, also the European investors should develop a common policy of 'best practices on kidnapping and extortion' that does justice to the safety of their company (and subcontractors) without yielding to practices that evidently foster violence. (see discussion points, chapter 5)

- **Promote public discussion on the dilemma of non-payment.** The arguments pro and contra should be weighed up, both on a corporate and a personal level.

-
- 1 The anti-kidnapping conference on November 12, 2001 is the initiation of a campaign that will take a year. A report on the conference will be published in 2002, including conclusions and recommendations.
 - 2 The actual stand of Mexico on the kidnapping of its nationals in Colombia, and the response of the FARC, is a clear indication that pressure helps. (Yet we hope that this firm stand will extend to Colombian civilians as well.)



Glossary

- ACCU** – *Autodefensas Colombianas de Córdoba y Urabá*; Colombian Self Defense Groups of Colombia. A paramilitary group.
- AIG** – American Insurance Group. Second largest insurer of kidnap and ransom in the world.
- AUC** – *Autodefensas Unidas de Colombia*; United Self Defense Groups of Colombia. National paramilitary coalition
- COINVERTIR** – Corporación Invertir en Colombia. Colombian Foreign Investment Corporation.
- CRG** – Control Risks Group. British security firm, provides management services, security advice and special training to multi-nationals operating in Colombia.
- CRI** – Corporate Risk International. A kidnap response and management company whose services are offered by PIA-Nassau insurance consortium.
- Czar antisecuestro** – Anti-kidnapping Czar. See PPDLP.
- DAS** – *Departamento Administrativo de Seguridad*; Administrative Security Department. An investigative police that operates without uniforms and is administered by Colombia's executive branch. All other police units are administered by the Interior Ministry.
- DSC** – Defense Systems Colombia. Private security company employed by multi-national companies.
- DNP** – *Departamento Nacional de Planificación*; National Planning Department. A government planning agency.
- ELN** – *Ejército de Liberación Nacional*; National Liberation Army. Second largest guerrilla group of Colombia.
- EPL** – *Ejército de Liberación Popular*; Popular Liberation Army. Small guerrilla group.

FARC-EP –	<i>Fuerzas Armadas Revolucionarias de Colombia</i> ; Revolutionary Armed Forces of Colombia. Colombia's largest guerilla organization. Usually referred to as FARC.
FBI -	Federal Bureau of Investigation. U.S. federal law enforcement agency.
Fiscalía -	The attorney General (Fiscal de la Nación) and the Fiscalía, Colombia's corp of prosecutors, are responsible for investigating kidnap cases and prosecuting kidnapers.
FMLN –	<i>Frente Farabundo Martí para la Liberación Nacional</i> . Farabundo Martí National Liberation Front. Former Salvadoran guerilla organization, currently a political organization.
GAULA –	Grupos de Acción Unificada por la Libertad Personal y Anti-extorción, The unified Action Groups for Personal Freedom and Anti-extortion. GAULA is the operative arm of the army to solve kidnap and extortion cases.
JEGA –	<i>Jorge Eliécer Gaitán</i> ; Jorge Eliécer Gaitán Guerilla Organization. Very small guerrilla group.
M-19 –	<i>Movimiento 19 de Abril</i> ; 19th of April Movement Guerilla Organization that accepted a government amnesty in 1990 and was demobilized. The Jaime Bateman Cayon group (a splitt off of the M-19) is still operative in Colombia.
MAS –	<i>Muerte a Secuestradores</i> ; Death to the Kidnappers. Paramilitary Organization.
MILF –	Moro Islamic Liberation Front. Armed Filipino muslim seperatist group. Active in kidnapping.
MNLF –	Moro National Liberation Front. Armed Filipino muslim seperatist group. Active in kidnapping.
NGO –	Non-Governmental Organization.
PPDLP –	<i>Programa Presidencial para la Defensa de Libertad Personal</i> . Presidential Program for Defense of

Personal Freedom. Government anti-kidnapping campaign, known in Colombia as the office of the anti-kidnapping Czar.

UNASE –

Unidad Anti-secuestro y Extorsión, Anti-Extortion and Kidnapping Unit. Staffed by officers drawn from the police, DAS and the military. UNASE is run through army brigades.



Annex 1: Een Europese ontvoeringszaak in Colombia; een persoonlijke getuigenis

“DE HELE STREEK IS HIER KAPOT GEMAAKT”

In 1994 vond de ontvoering van een Europeaan in Colombia plaats. De man was al vele jaren woonachtig in Colombia en was werkzaam als bedrijfsleider van twee middelgrote *fincas* (van 30 en 100 hectare). De eigenaren van deze boerderijen woonden in Bogotá en kwamen vanwege de veiligheidssituatie niet meer naar hun *fincas*. De bedrijfsleider verbleef wel een groot deel van de week op de *fincas* en rapporteerde de eigenaren regelmatig over de gang van zaken.

Op een avond werd de man van zijn bed gelicht door acht gewapende mannen die hem zeiden dat hun commandant hem wilde spreken. Omdat het slachtoffer wist dat dit een gebruikelijke smoes was om op een eenvoudige manier mensen te ontvoeren, weigerde hij mee te komen. De gewapende mannen dreigden toen de voorman van de *fincas* en diens echtgenote te vermoorden. Het slachtoffer ging onder protest met zijn ontvoerders mee en het groepje reisde de gehele nacht te voet naar een afgelegen gebied. Na een aantal dagen achtten de ontvoerders het veiliger om hem te verplaatsen richting het nog minder toegankelijke oerwoud.

De ontvoerder bleken leden te zijn van de FARC. Zij hielden het slachtoffer gevangen in een houten hutje en hij werd, naar omstandigheden, redelijk goed behandeld. Vanuit zijn hutje hoorde het slachtoffer dat zijn ontvoerders zeer regelmatig radiocontact onderhielden met andere fronten van het FARC. Uit deze gesprekken bleek onder andere dat de ontvoerders dachten dat hun slachtoffer eigenaar van de *fincas* was en dat ze daarmee een rijke buitenlander hadden buit gemaakt. Verder hoorde hij de ontvoerders contact onderhouden met wapenhandelaars in Ecuador over mogelijke wapenaankopen (wapens gestolen van het Ecuadoriaanse leger), die men wilde betalen met behulp van het te verwachten losgeld uit zijn ontvoering.

De echtgenote van het slachtoffer schakelde de politie in, en een aantal lokale politici die voorheen deel hadden uitgemaakt van de guerrilla (*reinsertados*). De ambassade van het land waaruit de man afkomstig was nam kennis van de ontvoering via een lokaal dagblad en nam contact op met de echtgenote van het slachtoffer. Daarna informeerde de ambassade de familie van het slachtoffer in Europa, maar adviseerde hen niet naar Colombia af te reizen. Afgezien van het opmaken van een verslag toen de ontvoering eenmaal achter de rug was, had de Ambassade geen verdere bemoeienis met de zaak.

Het onderhandelingsproces, waaraan ook de Colombiaanse politie niet aan deel nam, verliep via radio contacten. De echtgenote van het slachtoffer probeerde met behulp van officiële documenten uit het kadaster de ontvoerders te overtuigen dat haar man geen eigenaar van de boerderijen was. Mede hierdoor zakte de aanvankelijke vraagprijs van 200 miljoen Colombiaanse Pesos gestaag. Na verloop van twee weken werd een familielid van de echtgenote ingeschakeld die ervaring had in het onderhandelen met gewapende partijen. Zij stelde zich consequent op het standpunt dat het slachtoffer vrijgelaten diende te worden zonder betaling van losgeld. Mede door haar vastberaden houding zakte de vraagprijs van de ontvoerders uiteindelijk naar 12,5 miljoen Pesos (f 25.000,-).

Toen de echtgenote van het slachtoffer dit aanbod over de radio hoorde, greep ze microfoon om de ontvoerders mede te delen dat ze akkoord ging met het bedrag. Het losgeld werd in contanten bij de bank opgenomen en als pakketje in cadeaupapier door derden aan de ontvoerders overhandigd. Het slachtoffer kwam na ruim vier weken weer vrij.

De man bleef na de ontvoering op de *fincas* werken, maar sliep er 's nachts niet meer. In de jaren die daarna verstreken namen de criminele praktijken van het gewapend verzet in de streek hand over hand toe. Met name (kleine) ondernemers als winkeliers en middelgrote boeren werden het slachtoffer van afpersing door de guerrilla. Ook op de boerderij van het slachtoffer kwam de FARC langs om 26 stuks vee in beslag te nemen onder dreiging van geweld. De politie, werkzaam op een politiepost in het nabij gelegen dorp, is niet gemachtigd om de bebouwde kom te verlaten en het leger is in deze streek niet vertegenwoordigd. De ondernemers, boeren en bedrijfsleiders besloten een vergadering over deze problemen te beleggen. De Europeaan was echter op dit overleg, vanwege het late tijdstip, niet aanwezig. Tijdens de vergadering werd openlijk gesproken over de mogelijkheid om de paramilitairen te hulp te vragen. Korte tijd daarop werden twee eigenaren van nabij gelegen boerderijen die aan de vergadering hadden deelgenomen, door de FARC vermoord.

Korte tijd daarop besloot de man zijn baan als bedrijfsleider op te zeggen. Hij leeft thans van de opbrengst van enkele hectare landbouwgrond. Net als de rest van de kleine boeren in de streek zijn de kosten voor zijn teelt vaak hoger dan de opbrengst. De prijzen van de landbouwproducten zijn in Colombia momenteel zo laag dat de meeste boeren uit de streek grote moeite hebben om een eenvoudige maaltijd bij elkaar te verdienen. Daarbij komt dat veel boeren en kleine ondernemers gebukt blijven gaan onder de terreur van de gewapend verzet dat een groot deel van de productie op komt eisen. In enkele nabij gelegen gebieden hebben boeren inmiddels de veel lucratievere papaver (basis voor heroïne) aangeplant. Hiervoor werden stukken oerwoud geroid.

Colombia speurt intensief naar ontvoerde Nederlander

door Liduine Zumpolle

En „mislukte missie“ van Pax Christi in Colombia, aldus Trouw van 6 juli. Eerder zouden wij onze reis naar Colombia het noodzakelijke begin willen noemen van een intensieve campagne ter plekke om de ontvoerde jonge tuinier Mark Schaareman vrij te krijgen.

Het verschijnsel ontvoeringen is in Colombia het laatste jaar dramatisch toegenomen. Voordien was deze misdaad vooral het werk van gewone criminelen en de drugsmafia. Nu worden ook veel ontvoeringen, met een groeiend aantal buitenlandse slachtoffers, op het conto van de guerrillabeweging geschreven. Door de gewijzigde internationale verhoudingen zijn zij voor hun financiering nu geheel op zichzelf aangewezen. De nieuwe Colombiaanse regering Gaviria is een – deels succesvol – vredesproces aangegaan. Maar vooralsnog verlopen de besprekingen met een groot deel van de guerrillabeweging uiterst moeizaam.

Mark Schaareman kwam in februari naar Colombia als toerist, vanwege de tropische flora. Hij werd ontvoerd in een uitgestrekt en wild natuurgebied nabij de grens met Panama, dat volgens kenners vrijwel volledig door het grootste guerrillafront, de FARC, wordt gedomineerd. Een onbekende groep van onduidelijke politieke vlag eiste middels de Nederlandse ambassade twee miljoen dollar losgeld, een bedrag dat door de familie onmogelijk kan worden opgebracht. Uit principe weigert de Nederlandse overheid voor ontvoerde burgers in den vreemde te betalen.

In april werd door de familie de bemiddeling van Pax Christi gevraagd. Wij hebben meteen de tijdelijke aanwezigheid van de officiële top van de guerrillabeweging van Colombia, de „Coodinadora“, in Mexico (vanwege de onderhandelingen) aangegeven om daar een aantal vragen naar te leggen.

Actieve medewerking

De jarenlange bemoeienis van Pax Christi met mensenrechten in Colombia heeft ons als vredesbeweging, behalve veel contacten, her en der nogal wat krediet verleend. De politieke leider van de Coodinadora beloofde zijn actieve medewerking bij de opsporing van de Nederlander, en distantieerde zich geheel van de ontvoering. Via ra-

dioverbindingen werden de verschillende guerrillagroepen in het betreffende gebied in Colombia vanuit Mexico op het geval Schaareman attent gemaakt. Als één van de groepen hem had, diende hij te worden vrijgelaten. Maar of een guerrillagroep hem echt had bleef onzeker.

Wekenlang bleef er intensief contact tussen Pax Christi en „Mexico“. Tegelijkertijd werd binnen en buiten Colombia een netwerk van betrokkenen gevormd. In Colombia waren dat voornamelijk kerkelijke vertegenwoordigers: de bemiddeling van de kerk tussen overheid en verzet is welhaast historisch en daarbij komt dat de kerk in conflictgebieden niet zelden de betrouwbaarste ingangen naar de samenleving heeft. In Nederland vond herhaaldelijk overleg plaats met de nieuwe Colombiaanse ambassadeur die het verschijnsel ontvoering van zeer nabij heeft ondergaan. Hij speelde een essentiële rol in het uitzetten van een strategie en het treffen van voorbereidingen in Colombia voor een bezoek van Pax Christi ter plekke. Kort voor ons vertrek ging hij er mede daartoe zelf heen.

Machteloze overheid

Van diverse zijden was intussen duidelijk gemaakt dat de aanwezigheid van een humanitaire organisatie ter plekke onontbeerlijk was om tot enig resultaat te komen. Een enkele ontvoering van een „onbetekenende“ buitenlander heeft simpelweg onvoldoende gewicht in een samenleving met zoveel geweld en met op dit moment 3500 ontvoerden. Een enkel telefoontje of eens een brief sorteert niet genoeg effect. Daarbij komt dat de overheden vrijwel machteloos staan tegenover het verschijnsel. Wie ontwikkelt in zo'n situatie een alternatief? In het geval Schaareman ging aan de reis van Pax Christi 6 weken van gedegen onderzoek en voorbereiding vooraf, met hulp van de Colombiaanse overheid en diplomatieke dienst die de interventie van Pax Christi van meet af aan toelichtte. Onze reis was dus geenszins het resultaat van „een misverstand“. Wel was er kort voor vertrek sprake van telefoontjes naar de Nederlandse ambassade in Bogotá en de bisschop in het betrokken gebied Urabá: de ontvoerders zouden na aankomst van Pax Christi bereid zijn tot de overdracht van Schaareman, maar uitsluitend

aan Pax Christi zelf. Vanzelfsprekend was dit bericht zo kort voor vertrek enorm hoopgevend, vooral voor de familie van Schaareman. Zij had dan ook de grootste klap te incasseren toen ons, eenmaal ter plekke, bleek dat telefoontjes van die strekking niet hadden plaatsgevonden.

Moreel offensief

Een ander betekende weliswaar dat Pax Christi niet, zoals verwacht, binnen een korte tijd weer met Schaareman naar Nederland kon terugkeren, maar dat wij met behulp van kanalen van de kerk een daadwerkelijk begin moesten maken met de opsporing. Via de media en de kerkdiensten in het gebied werd een omvangrijk „moreel offensief“ gestart. Vóór de zoektocht naar deze jonge Nederlander, en tegen ontvoeringen in het algemeen, als een uiterst wrede misdaad waarbij niet één persoon maar een hele familie gegijzeld wordt, zeker ook als het een buitenlander betreft. De regionale en landelijke media reageerden uitermate sympathiek. Zij besteedden veelvuldig aandacht aan de Nederlander waardoor zijn geval voor het eerst de vereiste aandacht kreeg. Men riep op tot solidariteit en actieve medewerking met zijn opsporing. Tijdens de veelvuldige missen in de pioniersstadjes in het gebied, die de bisschop van Urabá samen met priester en Pax Christi secretaris Jan ter Laak celebreeerden (het communicatiemiddel bij uitstek in een diepkatholieke cultuur), sloot de bisschop in zijn vlammende aanklachten aan bij deze toon en aarzelde niet een ieder van medeplichtigheid te beschuldigen die informatie voor zich hield.

De bisschop beschouwt deze kerkelijke bijdrage aan de zaak-Schaareman als een logisch uitvloeisel van het omvangrijk vredeswerk dat de kerk in het van geweld verziekte Urabá weet te realiseren. Van de kant van de guerrillabeweging was te bespeuren dat men daadwerkelijk een zoektocht was begonnen, die gezien de complexe samenhang van diverse ideologische stromingen, ex-guerrillo's die „voor zichzelf“ zijn begonnen en andere dissidenten in het uitgestrekte gebied, nog wel even kan duren. Waarna wellicht even langdurige „onderhandelingen“ binnen eigen gelederen over zijn mogelijke vrijlating zullen volgen. De Colombiaanse overheid ander-

zijds droeg haar steentje bij door de belofte in geval van overdracht het betrokken gebied enkele dagen te de-militariseren. Het Colombiaanse Rode Kruis in Medellín zou in zo'n geval als neutrale instantie het praktische deel van een dergelijke operatie op zich nemen. Het netwerk is geschapen. Er is als gevolg van ons bezoek vier maanden na dato een stroom van activiteiten in werking gezet die vroeg of laat resultaat moet opleveren, er vanuit gaande dat Mark Schaareman nog in leven is. Colombiaanse optimisten menen tot geduld, de gemiddelde ontvoering in Colombia duurt ruim een jaar. In het rechteloze gebied waar Schaareman is ontvoerd – tijdens ons verblijf in het provinciehoofdstadje gemiddeld vrijwel elke dag een moord plaats – is de kerk de enige morele autoriteit.

Pax Christi heeft door er zelf heen te gaan ertoe bijgedragen dat deze autoriteit, met inbegrip van moedige priesters in afgelegen dorpen, nu volop voor deze zaak is ingeschakeld.

Liduine Zumpolle van de Latijns Amerikaanse afdeling van Pax Christi keerde vorige week zondag samen met Pax Christi secretaris Jan ter Laak na een verblijf van enkele weken in Colombia in Nederland terug.

pax
christi

persbericht

CONDENA TOTAL AL CRIMEN DEL SECUESTRO

Con el secuestro del avión comercial de Avianca el 12 de abril pasado por parte del ELN, se ha entrado en una nueva etapa de la triste historia del secuestro en Colombia.

El Movimiento por la Paz y los Derechos Humanos Pax Christi ha condenado repetidamente el crimen cobarde del secuestro.

El siguiente es un fragmento de la reciente intervención de Pax Christi Internacional ante la Comisión de Derechos Humanos de la ONU en Ginebra (marzo de 1999) sobre la necesidad de abolir el secuestro:

'Uno de los crímenes más horribles que se comete en la guerra colombiana es el secuestro de personas con el propósito de obtener beneficios económicos o de presionar decisiones políticas. Nada puede ser más lesivo a los derechos humanos que arrancar de sus familias a las personas y someterlas a la más brutal opresión psicológica y social. Este crimen de lesa humanidad cometido por la guerrilla, la delincuencia común y los paramilitares, ha degradado hasta límites indecibles el conflicto colombiano y está causando daños irreparables a la sociedad. Al mantener estas prácticas - que son violaciones del Convenio IV de Ginebra del artículo 3, inciso 1, acerca de la toma de rehenes - la guerrilla sigue perdiendo su credibilidad sobre las pretensiones altruistas y éticas de su lucha.

'Las empresas multinacionales han contribuido a estimular esta práctica mediante el pago de grandes sumas de dinero por el rescate de secuestrados. Con esto han alimentado la violencia y el conflicto mismo. Ha llegado la hora de que los empresarios extranjeros busquen alternativas que permitan ayudar de verdad a superar este flagelo. La Unión Europea podría formular un código de conducta para multinacionales que tengan que afrontar el secuestro y la extorsión, crímenes que se presentan en Colombia más que en cualquier otro lugar del mundo.'

Con este último secuestro masivo, el ELN ha demostrado el cinismo de su estrategia. El ELN se está burlando de las expectativas que se crearon entre los colombianos y en la comunidad internacional luego de los acuerdos de 'La Puerta del Cielo' en Alemania el año pasado. Se está burlando tanto de la Iglesia colombiana como de la alemana, las cuales hicieron un gran esfuerzo para realizar dicho evento. Y se está burlando del Derecho Internacional Humanitario que tanto dice que quiere respetar.

Pero más que todo la guerrilla se está burlando de toda aquella gente de buena voluntad y compasión con los que sufren la guerra en Colombia, porque sus actos sólo provocan más guerra en vez de paz entre sus compatriotas.

Con este comunicado Pax Christi Holanda hace un llamado a los miembros de todos los grupos armados que no están de acuerdo con estos actos de lesa humanidad para que convengan a sus líderes de abolir la práctica del secuestro y de iniciar la liberación de todos los indefensos que mantienen retenidos como rehenes. Mientras se sostenga la práctica del secuestro, lo único que se cosechará en Europa no será otra cosa que el repudio y menosprecio de la comunidad internacional, cuyo apoyo se trató de conseguir para presuntos proyectos de paz.

Holanda, abril de 1999.

postbus 19318
3501 DH utrecht

godebaldkwartier 74
3511 DZ utrecht

e-mail:paxchristi@antenna.nl
www.antenna.nl/paxchristi

telefoon 030 - 2 33 33 46
fax 030 - 2 36 81 99

generale bank: 23.07.06.177
postbank: 59.33.52

pax christi nederland maakt deel uit van de internationale katholieke vredesbeweging pax christi

pax
christi
netherlands

P.O. Box 19318
3501 DH Utrecht
The Netherlands

Phone: +31 (0) 30 2 33 33 46

Fax: +31 (0) 30 2 36 81 99

E-mail: paxchristi@paxchristi.nl

www.paxchristi.nl

