

University of Miami International and Comparative Law Review

Volume 1
Issue 1 *THE UNIVERSITY OF MIAMI YEARBOOK
OF INTERNATIONAL LAW VOLUME 1*

Article 17

1-1-1991

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Elena Manitzas

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Recommended Citation

Elena Manitzas, *Human Rights, Justice and U.S. Aid: The Colombian Contradiction*, 1 U. Miami Int'l & Comp. L. Rev. 309 (1991)

Available at: <https://repository.law.miami.edu/umiclr/vol1/iss1/17>

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HUMAN RIGHTS, JUSTICE AND U.S. AID: THE COLOMBIAN CONTRADICTION

ELENA S. MANITZAS*

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I thought that type of repression happened only in other countries, that it took place in Central America, that it occurred in Argentina, but not in a democracy like ours. That there were disappeared persons in Colombia, that the army disappeared them and that a dirty war was being waged, I was not conscious of that, I lived in another country.¹

It is difficult to sum up the life of a country which is rich in history, culture and people. It is even harder to write about the dark side of a country, particularly when events such as the assassination of friends and people we never knew is a part of daily living. This is the ugly side of Colombia, but a story that must be told -repeatedly- until it is banished to the past.

* Researcher with the Inter-American Legal Services Association (Instituto Latinoamericano de Servicios Legales Alternativos, ILSA). The author wishes to thank Robert Veltorra, Canadian lawyer specializing in corporate law and international human rights, and Roberto Molina, Colombian lawyer and researcher for the Andean Commission of Jurists Colombian Section (Comisión Andina de Juristas, Seccional Colombiana), for reviewing and commenting this article.

¹ Lalinde, *Testimonio de Una Madre Angustiada*, in UNA VIDA POR LA VIDA. TESTIMONIOS SOBRE LA VIDA Y OBRA DE HÉCTOR ABAD GÓMEZ 80 (P. Juten ed. 1989) (this and all other translations are the author's).

I. INTRODUCTION

When human rights monitors in Colombia are called upon to describe the situation of political violence and human rights violations in the country, we tend to begin by affirming that, similar to other modern nations, Colombia is a nation of contradictions.

Colombia is considered to be a formal democracy, as exemplified by its periodic political elections. Unlike most Latin American countries, where military dictatorships were once the norm, Colombia has remained under civilian rule. In further contrast, Colombia has had a relatively stable economy despite the external debt crisis of the 1980s, which in neighboring countries was synonymous with spiralling inflation and currency devaluation.²

Yet, within this context of formal democracy and stable economy, Colombia has paradoxically suffered from a generalized situation of violence.³ Colombia has one of the oldest guerrilla movements in the continent. Among the main groups are the Colombian Revolutionary Armed Forces (FARC), the National Liberation Army (ELN), and the recently demobilized April 19th Movement (M-19) and Popular Liberation Army (EPL). The guerrilla conflict has lasted almost 40 years. Furthermore, Colombia also suffers the consequences of a phenomenon of violent delinquency, with one of the highest murder rates in the world. In fact, murder is the leading cause of death among adults.⁴ Yet, the sector most known internationally for its violence are the drug trafficking cartels, which in August 1989 declared war against the Colombian state.

II. THE PARADOX OF COLOMBIA'S HUMAN RIGHTS SITUATION

This contradictory situation of violence within a framework of formal

² According to the World Bank, Colombia has one of the most dynamic economies in Latin America. Economic disparities, however, are as extreme as in neighboring countries: 40% of all Colombians live in "absolute poverty" and another 18% in "absolute misery." See WASHINGTON OFFICE ON LATIN AMERICA (hereinafter WOLA), *COLOMBIA BESIEGED: POLITICAL VIOLENCE AND STATE RESPONSIBILITY* 7-10 (1989).

³ Colombia's recent history was characterized by severe political disputes which reached its climax in the 20th century with the civil war known as "La Violencia." This struggle for political power in the late 1940s and early 1950s resulted in the death of some 200,000 Colombians (according to conservative estimates) and was resolved with a political agreement between the traditional Liberal and Conservative parties known as the "National Front." This pact consisted in the sharing and alternating of political power between these two parties. *Id.* at 12-16. Not all social and political sectors in Colombia were satisfied with the National Front, thus leading to the formation of guerrilla insurgent groups, known to be the oldest on the continent.

⁴ According to certain statistics, murder is the first cause of death for men between the ages of 15 and 45. *Id.* at 1. Annually, there are an average of 20,000 murders reported, including political assassinations. In 1990, 24,615 murders were reported. Each year about 3,000 of these victims of violence are considered "N.N.," unidentified, and deposited in common graves. Quinn, *La Mirada de Time*, *CRONOS*, May 6, 1991, at 22.

democracy has led to another paradox: over the past 40 years, while the country has been governed by civilian rule, there has simultaneously been an almost uninterrupted government-declared state of emergency - the so-called "state of siege". This situation has allowed for the creation of an exceptional justice system (that is, specialized courts for trying crimes of "terrorism" known as "public order tribunals"), the limitation of civil liberties and judicial guarantees, and, particularly over the past decade, a situation of systemic human rights violations.

Just to give an example, over the past three years, on an annual average, there have been more political, or allegedly political, assassinations and disappearances in Colombia than in the 17 years of General Augusto Pinochet's dictatorship in Chile. In 1990, there were 2,311 reported political, or allegedly political, assassinations in Colombia, and 217 enforced or involuntary disappearances.⁵ The Truth and Reconciliation Commission named by Chilean President Patricio Aylwin reported that 2,279 people were victims of General Pinochet's 17-year military dictatorship: 164 were considered victims of political violence and 2,115 of human rights violations.⁶ This comparison demonstrates that human rights violations not only take place under authoritarian or *de facto* totalitarian regimes. One must question why they take place under elected civilian governments such as the government of Colombia.

The situation of systemic violations of human rights in Colombia is multifaceted and has evolved during the past 15 years. In the late 1970s, human rights abuses were characterized by the systemic practice of torture and arbitrary detentions. In the early 1980s, human rights groups documented an increase in extrajudicial executions and enforced disappearances coupled with the emergence of parastate generators of violence (known as paramilitary groups or death squads).⁷ Beginning in 1988, and continuing up to the present, a new and horrifying form of violence predominated among the individual abuses described above: collective massacres of groups of four or more people.⁸

⁵ CENTRO DE INVESTIGACIÓN Y EDUCACIÓN POPULAR, BANCO DE DATOS DEL CINEP (Jan. 1991).

⁶ COMISIÓN ANDINA DE JURISTAS, INFORMATIVO ANDINO, NO. 52, INFORME RETTIG 4,5 (1991).

⁷ See generally IRRUPCIÓN DEL PARAESTADO, ENSAYOS SOBRE LA CRISIS COLOMBIANA (G. Palacio ed. 1990).

⁸ Between 1970 and 1979, 51,080 detentions or arrests and 833 extrajudicial executions were registered in Colombia. Between 1980 and 1989, the number of detentions dropped to 23,258, the number of executions soared to 11,723, and 1,080 enforced or involuntary disappearances were registered. See COMISIÓN ANDINA DE JURISTAS SECCIONAL COLOMBIANA, DETRÁS DEL TERRORISMO Y LA "GUERRA AL NARCOTRÁFICO": LOS DERECHOS HUMANOS EN COLOMBIA AL INICIO DEL NUEVO GOBIERNO (1990).

A. State Responsibility

According to international and Colombian human rights organizations - including the U.N. Working Group on Enforced or Involuntary Disappearances, the United Nations Special Rapporteur on Summary or Arbitrary Executions, Amnesty International, Americas Watch, and the Washington Office on Latin America - the Colombian state is internationally responsible for the human rights crisis affecting the country on two accounts. First, international human rights norms provide that a state is responsible for guaranteeing the full enjoyment of human rights by its citizens. This enjoyment by its citizens is not guaranteed by the Colombian state. Furthermore, known cases of human rights violations have not been brought to justice. This means that the Colombian state has failed in its responsibility to its own citizens according to international human rights law.⁹ Second, there is sufficient evidence available which indicates direct and indirect involvement by the Colombian state in human rights violations. This includes acts committed by paramilitary groups, which in the 1980s have been accused of committing the majority of the country's assassinations. According to a recent report by Americas Watch:

[T]he Colombian government has done too little to work through these complexities to identify, prosecute and punish those behind the political violence. This failing has been greatest in acknowledging the role of military and security forces in the killings. These forces continue to commit violent abuses themselves, and to condone and support killings by paramilitary groups.¹⁰

Paramilitary groups offer an effective camouflage for the Colombian state's involvement in human rights abuses, as do enforced or involuntary disappearances. Both modalities prove useful in obscuring responsibility for human rights abuses from superficial enquiry.

⁹ Colombia's commitment to international human rights norms is clearly stated in Article 93 of its Constitution. See CONSTITUCIÓN POLÍTICA DE COLOMBIA (1991). Article 93, Title II, Chapter 4, reads in relevant part:

The treaties and international conventions ratified by Congress, that recognize human rights and prohibit their limitation in a state of emergency, prevail in the domestic legal order The rights and duties consecrated in this Charter will be interpreted in conformity with the international human rights treaties ratified by Colombia (editors' translation).

See also Article 12 (prohibiting forced disappearances, torture, and cruel, degrading or inhuman treatment or punishment); Article 28 (prohibiting arbitrary detention, arrest, imprisonment, and warrantless searches of the domicile); Article 29 (excluding evidence obtained in violation of due process); Article 213 (prohibiting military tribunals from judging civilians). Colombia has signed and ratified the International Covenant on Civil and Political Rights, as well as its Optional Protocol, the American Convention on Human Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁰ AMERICAS WATCH, THE "DRUG WAR" IN COLOMBIA, THE NEGLECTED TRAGEDY OF POLITICAL VIOLENCE 1 (1990).

B. Paramilitary Cover-ups

State complicity with the paramilitary groups was made public as early as 1983 when a government report on the first such group - Death to Kidnappers, MAS - showed that 59 members of the military forces were implicated in paramilitary activity. However, no measures were taken to remove these officers from military service or to punish them.¹¹

Recent reports on Colombia only reaffirm the conclusion that members of the military and police are involved in paramilitary groups. These paramilitary groups now number 137.¹² According to Amos Wako, U.N. Special Rapporteur on Summary or Arbitrary Executions:

The majority of assassinations and killings committed by paramilitary groups take place in heavily militarized areas. The paramilitary groups may move about with ease in these areas and commit their assassinations with impunity . . . [I]n some cases the military or police officers feign ignorance to the doings of the paramilitary groups, support them granting safeconducts to their members or by impeding investigations.¹³

The composition of paramilitary groups and the involvement of state security forces was confirmed by the United States Congress' Committee on Government Operations, which stated in a February 1990 report: "[T]he traffickers supply the funds to hire the paramilitary groups, the Colombian military supplies the arms and members of the local elite provide an air of legitimacy"¹⁴ Indeed, paramilitaries, disappearances, and state omission and involvement translate into one word describing the Colombian system of justice: Impunity.

III. THE GOVERNMENT'S ANSWER TO HUMAN RIGHTS VIOLATIONS

The response of successive Colombian governments to the problem of human rights violations has been to continually deny its responsibility. For example, under President Julio César Turbay Ayala (1978-1982), when the practice of torturing prisoners was widespread, the government declared that these prisoners suffered not from torture but from self-flagellation; that is, they tortured themselves. The government of President Belisario Betancur (1982-

¹¹ See WOLA, *supra* note 2, at 74.

¹² In September 1987, the then Interior Minister, César Gaviria Trujillo, publicly announced the existence of 137 paramilitary groups. See *id.* at 62.

¹³ *Informe Oficial, Ejecuciones Arbitrarias en Colombia*, U.N. ESCOR, Amos Wako, Relator Especial, E/CN/1990/22/Add.1, para. 63 (1990).

¹⁴ THIRTEENTH REPORT BY THE COMMITTEE ON GOVERNMENT OPERATIONS TOGETHER WITH ADDITIONAL VIEWS, STOPPING THE FLOOD OF COCAINE WITH OPERATION SNOWCAP: IS IT WORKING? 86 (1990).

1986) found a convenient scapegoat for the country's situation of political violence and human rights violations by blaming the paramilitary groups and what were euphemistically called "dark forces."

Recently, the governments of President Virgilio Barco (1986-1990) and President César Gaviria Trujillo (1990-), while recognizing "isolated" cases of human rights abuses for which the state is accountable, have promoted the image of the state as a victim of violence and not a cause. The blame has been placed almost entirely upon the drug traffickers, paramilitary groups, and the guerrilla insurgents. By taking the position that the state is a victim they have rationalized their governments' concomitant inactivity. In fact, the notion that actors outside of the state are entirely responsible for the situation of violence and the human rights crisis in Colombia has been accepted internationally. This is reflected, for example, in stories printed in the international press.¹⁵ Although it is true that the drug traffickers and guerrillas are responsible to a certain degree for the situation of violence, recent government "discourse" to explain this situation hides a greater reality of human rights violations: the "dirty war."

A. Colombia's Dirty War

Perhaps one of the most serious and ironically "eloquent" examples of total disregard of basic human rights and international humanitarian law by government forces is the case of the "holocaust" of the Palace of Justice. On November 6, 1985 the M-19 guerrillas took over the Palace of Justice in Bogotá, holding magistrates and judges hostage, and called for a trial against the government of Belisario Betancur for violating a cease-fire agreement during ailing peace talks. Members of the International Committee of the Red Cross, among others, tried to intervene to hold negotiations between the government and the guerrillas. The President of the Supreme Court, who was being held captive by the guerrillas echoed this plea to negotiate. The government stated that it had other ways of resolving the situation. Forty-eight hours later, the Palace of Justice was aflame, most of the members of the Supreme Court - including its President - were dead, as were the majority of the guerrillas. To date the government has not brought this case to justice nor has it explained the disappearance of eleven persons following the government takeover of the Palace of Justice.¹⁶ For many analysts, the incident of the Palace of Justice marked the turning point in the detriment of Colombia's human rights situation. The armed forces established as a fact what had been their expectation: that they could take extreme measures to stop insurgency, in this case guerrillas, and

¹⁵ "In the United States, the human rights tragedy of Colombia has been overshadowed by, and often confused with, the Medellín cartel's violent response to President Barco's initiatives to bring them to justice and extradite them to the United States." AMERICAS WATCH, *supra* note 10, at 129.

¹⁶ See WOLA, *supra* note 3, at 27-28.

would not be held accountable for their actions.¹⁷

As stated earlier, recent cases of human rights violations have included extrajudicial executions and political assassinations, enforced or involuntary disappearances, and the practice of torture. Another form of repression used by state forces, paramilitary groups and the euphemistic "dark forces" has been the use of death threats against political and social organizers and opposition figures. Among those targeted recently are the very people who work toward guaranteeing the rights of Colombian citizens: human rights monitors.

B. Attacks on Human Rights Monitors

One such case of attacks by the state against human rights monitors, which represents the beginning of a back-lash against these groups, is the detention and disappearance of Alirio de Jesús Pedraza Becerra - human rights defense attorney and member of the Committee in Solidarity with Political Prisoners (CSPP). On July 4, 1990, Pedraza was apprehended by eight heavily armed men dressed in plainclothes when he exited a shopping center in Bogotá. Eye-witnesses stated that just before Pedraza was forced into a vehicle and driven away, two uniformed police officers tried to intervene on his behalf, yet were dissuaded from doing so when two of the armed men flashed state security forces identification cards. To date the whereabouts of Pedraza are unknown. Furthermore, the two police officers who witnessed his disappearance have refused to reveal their identity and offer testimony, thus impeding further investigations into this case.¹⁸

Following Pedraza's disappearance, several human rights monitors in various cities in the country received death threats, many referring to Pedraza's fate and warning these monitors that they could receive similar treatment. Several human rights workers have thus been forced to leave the cities they live in; some have even left the country.

¹⁷ On October 30, 1990, the Attorney General's office (Procuraduría General de la Nación, a government office in charge of checking irregularities committed by state employees, including human rights abuses committed by state security forces) called for the destitution of retired General Jesús Armando Arias Cabrales, in charge of the government action during the Palace of Justice incident, for irregularities committed at that time. The government response and that of the political elite and armed forces was to support Arias Cabrales whole-heartedly and attack the then Attorney General, who was forced to resign. The major print media stated, "[Arias Cabrales] is a soldier of democracy . . . a protagonist in a heroic situation in defense of the law and democratic institutionalism." COMISIÓN ANDINA DE JURISTAS, LIMA, INFORMATIVO ANDINO, No. 48, SANCIONES POR LA MASACRE DEL PALACIO DE JUSTICIA 2 (1990). This support for the general reflected a generalized feeling in the government that the defense of the state and its institutions predominated over the defense of the human rights of the state's citizens.

¹⁸ INSTITUTO LATINOAMERICANO DE SERVICIOS LEGALES ALTERNATIVOS (HEREINAFTER ILSA), PORTAVOZ, No. 24, EL GOBIERNO NACIONAL DEBE RESPONDER POR ALIRIO DE JESÚS PEDRAZA 10 (1990).

Another recent attack against human rights groups took place on February 25, 1991, when Alcides Castrillón was assassinated in Bogotá. Castrillón was a member of the National Human Rights, Displaced Persons and Refugee Coordinator of Colombia (CONADHEGS), and of the Colombian Association for Development and Social Assistance (ASCODAS), two organizations which work nationally on behalf of victims of counterinsurgency operations and, particularly, displaced persons or internal refugees. Castrillón himself was displaced from his birthplace in the department of Meta (south of Bogotá), when following death threats and harassment he was forced to move to Bogotá with his wife and seven children. Just a week prior to his assassination, while representing the CONADHEGS, Castrillón had attended a human rights commission meeting of the Attorney General's office and Bogotá based human rights organizations, at which time he had denounced government abuses against civilians during counterinsurgency operations.¹⁹

C. *"Low Intensity Conflict" and "Dirty War"*

In Colombia, the situation of human rights violations is known as the "dirty war." The dirty war is a strategy of the National Security Doctrine upheld by the Colombian government. It consists of relentless "low intensity conflicts" to combat guerrilla insurgency. The fundamental premise of this doctrine is that in order to stop the guerrilla insurgents, the government-alleged support base of the guerrillas must be eliminated. The type of political and social groups attacked under such a policy of low intensity conflict have led Colombians to describe this "dirty war" as a "war of intolerance." In Latin America, this notion is translated as such: "The water must be taken away from the fish," the water being the alleged support and the fish the guerrillas. This doctrine, and the concept of low intensity conflict, has resulted in the persecution of vast sectors of the political and social opposition. In the case of Colombia, it has included legal left-wing parties, grass-roots groups, labor leaders, peasant and indigenous leaders, and human rights workers.

The case of the Patriotic Union party (UP) exemplifies the extent of this policy of intolerance. Formed in 1985 following the amnesty of some guerrillas during a failed peace plan, the UP has faced incessant persecution by the armed forces and paramilitary groups. This persecution has resulted in the assassination of over 1,000 of its members, including two presidential candidates - Jaime Pardo Leal, assassinated in October 1987, and Bernardo Jaramillo Ossa, assassinated in March 1990. This persecution has not ceased despite the fact that Colombia is supposedly opening up its democratic process, allowing for the incorporation of the M-19 and EPL guerrillas into the Constituent Assembly and

¹⁹ See COMISIÓN DE DENUNCIA Y SOLIDARIDAD, COORDINADORA NACIONAL DE DERECHOS HUMANOS, DAMNIFICADOS Y REFUGIADOS DE COLOMBIA: DENUNCIA PÚBLICA, ¡LA GUERRA SUCIA SE ENSEÑA CONTRA LOS DAMNIFICADOS! (1991).

into the government²⁰. According to recent statistics, in the first two months of 1991, over 50 members of the UP have been assassinated or disappeared.²¹

The labor movement has suffered a similar fate. In 1986, several labor unions joined together to form the United Workers Federation (CUT). Since then, over 350 of its members have been assassinated.²² This systematic elimination of the political and social opposition has reached levels that defy hyperbole, as has the intolerance associated with it. As a result, Colombia is experiencing the phenomenon of "social clean-up operations": the systematic elimination of "undesirables" and the dispossessed in Colombian society. "Social clean-up operations" are aimed primarily against beggars, prostitutes, homosexuals, street children, thieves and drug addicts. In some cases there is evidence of police involvement in this practice.²³ In 1990, 267 Colombians fell prey to this form of violence.²⁴

D. Counterinsurgency and The Dirty War

Finally, within the context of the dirty war, human rights groups in Colombia and abroad have denounced abuses committed by government military forces against civilians during counterinsurgency operations. Such abuses include continual aerial bombardments against civilians, mainly peasants, who live in rural areas. Over the past two years, numerous cases have been denounced, particularly in the departments of Meta, Santander and Antioquia.²⁵

Other abuses include the massacre of civilians by military forces during counterinsurgency operations, presumably in revenge for guerrilla actions. A good example of this took place on June 7, 1990 in the town of Macaravita,

²⁰ Following the demobilization of the M-19 in early 1990, and the presidential elections of May 1990, President César Gaviria Trujillo named an M-19 leader as Health Minister. The M-19 political party - the Democratic Alliance (AD M-19) - won almost a third of the seats in the Constituent Assembly elections in December 1990. While the government uses this example to promote an international image of tolerance and democratic expansion, other sectors - primarily the UP party - continue to be excluded as noted in the incessant persecution of party members.

²¹ See UNIÓN PATRIÓTICA, OFICINA DE DERECHOS HUMANOS Y OFICINA DE PRENSA, *ASESINATO DE DIRIGENTES Y SIMPATIZANTES DE LA UNIÓN PATRIÓTICA Y DEL PARTIDO COMUNISTA COLOMBIANO EN LOS MESES DE ENERO Y FEBRERO-91* (July 26, 1991).

²² See U.N. ESCOR, *supra* note 13, at 45-47.

²³ Seminario del Grupo de Trabajo Internacional de Derechos Humanos en Colombia (Mar. 1991)(*memoria* of meeting). Among the agenda items of the seminar was an analysis of the regional and national context of human rights in Colombia. In all the regions addressed - Caldas, Risaralda, Santander, Boyacá, Córdoba, Cauca, Bogotá, Meta, Antioquia, among others - the participants denounced the existence of "social clean-up operations." Upon examining the situation of Cauca, the participants of the seminar stressed the responsibility of members of the police forces. In other regions of the country, participants suggested that "social clean-up operations" received "official" support.

²⁴ See Comité Intercongregacional de Justicia y Paz, 3 PAZ Y JUSTICIA, No. 4, at 91 (1990).

²⁵ See U.N. Escor, *supra* note 13, at 45-47.

Province of García Rovira, Department of Santander. Eleven peasants belonging to one family were massacred by the army following an incident involving guerrilla insurgents. Among the victims were an elderly 87 year-old man and a nine year-old child. The army claimed that the victims were guerrillas. However, forensic doctors later showed that the peasants were dressed in military uniforms following their deaths, as the bullets that caused their fatal wounds did not pierce the clothing they wore.²⁶ The Attorney General's office has opened an investigation into this case, charging a lieutenant colonel and other officers of the V Brigade of the army for this crime.²⁷

A similar case took place in May 1990 in the town of Puerto Valdivia, Antioquia. Following a guerrilla incursion, several peasants were detained-disappeared by the army. Their bodies were later found in a common grave in a nearby plantation. The then commander of the IV Brigade of the Army stated that the peasants were guerrillas who had died in armed combat although a forensic doctor later clarified that the peasants showed signs of torture and some had even been strangled to death. A commission of the Attorney General's office went to Puerto Valdivia to investigate the murder of the peasants. After informing the army about their mission, they set out to interview peasant survivors. The investigative commission was then forced to cut short its visit when the army began aerial bombardments of the area.²⁸

IV. THE WAR ON DRUGS

An overview of Colombia's human rights crisis would not be complete without addressing the so-called "war on drugs." Following the August 1989 murders of important Colombian figures, including Liberal party presidential candidate Luis Carlos Galán, the government of President Virgilio Barco declared war on "The Extraditables," drug traffickers sought for extradition to the United States. "The Extraditables" responded in kind. The most publicized of the violent methods used by "The Extraditables" were the November 1989 explosion aboard an Avianca airplane and the December 1989 bombing of the Colombian secret police (DAS) headquarters in Bogotá; these incidents resulted in the deaths of hundreds of innocent people.²⁹

²⁶ See COMISIÓN ANDINA DE JURISTAS SECCIONAL COLOMBIANA, PANORAMA DE LOS DERECHOS HUMANOS EN COLOMBIA: ENTRE LAS "GUERRAS" Y LA MODERNIZACIÓN AUTORITARIA (1990).

²⁷ While this investigation is admirable, it should be noted that only a few token cases of human rights abuses involving state forces have led to sanctions by the Attorney General's office. Furthermore, the highest sanction this office may impose is the *recommendation to remove* officers from military or police service. Several cases analyzed by human rights groups show that this *recommendation to remove* has been followed by a promotion of the officer in question.

²⁸ See COMISIÓN ANDINA DE JURISTAS, LIMA, INFORMATIVO ANDINO No. 43, LUCHA CONTRAINSURGENTE Y VIOLACIÓN DE LOS DERECHOS HUMANOS 4 (1990).

²⁹ See COMISIÓN ANDINA DE JURISTAS, LIMA, INFORMATIVO ANDINO No. 38, REFORMA CONSTITUCIONAL, PROCESO DE PAZ Y "GUERRA AL NARCOTRÁFICO" 2,3 (1990).

Human rights monitors in Colombia and abroad recognize the complex situation generated by the drug traffickers - particularly their use of violence. At the same time, many of the monitors have concluded that the waging of a "war on drugs" by the government only aggravates the problem of human rights in the country and does not prove truly effective in combatting the problem of drug exports. The two reasons for this conclusion arise from the principal tactics used by the Colombian government to combat drug traffickers: (1) the government's reliance on state of siege legislation; and (2) the government's implementation of a military strategy to deal with what is essentially a law enforcement problem.

A. State of Siege Legislation

The Colombian government's reliance on state of siege legislation has resulted in the continuous limitation of civil liberties and judicial guarantees. These limitations have expanded continuously over the past 15 years since the promulgation of the "Security Statute" under the government of President Turbay in the late 1970s. Recently, however, civil rights in general, and the rights of the detained and accused in particular, have become even more negligible under the "war on drugs." As it is impossible to give an exhaustive analysis of state of siege legislation at this time, I shall concentrate on the latest such decrees.

Ancillary to the declaration of war against the drug traffickers, and particularly the Medellín cartel, in August 1989 the government of President Barco promulgated several anti-drug decrees. The principal decree, No. 180, was said to be aimed against drug traffickers, yet used the terminology "terrorist" to describe the violent actors it was defined to target. The decree never actually mentioned the words "drug trafficker." Ultimately, decree No. 180 was used, as has other state of siege legislation, to thwart social and grass-roots organizations.³⁰

In 1990, the government of President Gaviria, also preoccupied by the violence of the drug traffickers, promulgated decree No. 2790, which came into force on January 16, 1991. This decree, named the "Statute in Defense of Justice," is intended to protect the judiciary, the government branch most influenced by the violence and threats of the drug traffickers (particularly "The Extraditables"). In essence, however, this "Statute in Defense of Justice" does quite the contrary.

³⁰ Among other cases, the following is worth citing. After the promulgation of this decree, four members of the Grass-roots Education Institute (Instituto Popular de Capacitación, a non-governmental organization based in Medellín) were detained and held incommunicado under charges of participating in "terrorist" activity. While under detention the four underwent psychological and physical torture. Weeks following their arrest they were released for lack of evidence. COMISIÓN ANDINA DE JURISTAS, LIMA, INFORMATIVO ANDINO NO. 34, EXCESOS EN LA LUCHA ANTIDROGAS (1989).

Briefly, the "Statute in Defense of Justice" details "terrorist" type crimes (including kidnapping, extortion and murder) and creates a separate self-contained penal code excepted from the general criminal law to deal with such crimes. Among the exceptional powers allowed by this state of siege legislation are:

- (A) The possibility of holding the detained incommunicado for up to eight days, during which time the person does not have the right to a defense or to a lawyer;
- (B) The restriction of *habeas corpus* whereby such a writ may be brought before any judicial authority but may only be resolved before the Superior Public Order Tribunal (in charge of reviewing cases of "terrorism") which is based solely in Bogotá, thus effectively impeding a speedy resolution;
- (C) The detailing of "passive" crimes whereby a person may be arrested for a crime committed by an organization of which he/she is a member despite the fact that he/she did not commit the offense;
- (D) The lifting of all statutory time limitations;
- (E) The militarization of the judicial investigation process, whereby investigative units may consist entirely of, or be staffed by, military personnel and, in such cases, conducted under the authority of the commanding military officer, including the commander of a military quarter or base;
- (F) The discretion granted to these investigative units to gather evidence, including those consisting entirely of the military (prior to this decree, and in accordance with the legal tradition of Colombia, the judge in charge of a case ordered the gathering of evidence and supervised its collection);
- (G) The possibility granted to police and military forces to conduct "generic" house searches; that is, specifying a block or neighborhood rather than a specific address. A warrant must be requested from a judge to conduct such searches, but the "Statute in Defense of Justice" allows for an exception should a judge not be available at the time;³¹
- (H) And, finally, the secrecy factor. The statute allows for secret or invisible judges (presumably to protect their identity and lives), secret prosecutors, secret investigative units, secret witnesses, secret informants, secret evidence and even secret dossiers.³²

These are only a few of the many human rights abuses permitted by this decree in order, allegedly, to defend the judges. The persons prejudiced by these measures are the accused. Numerous defense attorneys have stated that

³¹ The Supreme Court declared this power unconstitutional in April 1991. The other powers of decree No. 2790, however, were left untouched.

³² For an overview of Decree No. 2790, see COMISIÓN ANDINA DE JURISTAS SECCIONAL COLOMBIANA, *UNA JUSTICIA AMENAZADA: COMENTARIOS AL ESTATUTO PARA LA DEFENSA DE LA JUSTICIA* (1991).

they no longer have a function within the judicial system since this statute has made their task impossible. Among other things, the weighing of proof and the secret nature of some evidence and witnesses makes the job of the defense a herculean task. Human rights workers are deeply concerned because they feel this statute may be used summarily to detain social and political opponents of the government. Others also fear that the time a detainee may be held incommunicado and the absolute ineffectiveness of the writ of habeas corpus may allow for more of the severe human rights abuses which have already been witnessed in the country: the practice of torture, enforced disappearances and even extrajudicial executions.

B. Military Strategy and Innocent Victims

The other primary tactic used by the Colombian government to combat drug trafficking has been the militarization of the law enforcement: the "war on drugs." This strategy has proven itself capable of increasing the violence in the country but not in effectively stopping the drug problem. The case of the "war" waged in Medellín, headquarters of the drug cartel led by Pablo Escobar, is indeed telling.

During one of the many episodes of the "war on drugs," "The Extraditables" once more declared war on the state, this time against the police in Medellín. The reason: accusations from "The Extraditables" that the police were torturing and disappearing members of its network. On April 1, 1990, police officers started being assassinated in Medellín. By the time this "battle" subsided in July 1990, some 150 police officers had been assassinated. "The Extraditables" were reportedly offering \$4,000 for each police officer killed and another \$80,000 for each member of the elite force kidnapped or assassinated.³³ The end result was a dramatic increase in the number of homicides in the city. During the first six months of 1990, some 3,160 civilians were murdered along with the police. This number of homicides in Medellín - averaging 17 daily - is greater than all the political or allegedly political assassinations reported during the entire year.

Although it is not clear who is responsible for the deaths of these civilians (in Colombia numerous actors are responsible for the situation of violence), several press statements and a general chronological reconstruction of events would suggest that the police were involved in the assassination of civilians. According to a Medellín politician: "The massacres in the neighborhoods [of Medellín] are in retaliation for the assassination of police agents. Some of the death squads are formed by Metropolitan Police who . . . decided to take the

³³ The elite force of the police was created in April 1989. Its primary function was to combat paramilitary groups although it emphasized the persecution of alleged drug traffickers and counterinsurgency operations.

law in their hands to avenge their dead colleagues."³⁴ The fact that the violence increased under the militarization of the city, but dropped dramatically once the military lost some of its power to control civilian neighborhoods and the majority of the police forces changed, also points to this conclusion.³⁵ Finally, a press article reporting on the situation in Medellín, the fear of its citizens, and the problem of violence in general, quoted a police spokesperson who shed more light on the civilian homicides:

That death trade, said the officer, was of concern to the high command of the institution (the police), who began to suspect not only that some police officers would kill the young men but also that these same officers could be tempted by the money offered into killing one another and quickly decided to make thousands of changes and transfers in order to avoid what may have already occurred.³⁶

C. Decriminalization vs. Selective Justice

The irony of the "war on drugs" is that while authoritarian judicial measures are put forth and a military strategy is implemented, both severely affecting human rights overall, the government has also passed state of siege decrees that allow for drug traffickers, and paramilitaries, to turn themselves in, receive reduced penalties and, in certain cases, virtual amnesty for their crimes. These decrees - Nos. 2047 and 3030 of 1990 and 303 of 1991 - eliminate the threat of extradition for traffickers that turn themselves in, allow for the reduction of jail sentences and other penalties and, especially with respect to paramilitary groups, allow for release on probation with the simple turning over of weapons. As a result, the government has virtually decriminalized the activities of this sector of Colombian society that is responsible for so much violence. It is this last contradiction in the "war on drugs" - decriminalization of certain crimes including those carried out by paramilitary groups, coupled with the severe authoritarian measures described earlier - that has led analysts to conclude that the current drug policy is to be lenient with certain sectors - i.e., drug traffickers and paramilitaries who do not pose a threat to the status quo, and use an iron fist to deal with opposition forces that are nonconformist and considered a threat to the "democratic" status quo in Colombian society.

V. THE ROLE OF U.S. AID

Within this context of the war on drugs and the dirty war in Colombia, the United States government plays an increasing role. Under the guise of

³⁴ Anonymous, *¿Guerra Civil en Medellín?*, SEMANA, No. 426, at 23 (3 July 1990).

³⁵ For more information see ILSA 1 HUMAN RIGHTS WORKING PAPER, No. 1, *Is U.S. ANTI-NARCOTICS ASSISTANCE PROMOTING HUMAN RIGHTS ABUSE IN COLOMBIA?* (1991).

³⁶ Anonymous, *¿Quiénes Son Esos Priscos?*, LA PRENSA 2 (3 March 1991).

combatting drugs, the U.S. has offered greater amounts of aid to the country, particularly military aid. Analysts feel that this increase in aid to Colombia, and the Andean region as a whole, reflects a desire to maintain hegemony in Latin America. As the "cold war" shifts to the "drug war," so does attention from Central America to the Andes. This shift in attention includes new recipients for U.S. military advisors and equipment.³⁷

U.S. aid has had a relatively significant impact on the human rights situation in Colombia. For one thing, U.S. pressure upon the government to extradite drug traffickers to the United States has led to reiterated outbursts of violence from the drug traffickers in response. This effort has only aided in fueling the violence. In terms of military assistance, the United States' Andean Initiative - created after the February 1990 drug summit of the presidents of Bolivia, Colombia, Perú and the United States in Cartagena de Indias, Colombia - has promoted the intention to combat drugs on the military front. In essence, since August 1989, all the U.S. aid granted or budgeted for Colombia has had a military emphasis, outnumbering at a ratio of two to one the aid offered to the police forces (acknowledged to be the institution most capable in counternarcotics). Furthermore, this military aid has been diverted by the Colombian government - as a result of a lack of due oversight by or even the acquiescence of the U.S. government - for use in counterinsurgency activities.³⁸ Finally, the aid granted to Colombia has allowed for a police training component - because of a loophole in U.S. human rights legislation which banned such training in the 1970s after it proved to indirectly promote human rights abuse.

Colombia faces a human rights crisis and a grave situation of political violence in which state security, military and police forces are not immune from culpability. The Colombian government has not shown its political will to prosecute members of these forces for human rights violations nor has it purged these forces to rid them of dangerous elements. This means that United States

³⁷ "Now that the cold war is over, the armed services have become eager participants in the drug war. 'It's their new meal ticket now that the commies are not their big threat,' says a congressional staffer." Waller, Miller, Barry & Reiss, *RISKY BUSINESS: AS ITS INVOLVEMENT IN THE DRUG WAR GROWS, THE PENTAGON OUTLINES A PLAN TO CRUSH THE CARTELS*, *Newsweek* 16 (16 July 1991).

³⁸ According to a report by the Committee on Government Operations of the U.S. House of Representatives, not only has the U.S. government given higher amounts of aid to the military forces, it also has given aid to the police which is not considered a priority. Furthermore and with respect to the deviation of this aid, a U.S. embassy official in Bogotá was quoted as saying:

While the assistance is being provided under the auspices of narcotics control, it is generally understood that the assistance is to be used to control narcotics trafficking as well as insurgency activities [It] was not U.S. policy to tell the Colombians what equipment they needed or how to use the United States-provided assets. THIRTEEN REPORT BY THE COMMITTEE ON GOVERNMENT OPERATIONS, *supra* note 14, at 80-81.

The United States granted Colombia \$65 million in August 1989 under Section 506(a) of the Foreign Assistance Act. In FY90, \$60.3 million was granted to Colombia under the Andean Initiative and another \$80.5 million was forecast for FY91. In all cases, the Colombian military has received - or is forecast to receive - over 65% of the aid, which includes military hardware.

aid and policy is in effect an incentive for the Colombian state to continue with abusive practices. It is also, most unfortunately, a set of physical weapons with which to conduct them.

The United States 1990 Drug Control Act, along with measures such as Sections 502(b) and 660 of the Foreign Assistance Act, provide for certain standards by which to measure eligibility for military and police aid. The United States government should review its aid to Colombia in light of this legislation. Most independent international human rights reports show that in the context of this U.S. legislation, Colombia should not be granted such aid.

VI. CONCLUSION

This brief overview of Colombia's human rights situation has attempted to show that the country is undergoing a crisis. The systemic abuse of basic rights is one symptom of this crisis. Human rights organizations in Colombia have continually reiterated in their public reports and denunciations conclusions reached by international and intergovernmental monitors. This has included emphasizing that counterinsurgency and counternarcotics efforts cannot and should not override respect for human rights and the upholding of democratic principles.

Three basic suggestions arise from this brief overview of Colombia's human rights situation. First, the Colombian government needs to review its domestic law and practices in order to amend them to conform with its constitutionally recognized international human rights obligations. In this respect, state of siege legislation in particular should be revised in order to guarantee the basic rights of accused and detained persons. Second, the United States government should review its own policy with respect to the granting of military aid to countries known to be systematic violators of internationally recognized human rights. And, third, both the United States and Colombia should revise their overall strategies regarding counterinsurgency and narcotics control. Neither the war against guerrillas nor the war on drugs should be waged as a dirty war.