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Conflict in Colombia: How Can Rebel Forces, Paramilitary Groups, Drug Traffickers, and Government Forces Be Held Liable for Human Rights Violations in a Country Where Impunity Reigns Supreme?

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Conflict in Colombia: How Can Rebel Forces, Paramilitary Groups, Drug Traffickers, and Government Forces Be Held Liable for Human Rights Violations in a Country Where Impunity Reigns Supreme?

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I. OVERVIEW

This article discusses how international human rights and humanitarian law can be applied to the current armed conflict in Colombia and specifically considers whether human rights violators currently operating there with almost total impunity can be effectively prosecuted and punished under international law. Since the ongoing violations of the human rights of Colombian citizens have been implicitly excused by a government that is increasingly ineffective in dealing with the political chaos that has caused them, an international solution may be the best available alternative. By ceding or losing control of large portions of its national territory to guerrilla forces, by allowing paramilitary groups to act as vigilantes or as unofficial units of the military, and by looking the other way while its own military abuses the rights of its citizens, the Colombian government has demonstrated that it is unable or unwilling to address a problem that grows worse as the conflict accelerates.

Part II of this article briefly analyzes the origins of the current conflict within the context of Colombia's violent political history. Part III identifies the organizations that are principally responsible for violating human rights in Colombia today. Part IV identifies several of the major human rights abuses taking place in Colombia that rise to the level of violating both international human rights and humanitarian law. Part V discusses Colombia's contradictory approach to human rights issues, including an exemplary adherence to international treaties and an espoused commitment to human rights in its domestic laws, coupled with a reputation as having the worst human rights record in the world. Part VI examines the international legal regimes that can be used to hold human rights violators in Colombia liable for their actions, and identifies which fall short and which may be effective in bringing perpetrators to justice. Part VII concludes with a discussion of why the asserted solution is justified in this case.

II. INTRODUCTION

A. *The Current Conflict in Colombia*

Colombia is a country where impunity reigns.¹ In the face of a protracted period of violence and insecurity, the government is increasingly ineffective and unresponsive to the needs of its citizens.² The judiciary is virtually powerless as a result of decades of death threats and payoffs from drug traffickers, and today less than three percent of crimes are successfully prosecuted.³ The impact of this judicial vacuum exacerbates an already weakened executive branch.⁴ Colombia's former president was widely believed to have financed his presidential campaign with drug money, revealing to the world the extent to which drug cartels have infiltrated and compromised the government.⁵ The current president, Andres Pastrana, witnessed further deterioration of the situation due to the government's inability to effectively control guerrilla groups, paramilitary groups, and to some extent its own military, despite a concerted effort to negotiate peace.⁶ Pastrana's government is seen as "weak and increasingly unpopular."⁷ His brainchild solution, Plan Colombia, consisting largely of an infusion of

1. U.S. DEP'T OF STATE, *1999 Country Reports on Human Rights Practices (Colombia)*, Feb. 25, 2000, at http://www.state.gov/www/global/human_rights/1999_hrp_report/colombia.html [hereinafter *1999 Colombia Country Reports*].

2. *Id.*

3. U.S. DEP'T OF STATE, *Colombia Country Report on Human Rights Practices for 1998*, Feb. 26, 1999, at http://www.state.gov/www/global/human_rights/1998_hrp_report/colombia.html [hereinafter *1998 Colombia Country Report*]; see also *1999 Colombia Country Reports*, *supra* note 1 (reporting that "63 percent of crimes go unreported, and that 40 percent of all reported crimes go unpunished").

4. *1998 Colombia Country Report*, *supra* note 3.

5. Pedro Ruz Gutierrez, *Bullets, Bloodshed and Ballots: For Generations Violence Has Defined Colombia's Turbulent Political History*, ORLANDO SENTINEL (Fla.), Oct. 31, 1999, at A1; see also Jorge L. Esquirol, *Can International Law Help? An Analysis of the Colombian Peace Process*, 16 CONN. J. INT'L L. 23, 31 (2000).

6. *Human Rights in Colombia: 'Situation is Indeed Bleak,'* BOSTON GLOBE, Dec. 31, 2000, at D2 [hereinafter *Human Rights in Colombia*] (Interview with Mary Robinson, the United Nations High Commissioner for Human Rights).

7. Tim Golden, *Now, State of Siege, Colombian Style*, N.Y. TIMES, Oct. 10, 1999, at W3.

military aid from the United States, has the potential to escalate hostilities and make a bad situation worse.⁸

As a result, governmental legitimacy has been severely eroded and violence has become a way of life.⁹ Colombian citizens are constantly subjected to rampant political and criminal upheaval perpetrated by guerrillas, paramilitary groups, and drug traffickers, as well as by the Colombian military and national police.¹⁰ Violence has divided the country, killed thousands, and displaced even more.¹¹ Over the past ten years, more than 35,000 lives have been lost in this continuing conflict, and more than one million civilians have been displaced.¹² This situation has led to Colombia's reputation as having the worst human rights record in the world today.¹³

B. *Colombia's Violent History*

Violence in Colombia is nothing new. More than 500,000 Colombians have died as a result of political violence during the past 100 years.¹⁴ For at least the past fifty years, the country has been mired in a protracted state of political violence, which has caused a steady decline in national security.¹⁵ This violent political history provided fertile ground for the rise to power and illicit political dominance of the drug cartels, which capitalized on

8. Andrew Miller, *U.S. Military Support for Plan Colombia: Adding Fuel to the Fire*, 8 HUM. RIGHTS BRIEF 8 (2000). In 2000, the United States approved a \$1.319 billion aid package to assist in the implementation of Plan Colombia, a \$7.5 billion Colombian national recovery program designed to address problems of economic recovery, strengthen state institutions, strengthen national security and counter-narcotics operations, and kick start the peace process. *Id.* at 10. The majority of the United States aid package was earmarked for military operations. *Id.* The aid was originally tied to Colombian compliance with five human rights conditions but subject to waiver. In August 2000, all but one condition was waived and \$1 billion dollars was distributed. *Id.*

9. See *Human Rights in Colombia*, *supra* note 6.

10. Julia Manglano, *The Pervasive Immunity that Surrounds Human Rights Violations Committed by Colombia's Military*, 3 DEPAUL DIG. INT'L L. 45, 47 (1997); see also *1999 Columbia Country Reports*, *supra* note 1; *Human Rights in Colombia*, *supra* note 6.

11. Sibylla Brodzinsky, *Colombian Civilians Fear Repression, Retribution*, USA TODAY, Oct. 25, 1999, at 17A.

12. *Id.*

13. Manglano, *supra* note 10, at 45.

14. Ruz Gutierrez, *supra* note 5; see also Esquirol, *supra* note 5, at 26–29.

15. Ruz Gutierrez, *supra* note 5 (explaining that from 1948–1966, it is estimated that nearly 300,000 Colombians died as a result of partisan fighting, in a period known as La Violencia, “The Violence”).

governmental weaknesses and complicity, and embraced violence as a means to exert control over the country.¹⁶ This violent heritage was also the basis for the current conflict between the government and guerrilla insurgents that had its genesis more than thirty years ago.¹⁷ By using violence to maintain their respective power bases, the drug cartels, the guerrillas, and the government have accelerated the downward spiral in human rights violations that has now reached crisis proportions.¹⁸

The current conflict in Colombia is the culmination of decades of violence.¹⁹ Throughout the twentieth century, human rights violations have been inflicted on the citizens of Colombia with increasing impunity, first by the political status quo, later by the drug mafia, and finally by the guerrilla forces and their nemeses—the paramilitary groups and the Colombian military.²⁰ The human rights violators of today share a commonality of purpose with their predecessors. Colombian history shows that political factions—whether governmental, quasi-governmental, insurgent or criminal—maintain power through violence.²¹ In the current conflict, violence is used to maintain the respective fiefdoms of the military, the drug traffickers, the guerrilla forces, and the paramilitary groups, thus preventing the government from effectively addressing either national concerns of governance or the promotion of internationally recognized human rights.

III. WHO IS RESPONSIBLE FOR HUMAN RIGHTS VIOLATIONS IN COLOMBIA?

Responsibility for human rights violations in Colombia is shared by guerrilla factions, paramilitary groups, drug traffickers, and government forces.²² All of these groups have committed atrocious human rights violations to further their respective positions in the ongoing conflict.²³

16. Ruz Gutierrez, *supra* note 5.

17. Brodzinsky, *supra* note 11.

18. Manglano, *supra* note 10, at 45.

19. Ruz Gutierrez, *supra* note 5.

20. *Id.*

21. *Id.* This explains how the causes of violence, poverty, social reform, and political maneuvering have not changed throughout the 20th century, and that the guerrillas have “sacrificed ideology to survive through capitalism . . .” *Id.*

22. 1999 *Colombia Country Reports*, *supra* note 1; 1998 *Colombia Country Report*, *supra* note 3.

23. *Id.*

Under international human rights law, liability for abuses normally extends only to state action.²⁴ Liability can be extended to private individuals or groups only if they qualify as state agents.²⁵ This extension of liability occurs if the violations of human rights law by private individuals or groups are acquiesced in, tolerated, or condoned by the state.²⁶ International human rights law is therefore arguably applicable to the guerrillas, paramilitaries groups, and drug traffickers, as well as the military, because the Colombian government, through its inability to effectively deal with the violators, has acquiesced and tolerated their conduct.²⁷ Even if some of the human rights violators in the Colombian conflict are deemed to be private individuals which human rights law therefore cannot reach, international humanitarian law can fill the void and exact justice. It expressly binds all parties to a conflict, including state security forces, dissident armed groups, and all of their respective agents and proxies.²⁸

A. *Government Forces*

Throughout the 1990s, government forces have been responsible for a substantial percentage of the human rights violations that occur in Colombia.²⁹ Most human rights violations inflicted by government forces are perpetrated by the military and the national police.³⁰ Responsible parties range from specifically identifiable military officials to entire units.³¹ Ongoing abuses by police in urban areas, and by the army in rural areas, are regularly reported by local human rights organizations.³² Government sponsored abuses often occur when the military fails to distinguish between guerrillas and noncombatant citizens in its attempts to contain counterinsurgency, resulting in massacre, disappearance, and torture of innocent civilians.³³ In addition, there is evidence that the Colombian military collaborates with paramilitary groups in committing human rights

24. Inter-Am. C.H.R., *Third Report on the Human Rights Situation in Colombia*, OEA/ser.L./V./II.102, doc. 9 rev. 1, at 71 (1999) [hereinafter *IACHR Colombia Report*].

25. *Id.*

26. *Id.*

27. *Id.*

28. *IACHR Colombia Report*, *supra* note 24, at 75, 96.

29. *1998 Colombia Country Report*, *supra* note 3 (the army and police appear to be jointly responsible for almost as many violations as the combined nongovernmental groups).

30. Manglano, *supra* note 10, at 47.

31. *Id.*

32. *Id.*

33. *Id.* at 47–48.

abuses.³⁴ The national police and the Colombian military are also blamed for maintaining a campaign of social cleansing within the country.³⁵ Human rights violators within the Colombian military and police are rarely brought to justice.³⁶

B. *Guerrilla Forces*

There are several different guerrilla factions currently involved in the armed conflict in Colombia. The principally recognized groups are the Revolutionary Armed Forces of Colombia ("FARC"), the National Liberation Army ("ELN"), and the People's Liberation Army ("EPL").³⁷

Of the three, FARC is the most influential and well-organized, and is described as the oldest, most belligerent, and most powerful guerilla group in the country.³⁸ FARC's ranks are estimated to total 10,000 to 15,000 soldiers.³⁹ In an effort to induce the group to join peace talks, the government ceded a 16,000-square-mile area in southwestern Colombia to FARC in November 1998, which the rebels now completely control.⁴⁰ Approximately 100,000 Colombian citizens live in the ceded area.⁴¹ Since gaining control, FARC has refused to allow international observers to

34. See 1998 *Colombia Country Report*, *supra* note 3; *Human Rights in Colombia*, *supra* note 6 (there are troubling reports of persistent links between the army and paramilitary groups).

35. Elizabeth F. Schwartz, *Getting Away with Murder: Social Cleansing in Colombia and the Role of the United States*, 27 U. MIAMI INTER-AM. L. REV. 381, 384 (1995-96) (explaining that "[s]ocial cleansing . . . consists of 'serial killings of people who have been economically pushed so far toward the fringes of misery that the more affluent members of society classify them as undesirable.' [As such, the] victims . . . are perceived . . . to be dangerous and unfit to participate in society"); see also 1999 *Colombia Country Reports*, *supra* note 1 (reporting that 279 such killings occurred during the first six months of 1999).

36. Schwartz, *supra* note 35, at 396; see also *Colombia Convicts Former Army General in Rights Case*, USA TODAY, Feb. 14, 2001, at 13A (reporting that a former Colombian general convicted for failing to defend a village during a killing spree by a right wing death squad was "the first conviction of a Colombian general in a major human rights case").

37. 1999 *Colombia Country Reports*, *supra* note 1.

38. Pablo Rodriguez, *Cada Vez Mas Distantes el Gobierno y Las FARC*, EL NUEVO HERALD (Miami), Sept. 21, 1999, at 6A.

39. Esquirol, *supra* note 5, at 29; see also *Colombia, Rebels Will Talk Again*, MIAMI HERALD, Sept. 26, 1999, at 3A.

40. Brodzinsky, *supra* note 11.

41. See 1999 *Colombia Country Reports*, *supra* note 1.

oversee conditions in the zone.⁴² It is estimated that with the addition of this area ceded by the government, guerrilla forces now control approximately forty percent of Colombian territory.⁴³

Guerrilla forces are known to collect fees on narcotics production and trafficking, which take place in the geographic areas they control, and the funds collected are used to maintain their power base in the country.⁴⁴ The influence of these combined guerrilla forces is such that they have effectively replaced the government in certain areas of the country.⁴⁵ All of the known guerrilla groups inflict a wide variety of human rights violations on Colombian citizens with total impunity.⁴⁶

C. *Paramilitary Groups*

As the government has ceded or lost control over large areas of the national territory, the influence and power of paramilitary groups has grown.⁴⁷ It is estimated that a paramilitary umbrella organization consisting from 5000 to 7000 combatants now exists in Colombia.⁴⁸ The goal of this organization is to extend its presence into areas of the country now under guerrilla control.⁴⁹ This is accomplished by terrorizing guerrilla sympathizers into fleeing their homes and, by so doing, depriving guerrillas of civilian support.⁵⁰ In the process, civilians that are deemed to be supporters of the guerrillas are murdered, tortured, and displaced.⁵¹

42. Golden, *supra* note 7.

43. *Colombia Calls for Arms from Uncle Sam*, THE ECONOMIST, Sept. 25, 1999, at 17, available at 1999 WL 7364607.

44. Juan O. Tamayo, *U.S. Officials Tie Colombian Guerrillas to Drug Exports*, MIAMI HERALD, Dec. 13, 2000, at 3A; see also *1999 Colombia Country Reports*, *supra* note 1 (estimating that these revenues run to the hundreds of millions of dollars); Andrew Selsky, *U.S.-Aided Drug War Starts Strong*, SUN-SENTINEL (Broward), Feb. 4, 2001, at 21A (reporting that FARC "earns huge profits by protecting coca crops and taxing the growers").

45. *1999 Colombia Country Reports*, *supra* note 1.

46. *IACHR Colombia Report*, *supra* note 24, at 96–112. See discussion in text *infra* Section IV.

47. See *1998 Colombia Country Report*, *supra* note 3.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

Evidence exists to suggest that the paramilitary groups have strong ties to both drug traffickers and to the Colombian military.⁵² Drug traffickers employ paramilitaries as their own private armies.⁵³ The military uses them to fight insurgents.⁵⁴ The influence of paramilitary groups is on the rise, and the government is unable to bring them under control.⁵⁵

D. *Drug Traffickers*

The ongoing role of drug cartels in the Colombian conflict and their complicity in perpetrating human rights abuses should not be overlooked. Although much of the reporting on human rights tends to ignore their involvement, drug traffickers have long been associated with murders of government officials, peace negotiators, educators, journalists, and other civilians.⁵⁶ While the high point of drug violence may have ended with the demise of the more notorious kingpins, it still exists in a more decentralized and underground form.⁵⁷ Even if violations of human rights by drug traffickers are not as overt as in the past, there is evidence that drug trafficking is used to finance the operations of other participants in the conflict, and that drug traffickers hire both the guerrilla and paramilitary armies for protection.⁵⁸ Regardless of the degree or nature of the cooperation, it is apparent that drug traffickers are complicit participants in the conflict in Colombia and as such bear responsibility for the rampant violations of human rights that occur there on a daily basis.

IV. WHAT HUMAN RIGHTS VIOLATIONS ARE PREVALENT IN COLOMBIA TODAY?

The following section by no means provides an exhaustive overview of human rights violations being perpetrated in Colombia today—unfortunately, there are many more. The specific abuses discussed below were chosen to illustrate the types of abuses prevalent in Colombia today

52. *IACHR Colombia Report*, *supra* note 24, at 131–32 (explaining that the government “allowed the paramilitaries to act with legal protection and legitimacy in the 1970s and 1980s. . . . as a means of fighting the armed dissident groups”).

53. *1998 Colombia Country Report*, *supra* note 3.

54. *Id.*

55. *1999 Colombia Country Reports*, *supra* note 1.

56. *See generally* Ruz Gutierrez, *supra* note 5.

57. Esquirol, *supra* note 5, at 35.

58. *See 1998 Colombia Country Report*, *supra* note 3.

that qualify as violations of both international human rights law and international humanitarian law.⁵⁹

A. *Disappearances and Kidnappings*

The prospect of forced disappearances and kidnappings are threats that Colombian citizens face daily.⁶⁰ Well over 3000 cases of forced disappearances have been reported in Colombia since 1977.⁶¹ The Center for Investigations and Popular Research ("CINEP"), a nongovernmental organization ("NGO") that tracks human rights abuses in Colombia, reports that during the first nine months of 1998, paramilitary groups were responsible for 126 known cases of forced disappearance.⁶² There were reports of 309 cases of forced disappearance during the first nine months of 1999.⁶³ These figures are corroborated by a second NGO, the Permanent Commission for the Defense of Human Rights ("CPDH"), which reported that during the first six months of 1998, 117 people were forcibly disappeared.⁶⁴ CPDH reports indicate that most victims of forced disappearance in Colombia are never heard from again.⁶⁵

While it is reported that forced disappearances are perpetrated almost entirely by paramilitary groups, kidnapping is the forte of the guerrilla factions and is described as an "unambiguous, standing policy and major source of revenue for both FARC and ELN."⁶⁶ Colombia was ranked number one in the world for kidnappings for ransom in 1999.⁶⁷ According to

59. *IACHR Colombia Report*, *supra* note 24 (explaining that violations of humanitarian law during internal armed conflicts such as the one taking place in Colombia include, among other things, murder, forced disappearance, the taking of hostages, torture and other cruel treatment, and displacement of civilian populations). The report explains, for example, how summary execution qualifies as both a human rights violation and a violation of international humanitarian law, in that "summary execution of a peasant farmer for alleged cooperation with the guerrilla, which constitutes a violation of the right to life under human rights law, will also involve a violation of the protections provided to civilians under international humanitarian law, since the death was related to the armed conflict." *Id.* at 66.

60. *1999 Colombia Country Reports*, *supra* note 1.

61. *1998 Colombia Country Report*, *supra* note 3.

62. *Id.*

63. *1999 Colombia Country Reports*, *supra* note 1.

64. *1998 Colombia Country Report*, *supra* note 3.

65. *Id.*

66. *Id.*

67. Julia Flynn, *Global Kidnappings Climb to a New Peak*, WALL ST. J., May 11, 2000, at A21.

the NGO Pais Libre, there were 2216 kidnappings in Colombia in 1998, a thirty-three percent increase over 1997.⁶⁸ The 1999 estimate was 2945.⁶⁹ The preferred victims of guerrilla kidnappers covered a wide spectrum of citizens, including politicians, cattlemen, businessmen, and children, as well as foreigners.⁷⁰ Less than half of these kidnapping victims were known to be released during the year, and arrests or prosecutions of the kidnappers were rare.⁷¹

B. *Torture and Related Treatment*

In 1999, reports of torture and mistreatment of detainees by the national police and the military continued.⁷² Torture perpetrated by government officials most often occurred in connection with the detention of insurgents.⁷³ In addition, CINEP reported that both paramilitary and guerrilla groups were also responsible for torture, and that the bodies of victims kidnapped and killed by guerrillas often showed signs of torture and disfigurement.⁷⁴

In addition, prison conditions in Colombia are particularly harsh, largely as a result of severe overcrowding and unsanitary health conditions.⁷⁵ An Inter-American Commission for Human Rights ("IACHR") mission that visited a Bogota prison in December 1997 found conditions there amounted to cruel, inhuman, and degrading treatment on the part of the government.⁷⁶ It also found that murder is prevalent inside prison walls.⁷⁷

68. *1999 Colombia Country Reports*, *supra* note 1. According to the report, the NGO Pais Libre attributed 667 cases to FARC, 566 to ELN, 109 to EPL, 43 to other guerrilla groups, 20 to paramilitary groups, and 580 to other unknown organizations. *Id.*

69. *Id.*

70. *Id.* Pais Libre reports that 189 children were kidnapped, up from 131 in 1998. *Id.*

71. *1999 Colombia Country Reports*, *supra* note 1.

72. *Id.*

73. *Id.*; *see also IACHR Colombia Report*, *supra* note 24, at 104–107. Armed dissident groups were responsible for 15 percent of torture cases in 1996. *Id.* at 111. State agents tortured, released, and displaced many persons in Colombia in 1995, and another significant number were tortured before being executed. *Id.* at 104. Paramilitary groups accounted for almost 75 percent of acts of torture in 1996. *Id.*

74. *Id.*

75. *IACHR Colombia Report*, *supra* note 24.

76. *Id.* at 104–107.

77. *Id.*

C. *Extrajudicial Killing*

Colombia's murder rate is the highest in the world, and homicide is the leading cause of death in the country.⁷⁸ A large percentage of murders are extrajudicial executions carried out by security forces or result from death in combat due to the ongoing conflict.⁷⁹ Estimates of the number of Colombians who died as a result of the armed conflict in 1998 range from 2000 to 6000.⁸⁰ The Colombian military, paramilitary groups, guerrilla factions, and drug traffickers have all been implicated as using extrajudicial killings to further their respective goals in the ongoing conflict in Colombia.⁸¹

D. *Displacement*

The internal displacement of thousands of Colombian citizens has been described as a "longstanding and underreported problem" that is a direct result of the ongoing conflict.⁸² It is estimated that during 1998, 300,000 Colombians were displaced as a result of ongoing paramilitary and guerrilla attacks.⁸³ Prior to 1998, Colombia's internal refugee population was estimated to be one million, placing it among the top four in the world.⁸⁴ Most displaced Colombians remain within the country, but many seek international refuge, clearly placing this effect of the Colombian conflict in an international context.⁸⁵

78. Schwartz, *supra* note 35, at 382.

79. *Id.* at 383.

80. *Colombia Unida Por La Paz*, EL NUEVO HERALD (Miami), Oct. 25, 1999, at 1A.

81. *See generally* 1999 *Colombia Country Reports*, *supra* note 1.

82. Margalit Edelman, *Colombia's Quiet Catastrophe*, CHRISTIAN SCI. MONITOR, June 22, 1999, at 11.

83. *Id.*

84. *Id.*

85. *Id.* In a notable example, some 2600 refugees who sought refuge in Venezuela were eventually repatriated to Colombia in an apparent violation of Venezuela's obligations under international law. *Id.* An examination of this aspect of the Colombian crisis, however, does not fall within the framework of this paper. It serves as an example, however, of the international community's unwillingness to acknowledge the scope of Colombia's internal turmoil and its human rights repercussions.

V. WHAT IS COLOMBIA'S OFFICIAL POSITION ON HUMAN RIGHTS?

A. Colombia "Talks the Talk"

Colombia's record of espousing support for human rights within both domestic and international legal frameworks is exemplary. The Colombian Constitution of 1991 incorporates human rights provisions and specifically provides for citizen's rights. Such rights include: due process, freedom from torture, and right to life to be protected from violation.⁸⁶ Article 93 of the constitution places treaties that deal with international human rights and humanitarian law in preeminent positions with respect to the domestic legal system.⁸⁷

On the international side, Colombia has ratified most major international human rights covenants, protocols, and conventions, including the Convention Against Torture.⁸⁸ Colombia has signed and ratified the American Convention on Human Rights ("American Convention"), and has accepted the competency of the Inter-American Court for Human Rights ("Inter-American Court").⁸⁹ In accepting the competency of the Court, however, Colombia reserved the right to withdraw its acceptance at any moment that it considers to be opportune.⁹⁰

86. Manglano, *supra* note 10, at 46.

87. *Id.*

88. UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, United Nations Human Rights Website, Treaty Bodies Database, Status by Country, *available at* <http://untreaty.un.org>. Colombia is a signatory of the following: Convention Against Torture; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child (with reservations); International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Optional and Second Optional Protocols to the Covenant on Civil and Political Rights; and the International Convention on Protection and Rights of All Migrant Workers. *Id.*

89. Inter-Am. C.H.R., Convention Signatories, *available at* <http://www.corteidh-oea.nu.cr/ci/> (last visited Oct 2, 1999). Colombia was the second country to ratify the American Convention on Human Rights on July 31, 1973, and accepted the competency of the Court on June 21, 1985. *Id.*

90. *Id.*

B. *Colombia Doesn't "Walk the Walk"*

Colombia's record of enforcing human rights within its borders, however, is dismal and is characterized as the worst in the world.⁹¹ Human rights violations and violations of international humanitarian law perpetrated by the participants in the current conflict go almost totally unpunished.⁹² Although both the Colombian Penal Code and the Colombian Constitution provide support for punishing human rights violators in the domestic system by explicitly prohibiting such human rights abuses as extrajudicial killings, torture, and kidnapping, the Colombian government has shown that it is unable or unwilling to bring perpetrators to justice on this basis.⁹³

Some view the Colombian Constitution as a laudable effort by Colombia to show the world that it recognizes that human rights violations are prevalent in the country, but it has so far been ineffective, particularly against one of the principal violators of human rights in the country: its own military.⁹⁴ By channeling human rights abuse cases against members of the military to military tribunals, the constitution virtually guarantees that such offenders will be judged only by military peers, if they are prosecuted at all.⁹⁵ While recent reports indicate some willingness on the part of the government to prosecute a small number of military officials for human rights violations, the number is limited compared with the scope of the violations for which the military is responsible.⁹⁶

Although domestic law provides a legal basis to pursue other offenders, the fact that the government cedes control of up to forty percent of the national territory to guerrilla groups and allows drug traffickers to operate with near total impunity suggests that any power to bring these groups to justice on human rights grounds is extremely limited. As previously discussed, this problem is further complicated by a generally ineffective judiciary that is unable to successfully prosecute crimes.⁹⁷

It is, therefore, logical to conclude that such a domestic system is particularly unprepared to prosecute human rights violations when common

91. Manglano, *supra* note 10, at 45.

92. *Id.*

93. *Id.*

94. *Id.* at 47.

95. *Id.*

96. See 1998 Colombia Country Report, *supra* note 3; see also Colombia Convicts Former Army General in Rights Case, *supra* note 36.

97. Manglano, *supra* note 10, at 50.

criminals generally go free. In fact, reports indicate that where human rights abuses are concerned, impunity reaches 100 percent.⁹⁸ Whether by choice or through powerlessness, it is clear that Colombia doesn't "walk the walk" that is required to implement the effective prosecution and punishment of human rights violations that its domestic laws and international treaty obligations demand.

VI. WHAT ARE THE INTERNATIONAL LEGAL IMPLICATIONS OF THE CURRENT CONFLICT IN COLOMBIA?

A. *Colombia's International Human Rights Treaty Obligations: No Teeth*

As indicated above, Colombia is a signatory of most of the major international human rights treaties, conventions, and protocols.⁹⁹ None of these obligations provide a means by which perpetrators of human rights violations in the current conflict in Colombia can be prosecuted or punished.

B. *The Inter-American System: It Falls Short*

Colombia's adherence to the American Convention and its acceptance of the binding jurisdiction of the Inter-American Court offer a limited means to address human rights violations. The Inter-American Court hears cases brought by the Inter-American Commission on Human Rights against consenting member states for violations perpetrated by the state itself, or against private individuals or groups acting with the acquiescence of the state.¹⁰⁰ As a result, individual claims could conceivably be brought under this system.

It is important to note, however, that the Inter-American system was designed to treat cases involving the type of gross human rights violations that occur in Colombia today through its *in loco* reporting system, rather than by bringing individual claims before the Inter-American Court.¹⁰¹ In fact, the individual claims mechanism was conceived as a precautionary measure with a preventive role whereby "a single violation could be the first indication of the beginning of a process that, if allowed to proceed, will result in regression back to an authoritarian structure," seemingly before a

98. *IACHR Colombia Report*, *supra* note 24, at 75.

99. Manglano, *supra* note 10, at 52.

100. *IACHR Colombia Report*, *supra* note 24, at 71.

101. Claudio Grossman, *Strengthening the Inter-American Human Rights System: The Current Debate*, 92 AM. SOC'Y INT'L L. PROC. 186, 187-88 (1998).

situation reached the gross and flagrant stage.¹⁰² Such is clearly not the case in Colombia. While it is certainly conceivable that an individual claim could be brought before the Inter-American Court to address human rights abuses in the current conflict, where abuses number in the thousands, indicative of a breakdown of rule of law of enormous proportions, the individual claims mechanism of the Inter-American system would be overloaded.¹⁰³

The result of applying the *in loco* reporting procedures in the case of Colombia would be the preparation of a report by the IACHR suggesting actions to be undertaken by the Colombian government to stem the tide of abuses.¹⁰⁴ In the case of controlling human rights violations by the military, the IACHR report addresses the issue of the autonomy of the military courts, but it does not provide a means to punish any perpetrators of human rights violations who currently operate in Colombia with impunity.¹⁰⁵ The *in loco* system suggests a solution tied to a domestic judicial remedy. To be effective, such a solution requires that the country involved have control of its political system. In a country like Colombia where impunity reigns and justice is ineffective, such a solution is of limited consequence in effectively dealing with the human rights abuses that are being inflicted by a range of both state and non-state actors, which the government is unable or unwilling to control.

In fact, the IACHR recently released a report on Colombia following a visit in that country that provides the Inter-American system response to the conflict.¹⁰⁶ The report acknowledges the existence of violations of both human rights law and international humanitarian law in Colombia, but its relatively toothless recommendations seem unrealistic and inadequate in view of the seriousness and urgency of the situation.¹⁰⁷

As the foregoing analysis indicates, the Colombian government has become increasingly ineffective in dealing with the problems of conflict and violence that have arisen within its borders over the last three decades. The IACHR report, however, calls for action by this inactive government to

102. *Id.* at 188.

103. *Id.* (explaining that “the impact of the ‘case approach’ in situations of mass and gross violations is more limited than the impact of visits *in loco*” because trying to use the case system to address thousands of violations is like “the fable of the Dutch boy who tries to stop a flood by putting his finger in a hole in a dike as the whole structure collapses”). *Id.*

104. *See id.*

105. *See Manglano, supra* note 10, at 51.

106. *IACHR Colombia Report, supra* note 24, at 70.

107. *Id.* at 71.

resolve a situation it seems powerless to control.¹⁰⁸ The report exhorts the government to resolve the conflict based on a series of recommendations, which include, among other things: 1) intensification of human rights training of security forces; 2) dissemination of human rights information to the violators and the general population; 3) immediate implementation of measures to insure effective criminal investigation of human rights abuses; and 4) immediate implementation of measures to dismantle paramilitary groups.¹⁰⁹ The report also calls on all parties “[to] respect, implement and enforce the rules governing hostilities set forth in international humanitarian law, with particular emphasis on the protection of civilians.”¹¹⁰ It offers no insight, however, into how this resolution is to be accomplished by a government that is at best powerless or at worst complicit, and how parties that disregard basic humanitarian concerns will all at once pay heed to this call.

The report exposes the deficiencies of the Inter-American system in dealing with the type of situation that exists in Colombia today, where the government is but one of several culprits participating in gross violations of human rights. The Inter-American system was designed in large part to respond to the abuses of dictatorships through individualized complaints that would lead to reports by the IACHR that provided authoritative accounts of the violations.¹¹¹ The current situation in Colombia does not fit the model. It calls for a type of redress that the Inter-American system cannot provide, either in terms of prosecution or punishment.

Moreover, whether a solution based on human rights law can even reach such non-state actors as the drug traffickers and the guerrilla groups is an open question, since it can be argued that the Colombian government attempts to control them, albeit ineffectively, and therefore has not acquiesced, accepted, or condoned their conduct.¹¹²

108. *Id.* at 70–71.

109. *Id.*

110. *Id.*

111. Grossman, *supra* note 101, at 189–90.

112. The same may not be true for the paramilitary groups, since there is evidence of acquiescence in the form of collusion between this group and government forces. It can also conceivably be argued that the guerrilla groups are state actors themselves by virtue of the fact that they control large portions of Colombian territory.

C. *International Humanitarian Law: Can Recent Precedent Stick?*

Even if its recommendations fall short, the IACHR report offers a detailed analysis of how international humanitarian law applies to the idiosyncrasies of the ongoing conflict in Colombia.¹¹³ Several of the observations and conclusions reached by the IACHR indicate that international humanitarian law may provide the means to hold the Colombian government, the guerrillas, the paramilitary groups, and drug traffickers liable for human rights violations, and even punish them.¹¹⁴

The IACHR report openly admits that the American Convention and other universal and regional human rights instruments cannot be used to regulate to any great degree human rights abuses that occur during internal conflicts like the one that is now underway in Colombia.¹¹⁵ It does, however, point out that international humanitarian law is specifically designed to restrain such conduct.¹¹⁶

By invoking recent international humanitarian legal precedent, the IACHR issues a warning to the offending parties in the conflict. It puts them on notice that such recent international legal developments as the formation of the International Criminal Tribunal for the former Yugoslavia and the possible impending establishment of an international criminal court indicate that there is growing precedent for an international remedy that will stick to offenders like those in Colombia.¹¹⁷

As the IACHR report points out, the application of humanitarian law to the conflict in Colombia is particularly appropriate for two reasons.¹¹⁸ First, Colombia has acknowledged that its internal conflict rises to the level required for international humanitarian law to apply.¹¹⁹ Second, Colombia has acknowledged the applicability of the Geneva Conventions, which its constitution has established as preeminent law within its own domestic framework.¹²⁰

The IACHR report specifically concludes that international humanitarian law norms apply equally to human rights violations committed

113. *IACHR Colombia Report*, *supra* note 24, at 94–96.

114. *Id.* at 78.

115. *Id.* at 74.

116. *Id.*

117. *Id.* at 156–58.

118. *IACHR Colombia Report*, *supra* note 24, at 71–72.

119. *Id.* at 77.

120. *Id.* at 78.

in Colombia by guerrillas, the government, and paramilitary groups, because parties to such a conflict “are directly bound by international humanitarian law, and their belligerent acts are appropriately evaluated by reference to those norms.”¹²¹ As a result, the report analyzes the activities of each of these groups in light of applicable international humanitarian law and reiterates a conclusion reached after a 1997 on-site visit to Colombia where it noted that violations of human rights and/or international humanitarian law “could constitute crimes of an international character which would incur the individual criminal responsibility of the authors, who may be prosecuted in any State in which they happen to be [found].”¹²²

Fortunately for the violators, and unfortunately for the citizens of Colombia, the current state of international humanitarian law most likely means that at most the perpetrators of human rights violence in Colombia will receive the type of warning contained in the IACHR report. The proposed International Criminal Court might offer a solution that applies to the conflict in Colombia because it promises to investigate and bring justice to individuals who commit the most serious crimes of concern to the international community, such as genocide, war crimes, and crimes against humanity.¹²³ However, this solution is far from an immediate one. Even though twenty-seven countries, including the United States, ratified the treaty, sixty must do so before the court is established.¹²⁴ However, in the case of the United States, the treaty is not binding without Senate approval, and there is strong opposition to such approval.¹²⁵

The situation in Colombia cannot wait for the International Criminal Court to be established. Thus, other suggested solutions will not do justice. The IACHR report’s suggested solution relies too heavily on the weakened, beleaguered Colombian government to make a complete about face and bring the perpetrators to justice.¹²⁶ Other suggested courses of action overlook the fact that there are multiple offenders of human rights in the current conflict. This calls for prosecution of the military alone for failing to address the full magnitude of the violations.¹²⁷ Some suggest that

121. *Id.* at 96.

122. *Id.* at 156.

123. *IACHR Colombia Report*, *supra* note 24, at 72.

124. Joan Smith, Comment & Analysis: *Hypocrite to the Last: The U.S. President has Suddenly Signed up to the Plan for an International War Crimes Tribunal*, *THE GUARDIAN*, Jan. 3, 2001, available at 2000 WL 2910289.

125. *Id.*

126. *Id.*

127. Manglano, *supra* note 10, at 51.

prosecution is not needed at all, and that the guerrillas should be excused because the basis of their insurgency is a struggle for equality, overlooking the suffering that Colombian citizens have endured for decades.¹²⁸ Still others espouse a negotiated settlement, ignoring the fact that such a settlement in the end signifies one more round of impunity for human rights violators in Colombia.¹²⁹ And the government views the solution in dollar terms, and seeks help in the form of financial and military aid, with the United States ready, willing, and able to provide money.¹³⁰

None of these approaches have worked in the past and there is little reason to believe they will work now. All overlook the depth of the chaos, its ongoing nature, and the extent of the violations. Drastic measures are required to resolve this quiet catastrophe that worsens with the passage of time.¹³¹

The Colombian government is unable or unwilling to bring human rights violators to justice. International human rights law offers little chance of prosecuting and punishing human rights violators. International humanitarian law may offer hope for the thousands of Colombians abused by this conflict, which challenges established human rights law mechanisms such as the Inter-American system. The level of violence and the fact that blame can be laid at so many doors makes it impossible for the government to effectively act.

It is time for the international community to recognize that the armed conflict in Colombia has risen to the level that justifies invoking established international humanitarian legal precedent. As in the case of atrocities in other parts of the world, a Colombian war crimes tribunal should be established to bring violators from all sides in the current conflict to justice. Without international intervention of this type, there is little hope that the Colombian government will be able to regain control of the national territory while ending decades of human rights abuses inflicted upon the citizens of Colombia. Without justice for Colombia, there will be no peace.

128. Nick Trebat, *Drugs Replace Communism as the Point of Entry for U.S. Policy on Latin America*, COUNCIL ON HEMISPHERIC AFFAIRS (Aug. 24, 1999), at <http://www.icde.com/~paulwolf/hemisphr.htm>.

129. Winifred Tate, *Increased U.S. Military Aid to Colombia Won't Curb Drug Trafficking*, SAN FRANCISCO CHRONICLE, Aug. 19, 1999, at 25, at <http://www.lightparty.com/WarOnDrugs/DrugTrafficking6.html>.

130. See Christopher Marquis, *Un "Plan Marshall" Para Colombia*, EL NUEVO HERALD (Miami), Sept. 21, 1999, at 1A.

131. See Edelman, *supra* note 82.

VII. CONCLUSION

The foregoing analysis shows that Colombia has failed to protect its citizens from human rights violations perpetrated by its own military, by guerrilla groups, by paramilitary groups functioning either independently of or in complicity with the government, and by drug traffickers. The international and regional human rights treaties, conventions, and protocols to which Colombia has submitted are inadequate to address the problem of punishing human rights violators. Since the international criminal court is not yet operational, an international criminal tribunal should be formed to address the fact that: Colombia is unable to punish violators through its own domestic laws due to the severity of the internal conflict and the government's ineffectiveness; and international human rights law is geared toward promoting human rights rather than enforcing them and is designed to address the government as violator, an idiosyncrasy that makes its application to the current conflict in Colombia particularly ineffective.

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