

“COLOMBIA WEEPS BUT DOESN’T SURRENDER”:¹ THE BATTLE FOR PEACE IN COLOMBIA’S CIVIL WAR AND THE PROBLEMATIC SOLUTIONS OF PRESIDENT ALVARO URIBE

INTRODUCTION

A bloody and vicious civil war has torn apart the nation of Colombia for nearly half a century.² On a daily basis, seven warring factions³ murder, kidnap, and massacre⁴ Colombian citizens. The Colombian President, Alvaro Uribe, won the most recent election on a platform urging a strong front against the warring factions to establish “democratic security,” protect Colombians, and bring an end to the lawlessness fueled by drug trafficking.⁵ One of President Uribe’s proposals grants immunity to paramilitary groups that turn in their weapons in exchange for reparations paid to victims of the conflict.⁶ In addition, President Uribe has

1. Juan Forero, *11 Killed in Bombing in Colombian City*, N.Y. TIMES, Sept. 29, 2003, at A13.

2. Michael Easterbrook & Bryan Bender, *Colombia Talks Get OK Demobilization of Ultra-Right Group by End of '05 is Goal*, BOSTON GLOBE, July 17, 2003, at A8 (stating that “the paramilitary army is battling leftist rebels in a bloody civil conflict now in its 39th year”).

3. HUMAN RIGHTS WATCH, *WAR WITHOUT QUARTER: COLOMBIA AND INTERNATIONAL HUMANITARIAN LAW 2* (1998) [hereinafter HUMAN RIGHTS WATCH]. The factions are:

[T]he Colombian Army, National Police, “Special Vigilance and Private Security Services” (Servicios de Vigilancia y Seguridad Privada, or CONVIVIR); paramilitaries allied as the United Self-Defense Group of Colombia (Autodefensas Unidas de Colombia, or AUC); and Colombia’s three largest guerilla groups, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, or FARC), the National Liberation Army (NLA, or Unión Camilista-Ejército de Liberación Nacional, or UC-ELN), and the Popular Liberation Army (Ejército Popular de Liberación, or EPL).

Id.

4. See Karl Penhaul, *UN Spreads Blame for Colombia Massacre*, CNN.COM, May 31, 2002, available at <http://archives.cnn.com/2002/WORLD/americas/05/21/colombia.un/index.html> (last visited Mar. 30, 2005). See also *Two More Candidates in Colombian Elections Killed*, CNN.COM, Oct. 13, 2003, at <http://www.cnn.com/2003/WORLD/americas/10/11/colombia.violence.ap/index.html> (last visited Mar. 30, 2005) (stating “[s]ome 3,500 people, mainly civilians, die in the fighting each year”).

5. Michael Shifter, *Colombia’s New Hope*, WASH. POST, Aug. 6, 2003, at A17. Uribe is immensely popular, with approval ratings consistently near seventy percent, and is the only president in Latin America that can properly be classified as a “war president,” vowing to defeat the paramilitary and rebel factions. *Semana*, the Colombian weekly, captured the mood of support for Uribe in a lead story headlined “The Year that Hope was Restored.” *Id.*

6. Juan Forero, *Colombia Plans to Ease Penalties for Right-Wing Death Squads*, N.Y. TIMES, Sept. 15, 2003, at A7 [hereinafter Forero].

The proposed law would allow militiamen from the Self-Defense Forces of Colombia to avoid jail for widespread human rights abuses that include the mass killings of thousands of

pressed the need to provide greater powers for police forces to combat terrorism,⁷ including an initiative that would allow police to detain “terror suspects” for up to seventy-two hours without releasing any information as to their identity and without probable cause.⁸ However, these initiatives have been criticized by both the United Nations and human rights groups.⁹ Ending the human rights violations, bringing the perpetrators to justice, and securing lasting peace in Colombia requires U.S. assistance.

The United States, under the auspices of Plan Colombia, has provided \$2.5 billion in aid since 2000 and is likely to give an additional \$700 million to Colombia this year.¹⁰ Given the high level of economic investment in Colombia to date, the United States must become more actively involved in the long road to peace.¹¹ Granting immunity to paramilitaries or guerillas is not a viable solution to the problem, nor can the International Community sit idly by as war criminals escape justice. The United States needs to enter the conflict in a more direct role, providing direct military assistance as well as financial assistance, to assist Colombia in achieving a lasting resolution to the conflict.

Part I of this Note examines the history of Colombia and describes the horrendous civil war that has torn apart Colombia for over forty years. Part

villagers and the assassination of two presidential candidates. The group’s leaders, several already convicted in absentia for murder, would instead be compelled to admit their crimes and make symbolic acts of contrition, compensating victims by providing community services, turning in their land and paying fines. In exchange, the militia—a private, anti-guerrilla army financed through cocaine trafficking and donations from wealthy Colombians—would make peace.

Id. The plan would then, supposedly, open the door for future negotiations with Colombia’s two Marxist guerilla groups (FARC and ELN), according to Mr. Uribe. *See* Scott Wilson, *Uribe Sets Goal at Own Peril; Plan to Disarm Military Group May Undercut His Popularity*, WASH. POST, Sept. 20, 2003, at A28.

7. *Id.*

8. *Día Crucial Para el Estatuto Antiterrorista*, EL COLOMBIANO, Nov. 4, 2003, available at <http://www.elcolombiano.com/historicod/200311/20031104/nnh002.htm> (last visited Feb. 28, 2005).

9. Forero, *supra* note 6.

The United Nations and even conservative allies of Mr. Uribe say the legislation would be a travesty, allowing some of the most brutal warlords to avoid justice “The bill opens the door to impunity because it throws out jail time and allows those responsible not to serve a single day in prison,” said a recent statement from the United Nations high commissioner for human rights in Colombia, Michael Fruhling.

Id. The Human Rights Watch has been the most vocal human rights organization in opposition to President Uribe’s proposals. *See generally* HUMAN RIGHTS WATCH, *supra* note 3.

10. Juan Forero, *U.S. Backs Colombia on Attacking Drug Planes*, N.Y. TIMES, Aug. 20, 2003, at A1 [hereinafter Forero, *U.S. Backs Colombia*].

11. Steven R. Weisman, *Powell Says U.S. Will Increase Military Aid for Colombia*, N.Y. TIMES, Dec. 5, 2002, at A14. I am not suggesting that more money should be provided to Colombia. On the contrary, for a lasting peace to work, the United States will likely have to provide military assistance and monitor the situation closely to ensure that the warring factions are brought to justice.

II of this Note presents President Uribe's proposed law, designed to alleviate the terror strangling Colombia's progress. Part III of this Note examines similar processes from Sierra Leone and South Africa as a template for the complications created by granting immunity to war criminals. Part IV of this Note analyzes the U.N. position on Colombia, with a focus on the human rights dilemma presented by President Uribe's proposed law. Part V of this Note examines U.S. involvement in Colombia and the Bush administration's stance on President Uribe's proposals. Part VI of this Note critiques the situation and identifies possible solutions to this incredibly difficult situation, including direct U.S. military involvement. Finally, this Note concludes that U.S. intervention is required in order to obtain lasting peace in Colombia.

I. HISTORY OF THE CONFLICT¹²

The conflict in Colombia can be traced to the formation of several guerilla groups in the mid-1960s, and the largest guerilla faction, the Fuerzas Armadas Revolucionarias de Colombia (FARC), can be traced to the period between 1948 and 1958 known as *La Violencia*.¹³ Indeed, in the late 1940s, dissident Jorge Eliécer Gaitán, a leading Liberal and Communist reform presidential candidate, was assassinated in Bogotá. The assassination triggered the "Bogotazo," a popular uprising of lower class liberals that resulted in destruction and looting in Bogotá.¹⁴ Similar uprisings occurred throughout rural Colombia, forcing the conservative regime to quell the rebellion.¹⁵ Eventually, after periods of sporadic fighting and brutal killings of innocent people on both sides of the struggle, General Gustavo Rojas Pinilla launched a major military offensive. The offensive against the peasant uprising came to be known as the War of Villarica.¹⁶ This conflict gave rise to the "armed self-defense" groups that would later become FARC.¹⁷

12. The account of events provided in this Note is admittedly cursory and focuses much more narrowly on recent developments, as opposed to the initial reasons that war erupted in Colombia. For a more detailed account of Colombia from a historical perspective, see CHARLES BERGQUIST ET AL., *VIOLENCE IN COLOMBIA: THE CONTEMPORARY CRISIS IN HISTORICAL PERSPECTIVE* (1992). See also ALFREDO MOLANO, *LOS AÑOS DEL TROPEL: CRÓNICAS DE LA VIOLENCIA* (1985); ARTURO ALAPE, *LA PAZ, LA VIOLENCIA: TESTIGOS DE EXCEPCIÓN* (1985) (discussing the history of violence in Colombia).

13. Garry Leech, *Fifty Years of Violence*, COLOM. J. ONLINE, May 1999, at <http://www.colombiajournal.org/fiftyyearsofviolence.htm> (last visited Mar. 30, 2005).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* Other guerilla movements developed subsequent to FARC, including the Army for National Liberation (ELN), which was initially comprised of university students that had returned

FARC became more powerful when failed Colombian political initiatives in the 1970s led to a near doubling of the poverty level in urban areas.¹⁸ As a result, peasants fled the cities to find work in the FARC-controlled agrarian areas because of the profits that could be made by growing coca.¹⁹ This mass migration led to a large increase in FARC revenues, due to “war taxes” that FARC levied on civilians living within regions under their control.²⁰ Initially, the drug lords and FARC worked together; the drug lords produced and trafficked the cocaine, developed from the vast coca fields farmed by peasants, and FARC provided protection within the region for the illegal operation.²¹

However, as the drug lords became wealthier, they invested their money in property alongside FARC’s traditional enemy: wealthy land owners.²² This new dynamic led to violent conflict between FARC and the landowners, in which many landowners, who had reaped their wealth via the drug trade, were kidnapped and murdered.²³ As a result of the conflict, an alliance *Muerte a Secuestradores* (MAS) formed in the 1980s between the Colombian military, the police, businessmen, and ranchers.²⁴

MAS later evolved, under the leadership of Carlos Castano, into the 15,000 strong Autodefensas Unidas de Colombia (AUC).²⁵ Along with his brother Fidel, who had amassed a fortune through drug trafficking, the Castanos turned AUC into a prominent organization capable of carrying out a war against FARC.²⁶ The fighting amongst AUC, FARC, and the National Army continues today.²⁷

from Cuba and adhered to the philosophy of their hero, Che Guevara. *Id.* The Popular Army of Liberation (EPL) also formed during this time, adhered to the Maoist theory of a “prolonged popular war.” *Id.* However, because FARC is by far the largest guerilla faction in Colombia, most of this discussion will be limited to its involvement in the war and the peace process.

18. *Id.*

19. *Id.*

20. *Id.* This led to the improvement of FARC’s military capabilities. It was able to modernize its forces and provide a better standard of living for its members. *Id.*

21. *Id.*

22. *Id.* These new landowners quickly developed their own paramilitary forces to fight the guerillas and defend themselves and their new found wealth from guerilla sympathizers. During this initial period of fighting the guerillas began their aggressive campaign of kidnapping. *Id.* Many wealthy narco-landowners—drug traffickers that subsequently purchased land—were kidnapped and later murdered, quickly escalating the scale of the war. *Id.*

23. *Id.*

24. HUMAN RIGHTS WATCH, *supra* note 3, at 100–01. The killing of kidnapers and suspected kidnapers was deemed necessary to fend off the guerilla incursions; however, the activities of MAS and FARC escalated, from fighting and kidnapping, to the assassination of elected officials, farmers, and community leaders. *Id.* at 101.

25. *Id.* at 100–01.

26. *Id.* AUC and MAS are considered right-wing paramilitary groups; often operated with the implicit consent and even direct involvement of the government, as both groups wage war with FARC,

The history of the groups engaged in Colombia's conflict does not begin to detail the atrocities committed by these groups.²⁸ The civilian outlook is best summarized by Francisco Sanchez, whose neighbor was recently killed during an attack on a fortified police station: "You live in fear You never know when you are going to die."²⁹ In addition to murder; kidnapping is an ever-present threat in Colombia, tearing local families apart. Recently, the scope of these kidnappings has expanded to include Americans in Colombia, thus drawing the United States further into the fray.³⁰ Exacerbating the problem is the fact that over 160 Colombian municipalities have no police or army presence, and nearly 250 operate without a mayor.³¹ Moreover, mayoral candidates are frequently the victims of attacks. The fear of attack is so great that candidates often do not register in municipalities with open seats.³²

or guerillas. However, this changed in 1989, when the paramilitary landowners that made up the AUC turned their focus toward government officials who supported the extradition of drug traffickers to the United States. See Leech, *supra* note 13. A group of traffickers led by cartel chief Pablo Escobar, calling themselves the "Extraditables," waged a violent bombing campaign in Colombian cities in an attempt to end extradition. *Id.* The AUC eventually murdered a group of judges and investigators while they were investigating a number of other murders supposedly perpetrated by the paramilitaries. This led former President Virgilio Barco to issue Decree 1194, making it illegal for civilians or members of the military to create or participate in "self-defense" paramilitary groups. *Id.* In reality, the decree did very little to quell the activities of the paramilitary groups (especially AUC), and many government officials still participate in or provide aid to the groups today. HUMAN RIGHTS WATCH, *supra* note 3, at 107–08.

27. *Id.* The roots of the conflict can be traced back to the peasant rebellions of the late 1940s that gave rise to FARC and eventually its counterpart, AUC. *Id.* at 131.

28. *Id.* at 1. The victims of the numerous atrocities are almost exclusively innocent civilians or other non-combatants. FARC and AUC have both committed numerous massacres and murders against villages "suspected" of supporting the rival faction. *Id.*

29. Juan Forero, *Rebels Keeping Colombia on Edge*, N.Y. TIMES, Feb. 21, 2003, at A10 [hereinafter Forero, *Rebels*].

30. *Id.* A Colombian and an American were shot and killed after a plane used for counter-drug operations crashed, and three other occupants, all American, were carried off into the jungle. *Id.* The United States has over 900 Americans in Colombia; 500 work at the embassy and over 400 military personnel train Colombian troops to protect important oil pipelines. *Id.* FARC views the Americans as members of the war and targets in their war against the state. *Id.*

31. *Id.* The government claims it plans to post police officers and a new force of peasant soldiers in these towns. *Id.*

32. See *Colombian Mayoral Candidate Killed*, TAIPEI TIMES, Oct. 6, 2003, at 7, available at <http://www.taipetimes.com/News/world/archives/2003/10/06/2003070630> (last visited Mar. 23, 2005).

Gunmen shot and killed a mayoral candidate in a central Colombian town . . . bringing to 16 the number of political candidates killed in the run-up to elections . . . In more than 100 towns, both main rebel groups [FARC and ELN] and right-wing paramilitary fighters [AUC] have threatened candidates they suspect are not sympathetic to their respective groups. In a dozen other municipalities with open seats for mayor or city council, no candidates have registered, fearing attacks.

Id.

More startling than the assassinations and kidnappings perpetrated by almost every faction involved in the civil war, is the willingness of all parties to commit massacres against Colombian citizens. The government, AUC, and FARC have all committed separate massacres of citizens³³ in violation of Common Article 3 of the 1949 Geneva Convention,³⁴ Part 3 (Articles 28 and 33) of the Rome Statute of the International Criminal Court,³⁵ both of which Colombia has ratified.³⁶

33. HUMAN RIGHTS WATCH, *supra* note 3, at 1. Atrocities perpetrated by each individual group provide a striking visualization of the horrors of Colombian life.

First, the Colombian Government was involved in a massacre in the village of El Aro. On October 25, 1997, a joint force consisting of members of the Colombian National Army and AUC surrounded the village as part of a regional offensive against FARC. The soldiers' mission was to forcibly evict residents from villages identified as having provided FARC with supplies. The soldiers entered the village and immediately executed four people. A store owner was tied to a tree, tortured and killed. His eyes were cut out and his testicles were cut off. Over the five days the soldiers remained in El Aro they executed at least eleven people, including three children, and burned forty-seven of the sixty-eight houses. *Id.* at 65.

Second, FARC members committed similar atrocities in the villages of Nueva Luz and Bajira. After intense combat against AUC, the FARC members retreated through the two villages on January 9, 1997. The guerillas bound, executed, and decapitated four individuals they accused of being sympathetic to AUC. These individuals were civilians and protected by the laws of war. *Id.* at 143.

Third, AUC members massacred residents of the town of Mampiripan, Meta. From July 15 through July 20, 1997, AUC seized the town and killed at least thirteen people. The residents were detained, taken to a local slaughterhouse, bound, tortured, and executed. The AUC members hung one man from a hook, dismembered him, and threw his remains around. Two other people were decapitated. *Id.* at 118–19.

34. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, art. 3, 6 U.S.T. 3114, 75 U.N.T.S. 31.

In the case of armed conflict not of an international character [meaning civil war] occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

Id.

35. Rome Statute of the International Criminal Court, July 17, 1998, arts. 28, 33, U.N. Doc. A/CONF. 183/9, 2187 U.N.T.S. 90 (1998). Part 3 of article 28 governing the responsibility of commanders and other superiors provides that:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case

In addition to murders, assassinations, and kidnappings, Colombia has suffered additional human rights violations: the use of children in the conflict as informants, messengers, foot soldiers, and even executioners.³⁷ Specifically, recruitment of children under the age of fifteen constitutes a war crime,³⁸ yet FARC accounts for eighty percent of the use of children, and AUC accounts for the remaining twenty percent.³⁹

may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Id. art. 18.

In addition, article 33 governing superior orders and prescription of law provides that:

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

Id. art. 33.

36. Colombia signed and ratified the Rome Statute on December 10, 1998, available at <http://www.un.org/law/icc/statute/status.htm> (last visited Apr. 1, 2005).

Colombia signed and ratified article 3 of the Geneva Convention on August 11, 1961. See INT'L COMM. OF THE RED CROSS, STATES PARTY TO THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS, at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/\\$File/Conventions%20de%20Geneva%20et%20Protocoles%20additionnels%20ENG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/$File/Conventions%20de%20Geneva%20et%20Protocoles%20additionnels%20ENG.pdf) (last visited Apr. 1, 2005).

37. Ruth Morris, *Colombia Conflict Drawing in More Children; Human Rights Watch Reports that 11,000 Underage Combatants—as Young as 12—are Fighting for Rival Militias in the Civil War*, L.A. TIMES, Sept. 19, 2003, at A3. The prominent human rights group estimated that as many as 11,000 children are fighting in the war, which is a dramatic increase since the late 1990s. *Id.*

38. *Id.* Children that deserted told of mutilations to prisoners performed with machetes and chain saws, and girls faced the risk of sexual manipulation and forced conception. *Id.*

39. *Id.*

The violence has displaced over 2.5 million people,⁴⁰ and many of Colombia's displaced citizens endure severe hardship, receive little assistance, and live in a situation of acute vulnerability.⁴¹ The situation of internal displacement in Colombia is one of the worst in the world, forced displacement often caused by massacres, selective killings, and threats.⁴² In addition, the powerful business interests, in alliance with the paramilitaries, force poor farmers from their land, and then occupy it for paltry sums.⁴³ Most displaced Colombians flee to the cities, swelling the size of the slums.⁴⁴ Others take shelter in overcrowded, temporary camps which lack access to basic health, food, housing, and educational services.⁴⁵ The guerillas and paramilitary groups continue to threaten these displaced persons with further violence and harm even after they have been forced from their homes.⁴⁶

Both FARC and AUC support their reign of terror via drug trafficking. For years, both groups cultivated cocaine; Colombia now produces over ninety percent of the cocaine in the world.⁴⁷ In order to combat the drug trade, the United States sponsors surveillance flights designed to force down aircraft suspected of transporting illegal drugs⁴⁸ and utilizes aerial fumigation in attempts to destroy the vast fields of coca.⁴⁹ However, the destruction of coca fields has forced both FARC and AUC to augment their income by switching to the production of heroin.⁵⁰ The money

40. HUMAN RIGHTS WATCH, *supra* note 3, at 6.

41. U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2003, 241-46 (2003).

42. *Id.*

43. HUMAN RIGHTS WATCH, *supra* note 3, at 205.

44. *Id.*

45. *Id.*

46. *Id.* at 206.

47. BUREAU FOR INT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, DEPARTMENT OF STATE, ENVIRONMENTAL CONSEQUENCES OF THE ILLICIT COCA TRADE. BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS (2003), at <http://www.state.gov/g/inl/rls/fs/3807.htm> (last visited Mar. 25, 2005) [hereinafter BUREAU FOR INT'L NARCOTICS]. Coca cultivation has also led to the destruction of at least 5.9 million acres of rainforest. The trafficking of cocaine is a multimillion dollar industry and funds the activities of the paramilitary AUC and FARC. *Id.*

48. Steven Greenhouse, *U.S. to Revive Flights to Help Latin Nations Combat Drugs*, N.Y. TIMES, June 24, 1994, at A1.

49. Juan Forero & Tim Weiner, *Latin American Poppy Fields Undermine U.S. Drug Battle*, N.Y. TIMES, June 8, 2003, at A1.

50. *Id.* "Colombia and Mexico have become the dominant suppliers of heroin to the United States, supplanting Asia in a trend that experts and the authorities fear could offset American backed successes in a campaign against drugs that has focused mostly on cocaine." *Id.* at A16. "[A] Colombian system that for years ran cocaine is now increasingly reliant on heroin, which is easier to smuggle and brings much more profit." *Id.* This transition to heroin is detrimental to the United States and its "War on Drugs." *Id.*

The number of hard-core users in the United States rose to nearly a million last year, from 600,000 a decade ago The government's National Household Survey on Drug Abuse

generated by the production and trafficking of cocaine and heroin make FARC and AUC potent combatants with modernized machinery capable of additional destruction. FARC controls as much as sixty percent of the country and has a force of 20,000 soldiers.⁵¹ Combatants involved in the seemingly endless civil war have committed countless human rights violations; it is against this background that President Alvaro Uribe must find solutions to alleviate the suffering of an entire nation.

II. PRESIDENT URIBE'S SOLUTIONS

In hopes of bringing peace to Colombia, President Uribe proposed Decree 2758,⁵² which would allow members of AUC to avoid jail time for various crimes if they simply admit their crimes and make symbolic acts of contrition, such as turning in portions of their land and paying fines.⁵³ In return, the militiamen make peace and turn in their guns, thus saving lives by deactivating the "antiguerrilla" army.⁵⁴ The proposed decree contemplates that once the right-wing faction is out of the way, the government could then begin to work on the peace process with the two left-wing paramilitary forces (FARC and NLA).⁵⁵ Supporters of President Uribe's proposal believe that by deactivating AUC, valuable information could be gathered, allowing authorities to dismantle many criminal organizations and work toward peace.⁵⁶ Other proposals backed by President Uribe include an anti-terror statute that would give the military

also determined that the number of 18–25 year olds who had used heroin in the last month rose to 67,000 in 2001 from 26,000 in 2000.

Id. There is a danger of heroin becoming widespread in the U.S. market because of its lower cost. *Id.* The transition from cocaine to heroin also has other unfortunate side effects; due to the eradication of the coca fields, Colombian agrarian residents have ceased farming and turned to the production of drugs, specifically heroin, because it is easier to grow and brings more money in return than traditional agriculture. *Id.*

51. Isabel Hilton, *Terror as Usual: Political Killings Have Doubled and Drug Cartels Control Much of the Land, but British Cash Still Flows to Colombia*, THE GUARDIAN, Sept. 23, 2003, at 22.

52. *Decreto 2758 Que Fija Nuevo Periodo De Inscripcion De Candidatos*, <http://www.presidencia.gov.co/documentos/2003/octubre/decreto2758.htm> (last visited Sept. 7, 2005). Although the referendum containing the proposed law ultimately failed on October 26, President Uribe continues to pursue this law as a main objective in defeating the paramilitaries and guerillas. *Id.*

53. Forero, *supra* note 6. The crimes committed by paramilitary groups include the mass killings of thousands of villagers and the assassination of political candidates. *Id.*

54. *Id.* The law aims to remove the 13,000 armed fighters from the civil war and give the two leftist guerilla groups incentive to negotiate with the government to bring about an end to the war. *Id.*

55. *Id.*

56. *Id.* "Luis Carlos Restrepo, Mr. Uribe's peace commissioner, [has] said that the proposed law would bring in information that enable authorities to dismantle criminal organizations [In addition,] they would lose certain rights like running for office and carrying weapons." *Id.*

judicial powers⁵⁷ and would provide more power to the police, including the ability to detain people without divulging reasons for the detention.⁵⁸

The proposed decree would purportedly disarm AUC while allowing the paramilitary commanders, even those accused of grave human rights abuses, to escape prison time by repaying victims and performing social work.⁵⁹ The proposed decree would also require AUC members to acknowledge their crimes in open court in exchange for suspended sentences and five years probation.⁶⁰ President Uribe's goal is to persuade Colombians, as well as the international community, that lenient treatment for the privately funded AUC is the necessary price for removing the group from the conflict,⁶¹ even though AUC is listed by the U.S. State Department as a terrorist organization.⁶² As noted above, AUC derives its money from the drug trade that accounts for nearly ninety percent of the U.S. cocaine supply.⁶³ Specifically, AUC's leaders, Carlos Castano and Salvatore Mancuso, have been indicted by the United States for allegedly exporting seventeen tons of cocaine to the United States and using the profits to fund the war effort.⁶⁴

President Uribe clearly understands what is at stake,⁶⁵ and is willing to go further than most in order to achieve a lasting peace in Colombia.⁶⁶ President Uribe explained his controversial plan to the United Nations:

57. Rachel Van Dongen, *Colombia's President Faces Make-or-Break Weekend*, CHRISTIAN SCI. MONITOR, Oct. 24, 2003, at 7. The main reasons the referendum was defeated: it took an estimated twenty-two minutes to read; it was difficult to understand; and under Colombian law the referendum had to pass as a whole. Thus, either all proposals had to pass, or none would become law. In addition, twenty-five percent of eligible voters must participate in an election for the result to be binding. Of those who voted, the proposals received at least seventy-nine percent support. Also, on the day of the election, six policeman and a soldier were killed as well as six civilians. All of these actions were aimed at disrupting the voting and were perpetrated by FARC. See *Colombians Vote on Key Referendum Amid Violence; Suspected Rebel Attacks Kill 13. The Balloting Poses an Important Test for President Uribe*, L.A. TIMES, Oct. 26, 2003, at A14.

58. Juan Forero, *For Colombia's Ascetic Leader, Signs That Violence is Easing*, N.Y. TIMES, Nov. 10, 2003, at A4.

59. Scott Wilson, *Uribe Sets Goal at Own Peril; Plan to Disarm Paramilitary Group May Undercut His Popularity*, WASH. POST, Sept. 20, 2003, at A28.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* For Uribe, this plan is a shortcut to peace, but he states that it is necessary to end the terror plaguing Colombia, as the atrocities facing Colombia demand a difficult solution. *Id.*

66. Pablo Bachelet, *U.S. Can Fund Effort to Disarm Gunmen*, PITT. POST-GAZETTE, Dec. 20, 2004, at A3.

I understand the concern raised by offering alternative sentences for grave crimes,⁶⁷ but in a context of 30,000 terrorists, it must be understood that a definitive peace is the best justice for a nation in which several generations have never lived a single day without the occurrence of a terrorist act.⁶⁸

Indeed, signs indicate that President Uribe's policies are working, irrespective of their morality, as evidenced by a recent disarmament ceremony in which 800 fighters from an urban band of AUC laid down their weapons.⁶⁹ The 800 paramilitary forces who turned in their weapons were then bused to a recreation center where they enrolled in job training or educational programs.⁷⁰ However, the finality of such successes is uncertain, as Colombia's government has cloaked the process in secrecy, with no way to determine whether the demobilized fighters will return to the war if unable to find work or accept civilian life.⁷¹ If certain guarantees are granted to AUC's two dominant leaders, Castano and Mancuso, the complete deactivation of AUC could occur relatively soon, potentially allowing both men to walk free after paying only token reparations.⁷² Many human rights activists fear that the reparations and justice would simply constitute paying money and giving open confessions in court with the understanding that there would be no jail time.⁷³ However, the Uribe Administration insists that criminals will not walk free, stating that "What will not happen is forgiving and forgetting There will be investigations and there will be reparations. We intend to overcome

67. Peter Slevin, *Colombian President Defends Amnesty for Paramilitary Troops*, WASH. POST, Oct. 1, 2003, at A17.

68. *Id.*

69. Juan Forero, *800 in Colombia Lay Down Arms, Kindling Peace Hopes*, N.Y. TIMES, Nov. 26, 2003, at A3 [hereinafter Forero, *800 in Colombia*].

70. *Id.*

71. *Id.* The government has been willing to guarantee that this is an irreversible process. One problem with the disarmament is that the two leaders of AUC have been indicted for war crimes by the United States. The Bush Administration has said that the extradition requests will not be dropped, so the paramilitary commanders are trying to obtain government assurances that they will not be arrested during negotiations. *Id.* This analysis suggests that if such requests are met, AUC might disarm in exchange for what amounts to governmental immunity from prosecution of the crimes they have committed against the civilians of Colombia.

72. *Id.* See also Robin Kirk, *Checkbook Impunity for Murderers; Colombia May Let Paramilitary Thugs Buy Their Way Off the Hook*, L.A. TIMES, Sept. 14, 2003, at M5. Carlos Castano has been indicted by the United States in addition to being sentenced to 102 years in prison for massacres, assassinations, and torture by Colombia's judiciary, but has never served a day behind bars. *Id.*

73. See Forero, *800 in Colombia*, *supra* note 69, at A3.

forgiving and forgetting by entering a process of truth, justice and reparation that will be perfected over time.”⁷⁴

Furthermore, critics of President Uribe’s proposal claim that the law “opens the door to impunity because it throws out jail time and allows those responsible [for the atrocities] not to serve a single day in prison.”⁷⁵ Critics also point out that Colombia has attempted to enter similar arrangements in the past, most notably with the Castano family, only to see the guerrillas turn up two years later as Castano’s fighters in AUC.⁷⁶ Aside from the obvious ethical problems of allowing known war criminals guilty of human rights abuses and murders to walk free, the reparations required under President Uribe’s proposal warrant further scrutiny.⁷⁷ For instance, as President Uribe and the government continue to negotiate the demobilization of AUC, its leaders are laundering accumulated drug money and taking control of even more land so that they can offer their “takings” as reparations upon disarmament.⁷⁸ Most of the victims of these crimes are poor farmers, often forcibly removed from their farms.⁷⁹ Thus, President Uribe’s proposals raise numerous human rights issues and fail to adequately address Colombia’s land reform problems.⁸⁰

74. See Wilson, *supra* note 59, at A28 (quoting Uribe’s Peace Commissioner Luis Carlos Restrepo).

75. *Id.*

76. See Kirk, *supra* note 72, at M5. Carlos Castano is one of the prominent leaders in AUC, and has been indicted by the United States for his crimes against humanity. *Id.*

77. See, e.g., Juan Forero, *Colombia’s Landed Gentry: Coca Lords and Other Bullies*, N.Y. TIMES, Jan. 21, 2004, at A4.

78. *Id.*

79. *Id.*

80. *Id.* The land reform issue must form an integral part of any solution to Colombia’s civil war. Some diplomats and land use experts suggest that the only solution is to root out the corrupt owners, return the stolen property to its rightful owners, and parcel out untitled land to the landless. This process would work much more smoothly if the United States were more involved. Colombia is about the size of South Dakota, and it has over two million people displaced by conflict in need of a place to live. The nation has a strong tradition of agriculture, but without land to farm, millions have been forced into cities and towns where they live as internal refugees. The help of the United States is needed to reclaim land and give these people a chance for economic prosperity through farming. This economic recovery is necessary for Colombia to achieve peace.

III. LESSONS FROM SOUTH AFRICA AND SIERRA LEONE: PATHWAYS TO PEACE

A. *South Africa*

Historically, compromise has been absolutely vital to achieve peace, and may require that “[I]n some cases you have to negotiate with people accused of horrendous acts.”⁸¹ For example, the transition that led to the demise of the racial apartheid in South Africa produced a Truth and Reconciliation Commission.⁸² The Truth and Reconciliation Commission has become a model system for countries ravaged by war seeking to recover and reshape their institutions.⁸³ South Africa offered amnesty to those guilty of torture, murder, and terror, provided that they told the whole truth about their involvement.⁸⁴ To date the Commission has processed over 7,000 claims for amnesty.⁸⁵ Archbishop Desmond Tutu, who chaired the South African Commission, along with Nelson Mandela, emphasized that the impact of individual stories and interactions of those who had inflicted pain and suffering was necessary to the reconciliation process.⁸⁶

81. Lord Wallace & Stefanie Grant, *Is it Possible to Cut a Deal with a Man Accused of Being a War Criminal?*, GUARDIAN (London), Apr. 8, 1999, at 2 (noting that the Allied powers during World War II made a deal with Stalin to fight Hitler). There will always be tension between the need to bring criminals to justice and the need to move the peace process forward. *Id.*

82. Dr. Marta Zabaleta, *The Limits of Immunity; the Law Strikes Back*, THE GUARDIAN (London), Nov. 26, 1998, at 25. The limitations of amnesty: none of the leaders of the Apartheid atrocities have yet been brought to justice. *Id.*

83. Nicol Degli Innocenti, *Iraq May Look to South Africa on Long Road Back to Recovery: A Truth and Reconciliation Commission might be one way to help Saddam's Victims*, FIN. TIMES (London), Apr. 21, 2003, at 18. The Truth and Reconciliation Commission (TRC) in South Africa, which investigated the horrors of apartheid and has enabled a peaceful transition to a multi-racial democracy, lasted seven years. *Id.*

84. *Id.* Human rights groups have viewed the progress made in South Africa as overwhelmingly positive, claiming that the Truth and Reconciliation Commission provided South Africa with moral authority and international standing. *Id.*

85. Justin O'Brien, *South Africa Faces a Quandary Over What Action to Take Against Human Rights Violators*, IRISH TIMES, Apr. 11, 2002, at 14. The 7,000 applications represent a small fraction of the human rights violations carried out between 1960–1994 and everyone had the opportunity to apply for amnesty. *Id.* For example, Tikapela Johannes Mbelo, a self-confessed torturer, abductor and murderer, was granted amnesty, and will never see the inside of a jail for his role in politically motivated violence. *Id.* Mbelo has claimed that “[t]orturing people was the most used method in the security establishment of obtaining evidence or of obtaining information from any suspect or suspected guerrillas and it benefited the security branch, because they could gather more information in a very short time.” *Id.* Mbelo was provided amnesty by giving public testimony of his actions, including the murder of seven suspected members of the fringe Azanian Peoples' Liberation Army; he is now a senior police officer and claims that the violence was just a product of the times. *Id.*

86. See Innocenti, *supra* note 83, at 18. Public hearings persuade people to reveal, not forget, the past and impose forgiveness as the foundation of the new society, and by promoting reconciliation, the

However, critics of the Commission point out that perpetrators of crimes against humanity⁸⁷ escape justice⁸⁸ and are granted immunity.⁸⁹ Indeed, the South African government's response to the Commission's findings addresses this very dilemma.⁹⁰ However, many of those guilty of

foundations for a peaceful future and stable society provide a pathway to a lasting resolution. *Id.*

87. See Phillips, *infra* note 89. Critics point out that the international community has a stake in punishing war crimes, and human rights are universal and should be enforced. *Id.* By definition, crimes against humanity offend not just the victims, but the whole human race. *Id.* Crimes of such magnitude cannot hide behind national autonomy, as mass murder and torture confound norms and values that are universal. *Id.* See also Michael Mansfield, *There is a Way Through This War Crimes Maze: We Need to Clarify Our Thinking Over the Principles That Underlie the Debate over the Misdeeds of the Past*, INDEP. (London), Jan. 9, 2000, at 24. The international community must bring human rights violators to justice, as "[s]uch findings are not acts of vengeance, but acts of justice for the benefit of the whole international community. Attacks upon one are attacks upon us all. Freedoms are indivisible." *Id.* Those responsible "must be confronted. At that point, and only at that point, do the victims begin to feel that justice is being done . . ." *Id.* In addition, South African novelist Andre Brink condemns the TRC process as fundamentally unfair as follows:

It is so terribly, terribly unfair to many people who went through the harrowing experience of stripping their minds and lives naked in front of the world in order to arrive at the truth and then simply to discard that while all the others can go scot free—it's just not fair.

See Phillips, *infra* note 89.

88. *Id.*

In spite of the South African TRC's strong leadership, some victims of apartheid complain that its emphasis on forgiveness resulted in self-confessed murderers being set free. Many also lament the fact that over 21,000 black victims came forward to tell their story, but most white perpetrators, despite the lure of immunity chose not to embrace the process.

Id. In fact, the white minority regime's last president has insisted that he was not aware of any atrocities. The government also failed to pay more than token compensation to the 22,000 people identified by the Truth and Reconciliation Commission as victims. *Id.* However, a former commissioner of the TRC, Hlengiwe Mkhize, has told South African Parliament that the government will provide a grant to the individuals and survivors designated by the TRC. *Id.*

89. Melanie Phillips, *Pinochet Shines a Light in the Darkest Shadow*, SUNDAY TIMES (London), Mar. 5, 2000, available at <http://www.times-archive.co.uk/news/pages/sti/2000/03/05/stinwcpn01003.html?999> (last visited Mar. 30, 2005). The TRC faces criticism because public figures guilty of terrible wrongs escape justice, and public accounting must be part of the process, but reparation and restitution must follow, as only then can true reconciliation begin. *Id.*

[P]resuming to forgive rather than bring human rights abusers to account and make due restitution, the commission has undermined the rule of law and the understanding of justice. This is surely a factor behind the culture of state control, racially prejudiced affirmative action and violence that is reminiscent of the regime from which the new South Africa so painfully liberated itself.

Id.

90. See O'Brien, *supra* note 85, at 14. A South African Minister of Justice (who will play a decisive role in mapping out the government's response to the TRC's conclusions) recognized this dilemma:

I am torn between the legitimate clamor for justice on the one hand and the fear that you may unravel in the process whatever we want to believe we have done and achieved since the demise of the apartheid system in this country. You don't want to unleash anarchy. You don't want people to take law into their own hands.

Id. The clamor for justice may result in high profile trials of perpetrators of torture and murder, and ultimately, the government must decide whether to proceed with such trials. *Id.*

abuse in South Africa live among those they victimized, thus validating the Truth and Reconciliation Commission as a tool in shaping a lasting peace for South Africa.⁹¹

B. Sierra Leone

To resolve the conflict in Sierra Leone, a commission similar to the Truth and Reconciliation Commission was established.⁹² However, Sierra Leone created the Special Court for Sierra Leone to ensure "Sierra Leonean justice for Sierra Leonean atrocities."⁹³ Because the court was created by both the sovereign government of Sierra Leone and the international community, it is unique among war crimes tribunals.⁹⁴ The Special Court has already indicted numerous war crime perpetrators, including former Liberian President, Charles Taylor.⁹⁵ Unlike the South

[The] reality is . . . that the decision to mount a series of what will be perceived to be show trials across the country is essentially a political one in which the balance of advantage has to be carefully weighed. The Ministry of Justice concedes there is a very real danger that any future prosecutions could be perceived as an attempt by the victors of the South African conflict persecuting the politically vanquished, [which could draw comparisons to Nuremberg].

Id.

91. Because truth and reconciliation commissions accelerate the peace process, compromise is necessary to accomplish resolution. Such compromise is unlikely to occur in a war crimes tribunal. See Jon Holbrook, *Law: Whose War is it Anyway?: The Hunting of War Criminals Has Become a Passion for the Human Rights Movement. But are the International Tribunals the Best Way to Secure Peace and Justice?*, INDEP. (London), June 27, 2000, at 11. Holbrook contends that criminal law cannot create a lasting peace. It can assist the process once peace has been established and it may play a role in healing wounds or exposing the crimes of the vanquished. However, Holbrook claims that "in most circumstances, other strategies will have a better chance of securing peace. Amnesties, truth and reconciliation commissions, or even war are all tried and tested ways of facilitating peace that have better track records than war crimes tribunals." *Id.* He emphasizes that laws cannot eradicate evil stating, "[i]n the real world human conflicts are motivated by ideas and passions that are easier to denounce than to resolve." *Id.* While some critics may bemoan the process of the TRC in South Africa, they cannot argue that it has secured peace.

92. See Innocenti, *supra* note 83.

93. Tim Butcher, *Ramshackle Huts in Africa Offer Clue to how Justice may be Done*, DAILY TELEGRAPH (London), Dec. 16, 2003, at 4.

94. *Id.* The court has set out to avoid "victors' justice," and deals with crimes both through the Sierra Leonean criminal code (for crimes like child abuse) and through international law, including the Geneva Convention. International law covers more sweeping crimes such as crimes against humanity. *Id.*

95. *Id.* The indictment of Taylor has raised questions of sovereign immunity for heads of state, though there is little debate that Taylor is guilty of war crimes. See Somini Sengupta, *Lessons From Africa: War Crimes Without End*, N.Y. TIMES, Dec. 21, 2003, sec. 4, at 5. The former Liberian president has accepted exile, and immunity, in Nigeria. Taylor was a warlord in Liberia before he ascended to the presidency. The Special Court in Sierra Leone indicted him for fomenting the civil war in Sierra Leone and argued that it is illegal for Nigeria to offer asylum to an indicted war criminal. Michelle Green, *Keep the Heat on Taylor*, CHRISTIAN SCI. MONITOR, Aug. 22, 2003, at 11. Sierra

African Commission, the Sierra Leone Commission aids the Special Court's proceedings in order to bring the perpetrators of war crimes to justice.⁹⁶ Though in its early stages, the court has already had an impact, as evidenced by the indictment of Taylor, and does not suffer from the same moral criticisms of South Africa's Commission because Sierra Leonean perpetrators will be brought to justice.⁹⁷ Both South Africa and Sierra Leone provide possible examples of alternative responses available to Colombia on its path to peace.⁹⁸

Leone still bears the scars of the decade-long civil war at the hands of the Revolutionary United Front (RUF), armed and trained by Taylor. Taylor has been charged with "bearing the greatest responsibility for war crimes and crimes against humanity, including murder, rape, sexual slavery, and the use of child soldiers during Sierra Leone's war. He traded arms for diamonds, reaping profits while strengthening RUF." *Id.* RUF bears a striking resemblance to both FARC and AUC in that it lures fighters into the war by offering them money. *Id.* The Truth and Reconciliation Commission in Sierra Leone shed some light on the horrors of the war fueled by Taylor. For example, one woman recently told her tale:

RUF rebels came to her home and mutilated and murdered her husband, father, and young infant. They herded her extended family into the house and set it on fire. They all died in the flames. She was made a sex slave and repeatedly raped over many years. Now she has AIDS, three young children, and no way to care for them.

Id.

96. *Id.* The Special Court for Sierra Leone is still in the indictment and investigatory stage. RUF and Taylor have been implicated in crimes against humanity from the first incursion that started the war in 1991. *Id.* RUF repeatedly hacked off the limbs of civilians, including babies. "Thousands of children were abducted and countless villages were destroyed. The nation's infrastructure was decimated. While other groups participated in the brutality, the RUF systematically committed many of the worst offenses." *Id.* Taylor has been under U.N. sanctions for continuing to trade diamonds recovered from Sierra Leone, which he used to finance RUF and prolong the war. *Id.*

97. *Id.* The court provides potential justice for victims, but also acts as a deterrent. Recently, a human rights expert explained that after Taylor's indictment, "rebels in Liberia started asking questions about what constitutes a 'child soldier' to ensure that they were not committing war crimes for which they might later be held liable." *Id.* The amnesty granted to Taylor by Nigeria threatens the progress of the court, however, as "[i]mmunity for Taylor would undermine this growing notion of accountability." *Id.* See also Butcher, *supra* note 93 (stating "the court has so far proved effective and efficient). Critics of the Sierra Leone court, however, point out that Taylor has not been brought to justice. Some critics have pointed out that the court is "a moral luxury that has done little to help [a] crumbling country," and noting that "[o]ur states are fragile If one rushes with certain high principles, it certainly won't lead to stability." Sengupta, *supra* note 95. Critics claim that failure to redress the past wrongs may plunge the society back into war, and given the fact that Mr. Taylor's supporters have not yet disarmed, immunity for Taylor may not be as great an outrage as the possibility of renewed violence. See James Harding et al., *The Imminent Departure of the Reviled President Will Prove Insufficient to Bring Peace to the Region Without Intervention by Western Countries—and Help Appears Unlikely to be Provided Soon*, FIN. TIMES (London), Aug. 8, 2003, at 17. However, the fighting in Sierra Leone was brought to a close through British involvement, and Britain has made substantial investment in developing the government institutions. Thus, it is not as though Sierra Leone teeters on the brink of destruction. *Id.*

98. Another possible solution would be for the International Criminal Court (ICC) to play a role. "The court's job is to provide justice for genocide, crimes against humanity and war crimes, so that future victims have somewhere to turn when the national systems fail." Ian Black, *International Criminal Court Comes to Life: Justice for Genocide Victims Now in Sight but American Opposition*

IV. THE INVOLVEMENT OF THE UNITED NATIONS

The United Nations has spoken out against President Uribe's proposal both generally and specifically. Generally, the Universal Declaration of Human Rights applies to any solution President Uribe might propose. Specifically, the United Nations High Commissioner for Human Rights has directly addressed the situation in Colombia.⁹⁹ The main perpetrators involved in Colombia's civil war have directly violated several articles of the Universal Declaration of Human Rights, and President Uribe's proposals also violate the Declaration.¹⁰⁰ The most recent statement by the Chairperson on the Situation of Human Rights in Colombia expressly condemned the persistence of impunity in Colombia and urged President Uribe to end impunity and bring the full force of law to bear on those responsible for the crimes.¹⁰¹

Threatens to Hamstring New Institution, THE GUARDIAN (London), Mar. 11, 2003, at P14. The ICC seeks to provide globalized justice and to ensure that people who commit war crimes and crimes against humanity are brought to justice, i.e., the elimination of impunity. The ICC is still in its formative stages and without U.S. support it is uncertain as to how much authority it can wield. *Id.* The ICC cannot try crimes committed by nationals of governments that do not ratify the treaty and therefore lacks universal authority. *Id.* Some feel that the Colombian conflict will generate cases for the ICC, but given the amount of U.S. involvement in Colombia (discussed below) and U.S. opposition to the ICC, the ICC seems an unlikely solution to Colombia's problem. In addition, the ICC is a last resort, wielding authority and bringing people to justice only after the conflict has ended. *Id.* Colombia's civil war rages on.

99. See Chairperson's Statement, *infra* note 101.

100. The Universal Declaration of Human Rights adopted and proclaimed by General Assembly Resolution 217A(III) Dec. 1948, available at <http://www.un.org/Overview/rights.html> (last visited Oct. 10, 2003). The civil war participants in Colombia have violated nearly every article of the Declaration over the course of forty years. More specifically, the proposals of President Uribe conflict with articles 3, 8, and 9. Article 3 provides that "[e]veryone has the right to life, liberty and security of person." *Id.* If the government allows AUC to deactivate without facing adequate punishment for its conduct, this guarantee will be significantly undermined. Article 8 provides that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." *Id.* Allowing perpetrators of torture, murder, and massacres to enter society by paying a fine falls well short of an effective remedy for their victims. Finally, article 9 provides that "[n]o one shall be subjected to arbitrary arrest, detention or exile." *Id.* This speaks directly to President Uribe's grant of police powers to the military and permission to detain people for up to seventy-two hours without providing any reason for the detention. There is no justification for President Uribe to skirt the commands of the United Nations as expressed in the Universal Declaration of Human Rights by allowing these paramilitaries to escape justice.

101. Office of the United Nations High Commissioner for Human Rights, Chairperson's statement on the situation of human rights in Colombia, para. 18, at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/OHCHR.STM.CHR.03.2.Eu?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/OHCHR.STM.CHR.03.2.Eu?Opendocument) (last visited Apr. 1, 2005) [hereinafter Chairperson's Statement].

The Commission strongly condemns the persistence of impunity in Colombia, especially with regard to violations and abuses of human rights and international humanitarian law. It urges the Government to take further necessary measures to end impunity and recalls the importance of bringing the full force of the law to bear on those responsible for the crimes

While the position of the United Nations and the High Commission for Human Rights is understandable, the United Nations makes recommendations at an elevated level of abstraction that fails to sufficiently grasp the situation in Colombia. The High Commission for Human Rights, far removed from the battleground occupying nearly the entire country of Colombia, clings to proposals and demands that are untenable.¹⁰² The High Commission believes that a negotiated solution is necessary to end the conflict and establish a lasting peace, yet it insists upon the responsibility of government to ensure that all measures taken respect human rights, humanitarian law, and democratic principles.¹⁰³ While idealistic, such a solution is unlikely.

V. THE UNITED STATES: A NECESSARY PIECE TO A COMPLEX PUZZLE¹⁰⁴

Former Colombian President Andres Pastrana initially developed Plan Colombia as a comprehensive plan for peace and development.¹⁰⁵ The United States has strongly supported Plan Colombia by providing Colombia with more than \$2.5 billion in aid since 2000¹⁰⁶ and over \$25 billion in the past twenty years, most of it in the form of military hardware

committed by bringing them to trial in civilian courts, in accordance with international standards of fair trial, and emphasizes that any solution to the conflict must not lead to impunity for such crimes.

Id.

102. *Id.* The position of the United Nations High Commission for Human Rights demands justice and the end to violence, which is easier said than done. The High Commission lays out many requirements to ensure that the Colombian peace process advances efficiently and protects human rights. This includes firmly condemning all acts of terrorism and other criminal acts, the recruitment of children by illegal armed groups, and the practice of kidnapping. *Id.*

103. *Id.*

104. The United States is in an odd position when it comes to war crimes and criminals. The United States has been highly involved in Colombia for years and must play a major role in bringing the Colombian civil war to an end. However, the United States may not be able to play a role in bringing war criminals to justice given their stance on the ICC. Without the efforts of the United States it is unlikely that the Rome Conference that gave birth to the ICC would have occurred. In addition, the United States completely condemns the commission of war crimes, but at the same time guards its sovereignty so closely that it will not embrace the ICC and subject itself to universal rules of justice. Thus, if the United States can facilitate a cessation to Colombia's civil war, they may not be able to assist in bringing war criminals such as Salvatore Mancuso and Carlos Castano to justice, except by expediting them to the United States on drug trafficking charges. See Richard J. Goldstone, *The Role of the United Nations in the Prosecution of International War Criminals*, 5 WASH. U. J.L. & POL'Y 119, 125-26 (2001).

105. William Brownfield, Ambassador, Venezuela, U.S. DRUG POLICY IN COLOMBIA SEEKS TO AID HUMAN RIGHTS U.S. DEPARTMENT OF STATE, available at <http://www.usembassy.it/file2001-04/alia/a1043011.htm> (last visited Apr. 1, 2005).

106. See Wilson, *supra* note 59.

and military training to reduce the production and trafficking of cocaine and heroin from Colombia.¹⁰⁷

U.S. officials have long held that the production of coca provides the motivational fuel for the country's civil war, and, therefore, U.S. support consists largely of aerial flights aimed at eradicating the vast coca fields.¹⁰⁸ The United States also provides aid to improve human rights, the administration of justice, and to foster economic development.¹⁰⁹ However, legitimate concern arises because the Bush Administration has measured its success in Colombia by using as its proxy a swift reduction in drug crops, instead of achievement of lasting peace.¹¹⁰ Colombian trafficking accounts for as much as ninety percent of the cocaine reaching U.S. shores and it also funds FARC, AUC, and NLA.¹¹¹ In the area of coca eradication, the Bush Administration has achieved some success: reducing one coca covered area of nearly 163,000 acres to fewer than 12,000 acres within three years.¹¹² Yet, while the Bush Administration promotes such eradication as progress and success; fighting has actually escalated during this period.¹¹³

The Bush Administration has voiced strong support for the policies articulated by President Uribe and has established objectives for continuing assistance to Colombia.¹¹⁴ While remaining deeply involved,

107. See Wallace & Grant, *supra* note 81, at 2.

108. Scott Wilson, *In Colombia, Coca Declines But the War Does Not; Fighting Spikes in Province Despite Anti-Drug Program*, WASH. POST, Dec. 21, 2003, at A24.

109. See Phillips, *supra* note 89.

110. See Wilson, *supra* note 108, at A24.

111. *Id.*

112. *Id.*

113. *Id.* The fighting has actually escalated as a result of the U.S. eradication programs. The paramilitaries and guerillas fear the destruction of their profits and fight more fiercely to protect the source of their income—drugs. Indeed, if the primary concern is the production of cocaine, the swift eradication of coca fields in Colombia will ultimately harm the “War on Drugs.” The result of the eradication is that production has now shifted into the Amazon River basin and along the Ecuadorian frontier. *Id.* Thus, the United States has pushed the guerillas into neighboring countries, forcing an expansion of the war. In addition, the guerillas have started firing more frequently on U.S. planes participating in the eradication flights, bringing down a total of four planes to date. *Id.* To end the conflict, the United States must become more deeply involved. Flying small planes over acres of farmland will not provide an ultimate solution to the conflict, and could actually prolong and intensify the situation as guerillas move into Ecuador to evade the eradication of their coca fields.

114. U.S. Department of State Report to Congress on United States Policy Towards Colombia and Other Related Issues, Feb. 3, 2003, available at <http://www.state.gov/p/wha/rls/rpt/17140.htm> (last visited Jan. 20, 2004). These objectives include: assistance to combat illicit drugs and terrorism; the defense of human rights; the promotion of economic, social, and alternative development initiatives; the reform and strengthening of the administrations of justice; and assistance to the internally displaced. *Id.* Other than coming to the aid of another democratically elected government, the State Department also established several reasons as to why Colombia matters. First, Colombia is responsible for seventy-five percent of the world's cocaine production and is also a significant source

providing more than \$700 million in aid to Colombia in 2004,¹¹⁵ officials would like to see Bogotá take more responsibility for the war and the human rights situation, in hopes of winding down further U.S. involvement.¹¹⁶

As part of this process to reduce U.S. involvement, the State Department has conditioned the granting of financial aid on certification that the Colombian government has complied with human rights protection.¹¹⁷ However, the State Department has twice granted certification for Colombia to receive a total of more than \$61 million in aid without holding Colombia accountable for the defense of human rights.¹¹⁸ Congress has required that any military aid given to Colombia be conditioned upon Colombian fulfillment of human rights conditions.¹¹⁹ The conditions on U.S. aid require; the Colombian government to break ties between its military and illegal paramilitary groups (notably AUC), suspend officers implicated in abuses, actively pursue and arrest paramilitary leaders, and restore order to regions beset by guerrilla and paramilitary violence.¹²⁰ The Colombian government has not met these conditions, yet certification was still granted by then-Secretary of State Colin Powell.¹²¹ Additionally, the Colombian government signed an

of heroin. Also, there were 50,000 drug-related deaths in the United States in 2000 alone, and the United States suffered \$160 billion in economic losses in the same year due to illicit drug use. Additionally, terrorism in Colombia both supports and draws resources from the narcotics industry, kidnapping and extortion, threatening U.S. citizens and economic interests. Colombia's terrorist groups have kidnapped fifty-one American citizens since 1992, killing ten. Also, terrorist attacks resulted in over 3,000 Colombians killed in 2001 while another 2,856 were kidnapped. Finally, the State Department conveniently pointed out that Colombia has important reserves of petroleum, natural gas, and coal. *Id.* Currently, seventy American soldiers are training Colombian troops to protect an important oil pipeline in Northeast Colombia. See COLOMBIAN MAYORAL CANDIDATE KILLED, *supra* note 32.

115. Human Rights Watch, *Colombia's Checkbook Impunity—a Briefing Paper*, Sept. 22, 2003, available at <http://www.hrw.org/background/america/checkbook-impunity.htm> (last visited Jan. 20, 2004). Colombia receives the third largest amount of U.S. military aid. *Id.*

116. David Adams, *Colombia Walks Hesitantly on Road to Peace*, ST. PETERSBURG TIMES, July 20, 2003, at 13A.

117. Human Rights Watch, *Colombia: Flawed Certification Squanders U.S. Leverage*, Jan. 23, 2004, available at <http://hrw.org/english/docs/2004/01/23/colomb6990.htm> (last visited Jan. 20, 2004) [hereinafter Human Rights Watch, *Colombia: Flawed Certification*].

118. *Id.* See also Human Rights Watch, *Colombia: U.S. "Misses an Opportunity"*, July 8, 2003, at <http://hrw.org/press/2003/07/colombia0708.htm> (last visited Jan. 20, 2004) [hereinafter Human Rights Watch, *U.S. Misses an Opportunity*].

119. Human Rights Watch, *Colombia: Flawed Certification*, *supra* note 117.

120. *Id.*

121. *Id.* The most recent certification is the eighth time in three years that the State Department has certified Colombia, despite compelling evidence of non-compliance with the conditions contained in Public Law 108-7. The government has ceased to cut ties to the paramilitary groups, including the very paramilitary group to which Uribe plans to offer immunity. These paramilitaries recently

agreement that exempts Americans arrested in Colombia for human rights violations from prosecution before the International Criminal Court¹²² in exchange for \$130 million in aid.¹²³ Thus, the Bush Administration has imposed conditions upon Colombia designed to protect and prevent abuses of human rights, but failed to enforce the restrictions.¹²⁴

In the end, a solution will take more than money and a self-interested policy of drug eradication to free Colombia from the destructive war.

VI. ANALYSIS

Admittedly, any proposed solution to the problems facing Colombia cannot adequately address the tragic circumstances Colombians have been forced to deal with for over forty years.¹²⁵ The United Nations insists upon a negotiated settlement where all criminals guilty of human rights violations are brought to justice.¹²⁶ In reality, such an optimistic ending to this terrible war is nearly impossible, yet some sort of compromise is necessary.¹²⁷ The solution to Colombia's conflict lies in the gray area between granting outright immunity to members of paramilitary groups and attempting to negotiate a settlement between the government and the paramilitaries and guerillas. It is in this gray area where the United States must intensify its focus on Colombia's conflict to help ease the tensions in Colombia and to make major headway in the "War on Drugs" at home.¹²⁸ Until the civil war ends, Colombia will be unable to install a Truth and Reconciliation Commission or a special court to bring the guerillas and paramilitaries to justice.¹²⁹

executed a human rights worker for speaking out against them. *Id.* See also Human Rights Watch, *U.S. Misses an Opportunity*, *supra* note 118 (discussing Public Law 108-7).

122. Juan Forero, *Colombia Accepts a U.S. Deal on Exemptions in Rights Cases*, N.Y. TIMES, Sept. 19, 2003, at A11.

123. *Id.* The agreement reduces the jurisdiction of the International Criminal Court by exempting Americans guilty of human rights violations from prosecution. Accordingly, it has been condemned as an attempt by the Bush Administration to destroy the International Criminal Court. *Id.*

124. By granting certification, the Bush Administration reveals their primary concern as the "War on Drugs." A more effective strategy for combating the drug trade would be to insist upon the protection of human rights in Colombia and actively assist Colombia in its struggle to end the war and bring the guerillas and the paramilitaries to justice.

125. See Easterbrook, *supra* note 2, at A8.

126. See Chairperson's Statement, *supra* note 101.

127. See Wilson, *supra* note 59, at A25.

128. See BUREAU FOR INT'L NARCOTICS, *supra* note 47. The United States can only win the "War on Drugs" by defeating the illegal organizations in Colombia that produce and distribute most of the world's cocaine and heroin.

129. See Sengupta, *supra* note 95, sec. 4, at 5. See also O'Brien, *supra* note 85, at 14.

The United States cannot begin to pull out of Colombia if the current administration is truly dedicated to ending the drug war, the terrorism, and the human rights abuses in Colombia. In fact, a more elevated level of involvement will be required to aid the Colombian people and to cease the massacres, kidnappings, and torture. The United States must assist Colombia and President Uribe, but must also ensure that the Colombian government protects human rights on the road to peace.

Achieving peace may require offering immunity to some of the soldiers involved in the conflict; however, Colombia, the United States, and the United Nations must ensure that the most egregious offenders are brought to justice. The United Nations and Human Rights groups are justified in their criticisms of President Uribe's proposals.¹³⁰

The situation in Colombia is horrendous.¹³¹ President Uribe's proposals merely begin the process of demobilizing the paramilitary and guerilla groups.¹³² The problem exceeds simple disarmament. With only twenty percent of Colombia's arable land in actual use for farming, the primary way of life in a country twice the size of France has been crippled.¹³³ There are men involved in this conflict whose entire lives consist of murdering, torturing, and kidnapping the citizens of Colombia. There must be an attempt to transition back into civilian life, with these individuals living peaceably side by side with victims of their attacks. Clearly, every soldier that has perpetrated these attacks will not be brought to justice; rehabilitation of the society is paramount.

Immunity is not an untenable position if it is offered only to lesser members of the paramilitary and guerilla groups. Currently, the proposal only grants immunity to members of the paramilitary.¹³⁴ To reach a lasting resolution, the government must open negotiations with the guerillas as well. The leaders of such groups must be punished for their crimes, but they will obviously not come willingly, and, thus, a negotiated peace is unlikely.

Amid this uncertainty, the United States must increase its involvement in Colombia by providing a greater military presence. The United States has, to this point, focused on eradicating crops, leading to a spike in violence without bringing Colombia any closer to peace. Ultimately, the United States will have to lend military support to Colombia and fight

130. See Kirk, *supra* note 72, at M5.

131. See *supra* notes 12–51 and accompanying text.

132. See Forero, *supra* note 53, at A7.

133. See *supra* notes 18–27 and accompanying text.

134. See *supra* notes 52–55 and accompanying text.

alongside the Colombian military to bring leaders such as Salvatore Mancuso and Carlos Castano, both of whom are under extradition requests from the United States, to justice. Removing these insurgent groups by force will allow millions of displaced citizens to return to the land that has been taken from them, and allow them to begin the long recovery.¹³⁵ Before Colombia can begin to establish a Special Court or Truth and Reconciliation Commission, the war must end. Sierra Leone and South Africa provide examples for Colombia's future, but the United States provides a solution to Colombia's present.

CONCLUSION

There is no easy solution to Colombia's problem. The path to peace is paved between the idealistic demands of the United Nations and the pragmatic solutions of President Uribe. The only certainty is that in order to obtain peace, the United States must come to the aid of Colombia with military support to fight alongside the Colombian government to end the bloody civil war.¹³⁶

*Timothy Posnanski**

135. See Forero, *supra* note 77, at A4.

136. Since Vietnam, any recommendation of American military involvement in a foreign country invariably draws immediate objection. However, if the United States were to enter Colombia for the right reasons, i.e., assisting a democratic nation bring war criminals to justice and alleviate a horrendous civil war, the international community may support such an effort. The United States was instrumental in removing Slobodan Milosevic, and could come to the aid of the Colombian National Army to cease the fighting that has plagued Colombia for over forty years. This situation is entirely different from Vietnam. Colombia is not a domino in the Cold War, but a democratic ally in need. President Uribe is an ally of the United States, bringing an end to the guerillas and paramilitary actions in Colombia would cripple the "War on Drugs" by destroying the greatest suppliers of cocaine and restoring the land back to its rightful owners, the Colombian people.

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