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## HOSTAGES FOR PRISONERS: A WAY TO PEACE IN COLOMBIA?

### I. OVERVIEW

In February 2004, the Revolutionary Armed Forces of Colombia (FARC), the major insurgent group, announced creation of a three-member negotiation commission and a "diplomatic offensive" aimed at obtaining the release of hundreds of its imprisoned members in exchange for about 60 military and political hostages it holds. This has raised hope among the relatives of hostages and kidnap victims that a "humanitarian exchange" could happen in the not too distant future.<sup>1</sup>

Several prominent Colombians, such as former Presidents Alfonso López, Ernesto Samper, and Julio César Turbay and former Public Prosecutor Jaime Bernal, have backed the idea and offered specific proposals for how it could happen and whom it should include.

While continuing to insist that there will be no release of FARC prisoners without strong conditionality, President Alvaro Uribe's government has dropped earlier demands that a ceasefire and peace negotiations precede any discussion of hostages. Nevertheless, it remains opposed to exchanging hostages for prisoners and rules out establishing demilitarised zones for that purpose. It contends that in any mutual release, the FARC must free all those detained, not just political or military hostages, who are a minority.

Earlier Colombian governments have agreed to similar exchanges, some believing they would be the precursors of more substantive negotiations, others that the release of even a limited number of hostages merited the risk involved in freeing captured guerrillas.

Colombia's Catholic Church has been playing an important facilitation role for a possible "humanitarian exchange" in recent months. It is the only national institution in continuous direct contact with the FARC since Uribe took office in August 2002. The insurgents are apparently interested in such mediation,<sup>2</sup> and the government seems to have authorised this provided that negotiations for a limited hostages/prisoners swap are seen as a first step towards freeing all victims -- including those abducted for ransom.<sup>3</sup> The hope is that success on the humanitarian issue might open a window for peace talks.

This briefing examines the desirability, feasibility and political implications of a release or swap of hostages/prisoners under conditions of ongoing fighting.

While acknowledging the need for caution, ICG concludes that a well-designed negotiation strategy could lead to freeing of the hostages and kidnap victims in the medium-term. Lack of immediate progress on the latter should not be an absolute bar to proceeding with the former.

The Uribe administration needs to approach the issue with strategic vision, identifying and defining the purpose a hostages/prisoners swap would serve. Engaging the FARC in talks about such a swap can be justified if it leads to wider political negotiations to terminate the conflict, with the early release of kidnap victims and an end to kidnapping being key elements in that process.

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<sup>1</sup> Throughout this briefing a distinction will be made between hostages (policemen, soldiers and politicians captured by the armed groups) and kidnap victims (civilians held for ransom). Strictly speaking, the concept of a "hostages/prisoners release or swap" refers only to a relatively few policemen, soldiers and politicians, on the one hand, and FARC prisoners on the other and excludes a large number of individuals ("civilians") kidnapped by the insurgents not because they were of military or political value but because ransoms could be demanded for them.

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<sup>2</sup> ICG interview, Bogotá, 18 February 2004.

<sup>3</sup> ICG interviews, Bogotá, 18 February, 5 March 2004.

While any engagement on the swap issue -- involving as it would some de facto recognition of the FARC as a political actor -- will not be easy for the government, it would open a spectrum of possibilities for it to establish conditions for wider forward movement. By taking back the initiative on the humanitarian debate, the government would strengthen its political stance in the ongoing struggle with the FARC.

Similar logic applies with regard to the smaller ELN insurgency, which holds fewer prisoners but may be more willing to meet government conditions because it is militarily weaker and has lately been more receptive to releases.<sup>4</sup>

International actors such as the UN, the U.S. and the EU should assist the Uribe administration to move this way, with the goal of building on the immediate humanitarian issue to advance the longer term agenda of a negotiated resolution of the conflict.

## II. BACKGROUND

During the 1970s and 1980s, abductions by the guerrillas were generally selective and, above all, for exerting political pressure on the government.<sup>5</sup> In the 1990s, the principal motive changed to a means for financing the insurgency. Today, Colombia is the global leader in kidnappings, which constitute the FARC's second source of income, after drug trafficking.<sup>6</sup>

Until 2001, the ELN was responsible for the majority of cases but over the last two years the FARC has increased its share in the "industry". The right-wing paramilitary forces also kidnap, though less often and generally to intimidate and terrorise the civilian population rather than raise money. In 2003, the FARC were responsible for 30.55 per cent

of abductions, the ELN for 15.55 per cent and the AUC for 7.86 per cent.<sup>7</sup>

According to official figures, there were 2,200 kidnap victims in 2003,<sup>8</sup> compared to 1,039 in 1996. The number has decreased slightly every year since the peak of 3,706 in 2000. During 2003, 915 victims were liberated, 575 are still held, 399 have been rescued, 203 were abandoned by the kidnappers when state security forces were about to attempt rescues, 71 died in captivity and 37 escaped.<sup>9</sup> Additional hostages, believed to number in the hundreds, are held from previous years. Figures for kidnaps tend to be easily accessible whereas those for releases or victims remaining in captivity are more difficult since families do not easily admit to the government or NGOs that they have paid ransom.<sup>10</sup>

In 2003, extortive abductions were 67 per cent of all cases, abductions of members of the armed forces or police 1 per cent, and political abductions less than 3 per cent.<sup>11</sup>

Foreigners were 1.32 per cent of victims in 2003, a number that has declined considerably over the past six years.<sup>12</sup> However, they bring disproportionately large financial gains to the insurgents. Even though international companies have allegedly adopted a "no pay" policy, a recent report suggests they have generally broken their own rule.<sup>13</sup>

There are precedents for a release or swap of hostages/prisoners. They highlight the interest (however

<sup>4</sup> In November and December 2003, the ELN unconditionally released eight foreigners it had kidnapped in the Sierra Nevada region in September.

<sup>5</sup> This was the case, for example, when, in 1985, the M-19 stormed the Supreme Court in Bogotá and took sixteen magistrates as hostages.

<sup>6</sup> United Nations Office on Drugs and Crime, "Country Profile: Colombia 2003", p. 8.

<sup>7</sup> The remaining 46 per cent is attributed to organised crime although some portion may represent unacknowledged abductions by FARC, ELN or AUC.

<sup>8</sup> These figures are taken from the National Information Centre (*Centro Nacional de Datos*) of the Colombian Ministry of Defence and are considered the most precise as they have been developed monthly by a working group since 1996. The Colombian NGO *Fundación País Libre* (FPL) has its own unpublished statistics. However, FPL participates in the National Information Centre working group. Short-term abductions for ransom, such as the so-called *paseos millonarios*, are no longer included in these figures, explaining the decrease in part. ICG interview, Bogotá, 23 February 2004.

<sup>9</sup> Ibid.

<sup>10</sup> ICG interview, Bogotá, 27 January 2004.

<sup>11</sup> The remaining 29 per cent are not fully accounted for but likely also involved ransoms. Official and unofficial figures through November 2003 from *Fundación País Libre*.

<sup>12</sup> *Centro Nacional de Datos*, Colombian Ministry of Defense.

<sup>13</sup> Pax Christi Netherlands, "The Kidnap Industry In Colombia: Our Business?", Utrecht, 2001.

different in degree and context) of the administrations of Ernesto Samper (1994-1998) and Andres Pastrana (1998-2002), to use negotiations for "humanitarian accords" or swaps as stepping stones toward broader peace accords.<sup>14</sup> However, both failed.

On 15 June 1997, and in the presence of international observers (such as Rodrigo Carazo, ex-president of Costa Rica and Manuel Conde, expert in conflict management from Guatemala), the FARC released some 60 soldiers and ten marines in Cartagena del Chairá (Caquetá).<sup>15</sup> The main reasons for this unilateral action were its desire to enter peace negotiations and the burden that the military prisoners -- recruits who had completed service -- represented.<sup>16</sup> The International Committee of the Red Cross (ICRC) and the National Reconciliation Commission (*Comisión Nacional de Conciliación*) played important roles in this "humanitarian delivery" (*entrega humanitaria*).<sup>17</sup> The FARC's condition was no military presence in the area during the release. The government agreed that the army would leave the zone (some 13,000 square kilometres) for 100 hours.<sup>18</sup> The military reoccupied the area on 23 June 1997 with verification by the National Reconciliation Commission and the ICRC.<sup>19</sup>

In early 1998, the "Doors to Heaven Agreement" (*Acuerdo de Puerta del Cielo*), an attempt to humanise the conflict, was signed by representatives of civil society groups, among them the Civilian Facilitating Commission (*Comision Facilitadora Civil*, CFC), and the ELN in Würzburg, Germany.<sup>20</sup> The ELN committed itself not to kidnap pregnant women, children and adults over 65. The accord was very controversial as some argued that it implied it was acceptable to kidnap younger civilians.<sup>21</sup> The ELN also stated it would end kidnapping if it

received some type of financial support in a future peace process.<sup>22</sup>

The Pastrana administration signed the first "humanitarian exchange accord" with the FARC on 2 June 2001 in San Vicente del Caguan, the first written document mentioning international humanitarian law (IHL) -- as protecting the ill and injured -- in the context of such a swap. Fifteen FARC members were exchanged for 42 soldiers and policemen. Ill health was the justification for the releases, and the document clearly stipulated that for this reason, the liberated FARC members would not go back to fighting. The ICRC played an important logistical role.<sup>23</sup> The FARC released another 242 individuals on 28 June 2001 in Macarena (Meta), a zone cleared of government troops for the period of the exchange.

During the past decade, in addition to the above-mentioned exchanges, the kidnapping issue and related questions of hostage release and rescue have generated civil society movements and law enforcement initiatives, with varying degrees of success.

To counteract massive kidnapping, civil society has instigated the "Don't Pay" (No Pago) campaign. The Free Country Foundation, co-founded by Vice-President Santos, has been a main force behind this campaign.<sup>24</sup> Many believe that the only durable way to end kidnapping is to prohibit the state, families, and companies from paying any type of ransom so that kidnapping would no longer produce revenue.

Attempts have been made to make payment of ransom illegal such as Law 4093 in 1993, which was deemed unconstitutional and amended to state that payment was illegal unless for humanitarian purposes. Another attempt was made by the Senate president, German Vargas Lleras, in September 2003.<sup>25</sup> It and others failed because of the general belief that if the state cannot protect its citizens, they

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<sup>14</sup> On the day of the release, President Samper stated that "he was ready to open a new door for peace in Colombia" if conditions were met, *El Tiempo*, 16 June 1997, p. 6A; Camilo Gómez, Pastrana's peace commissioner, said the humanitarian accord of 2001 "opened the door to many other things" in the peace process, *El Tiempo*, 2 June 2001, p.1.

<sup>15</sup> *El Tiempo*, 16 June 1997, pp. 10A, 6A.

<sup>16</sup> ICG interview, Bogotá, 23 February 2004.

<sup>17</sup> *El Tiempo*, 15 June 1997, p. 19A.

<sup>18</sup> *Semana*, 16-23 June 1997, p. 24.

<sup>19</sup> ICG interview, Bogotá, 16 February 2004; *El Tiempo*, 17 June 1997, p. 8A.

<sup>20</sup> See ICG Latin American Report N°2, *Colombia: The Prospects for Peace with the ELN*, 4 October 2002.

<sup>21</sup> See Roberto Pombo, "Puerta del Cielo y Ventana del Infierno", *Semana*, 17-24 August 1998.

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<sup>22</sup> "Acuerdo de Puerta del Cielo con el ELN", Mainz, 15 July 1998.

<sup>23</sup> *El Tiempo*, 2 June 2001, p. 2.

<sup>24</sup> Vice President Francisco Santos was kidnapped by Pablo Escobar, leader of the Medellín drug cartel, in 1990. This and the abduction of ten journalists was aimed at pressuring César Gaviria's government to promise not to extradite drug dealers to the U.S.. Santos was held for eight months.

<sup>25</sup> Radio Caracol, 17 September 2004.

should be able to help themselves.<sup>26</sup> In the short term, the *No Pago* campaign will not solve the problem.<sup>27</sup>

The state is obligated to rescue kidnap victims through law enforcement and military operations, taking into account the risks to their lives. Following the abduction of Guillermo Gaviria, the governor of Antioquia and Gilberto Echeverri, the former peace commissioner, President Uribe attempted their rescue. After the operation failed leading to the death of both and eight other hostages on 5 May 2003, Uribe went on television accompanied by the defence minister and high ranking military officials to explain.<sup>28</sup> His decision was approved by 79 per cent of the population even though before the operation, a humanitarian exchange was strongly urged by relatives and the Church.<sup>29</sup>

### III. THE POLITICS

The FARC has taken the initiative on a hostages/prisoners swap. In February 2004, it announced a "diplomatic offensive" and published a statement through *Noticia Uno* appointing Simon Trinidad<sup>30</sup> its representative and asking the government to appoint an interlocutor.<sup>31</sup> The insurgents replaced Trinidad when he himself was arrested with Fabian Ramirez, Carlos Antonio Lozada and Felipe Rincon.<sup>32</sup>

The FARC's demands are direct negotiations about a swap with the government and demilitarisation of the

southern departments of Putumayo and Caqueta.<sup>33</sup> It seeks 300 or more of its people in prison. Its list of persons whom it could be willing to exchange (*intercambiables*) includes twenty politicians, 35 soldiers, and three Americans.<sup>34</sup> It has not referred to the many more civilian abduction victims it holds.

Its interest in exchanging hostages for prisoners is twofold. Colombian analysts see an attempt to improve its military posture by recovering middle-ranking commanders.<sup>35</sup> This assumption corresponds with the government's belief that its military campaign has hurt the FARC badly. However, a number of other sources state that, while wounded, the FARC does not seem to have been hurt fundamentally.<sup>36</sup> According to knowledgeable sources, its high command has ordered a strategic withdrawal.<sup>37</sup> Indeed, its recent attacks against villages and infrastructure, as well as a spectacular hostage taking in Neiva, the capital of the department of Huila, on 24 February, indicate it retains some offensive capability.<sup>38</sup>

According to ICG sources, another element of the FARC's strategy is to regain status, internationally and nationally, by re-establishing discussion on an equal footing with the government. Commander Manuel Marulanda is said to have an "obsession" with recovering FARC prisoners and thereby achieving de facto political recognition, even if short of its goal of being formally designated a

<sup>26</sup> ICG interview, Bogotá, 26 January 2004.

<sup>27</sup> Kidnapping has been on the rise throughout Latin America. Argentina saw an increase in cases from 164 in 2002 to 217 in the first six months of 2003, *The Herald*, 9 November 2003. Attempts in La Paz, Bolivia, rose from seven in 2002 to fourteen in 2003, *La Razón*, 27 February 2004. Kidnap for ransom cases in Sao Paulo, Brazil, increased from 307 in 2001 to 321 in 2002, and the trend seems to be continuing, according to the Ministry of Justice.

<sup>28</sup> See ICG Latin American Report N°6, *Colombia: President Uribe's Democratic Security Policy*, 13 November 2003; *Cambio*, 12-19 May 2003, pp. 18-35.

<sup>29</sup> Opinómetro in *Cambio*, 12-19 May 2003, p.32.

<sup>30</sup> The circumstances surrounding Trinidad's capture in January 2004 are unclear. Ecuadorian migration police are said to have arrested him during a random identity check. Others believe his arrest was the result of joint undercover Colombian-U.S. police work in Ecuador.

<sup>31</sup> *El Tiempo*, 1 February 2004; *El Espectador*, 6 February 2004.

<sup>32</sup> [www.farcep.org/novedades/comunicados](http://www.farcep.org/novedades/comunicados).

<sup>33</sup> Ibid, and ICG interview, Bogota, 24 February 2004.

<sup>34</sup> The *intercambiables* include: Ingrid Betancourt, former presidential candidate; Clara Rojas, her running mate; Fernando Araujo, former minister; Alan Jara, former governor of Meta; Senators Luis Eladio Pérez and Eduardo Gechem; Consuelo González, Orlando Beltrán and Oscar Liscano, parliamentarians; twelve deputies of Valle province; 37 non-commissioned military and police officers, the head of the Mitú police, and three U.S. citizens.

<sup>35</sup> ICG interviews, Bogotá, 12, 18 February 2004.

<sup>36</sup> ICG interviews, Bogotá, 10, 23 February 2004.

<sup>37</sup> ICG interview, Bogotá, 23 February 2004.

<sup>38</sup> During the first two months of 2004, the FARC again increased attacks against infrastructure, villages, civilians and army bases. In the department of Caquetá, 180 families were displaced by insurgents; the police station of a village in the department of Nariño was attacked by FARC; and on 24 February, 40 to 60 FARC fighters stormed a residential building in an upper middle-class sector of Neiva (Huila), abducting three persons. At the same time, insurgents attacked an army base in Santa Maria (Huila), killing at least twelve soldiers and wounding another ten in a five-hour battle. *El Tiempo*, 25 January, 15 and 25 February 2004.

"belligerent party".<sup>39</sup> The latter would seem to be blocked by the fact that a number of governments, including the U.S., have designated the FARC as a terrorist organisation.

Combating kidnapping is an important element of President Uribe's security policy, which has produced some tangible results, such as the army's rescue of Jorge Jiménez, Bishop of Zipaquirá (Cundinamarca) and President of the Latin American Episcopal Council (CELAM), after he was abducted by the FARC in November 2002.<sup>40</sup> Kidnapping has decreased in the past year; in January 2004 there were 114 cases fewer than in January 2003.<sup>41</sup>

In his political program (*Manifiesto Democrático*), Uribe made it clear there would be no dialogue with insurgent groups without a prior ceasefire. His government's position in August 2002 regarding a hostages/prisoners swap was rigid: no exchange except in the context of a full peace process. Since then Uribe's position has changed.<sup>42</sup> A swap would be possible under specific conditions:

- ❑ The government would accept the freeing of hostages but not permit differentiation between military, political and civilian figures. Any deal must include an end to kidnapping. The government would expect to recover about 800 victims.<sup>43</sup>
- ❑ Released FARC prisoners would not return to combat but must be demobilised and reinserted into civilian life.<sup>44</sup> This was emphasised in a communiqué: "The national government will not allow for the liberation of terrorists if it is not in accordance with legal norms and the effective guarantees that they will not go back to fight".<sup>45</sup> The same would apply if released FARC members were to be accepted in another country.<sup>46</sup>

- ❑ The government will not create demilitarised zones<sup>47</sup> and reproduce the Pastrana administration's experience.<sup>48</sup>

However, Uribe's recent comparisons, during his visit to the EU in Brussels and the European Parliament in Strasbourg, of the FARC to the Hitler regime and its holding places for kidnap victims to concentration camps have reduced prospects for a hostages/prisoners swap.<sup>49</sup>

On 16 February 2004, Peace Commissioner Luis Restrepo called the discussion of a humanitarian exchange "collective blackmail".<sup>50</sup> He also clarified what the government understands by such an exchange: that the FARC would unconditionally liberate those it holds, after which the government would take concrete political action, which could include the liberation of certain FARC prisoners on the premise they would not go back to their units.<sup>51</sup>

The government's own rhetoric has limited its range of action to some degree. It has declared it has no intention of altering its "democratic security policy", aimed at uprooting the insurgents militarily, denying them their illegal sources of income (drugs, kidnapping and extortion) and expanding the presence of the state across Colombia.<sup>52</sup> This includes more military and police action to rescue hostages and kidnap victims wherever possible and to prevent new abductions. A large portion of the electorate supports the government and expects it to continue a firm policy.

Negotiating the release of FARC prisoners carries inherent political risks, particularly if done poorly, but there also are risks if the government is perceived as not pursuing all possible avenues to recover hostages. A deeply troubling danger for Uribe is the potential loss of military support if an exchange were perceived as undermining the security strategy. Officers would be hard pressed to understand why the government continuously demands results against the insurgents while it is prepared to release imprisoned FARC fighters. The administration

<sup>39</sup> ICG interview, Bogotá, 23 February 2004; see also Patricia Lara, "La hora final de Tirofijo", in *Revista Dinero*, February 2004, p. 23.

<sup>40</sup> *El Tiempo*, 15 November 2002.

<sup>41</sup> There were 187 kidnap cases in January 2003, 74 in January 2004. Figures published by *Fundación País Libre*, *El Tiempo*, 20 February 2004, p. 5.

<sup>42</sup> ICG interview, Bogotá, 10 February 2004.

<sup>43</sup> *El Colombiano*, 8 February 2004, p. 7A.

<sup>44</sup> *El Tiempo*, 19 February, p. 4.

<sup>45</sup> Communiqué of the Presidency, Bogotá, 2 February 2004.

<sup>46</sup> ICG interview, Bogotá, 3 March 2004.

<sup>47</sup> *El Colombiano*, 8 February 2004, p. 7A; ICG interview, Bogotá, 10 February 2004.

<sup>48</sup> See ICG Latin America Report N°1, *Colombia's Elusive Quest for Peace*, 26 March 2002.

<sup>49</sup> *El Tiempo*, 10 February 2004, p. 3.

<sup>50</sup> *El Tiempo*, 17 February, 2004, p. 5.

<sup>51</sup> *El Espectador*, 22 February 2004, p. 5A.

<sup>52</sup> See ICG Report, *President Uribe's Democratic Security Policy*, op. cit.

would be compelled to demonstrate that it has the capacity and appropriate mechanisms to prevent those fighters from rejoining the insurgents.

This, in turn, is complicated by the fact that the FARC is most interested in the release of mid-ranking officers with political, military and logistical experience, who are needed to instruct and command the many young fighters recruited over the last two years.<sup>53</sup>

The "humanitarian exchange" has become a major political issue. The Uribe administration, therefore, is aware that it has to be careful not to give the FARC the chance to gain a domestic and international publicity victory. It is under increasing pressure at home and abroad to engage in such negotiations, and it runs the risk of isolating itself politically if it continues to rule them out because the FARC has not met its conditions. The government's position is further complicated by U.S. unwillingness to appear openly to have any contact with a terrorist organisation. Washington wants under no circumstances to risk allowing such a group to believe it can benefit if it kidnaps U.S. citizens.<sup>54</sup>

On the other hand, the Uribe administration is under increasing pressure from relatives of victims and civil society groups to embark on a hostages/prisoners swap, with or without inclusion of the kidnap victims. Personalities, such as former Presidents Alfonso Lopez Michelson and Ernesto Samper and former Public Prosecutor Jaime Bernal, as well as party politicians have also taken up the issue.

Bernal has emphasised that personal liberty should be the government's priority, and it should be prepared to make concessions. He has also stated that international humanitarian law is consistent with an accord.<sup>55</sup> Samper has highlighted lack of political will from the FARC and government alike and publicly asked Uribe to comply with the FARC's demand to appoint a representative to start active negotiations.<sup>56</sup> He has also emphasized the role that Monsignor Augusto Castro and the Church could

play.<sup>57</sup> Lopez, Samper and other ex-liberal presidents on 28 April 2003 urged the government to opt for an accord.<sup>58</sup> Lopez argued that it should be purely humanitarian and thus have no political conditions attached.<sup>59</sup> All these proposals run counter to the administration's position.

The Chirac administration in France has been pushing for an accord due to the prominence of Ingrid Betancourt's case. Foreign Minister Dominique de Villepin stated on 23 February 2004, "we are pressed for time: we need to take action urgently".<sup>60</sup> Yolanda Pulecio, Ingrid's mother, and Fabrice Delloye,<sup>61</sup> her former husband, have been lobbying the EU to stop financial aid to Colombia until it does more to obtain her release.<sup>62</sup>

Colombian civil society is divided on the subject. A May 2003 poll showed that 50 per cent of Colombians would support a hostages/prisoners swap.<sup>63</sup> Relatives of political and military hostages and NGOs are strongly in favour but families whose relatives are not on the list of FARC *intercambiables* feel a swap will not help them.

The relatives of the twelve kidnapped deputies of the department of Valle have created the Cali Council (*Consejo de Cali*), which tries to attract international attention to the plight of their relatives, who have been held two years.<sup>64</sup> A number of other NGOs favour an accord for purely humanitarian reasons.

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<sup>57</sup> Ibid.

<sup>58</sup> *El Tiempo*, 29 April 2003.

<sup>59</sup> Ibid.

<sup>60</sup> *El Tiempo*, 23 February 2004, p. 4; ICG interview, Bogotá, 28 January 2004.

<sup>61</sup> Ingrid Betancourt's case has generated widespread attention, particularly in Europe. She has been made an honorary citizen of 1,063 cities and nominated for the Nobel Peace Prize (*El Tiempo*, 23 February 2004, p. 4). Her family's increasingly anti-Uribe comments have made her case highly contentious. Delloye published a controversial article in *Le Monde*, 9 February 2004, criticising Uribe for negotiating with paramilitaries but not the FARC. Dominique de Villepin, France's foreign minister, apologised to the Colombian government, *El Tiempo*, 12 February 2004, p. 2. Her daughter stated on the second anniversary of her abduction that Uribe was launching a "total war without dialogue", *El Colombiano*, 23 February 2004, p. 3A. Such comments have disturbed opinion in Colombia as apparent in recent editorials, *El Tiempo*, 22, 23 February 2004, pp. 16-17.

<sup>62</sup> *El Espectador*, 11 February 2004.

<sup>63</sup> Poll by Invaer-Gallup, published in *Semana*, 4 May 2003.

<sup>64</sup> ICG phone interview, 30 January 2004.

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<sup>53</sup> ICG interview, Bogotá, 18 February 2004.

<sup>54</sup> ICG interviews, Bogotá, 18 February 2004 and Washington.

<sup>55</sup> ICG interview, Bogotá, 12 February 2004; *El Tiempo*, 1 February 2004, p. 2. On the debate about international humanitarian law, see also Ana Caterina Heyck, *Sí al Acuerdo Humanitario*, (Bogotá, 2004).

<sup>56</sup> *El Colombiano*, 7 February 2004, p. 12A; *El Tiempo*, 15 February 2004, p. 5.

The peace network REDEPAZ, for example, argues that an accord should be agreed without conditions, independent of any peace initiative.

The relatives of those who have been kidnapped for money, some of whom have been in captivity as long as seven years, paint a different picture.<sup>65</sup> In some cases, where the families have paid ransom without result, it is not clear whether they are still alive or where they are being held.<sup>66</sup> The relatives of these victims and NGOs such as Fundación País Libre, who represent them, object to an accord that would only include certain victims. They fear that their loved ones, who are neither militarily nor politically relevant would not be a priority and that releasing only some would just mean that others would be kidnapped in future. They argue that a humanitarian accord is only viable if it ends all kidnappings.

#### IV. POSSIBLE WAYS OUT OF THE DEADLOCK

The Catholic Church is playing an important role in discussion of a deal. It has contacts with all groups involved in the conflict. Its Facilitating Commission (*Comisión Facilitadora*) is discussing a possible humanitarian accord with the FARC; its Episcopal Commission (*Comisión Episcopal*) is actively searching to reconcile the ELN and the government; and the Commission of Bishops (*Comisión de Obispos*) is involved in the paramilitary demobilisation process.<sup>67</sup> A member of the *Pastoral Social* said that the Church is "on good track" with the insurgents about a humanitarian exchange.<sup>68</sup> ICG interviews show that the FARC is considering pursuing talks with the Church on possible modalities.<sup>69</sup>

Differentiation between types of kidnap victims and hostages affects the discussion. So far, the focus has mostly been on political and military hostages. While the majority of kidnappings are for money -- a crime central to the insurgents' war strategy -- an approach contemplating the progressive liberation of all victims, but with "civilian" victims coming later and clearly agreed linkages, could be a way forward.<sup>70</sup>

However, there is controversy over the legal aspects of a deal. Under international humanitarian law, the FARC should release all kidnap victims and hostages immediately, unconditionally and unilaterally.<sup>71</sup> Yet, given the improbability of this, common Article Three of the Geneva Conventions could be used as a legal base for agreement on a "mutual release" -- not exchange. However, international humanitarian law proscribes the release of prisoners who have committed grave crimes.<sup>72</sup>

The Uribe administration holds a "restricted" view of Article Three, underscoring the FARC's obligation to free all kidnapped persons immediately, unconditionally and unilaterally. The proponents of a "humanitarian exchange", such as Lopez and Bernal, are more flexible. Their point is that the liberation of kidnapped persons is paramount, and the government ought to do everything in its power to achieve it. Agreement on a swap would not violate the spirit of Article Three since it would only represent an additional obligation that would not forfeit the principal obligations under international humanitarian law.

Colombia's constitution grants the president and parliament power to amnesty or pardon "political crimes" (Articles 150/17 and 201/2). Law 782 of December 2002 stipulates that the government and armed groups can negotiate agreements on

<sup>65</sup> ICG interview, Bogotá, 27 January 2004.

<sup>66</sup> Ibid.

<sup>67</sup> *Conferencia Episcopal de Colombia, Mensaje Final de la LXXVI Asamblea Plenaria del Episcopado*, Bogotá, 6 February 2004; ICG interview, Bogotá, 16 February 2004.

<sup>68</sup> "Coordinación Colombia, Europa, Estados Unidos", conference, Bogotá, 4 February 2004.

<sup>69</sup> ICG interview, Bogotá, 16 February 2004; *El Espectador*, 6 February 2006. Reportedly, the most recent draft proposal presented by the Church to the government contains the following elements: simultaneous release of imprisoned FARC members and military and police personnel held by the FARC; unilateral release by the FARC of all abducted civilians; released FARC members individually commit not

"to break the law again"; the government would remove all legal obstacles that could impede the implementation of the agreement; the UN and the ICRC would provide good offices. In order to facilitate the deal, the Church proposes further not "demilitarised zones" but rather a "momentary cessation of offensive military operations in precisely agreed spots". *El Tiempo*, 8 March 2004.

<sup>70</sup> Successive releases of women and children, the ill, and the elderly have been suggested.

<sup>71</sup> Article 3:1(b) states that "the taking of hostages" is prohibited, thus implying that they should be released unconditionally.

<sup>72</sup> Such crimes would include the taking of hostages, terrorist acts, or attacks against civilians. Geneva Conventions 1949 and Additional Protocols.

application of international humanitarian law, which would include the option of a "mutual release", and the possibility of stopping prosecution of FARC members imprisoned but not yet convicted.

The government could benefit from a release or swap, which could open a spectrum of possibilities to take control of the political dimension of the struggle with the FARC, which is clearly interested in a deal. Linking release of FARC prisoners to negotiations about an end to kidnapping could provide a basis for negotiations, with UN mediation, about an end to the conflict. The point is to draw the FARC into political negotiations with something it badly wants: the release of its prisoners and de facto recognition as a political actor.

It is clear that the Uribe administration cannot and should not give in to the FARC's demand to demilitarise Putumayo and Caqueta departments. It also has to condition the release of FARC prisoners so they cannot rejoin the conflict. The conditions attached to a release have to be strong in order to keep the process acceptable for the government, the military and the Colombian public in general.

It would appear helpful to require freed FARC prisoners to go through a credible reinsertion-into-society process like that which demobilised paramilitaries should also face. This would allow the government to liberate prisoners but keep them under control during a training period and have reasonable expectation they would not go back to fighting. Prior to release, their records should be carefully reviewed to determine whether they have committed crimes against humanity or other extraordinary offences.

Even with strong conditions attached to the release, the FARC would clearly derive from the process some of the international publicity and status it seeks. Its commander Manuel Marulanda, who is credibly believed to be terminally ill, would have a chance to leave a legacy of freeing "his boys and girls" and putting the insurgency onto the path of peace.<sup>73</sup>

Given government conditions and FARC intransigence, manoeuvring room is restricted. A first stage in the overall process might involve the ELN, which likely is readier to guarantee released

cadres would not return to the battlefield, to release everyone it holds, and to use the process for entry into broader talks on a ceasefire and definitive peace. The odds are still against this, particularly because the FARC will pressure the ELN not to get too far in front. If a deal could be struck, however, it would strengthen the belief on all sides that something similar could eventually be possible with the FARC.

## **A. INTERNATIONAL SUPPORT**

The international community, particularly the EU and UN, could play an important role in devising an effective reinsertion program for released guerrillas and former paramilitaries.

During a two-day visit to Colombia, Chris Patten, EU External Relations Commissioner, was approached by relatives of kidnap victims. Following discussion, he issued a statement on 22 January 2004 that he would bring the matter of a possible humanitarian exchange to Kofi Annan, UN Secretary General.<sup>74</sup> The EU's European Commission issued a statement on 26 January expressing hope for prompt freeing of all kidnap victims through a humanitarian accord.<sup>75</sup> On 28 January Patten and Annan discussed the issue, and Patten said the EU would be willing to get involved in such a process if the UN or another actor requested.<sup>76</sup>

France has been mentioned as a possible receiving country for liberated FARC members, though the presence of the FARC on the EU list of terrorist groups makes this difficult. Countries would prefer that such an initiative were part of a full peace process, not simply a hostages-for-prisoners swap.<sup>77</sup>

Possible UN or Organisation of American States (OAS) involvement is uncertain. Cesar Gaviria, OAS Secretary General and a Colombian, cited UN and ICRC experience but indicated no intention of committing his organisation.<sup>78</sup> James Lemoyne, Special Advisor on Colombia to the UN Secretary General, reportedly said he was prepared to have contact with the FARC about a humanitarian

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<sup>73</sup> Patricia Lara, "La Hora Final de Tirofijo", *Revista Dineros*, February 2004, pp. 20-24.

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<sup>74</sup> *El Tiempo*, 22 January 2004, p. 3.

<sup>75</sup> "Declaration of the European Union Commission and External Relations Commission", Brussels, 26 January 2004.

<sup>76</sup> *El Colombiano*, 29 January 2004, p. 12A.

<sup>77</sup> ICG interview, Bogotá, 12 February 2004.

<sup>78</sup> ICG interview, Washington, February 2004.



exchange if the parties desired.<sup>79</sup> The UN Human Rights Commission (UNHCHR) in Colombia, however, might have international law concerns if guerrillas who had committed war crimes were freed.

UN involvement could be important, first in breaking the political deadlock in Bogotá, then in providing comparative experience from other countries that have had a successful "controlled" liberation of former guerrillas. The UN could also offer useful advice on monitoring an agreement.<sup>80</sup>

## **V. CONCLUSION**

Political circumstances make an early hostages/prisoners swap or release unlikely. The Uribe administration understandably has rejected FARC demands for demilitarisation of Caqueta and Putumayo departments and the "unconditional" release of hundreds of its imprisoned fighters in exchange for just 60 "military and political" hostages. Such a formula could produce more FARC kidnappings and would probably trigger opposition by the Colombian armed forces and families of "civilian" kidnap victims.

However, since the Uribe administration is obliged to go beyond increased law enforcement and risky rescue operations to ease the plight of the victims, it should strive to turn the issue to its benefit. This means tackling a "humanitarian exchange" with strategic vision and developing a negotiation strategy to engage the FARC first on successive, linked hostage/prisoner releases; subsequently, as conditions on the ground permit, an end to kidnapping; and finally negotiations to end the conflict.

Taking this path would imply granting the FARC some of the de facto political status it badly wants. However, it would provide the Uribe administration a way to assume the initiative and set the agenda for the political dimension of the armed struggle. It would strengthen it domestically and internationally and could open a real possibility for freeing all kidnap victims and, in the medium term, for ending kidnapping.

The government should confirm the Church -- owing to its ability to contact the FARC -- as facilitator for

a humanitarian exchange, in conjunction with the UN, which already has the mandate to use the Secretary General's good offices to help bring about peace negotiations. The FARC's willingness to lower its demands is unclear, as is the government's ability to find a mechanism to ensure that released prisoners cannot return to the conflict. Nevertheless, the effort should be pursued -- on humanitarian grounds but also because it might offer an opportunity to press for concrete steps to bring about the negotiated end to the conflict that is the only sure way to end Colombia's humanitarian crisis.

**Bogotá/Brussels, 8 March 2004**

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<sup>79</sup> *El Colombiano*, 29 January 2004, p. 12A.

<sup>80</sup> *RCN*, 3 February 2004.

## APPENDIX A

### MAP OF COLOMBIA



Courtesy of The General Libraries, The University of Texas at Austin

## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 90 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers. ICG also publishes *CrisisWatch*, a 12-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, [www.crisisweb.org](http://www.crisisweb.org). ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York, London and Moscow. The organisation currently operates thirteen field offices (in Amman, Belgrade, Bogotá, Cairo, Freetown, Islamabad, Jakarta, Kathmandu, Nairobi, Osh, Pristina, Sarajevo and Tbilisi) with analysts working in over 40 crisis-affected countries and territories across four continents. In Africa, those countries include Burundi, Rwanda, the Democratic Republic of the Congo, Sierra Leone, Liberia, Guinea,

Ethiopia, Eritrea, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Pakistan, Afghanistan, Kashmir and Nepal; in Europe, Albania, Bosnia, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: the Australian Agency for International Development, the Austrian Federal Ministry of Foreign Affairs, the Canadian Department of Foreign Affairs and International Trade, the Canadian International Development Agency, the Dutch Ministry of Foreign Affairs, the Finnish Ministry of Foreign Affairs, the French Ministry of Foreign Affairs, the German Foreign Office, the Irish Department of Foreign Affairs, the Japanese International Cooperation Agency, the Luxembourgian Ministry of Foreign Affairs, the New Zealand Agency for International Development, the Republic of China Ministry of Foreign Affairs (Taiwan), the Royal Danish Ministry of Foreign Affairs, the Royal Norwegian Ministry of Foreign Affairs, the Swedish Ministry for Foreign Affairs, the Swiss Federal Department of Foreign Affairs, the Turkish Ministry of Foreign Affairs, the United Kingdom Foreign and Commonwealth Office, the United Kingdom Department for International Development, the U.S. Agency for International Development.

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