

Private security services in the Colombian context

An Vranckx

International Peace Information Service

Abstract

Companies that operate in Colombia tend to complement state-ensured security services in hiring private security contractors. The services which these private security providers offer on the Colombian market are geared at 'preventive' action to minimize risks (risk assessments, surveillance of installations and of other assets, deterrence, protection of employees), as well as at 'curative' measures, such as crisis management (including kidnap response). Such kidnap response service is often part of special insurance packages which cover all costs to resolve extortive kidnapping crises.

However attractive the solutions which private security arrangements may offer on the short term, some of these arrangements undermine the conditions for overall state-ensured security on the longer term. Kidnap and ransom packages facilitate the extortion industry and provide an incentive for more extortive kidnappings, while ransoms are an important source of income for Colombia's armed groups. Ransom payments and practices that facilitate such payments may therefore be said to fund the ongoing civil war. The kidnap and ransom insurances that some buy, increase the risk of kidnapping for the many, and thereby undermine the security situation at large. A potential for increasing rather than reducing security risks has also been ascribed to private surveillance and protection staff; some of which were at times seen to operate beyond the control of those who paid for their services and allegedly became involved in human rights abuses.

The corporate policies of companies, including policies on making private security arrangements, should be made the object of critical concern. These arrangements have a bearing on the prime victims of the Colombian security crisis: the many Colombian citizens who are not in a position to contract private security providers, nor to circumnavigate legal obstacles to obtain kidnap and ransom insurance packages.

1. The security sector - general considerations

“The security sector includes all those organisations which have authority to use, or order the use of, force, or the threat of force, to protect the state and its citizens, as well as those civil structures that are responsible for their management and oversight. It includes:

- (a) military and paramilitary forces, as well as those civilian structures - such as Ministries of Defence - that are responsible for their control;
- (b) intelligence services;
- (c) police forces, both national and local, together with border guards and customs services;
- (d) judicial and penal systems;
- (e) civil structures responsible for the management and oversight of the above”.¹

The provision of safety for all citizens, quite like the provision of health and of education, is considered a state obligation, that is more than a matter of social policy. If the state security sector cannot provide an acceptable level of safety, economic development is stifled as well and the prospects for productive investment reduced. The security sector, therefore, is to meet the demands of economic actors as well. “In theory, a company should be able to rely on state-funded security services, paid for out of taxes, to protect its people and assets. In many developing economies, however, these services often lack the necessary capacity, in terms of size, skills and equipment, to protect business interests”.² The resources to be invested for the security sector to be efficient, are obviously contingent on the security situation in a given region, at a given time.

Increasing numbers of regions are confronted with insecurity problems that prove beyond the capacity of the available security sector. “If the government cannot provide accountable and effective security services, individuals and communities increasingly take

¹ Chalmers, Malcolm, *Security sector reform in developing countries: an EU perspective*. London: Saferworld and Brussels/ Ebenhausen: Conflict Prevention Network/ Stiftung Wissenschaft und Politik, 2000, p. 6.

² Nelson, Jane, *The Business of Peace. The private sector as a partner in conflict prevention and resolution*. London: The Prince of Wales Business Leaders Forum/ International Alert/ Council on Economic Priorities, 2000.

security and protection into their own hands”.³ In many cases, they contract private security firms which work on a commercial basis and which provide services in a growing share of the security sector as defined above. This “privatisation of security” is a process that gained momentum more than a decade ago.⁴

2. Providers of the global private security market

In the 1990s, the global private security services market was estimated to grow 8% annually. This growth was not distributed evenly around the globe. The Latin-American market for private security was ascribed a 12% annual growth figure in the mid 1990s,⁵ making it the world’s second-fastest grower after Eastern Europe.

The market for private security services is presently serviced by a range of companies that are any size from very modest (e.g. local companies which guard buildings and private individuals) to large multinational business groups.⁶ Some of the latter conduct business in more than 20 different countries, and offer a wide range of services and products. These larger private security services providers, moreover, are often part of holdings that also incorporate arms manufacturers, and/or have links with insurance companies. These links are seen to put large multinational security services providers in the optimal position to safeguard everything from economic activities situated in tricky spots around the globe to the physical integrity of individuals who have the means to pay for more safety than state institutions are able to provide.

The set of services that are contracted on a commercial basis today includes both offensive military operations and defensive arrangements. Examples of the first have often been recognised as mercenary operations, while the latter are the sets of less controversial arrangements that range from armed surveillance and deterrence activities, to the cerebral businesses of crisis management, risk assessment and corporate investigation.

³ Chalmers, Malcolm, *O. C.*, p. 7.

⁴ South, Nigel, *Policing for Profit - The Private Security Sector*. London: Sage, 1988.

⁵ Lock, Peter, “Privatisierung von Sicherheit im Zeitalter der Globalisierung - Das Beispiel Lateinamerika”. In: *Lateinamerika Analysen - Daten - Dokumentation*, 15 (1998) 38, pp. 13-28.

⁶ An overview of the larger players on the private security market is provided by Lewis, William & Edgecliffe-Johnson, Andrew, “Corporate Security: The masked man’s guide to the industry”. In: *The Financial Times*, 03/03/2000.

Military operations and surveillance

“Defence is becoming privatised, and international private military firms are proliferating. In some countries mercenaries often sell their services for mining and energy concessions and set up affiliates in air transport, road building and trading. And more and more, the clients of these mercenaries are multinational corporations seeking to protect their mining interests in conflict-prone countries. Executive Outcomes, Sandline International and Military Professional Resources Incorporated offer military services and training to governments and large corporations (...) The rise of military companies is linked to the post-war power vacuum. Major power are less inclined to intervene militarily, especially in low-level conflicts. Accountable only to those who pay [for their services], such businesses are hard to regulate”.⁷

Military Professional Resources Inc. (MPRI), is one among more private companies in the United States, which have obtained contracts for military tasks abroad, including tasks in Colombia. The US Department of Defence justifies that it outsources certain military tasks to these and similar private contractors with the reasoning that “the political risks of using active-duty troops in such dangerous places as Colombia often outweigh the advantages. The use of retired military personnel under contract, by contrast, generally provides a higher level of expertise with lower overall costs and minimal political risks (...) There is inevitably a public outcry whenever U.S. troops are injured or killed in a foreign conflict, whereas less attention is paid when privately contracted military trainers or specialists suffer the same fate. The government has minimal reporting requirements regarding casualties suffered by private contractors”.⁸

Former state security sector employees also staff large private security companies that are geared at “passive security” rather than at offensive military tasks, and that consequently object “to being labelled a ‘mercenary organisation”, such as Defence Systems Limited (DSL). DSL was founded by a group of retired British military officers, (including Alastair Morrison, a notorious ex-Special Air Service member), with private financial support from city bankers. “Since 1981, DSL has offered a wide range of security

⁷ UNDP, *Human Development Report 1999*. New York: Oxford University Press, 1999, pp. 42-43.

⁸ Robberson, Tod, “Contractors playing increasing role in the U.S. drug war”. In: *Dallas Morning News*, 27/02/2000.

services to governments, private and public corporations, and individuals. These services include crisis management, threat assessment, specialist manpower, demining, oilfield and mining security, technical security equipment and human resources”.⁹ In 1996, DSL was bought by Armor Holdings Incorporated, a US security products company that paid US \$ 36 million for DSL, which since then “experienced continued growth, with revenues in excess of \$ 48 million in 1997. The business is now tightly integrated with the ArmorGroup, the risk management division of Armor Holdings, and as such has a much broader remit in solving client’s risk management problems. The company has over 3000 employees on its payroll, with former British military soldiers, using knowledge gained from their service in elite British military units such as the Special Air Service and the Gurkhas, acting as supervisors (...). Besides its traditional guard functions, DSL maintains that it often serves as an intermediary between the local police and military forces, and its clients. The company’s role is to promote dialogue, share information about its client’s activities with local authorities and support, through community works for example, local troops securing its client’s assets”.¹⁰

Risk assessment and crisis management (including kidnap response)

Non-military segments of the private security industry, such as risk assessors and crisis management consultancies, are dominated by Anglo-American companies as well.¹¹ The largest company in this segment of the private security industry is Kroll Associates, established in New York in 1972. Kroll merged in 1997 with O’Gara, an armoured vehicle manufacturer, then proceeded to take itself private in a US \$ 478 million deal with Blackstone. Kroll-O’Gara currently operates in 23 countries. Revenues in 1998 amounted to US \$ 254 million.¹²

⁹ Goulet, Yves, “DSL: Serving states and multinationals”. In: *Jane’s Intelligence Review*, June 2000, p. 46.

¹⁰ *Ibidem*.

¹¹ “US and UK companies dominate the sector, having brought ‘real sophistication to the business’ (...) The top companies in the Far East and southeast Asia tend to be American or British managed, and while there are also well thought of companies in France, Germany and elsewhere in Europe, none has managed to break through internationally”, according to Lewis, William & Edgecliffe-Johnson, Andrew, l.c.

¹² Lewis, William & Edgecliffe-Johnson, Andrew, l.c.

The range of services that Kroll-O’Gara provides include risk assessment. These assessments often take the form of so-called ‘country risk assessment reports’,¹³ that are bought by governments and by multinational corporate groups which seek to minimize risks for their staff and installations in the respective countries. These assessments can be complemented with tailor-made advice on preventive security measures, and training in ‘defensive tactics’.¹⁴

Some of the companies that provide these preventive security consultancies also consult on ‘curative action’, that is crisis management, such as kidnap response. Kroll-O’Gara’s main competitor in this market segment is the British Control Risks Group (CRG). CRG was founded in 1975 by Julian Radcliffe, an insurance director for a broker of Lloyd’s of London. Radcliffe began staffing CRG by enlisting a former major from the SAS-unit within the British army, and three other former officers.¹⁵ Their mission was to recover hostages as a part of the Lloyd’s Kidnap and Ransom (K&R) insurance package,¹⁶ that is: get insured hostages out alive, at the least possible cost. The insurer exacts this last condition - cost effectiveness - by awarding the kidnap response team a larger bonus the lower the ransom that gets the hostages out.

Today’s team of CRG kidnap response operatives is on call twenty-four hours a day to fly to any part of the world to work a case, as a service to K&R insurance contracts written out by Hiscox, the current market leader of that insurance product, and by other underwriters of Lloyd’s. For the uninsured, CRG works on a fee-paying basis of about US \$2000 a day plus expenses, and the company does occasional pro bono work for families and individuals in trouble. The kidnap response service is essentially to (help) negotiate the ransom under a given price, then to advise the hostage’s relatives and/or employer to pay that ransom. The kidnap response team can also help devise a strategy to pay. In cases where that ransom payment is covered through K&R insurance, the matter is further dealt with by the insurance partner of the kidnap response company.

Similar kidnap response services can be obtained from Kroll-O’Gara, *interalia* as part of an K&R package from the American International Group (AIG), the second-largest

¹³ Kroll-O’Gara’s information service K.I.N.S. displays a sample of its regularly updated country risk reports, that actually focuses on Colombia, on its website at <http://kins.kroll-ogara.com>.

¹⁴ Woellert, Lorraine, “New weapons for scary world - Services provide security with brains, technology, not arms”. In: *Washington Business Times*, 5/5/1997.

¹⁵ Some of the information on CRG presented in this section is taken from Hagedorn Auerbach, Ann, *Ransom: The untold story of international kidnapping*. New York: Henry Holt and Company, 1998, chapter 19, pp. 201-219.

K&R insurer. A few smaller private security companies advertise that they dispose of expertise on ‘how to respond at the beginning of a kidnapping and/or extortion incident’ and that they maintain an ‘insurance partnership’ with reputed insurance companies as well. Hostage negotiation is one of the counter-terrorism services for which former CIA agent Mike Ackerman’s firm from Miami is well-known.¹⁷ Ackerman’s clients are said to “include some 65 of America’s top 100 multinationals, along with numerous European and Japanese companies”.¹⁸ From 1978 onwards, Ackerman dispatched ‘response professionals’ to recover hostages insured by the Chubb Insurance company.¹⁹ The insurance consortium PIA-Nassau Europe, in turn, offers insurance arrangements that are linked to the ‘Kidnap Ransom & Extorsion Programs’ of Corporate Risk International (CRI).²⁰ CRI is a relative newcomer to kidnap response and is based in Fairfax, Virginia.²¹ In the course of 2000, a French association of the insurer Gras-Savoie and the Paris-based *cabinet d’investigation* SAS started selling K&R packages for European corporate clients. These newcomers, however, are not expected to break the European monopoly of K&R insurance packages serviced by CRG.²²

Kidnap response services believed to be commercial in nature have also been offered by the notorious Werner Mauss. Mauss is a German former secret service contractor who claims he currently works ‘on humanitarian grounds only’ yet is believed to have made large profits from some of his kidnap response activities.²³ The exclusive services by *das Institut Mauss*, however, are not tied to insurance packages, and have actually been seen to obstruct CRG’s kidnap response team in the process of negotiating the ransom for an insured client.²⁴

¹⁶ The K&R insurance package is discussed in some detail below, in section 3.

¹⁷ Millman, Joel, “Spook for hire”. In: *Forbes*, 18/3/1991.

¹⁸ The Ackerman Group, *Information brochure*.

¹⁹ Williams, Heather, “Kidnap and Ransom Insurance to the Rescue”. On *insure.com*.

²⁰ Corporate Risk International, “Kidnap, ransom and extortion programme”. On: www.corprisk.com.

²¹ CRG, the ‘more established’ in risk assessment and kidnap response, sued newcomer CRI for trademark infringement, arguing the similar acronyms were intended to confuse clients

²² “Le marché du ‘kidnap & ransom’ progresse”. In : *Le monde du renseignement* n° 382, 18/05/2000 : “ On constate ainsi l’arrivée de nouveaux acteurs déterminés à rivaliser avec les grandes sociétés anglo-saxonnes sur ce marché des polices d’assurance contre le rapt des salariés à l’étranger. Cependant, même en France, une firme comme Control Risks Group dispose d’une forte implantation et d’une longue expérience, capable de gêner durablement ses challengers. conscientes de cette situation, certaines compagnies d’assurance, comme Europe Assistance, hésiteraient à s’approcher de cabinets français, dont l’expertise et les dimensions leur paraissent encore trop fragiles“.

²³ Many reasons supporting that believe are summarised in Gómez, Ignacio & Schumacher, Peter, *Der Agent und sein Minister. Mauss und Schmuidbauer in geheimer Mission*. Berlin: Elefant Press, 1997.

²⁴ Rienhardt, Joachim, “Agent aus Liebe”. In: *Stern*, 28/06/1997, p. 55, lists cases “in dem die britische Sicherheitsfirma Control Risks wegen der Intervention von Mauss ihren Auftrag nicht erfüllen konnte”.

Several non-profit organisations offer kidnap response services as well. Crisis Consultant International, a California-based group, has helped free missionaries from captivity.²⁵ International non-governmental organisations such as the Red Cross, and the church, have all been actively involved in resolving kidnap cases as well. In Colombia, the *Fundación País Libre* has had the sad opportunity to collect a very large experience with kidnap cases. This experience is now available through consultancies that are offered on a non-commercial basis to relatives of the numerous uninsured victims of the Colombian kidnap industry. The *Fundacion* has also promoted a *compromiso de no paga*, that is a formal arrangement whereby an individual declares he does not want to be ransomed in case he or she becomes the victim of a kidnapping.

3. The kidnap and ransom insurance controversy

Lloyd's of London began selling K&R insurance in 1932, after the Lindbergh kidnapping, and to date continues to consider K&R arrangements a legitimate insurance product: "Societies faced by the threat of assassinations, kidnappings, or other misfortunes, whether politically or criminally inspired, look at governments for protection (...) Then realizing that total security is not possible and is very expensive, they seek to shift the losses of the few to the shoulders of the many by means of insurance".²⁶

The expectation that governments provide sufficient protection to prevent kidnappings and other dramas is a legitimate one, at least in most areas of the world. The expectation that these governments would also take steps to resolve kidnap cases, by contrast, is ill-founded. Measures required to resolve a kidnapping crisis imply bargaining and actually handing over money to criminal and/or terrorist groups that are the authors of the kidnap crime. Such bargaining and ransoming runs counter to many countries' governmental policies. A 1979 UN Convention criminalised hostage-taking in general even if it did not altogether ban ransom payments.²⁷ Yet many countries have policies that explicitly condemn ransom paying, for their governments take ransoms to fund terrorists and criminals and to encourage more kidnappings, thus endangering the lives of peoples in the countries where the ransoms are paid. Within the European Union and the Group of

²⁵ Hagedorn, Ann, *O. C.*, p. 187.

²⁶ Julian Radcliffe, quoted *ibidem*, p. 212.

Eight, governments attempted to agree on guidelines to best practice in hostage situations, that preclude ransom payments.²⁸ Not to pay ransoms, and not even to bargain, is explicit national governmental policy of the US and UK,²⁹ the two countries where - coincidentally - the world market leaders in K&R insurance and kidnap response service providers are based.

These predominantly Anglo-American K&R insurance packages, however, are sold by private enterprises that work independent of any government. There are no legal ways to prevent that these private companies advise clients to pay a ransom if they believe that paying that ransom is the only viable option to resolve the kidnap case at hand, nor are there ways to effectively prevent that these private actors set the machinery in motion through which that ransom is actually paid. Private kidnap response teams in this respect circumvent governmental counter-terrorism policies, and they routinely perform tasks that cannot be performed by the governmental agencies (such as the FBI and Scotland Yard) which would be expected to work on cases where US and UK citizens are involved.

Civil servants and others employed abroad by US and UK authorities (e.g. diplomatic personnel) do not expect their governments to ransom them out, not even to negotiate, in the event they become the victims of a kidnapping. Neither can they expect private kidnap response teams to be made to work their case. As such, the situation of civil servants differs from that of their compatriots who can obtain K&R arrangements that are offered by private security services providers, and do so in disregard of their countries' official policy. "British policy remains never to give in to ransom demands, but the Foreign Office admits it has no control over the actions of people and companies with abduction insurance".³⁰ "The policy of not negotiating with kidnappers extends only to government departments and cannot be forced on individuals or companies who believe insuring against abduction is necessary to protect their employees".³¹

From the mid 1980s onwards, several European governments have sought to alter this situation, and both K&R insurance and private kidnap response services have been severely criticized. A series of initiatives were launched as a direct consequence of the

²⁷ "Hostage Taking". In: *The Financial Times*, 03/09/2000.

²⁸ Ibidem.

²⁹ In a private communication of 09/02/2000, John Virgoe of the Counter-Terrorism Policy Department - Foreign & Commonwealth Office, summarized British Government policy on kidnaps as follows: "Our prime concern is the safety of the hostages, but we do not make concessions to kidnappers or terrorists. To do so only encourages further crimes".

³⁰ Wilson, James, "Kidnaps for ransom reach worldwide high". In: *The Guardian*, 21/04/2000.

1986 high-profile kidnapping of Jennifer Guinness. Mrs. Guinness was kidnapped by criminals who were suspected to have ties with the Irish Republican Army and demanded a 2,6 million ransom. When newspaper articles made it public knowledge that CRG was working this case, British members of Parliament called for the prosecution of CRG and of its K&R insurance underwriter for breaching prevention of terrorism laws. Then Home Secretary Douglas Hurd claimed he would review K&R insurance in response to the call for prosecution. A top police official told the press, "Private security firms such as the one called on in the Guinness kidnappings are operating at the very frontiers of official tolerance". Prime Minister Margaret Thatcher was persuaded that what CRG did was directly in opposition to what governments were trying to do to counter terrorism, and politicians from Tory, Alliance and Labour expressed their concern over K&R as an encouragement to kidnapping. The Commons passed a motion to put the issue before the world leaders at the May 1986 Tokyo summit, and at The Hague, measures against the payment of ransoms were being studied. The Irish government, charging that the availability of K&R insurance was an incentive to kidnappers, lobbied the European institutions for a Europe-wide ban on K&R insurance.³²

None of these initiatives proved effective. The insurance industry countered the claim that insurance encourages kidnappers and terrorists, with the argument that only 2% of all victims are likely to be insured,³³ and that the existence of an insurance policy ensures that the authorities are informed as soon as the kidnap takes place. They also argued that the practice of calling in professional negotiators can help eliminate the possibility that a family transfers the ransom money before the police are even aware that a kidnap has taken place. Kidnap insurance, insurers argued, was consequently more likely to result in less money getting into the hands of terrorist organisations.

There are few reasons to doubt that the K&R insurance trade was booming towards the end of the 1990s. "The largest kidnap insurer in the world, the Hiscox Group at Lloyd's, is now issuing about 5000 policies a year, amounting to 60% of all world business".³⁴ "The number of kidnap and ransom policies underwritten at Lloyd's has more than doubled in the past 10 years. It is understood that Hiscox pays out for about 30

³¹ Boggan, Steve, "Kidnap policies pay out millions". In: *The Independent*, 09/10/1998, p. 9.

³² This paragraph summarizes Hagedorn, Ann, *O. C.*, p. 215-217.

³³ Yet, these may actually represent the percentage of victims that have a profile for which kidnappers tend to demand the highest ransoms (e.g. multinational business executives and engineers)

³⁴ Boggan, Steve, l. c.

kidnappings a year, but the group refuses to release details about people for whom it has paid to be released or those it insures. A spokeswoman for the company said: ‘if it becomes common knowledge that a person has kidnap insurance then they are much more likely to become a target’³⁵.

K&R insurance clients, meanwhile, try to keep a low profile, and tend to withhold information of actual ransom payments, so as not to whet potential kidnappers’ appetite for more insured hostages. The insurers handle their K&R product with maximum confidentiality, and oblige their clients to do the same.³⁶ “As part of the K&R agreement through Lloyd’s underwriters, the company or individual with the policy cannot reveal to anyone that it has such coverage. Exposure will result in automatic cancellation of the policy. The K&R policies are kept in a locked safe at Lloyd’s. The clients’ folders are filed under coded names. And the case files are kept in a vault in a secretive room at CRG’s London headquarters. Even if a reporter confirms the presence of a CRG negotiator at the scene of a high-profile kidnapping, neither CRG nor the policyholder will confirm the firm’s involvement”.³⁷ K&R insurance packages offered by other insurers bear witness to a similar confidentiality policy. K&R insurer PIA Nassau Europe contracts are explicit in that “The insured must all times use best efforts to insure that knowledge of the existence of the insurance is restricted as far as possible”.³⁸

And yet, these confidentiality measures have proven unsuccessful in preventing the information on K&R-insured clients from leaking out of London vaults and into the hands of prominent actors in the kidnap industry. When the wife of a former BASF-president was kidnapped in Medellín, in 1996, the first communication sent by the kidnappers referred to the fact that the hostage was insured for US \$ 6 million.³⁹ CRG later failed to service this particular K&R insurance contract, allegedly because it was elbowed aside by the German private hostage negotiator Werner Mauss.

³⁵ Wilson, James, l. c.

³⁶ Amongst the net results of this obligation is the near impossibility to obtain data on whether European corporate actors take K&R insurance covering for employees that they send out to areas with high kidnap incidence. This fact proved obstructive to our effort to document European corporate actor’s security policy vis-à-vis the Colombian kidnap industry.

³⁷ Hagedorn, Ann, *O. C.*, p. 203-204.

³⁸ “21: Confidentiality” in the contract for *Special Coverage Policy* effected with Underwriters at Lloyd’s, London, by Professional Indemnity Agency, New Jersey, and with Nassau Verzekering Maatschappij, Rotterdam.

³⁹ Rienhardt, Joachim, l. c., p. 55.

Evidence of leaks was also provided with respect to British K&R insurance coverage contracted by members of the Colombian Jewish community. Guerrilla fractions managed to infiltrate amongst the insurance file-keepers by way of a member of the insured Jewish community, and actually obtained names and information on the amount covered by their K&R insurance. From 1984 to 1989, insured members of the Jewish community were kidnapped, one after the other, totalling more than 40 cases in all. This trade ended with the assassination of the man who had mediated in all of these kidnap cases and was also suspected of having provided information about the insured to the guerrilla in the first place. This assassination was ascribed to the Israeli secret service Mossad.⁴⁰

4. The market for private security services in Colombia

Kidnap and ransom arrangements

“Multinational companies doing business in Colombia are advised to obtain kidnap and ransom insurance for their personnel”.⁴¹ This advice concludes the ‘kidnap’ section in an August 2000 “Colombia country risk report” by the New York-based private security multinational Kroll-O’Gara. The same source claims that K&R arrangements can effectively be serviced in Colombia, even though it is aware that paying ransoms is illegal in that country. The anti-kidnapping law that the Colombian government enacted in January 1993 “did little to diminish abductions or the payment of ransoms, however, and has since been modified in several ways. In short, Colombian courts have ruled that individuals or organizations acting on behalf of the best interests of a kidnapping victim are within the bounds of the law if they comply with government procedures and protocols”.⁴²

⁴⁰ The paragraph summarizes Valencia, León, “Secuestro, extorsión y guerra en Colombia“, fascimile, Bogotá 2000, who points out how “la comunidad judía, compuesta por ricos industriales y comerciantes, emigrados de Europa y sus descendientes, (...) iniciaron la práctica de comprar seguros contra secuestros a compañías inglesas. La guerrilla infiltró la información a través de un miembro de la misma comunidad judía, acerca de quiénes habían comprado las pólizas y sus respectivos montos o cantidades que pagaría el seguro. Uno a uno fueron secuestrados entre 1984 y 1989, periodo en que se dieron más de 40 casos. Con un elemento en común: el negociador era el mismo (...) [El] se encargaba de la mediación entre la familia y los secuestradores. Este negocio ilícito se agotó con el asesinato de [este negociador] en 1989 o 1990, en Bogotá, por el Mossad, en la calle 26 con la carrera 17. “

⁴¹ KINS, *Country Risk Reports: Colombia*. <http://kins.kroll-ogara.com/crr1.cmf> (updated 03/08/2000).

⁴² Ibidem.

The situation as summarized here by Kroll-O’Gara’s analysts, however, does not correspond in all respects to the official reading of the Colombian *Código Penal*, of the anti-kidnapping law, and of relevant *Corte Constitucional* ruling. The currently applicable anti-kidnapping law as a rule forbids ransom payments that fund terrorist organisations. On the other hand, the law provides for a limited number *causales de justificación* to abstract from that rule - that is a very narrow margin in which kidnap victims and their relatives can act and can receive assistance to resolve a kidnapping case.⁴³ The common and practical interpretation of this law is to define ransom payment as an act that is neither good nor bad in and of itself, and that the moral nature of the payment depends on the aim that is sought by the payment. Whomever is seen to obtain a profit from a ransom transaction, commits a crime.⁴⁴

Kroll-O’Gara’s kidnap response team is servicing K&R arrangements in Colombia nevertheless,⁴⁵ and so are hostage negotiators employed by CRG, the Ackerman Group, CRI and still other private security companies. Private individuals and companies that obtain a K&R insurance package do not violate Colombian law, strictly speaking. Multinational companies cannot be legally prevented from sending employees to Colombia who are insured through a K&R package contracted in the country where their employer is based. Nor can it be prevented that Colombian nationals, who are employed in Colombia by foreign companies, are effectively ensured by that employer’s K&R insurance package. The only practical difficulty is in obtaining that insurance while in Colombia: Colombia’s *Ley 40 de 93*, Art. 12, penalizes vendors of K&R insurance, and a sanction can be effected by the Colombian *superintendencia de sociedades* from which insurers must obtain a license to operate in Colombia.⁴⁶ Nevertheless, even that system of control and penalisation is seen to be circumvented rather easily, by insurance brokers in Colombia that invite their clients to sign the contract abroad.⁴⁷

⁴³ Information obtained from the Colombian mission in Belgium.

⁴⁴ Meluk, Emilio, “El secuestro en Colombia y las multinacionales Europeas”, facsimile, Santafé de Bogotá, 1999, pp. 23-24.

⁴⁵ Even though the Colombian government did make an effort to expel Kroll in 1997, for marketing its services on the basis of ‘exaggerated’ kidnap statistics, according to Meluk, Emilio, *loc. cit.*, 1999, p. 24.

⁴⁶ Information obtained from the Colombian mission in Belgium.

⁴⁷ Meluk, Emilio, *loc. cit.*, 1999, p. 23: “Las compañías aseguradoras contra secuestro se ven en la necesidad hacer un rodeo con sus clientes. Contactados los clientes al interior del país por un vendedor de seguros, y aceptada la compra de la póliza, la compañía aseguradora les paga a los clientes el viaje al exterior para firmar los documentos (...) Esta es la modalidad que utiliza, por ejemplo, Seitlin & Company Insurance de Miami, uno de los grandes vendedores de seguros contra secuestro en Colombia, los cuales se comercializan

And yet, not all foreign companies that operate in Colombian high risk areas obtain K&R insurance. The largest single foreign investor in Colombia, British Petrol (BP), which operates part of Colombia's oil exploitation infrastructure, makes it an explicit policy commitment not to obtain K&R insurance, and not to bargain or in any other way give in to extortionist demands.⁴⁸ This corporate policy is not a theoretical stand. The company and its local subcontractors have effectively been facing extortionists' demands, and personnel has actually been kidnapped near the premises of BP's compound in Casanare. That production site is situated in one of Colombia's sparsely populated eastern provinces, where guerrilla movements settled and operated since the mid 1970s.⁴⁹ One of these guerrilla movements continues to target the oil companies and infrastructure today, for reasons that are political and economic.⁵⁰ Extortion and extortive kidnapping in that area are crucial to the guerrilla's fundraising.

BP's option not to yield to the guerrilla's extortion campaigns in Casanare has been 'reprimanded' in several ways. "Several explosives devices have been set against the wells (...) lots of employees have received threats. Since 1988, 15 men of the army and police assigned to the protection of the oil infrastructure that we operate, have been killed while protecting these installations. More than 20 have been injured".⁵¹

BP's option not to obtain K&R insurance notwithstanding the extreme insecurity climate, and its corporate policy to strictly comply with Colombian governmental policies, is more than a voluntary commitment. It is also explained by the fact that BP requires a licence to operate in Colombia, whereby it can effectively be sanctioned in the event that the multinational oil company does not comply with Colombian law. In Colombia, private oil companies are by necessity partners of the state oil company *Empresa Colombiana de Petróleos* (Ecopetrol), in profit sharing agreements that are called association contracts. Consequently, all contracts between private companies and the Colombian state - not only the association contracts with Ecopetrol - must comply with *Ley 104 de 1993*. Article 45 of this law, which was altered by *Ley 241 de 1995*, contains a clause that invalidates the

con el nombre de Seguro Especial de Indemnización. Lo mismo hace Nicolson Leslie Group Special Risks (Lloyd's broker) de Londres".

⁴⁸ Information obtained from BP staff at BP's London headquarters.

⁴⁹ Peñate, Andrés, *Arauca: Politics and Oil in a Colombian Province*. University of Oxford, 1991.

⁵⁰ Peñate, Andrés, "El sendero estrategico del ELN: del idealismo guevarista al clientelismo armado". In: *Reconocer la guerra para hacer la paz*, eds. Malcolm Deas & Maria Victoria Llorente. Bogotá: Norma y La Universidad de los Andes, 1999, pp 53-98.

⁵¹ Information obtained from BP through electronic mail communication 01/06/2000.

contract if the contracting companies are seen to pay protection money or ransom to guerrilla or paramilitary groups. All contracts that private companies conclude with Colombian state entities can be sanctioned by this mechanism. The difficulty in enforcing this clause is in demonstrating that companies do or did yield to extortion campaigns.

In practice, this mechanism can be seen to generate a dual system that excludes only certain individuals and companies from obtaining K&R packages. Many individuals in Colombia are not in a position to pay expensive K&R premiums. Fewer others may well be in a position to afford K&R insurance, but will never (have their families) benefit from privately contracted K&R packages, since they are employed by state institutions or by (multinational) companies that operate on contracts with Colombian state entities (such as Ecopetrol). Other individuals and companies in Colombia, however, cannot legally be prevented to obtain certain private security arrangements that run counter to Colombian policy but that are marketed nevertheless.

This last situation may be taken to undermine the effectiveness of anti-kidnapping policy to a considerable extent. It implies that K&R arrangements do more than “shift the losses of the few to the shoulders of the many by means of insurance”. In this case, the “many” that obtain K&R insurance become accomplices of a system that undermines Colombian anti-kidnapping policy.

Surveillance and deterrence

Anti-K&R policies all but preclude companies from making security arrangements of a different kind, such as investing in prevention and deterrence. In the early 90s, several foreign mining and oil companies were made to pay a so-called ‘war tax’. The tax was imposed by the Colombian government and entitled these companies’ installations and personnel to extra protection from the Colombian national security sector.⁵² But this arrangement caused controversy in the countries where these mining and oil companies headquarters were based. In the event BP became victim of allegations that seriously endangered “that most priceless of [multinationals’] assets, their good name”.⁵³ Human Rights Watch, and several other non-governmental organisations and human rights pressure groups, went as far as claiming “BP’s Colombian office was complicit in murder,

⁵² Today this tax is no longer in place.

⁵³ Nelson, Jane, *O. C.*, p. 73.

torture and intimidation by employing state security forces which had a poor human rights record and links with paramilitary organisations”.⁵⁴ These and similar critiques did not fail to generate an effect. The company began to communicate more openly and proactively with key stake holders in the region, on matters of security, but also of environmental and social policy.⁵⁵ BP also altered its corporate strategy vis-a-vis certain press and international NGO’s.

“Following criticism of BP Amoco’s security agreement with the Colombian army in Casanare, which the company accept was flawed, a new agreement was developed with advice from Human Rights Watch. The revised agreement, which is between Ecopetrol (here in the capacity of BP Amoco’s state-owned partner) and the Colombian Ministry of Defence, contains human rights and auditing provisions”.⁵⁶ The current agreement is to cover logistics support (such as accommodation, food, transportation and health services) for those troops and police operating in the region where oil infrastructure and personnel are under armed threat.

Controversy over security arrangements in which oil companies are involved have encompassed more than compensation for certain costs of the Colombian army and national police. Another blend of commotion has been expressed about the joint venture that develops and exploits the Santiago de las Atalayas oil fields, and transports crude oil to the loading terminal by way of the OCENSA pipeline system. The majority partner in the joint venture is the state-owned Ecopetrol, but BP, the French oil multinational Total and the US-based Triton corporation participate as well. In 1996, evidence came out that security forces that were employed to protect the OCENSA pipeline system were also maintaining contacts with a private Israeli arms company, Silver Shadow Advanced Security Systems Ltd. Silver Shadow offered to arm the joint venture’s security workers.⁵⁷ In the end, all the items in the offer were rejected by OCENSA except one. The deal

⁵⁴ Atkinson, Mark, “BP pressed to vet army protectors”. In: *The Guardian*, 21/04/1998.

The most recent Human Rights Watch report that claims Colombian military troops continue to maintain ties with paramilitary violators of human rights was published as *The Ties That Bind: Colombia and Military-Paramilitary Links*. Washington, February 2000.

⁵⁵ As evidenced by Aidan, Davy et al., *BPXC’s Operations in Casanare, Colombia: Factoring social concerns into development decision-making*. Social Development Papers n° 31, The World Bank, July 1999.

⁵⁶ Frankental, Peter & House, Frances, *Human rights: Is it any of your business?* London: Amnesty International/ The Prince of Wales Business Leaders Forum, 2000, p. 114.

⁵⁷ These offers are documented through copies obtained from the fax correspondence between OCENSA security people and Silver Shadow.

agreed on was to obtain 60 pairs of night vision goggles. These were supplied to the Colombian army by OCENSA, to help soldiers see at night to perform surveillance duties.

The observation that Colombian soldiers of the 16th Brigade assigned to protect the joint venture's rigs and facilities, failed to provide sufficient protection against guerrilla attacks, lead the joint venture to offer a contract to Defence Systems Colombia (DSC), DSL's Colombian subsidiary. According to one source, a first such contract concluded in 1992 "was to train a 540-strong police unit, provided by the Colombian National Police (which in 1996 signed a US \$ 2 million three-year agreement with BP), and to protect the oil rigs. DSC, with BP's security division, trained this unit in 'defensive tactics' such as safety, first aid and liaison with public forces".⁵⁸ BP however maintains that DSC did not 'train' the police unit, and that the private security company was hired to provide security advise: DSC "was to detect that the police members assigned to the protection of the oil infrastructure needed better training from their institution (the National Police). The Colombian National Police provided this training to their men and women assigned to protect the oil installations".⁵⁹

To provide military training is illegal in Colombia for nationals that are not members of the armed forces, or for foreigners acting without a public assistance agreement between governments. The allegation that DSC, the OCENSA joint venture, or any of the companies participating in that joint venture, have been involved in providing, financing or otherwise facilitating such illegal activity, have been investigated by the Colombian Human Rights Prosecutor. The UN Rapporteur of the Commission on Human Rights, in his turn, summarizes the case as follows: "In January 1998, at the request of the BP Exploration Colombia Company, the Public Prosecutor's Office of Colombia completed a 14-month preliminary investigation of the accusations that BP Exploration Colombia Company was involved in human rights violations. In that investigation the Office found no grounds for opening a formal investigation. Furthermore, with regard to the cooperation agreements signed between BP and other companies associated with Ecopetrol and the Ministry of Defence, these originated as a result of threats, attacks, extortion and kidnapping of Ecopetrol officials by subversive elements which had declared the oil infrastructure, including that of Ecopetrol, to be a military objective. This situation led to a state of such vulnerability that the oil companies, including Ecopetrol, were forced to turn

⁵⁸ Goulet, Yves, l. c., p. 47.

⁵⁹ Electronic mail communication from BP London headquarters, 28/09/2000.

to the Colombian army and the police for armed protection, in accordance with the Colombian Constitution. In order to facilitate the performance of the task of the army and the police, the oil companies provide support designed solely to increase the well-being of the personnel providing that protection; it is in no case lethal in nature (...) This support is legalized through inter-agency cooperation agreements signed between the associates and/or Ecopetrol and the Ministry of Defence”.⁶⁰

There are reasons nevertheless to believe that Colombian forces do receive training other than through the said transparent assistance agreements. “For years, London has secretly helped out in Colombia with its elite Special Air Service providing training for the Colombian air force”.⁶¹ Some such training may even be provided by private actors that are sponsored by foreign regimes. A source in the USA commented on how two Virginia-based private security companies are “completing contracts with the US government related to logistics support of Colombian police and counterinsurgency forces: Dyncorp, which has employed Vietnam-veteran helicopter pilots in Colombia, provides maintenance and support for drug-crop eradication flights, often over guerrilla-dominated territory”.⁶² “MPRI (...) helped the Colombian government devise the official, three-phase action plan”,⁶³ that was presented to US Congress early 2000. MPRI particularly outlined how the American money for military aid was to be spent, and was seen to be “gearing up for new business” in Colombia.⁶⁴ Many similar deals are expected to be concluded in the near future, following the US allocation of a very considerable sum in military aid.

This information, on the face of it, would not be a cause for concern that Colombian policies, institutions, laws and regulations are being disregarded through private security arrangements. The operations of private security companies in Colombia, whether small or large, Colombian or foreign, are controlled by way of the *Superintendencia de Vigilancia y Seguridad Privada*, that resorts under the Colombian Ministry of Defence. The institution was created by *Ley 62 del 12 de agosto 1993*, its structure, aims, functions and the regime whereby it can sanction private security companies, are defined by *Decreto N° 2453 de*

⁶⁰ United Nations General Assembly, “Report by Mr. Enrique Bernales Ballesteros, Special Rapporteur on the question of the use of mercenaries”. In: *A/54/326 Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination*, 7/9/1999, § 19.

⁶¹ Adams, David, “US, Colombia: go in alone in war on drugs trade”. In: *St. Petersburg Times*, 15/09/2000.

⁶² Robberson, Tod, l. c. An ‘insiders source’ confirming such and similar DynCorp activities in Colombia is Salisbury, Steve, “Pray and Spray - Colombia’s Coke-Bustin’ Broncos”. In: *Soldiers of Fortune*, 23 (1998), n° 7, pp. 60-63.

⁶³ Robberson, Tod, l. c.

⁶⁴ Ibidem.

diciembre de 1993. The *Superintendencia* is, amongst others, to prevent that private security services generate practices which violate the civil rights and liberties, or which are applied to ends different than those defined by Colombian law. That legal *Estatuto de Vigilancia y Seguridad Privada* is set by *Decreto 356 del 11 de febrero de 1994*. Companies that contract private security services are advised to chose providers authorised by the *Superintendencia*.

In practice, there is little to guarantee that private security clients comply with that advise. The *Superintendencia* admits that private security companies operating in Colombia without licence are numerous (these are known as the so-called ‘*empresas piratas*’), and that inspecting the companies and enforcing the relevant legal provisions proves difficult given the *Superintendencia*’s limitations in terms of personnel and resources.⁶⁵

Tentative conclusions

Colombia has a large and expanding market for private security services, for reasons that are not unrelated to the scarcity of state-provided security structures on large parts of the territory. The services that the state security sector can provide have moreover proven insufficient to curb the gravity of Colombia’s safety problem.

This situation, however, need not imply that private individuals and companies may freely contract private security services that disrespect Colombia’s national policy and laws. Some foreign companies and joint-ventures, by their ‘corporate responsibility’ policies, are seen to set a reasonable example in Colombia. But that example cannot be expected to be followed in all respects by all foreign companies doing business in Colombia, and for several reasons, including lack of commitment, an absence of legally sanctioned incentives such as a contract invalidation clause, and/ or scarcity of resources to invest in adequate deterrence, preventive security and protection. Yet even in that last situation it is hard to justify that some companies opt for a relatively cheap curative solution, such as insurance arrangements to facilitate payments of ransoms, when these arrangements and the eventual payments violate Colombian law and have convincingly been ascribed a potential to deteriorate the security situation at large.

⁶⁵ Information obtained from the *Superintendencia de Vigilancia y Seguridad Privada*, in an interview in Bogotá, January 1999.

This political, institutional and legal reasoning that dissuades corporate actors and individuals in Colombia from paying protection money and ransoms, cannot be confounded with a moral judgement on the course the individual must take when confronted with a kidnapping drama, whether in Colombia or elsewhere. The moral dilemma that is implied has not been addressed here, and is beyond the scope of this paper.

Bibliography

- Adams, David, "US, Colombia: go in alone in war on drugs trade". In: *St. Petersburg Times*, 15/09/2000.
- Aidan, Davy, et al., *BPXC's Operations in Casanare, Colombia: Factoring social concerns into development decision-making*. Social Development Papers n° 31, The World Bank, July 1999.
- Atkinson, Mark, "BP pressed to vet army protectors". In: *The Guardian*, 21/04/1998.
- Boggan, Steve, "Kidnap policies pay out millions". In: *The Independent*, 09/10/1998.
- Chalmers, Malcolm, *Security sector reform in developing countries: an EU perspective*. London: Saferworld & Brussels & Ebenhausen: Confliction Prevention Network - Stiftung Wissenschaft und Politik, January 2000.
- Corporate Risk International, "Kidnap, ransom and extortion programme". On: www.corprisk.com.
- Frankental, Peter & House, Frances, *Human Rights : Is it any of your business ?* London: Amnesty International & The Prince of Wales Business Leaders Forum, 2000.
- Gómez, Ignacio & Schumacher, Peter, *Der Agent und sein Minister. Mauss und Schmidbauer in geheimer Mission*. Berlin: Elefanten Press, 1997.
- Goulet, Yves, "DSL: serving states and multinationals". In: *Jane's Intelligence Review*, June 2000, pp. 46-48.
- Hagedorn Auerbach, Ann, *Ransom: The untold story of international kidnapping*. New York: Henry Holt and Company, 1998.
- Human Rights Watch, *The ties that bind*. Washington: Human Rights Watch, 2000.
- KINS, *Country Risk Reports: Colombia*. <http://kins.kroll-ogara.com/crr1.cmf> (3/08/2000).
- Le monde du renseignement, "Le marché du 'kidnap & ransom' progresse". In : *Le monde du renseignement* n° 382, 18/05/2000.

- Lewis, William & Edgecliffe-Johnson, Andrew, "Corporate Security: The masked man's guide to the industry". On: *www.globalarchive.ft.com*.
- Lock, Peter, "Privatisierung von Sicherheit im Zeitalter der Globalisierung - Das Beispiel Lateinamerika". In: *Lateinamerika Analysen - Daten - Dokumentation*, 15 (1998) 38, pp. 13-28.
- Meluk, Emilio, *El Secuestro en Colombia y las Multinacionales Europeas*. Santafé de Bogotá, 1999.
- Millman, Joel, "Spook for hire". In: *Forbes*, 18/3/1991.
- Nelson, Jane, *The Business of Peace. The private sector as a partner in conflict prevention and resolution*. London: The Prince of Wales Business Leaders Forum/ International Alert/ Council on Economic Priorities, 2000
- Peñate, Andrés, *Arauca : Politics and Oil in a Colombian Province* (M. Phil Thesis), University of Oxford, 1991.
- Peñate, Andrés, "El sendero estrategico del ELN: del idealismo guevarista al clientelismo armado". In: *Reconocer la guerra para hacer la paz*, eds. Malcolm Deas & Maria Victoria Llorente. Santafé de Bogotá: Norma y La Universidad de los Andes, 1999, pp 53-98.
- Rienhardt, Joachim, "Agent aus Liebe". In: *Stern*, 28/06/1997.
- Robberson, Tod, "Contractors playing increasing role in the U.S. drug war". In: *Dallas Morning News*, 27/02/2000.
- Salisbury, Steve, "Pray and Spray - Colombia's Coke-Bustin' Broncos". In: *Soldiers of Fortune*, 23 (1998), n° 7, pp. 60-63.
- South, Nigel, *Policing for Profit - The Private Security Sector*. London: Sage, 1988.
- Superintendencia de Vigilancia y Seguridad, *Estatuto de vigilancia y seguridad privada - Decreto 356 del 11/02/1994*. Santafé de Bogotá: Ministerio de Defensa Nacional - Superintendencia de Vigilancia y Seguridad.
- The Financial Times, "Hostage Taking". In: *The Financial Times*, 03/09/2000.
- United Nations General Assembly, "Report by Mr. Enrique Bernales Ballesteros, Special Rapporteur on the question of the use of mercenaries". In: *A/54/326 Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination*, 7/9/1999.
- Williams, Heather, "Kidnap and Ransom Insurance to the Rescue". On *insure.com*.

Wilson, James, "Kidnaps for ransom reach worldwide high". In: *The Guardian*, 21/04/2000.

Woellert, Lorraine, "New weapons for scary world - Services provide security with brains, technology, not arms". In: *Washington Business Times*, 5/5/1997.