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**ARMED OPPOSITION GROUPS AND
INTERNATIONAL HUMANITARIAN STANDARDS
A COMPARATIVE LOOK AT CHALLENGES AND STRATEGIES
THE CASE OF COLOMBIA**

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INTRODUCTION

1. This paper surveys the experience of Colombian human rights and humanitarian organizations in attempting to influence armed opposition groups to respect humanitarian standards and put an end to abuses.
2. The paper presents a systematic analysis of the experience of non-governmental organizations (NGOs) working in the field of human rights and gives a structured overview of the main debates within NGOs, between NGOs and the government, and in conversations with imprisoned guerrillas. As a director and activist of the *Comité de Solidaridad con los Presos Políticos* (Political Prisoners Solidarity Committee), the author has been directly involved in many of these initiatives.
3. In conducting the research for this analysis, the author consulted a variety of relevant texts, statements, reports and analyses by human rights organizations, other humanitarian actors, state and government bodies (both civilian and military) and armed opposition groups.
4. The author then contacted members of humanitarian organizations and state bodies working on these issues, as well as relevant analysts and former guerrillas, to discuss the preliminary conclusions reached following the process of consultation, ordering and systematization. The conclusions and observations contained in this paper have also benefited from valuable comments by a number of friends who generously gave of their time.
5. Their names are not mentioned here as several of them asked not to be identified, either for their own protection or for reasons of confidentiality.

6. For reasons of space, quotations have been kept to a minimum and reduced to their essential core. However, an abundance of material is available for anyone interested in studying the issue in greater depth or wanting more detailed accounts of the opinions of various humanitarian actors. Almost all of this material has been produced in the last ten years, a period in which international humanitarian law has become of increasing interest to Colombian society as well as to the parties to the conflict.

CHARACTERIZATION OF THE ARMED CONFLICT

7. Relevant humanitarian actors characterise the armed conflict from three different but complementary perspectives:
 - a- The political or criminal nature of the conflict;
 - b- The degree of intensity of the conflict;
 - c- The forces in confrontation.
8. The first refers to controversies over the alleged aims or claims of armed non-state actors, which determine whether this can be defined as a conflict to be regulated by international humanitarian law standards and resolved through political negotiation, or a situation involving criminal organizations whose suppression falls exclusively within the domain of domestic criminal law.
9. The second relates to the question of the applicability of Protocol II Additional to the Geneva Conventions and whether the conditions set out in Article I of the Protocol exist. This will determine whether or not the parties to the conflict can be held to further standards imposing duties and prohibitions on the use of force.
10. The third relates to whether the conflict is viewed as a war between opposing armed forces or rather as a diffuse or complex conflict.

The political or criminal nature of the conflict

11. The violence associated with the guerrilla groups in Colombia is seen by a considerable number of political analysts, humanitarian actors, churches and the civilian government as having political and social causes.
12. There are different strands to this view: some consider the groups' use of violence legitimate, given the long history of economic oppression and political exclusion, and the violent and abusive handling of the social conflicts arising from this oppression and exclusion; others recognize that these factors led to the emergence of armed opposition groups but do not agree that they justify the resort to violence, stressing the need to bring about economic, social and political transformations by peaceful means; others question whether some or any of these factors indeed exist, or else consider that they are only part of the real reasons behind the resort to arms, although they acknowledge that the armed opposition groups have political claims.
13. The perceptions of different humanitarian actors, analysts and governments have changed significantly over the four decades of armed conflict.
14. Many of those who previously denied that the conflict was politically motivated now recognize this openly and speak of the need to effect significant change in the economic, social and political spheres if the armed conflict is to be resolved. This is the case of the Catholic church which, since the beginning of the decade, has played an important role in promoting, facilitating

and mediating in peace talks between the government and armed opposition groups. To some extent this is also the position of the business sector which, with some exceptions, has recognized the economic and social causes of the armed conflict and has even accepted, although only at a rhetorical level, that achieving peace will involve certain concessions by the state and the most economically powerful sectors.

15. This shift in perception also occurred within government from the early 1980s, perhaps because an exclusively military response to armed opposition groups had had negative results, leading in the late 1970s to serious and well-documented human rights violations attributed to the state's armed forces which severely tarnished their image.
16. After two decades of pursuing an exclusively military option, with governments denying that the violence by armed groups was politically motivated and viewing these merely as criminal gangs, President Belisario Betancur (1982-1986) began an alternative search for a negotiated political solution.
17. This led to an unexpected and in some ways daring shift in the government's perspective: President Betancur spoke of the "objective and subjective causes of violence", referring to the motives behind the armed opposition groups' use of violence, and began talks with some of the groups which led to bilateral cease-fire agreements.¹ The talks broke down, due in part to the lack of presidential authority over the state armed forces, who frequently made public their disagreement with the peace process and carried out military operations seen as violations of the agreed cease-fire, as well as attacking guerrilla spokespeople acting as negotiators.
18. This evolution in the position of the government and the state regarding the motives behind the guerrilla violence has been marked by numerous contradictions and ambiguities within government and other state sectors, as well as by sudden and drastic shifts. These shifts have reflected advances and setbacks in the peace talks and the degree of progress towards a peace agreement.
19. A quick survey of the period since 1982 reveals numerous differences and contradictions in the government's stated position, differences not just between one government and another, but even within the same government. At times, when peace talks appear to be on the horizon, governments recognize that the conflict is politically motivated and that armed opposition groups are political actors; at other times, when peace talks break down temporarily or definitively, they highlight the purely criminal nature of the violence, referring to the groups in disparaging terms such as "bandits", "criminals", "rabid dogs", "outlaws" and "terrorists".
20. The most extreme case of governmental schizophrenia was the recent attitude of President Andrés Pastrana towards the *Ejército de Liberación Nacional* (National Liberation Army - ELN), following the armed group's mass kidnapping of civilians in a commercial aircraft in Bucaramanga and in a church south of Cali. A few hours after decrying the group as "terrorists", discounting any possibility of dialogue or contact with the group and threatening to call on Interpol to go after the group's leaders, the president admitted that a commission had been created to pursue negotiations for the release of those held.
21. It should be pointed out that there is a school of thought within certain state, government and social sectors (including almost all members of the security forces) which categorically and absolutely denies that the guerrilla violence has social or political causes and only recognizes its

¹ In 1984, the Betancur government signed bilateral cease-fire agreements with the *Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo* (Revolutionary Armed Forces of Colombia - People's Army - FARC-EP), the *Movimiento 19 de Abril* (19 April Movement - M-19) and the *Ejército Popular de Liberación* (Popular Liberation Army - EPL).

criminal or terrorist motivation. It is an opinion which at certain points has guided official policy. Until the late 1980s this opinion also drew on the perception that violence and destabilisation were being promoted by international communism, forces with little connection to the political reality of the country. The proponents of this point of view saw no contradiction in characterising the violence as both politically destabilising and purely criminal.

22. The collapse of the Communist bloc at the end of the 1980s and the income the Colombian armed groups receive from taxes on the production and sale of coca or from kidnapping for ransom, have strengthened the conviction of the above-mentioned sectors that armed group violence obeys a purely criminal logic and has lost any political motivation it may once have had.
23. These sectors advocate a military solution to the conflict, rejecting any politically negotiated alternative. They scorn any attempt to recognize the applicability of international humanitarian standards and call for the implementation of a security policy which sets no limits on the means and methods of combat against armed groups.
24. This view has also begun to be shared by humanitarian actors and analysts who previously recognized the political motivation behind the violence by guerrilla groups. Their attitude has been influenced by the increasingly serious breaches of humanitarian law committed by these groups, the group's preference for armed rather than political activities, their resort to often disproportionate attacks with unclear objectives in terms of the military advantage to be gained, and their confusion or lack of clarity with regard to the political project they are putting forward in peace talks, as evidenced in recent public statements.
25. Although most humanitarian actors and the current government do still recognize the political motivation of armed opposition groups, it is increasingly called into question; not because the social problems which have existed for more than four decades and which have prompted many Colombians to take up arms have ceased to exist, but because many of the groups' actions are aimed at obtaining funds and/or constitute serious crimes.
26. In recent years armed opposition groups have resorted to increasingly abusive methods, leading some humanitarian actors to reconsider their position with regard to these groups. The use of illegitimate methods by armed opposition groups has called into question the legitimacy of their alleged aims, to the extent that their claim to pursue political ends is now in doubt.
27. Despite these changes in perception, a considerable number of humanitarian actors and analysts, as well as the civilian government, hold firm (despite some expressions of doubt) to the view the armed conflict is political in motivation and that armed opposition groups are political actors, as a means of getting these groups to commit themselves to respecting humanitarian principles and facilitating a political solution to the conflict.

The degree of intensity of the conflict

28. Regarding the intensity of the conflict, there is controversy over whether the armed groups are under responsible command and exercise control of territory, according to the terms of Article 1 of Protocol II.
29. Most relevant humanitarian actors, including government agencies, agree (although opinions vary in detail) that the armed opposition groups involved in the conflict have responsible command structures and exercise control over territory which, although diffuse and frequently disputed by state or para-state armed forces, allows them to carry out sustained and concerted military

operations. Some proponents of this view doubt whether armed opposition groups exercise territorial control in such a manner as to allow them to implement the protocol.

30. According to these humanitarian actors, the armed groups have established hierarchical command structures, including centralised command.² They consider that the groups exercise sufficient control of territory in various regions of the country, whether total or relative, permanent or temporary, to enable them to carry out military operations which frequently involve mobilizing numerous contingents of combatants and attacking relatively large and significant military posts or units.
31. This analysis takes into account the tendency of certain guerrilla fronts to autonomous action, which can even lead to splits for ideological, political or military reasons. But it does not doubt the existence of a responsible command nor its capacity to impose its authority in the conduct of operations and ensure respect for humanitarian standards.
32. According to this point of view, the autonomy of certain guerrilla fronts vis-à-vis central command should not be accepted as an excuse or justification by an armed group for denying responsibility for practices contrary to humanitarian principles or for claiming diminished responsibility on grounds that the group cannot discipline its local commanders and rank and file combatants. Giving credit to such justifications or excuses in circumstances where armed opposition groups have created their own command structures does not seem the best way to promote respect for minimum humanitarian standards by such groups.
33. Various governments have recognised the existence of responsible command structures within armed opposition groups in order to initiate talks and political negotiations with their commissioners or delegates. Several such processes have culminated in the signing of agreements putting an end to military hostilities and allowing for the reintegration of such groups into civilian life.³
34. These processes were marked by controversy and dissent within the armed opposition groups regarding the acceptability of the negotiations and the content of partial or final agreements. This led some members to disregard the agreed terms, some leaving to create new armed groups or to join other groups which had not signed peace agreements.
35. Neither have the Colombian state forces found it easy to forge a consensus position on matters relating to peace and the observance of humanitarian law. This has frequently undermined their unity of command, resulting in contradictions, ambiguities and delays in the development and application of public policy, as well as violations of cease-fire or peace agreements which have threatened the future of the peace process.
36. This is not to deny that the Colombian state armed forces are under responsible command or to question the military leadership's capacity to honour commitments and ensure they are complied with by those under their command. Rather, it is a situation which has led to increased demands that the armed forces and the government they serve adopt a clear and coherent position, based on the political will to adhere to humanitarian principles or to respect peace agreements signed with armed opposition groups.

² The National Secretariat of the Central High Command of the FARC-EP; the Central Command of the ELN; and the Central High Command of the EPL.

³ Between 1989 and 1998 the government signed peace agreements with the central command of the M-19, the EPL, the *Partido Revolucionario de los Trabajadores* (Revolutionary Worker's Party - PRT), the *Movimiento Armado Quintín Lame* (Quintín Lame Armed Movement), the ELN splinter group *Corriente de Renovación Socialista* (Socialist Renewal Tendency - CRS), the *Milicias Populares de Medellín* (Medellín Popular Militias) and another two smaller groups.

37. The issue of territorial control by armed opposition groups is even more controversial, almost entirely due to the political consequences of recognising that such groups exercise a greater or lesser degree of geographical control, particularly the possibility of having belligerent status recognised.
38. Certain independent analysts and government advisers, as well as the military high command, deny that such groups exercise control of territory in any part of the country or else minimize the significance of the area under their control, so as to play down the groups' political and/or military importance and to avoid undermining the position of the state armed forces. Nevertheless these same analysts, advisers or military commanders often alert public opinion to the scope and impact of guerrilla groups' actions⁴, so as to justify their demand for more resources, increased legal powers and restrictions on civil liberties and guarantees.
39. These analysts, advisers and military commanders argue that the regular armed forces are obliged to exercise sovereignty over the whole country and that the armed opposition groups operating in the country are not political in nature, do not constitute an opposition force and do not exercise control of territory; their ability to carry out successful military actions is due entirely to their irregular, mobile and nomadic character, rather than control of territory.
40. This refusal to admit that armed opposition groups exercise any degree of control over territory arises from the need to minimize the groups' military capacity and to reaffirm the strength of the state's armed forces. But it is also intended to highlight that the conditions for applying Protocol II Additional to the Geneva Conventions do not exist and thus to affirm that the obligations contained in that instrument do not apply to the regular armed forces.
41. Various humanitarian actors, independent analysts and the government itself accept that guerrilla groups exercise control over parts of the country in such a way that they can carry out sustained and concerted military operations, even if that control is diffuse, unstable and frequently contested by the regular armed forces or by so-called self-defence groups or paramilitaries. Therefore, they argue, the conditions for applying Protocol II, as set out in Article 1, are present in Colombia.
42. In November 1994, the then President Ernesto Samper made the following remarks on the issue:

We are now willing to commit ourselves to a new humanitarian policy of applying Article 3 of the Geneva Conventions and Protocol II of 1977, currently going through Congress, and observing the humanitarian provisions which regulate armed conflict (...)

As a country governed by the rule of law, with a respected and respectable constitution and an Armed Forces totally subordinated to civilian authority, Colombia commits itself to the humanisation of the war.

The guerrilla groups have made public statements in the past regarding their willingness to observe some of the standards for humanising war. The National Government is now calling on the groups who have taken up arms, as Colombians and as possible future political actors, to take decisive steps towards limiting the suffering of the civilian population caught in the conflict and that of the wounded and sick placed hors de combat, and to send an unequivocal signal to the country that they are willing to take practical steps towards peace, which the whole country is demanding.

⁴ Military intelligence reports leaked intentionally to the media have drawn attention to the guerrilla groups' control or influence over more than half of the towns in the country. These reports indicate that the groups exert control and influence over the civilian population and local authorities, as well as over economic activity, public utilities and transport routes.

The Government of Colombia would accept that this proposal to humanise the war be verified by a body such as the Colombian Red Cross, with the advisory support of the International Red Cross, or the Colombian Public Ministry.⁵

43. The Government of Colombia has not only decided to ratify Protocol II, introducing legislation in 1994 bringing it into force in Colombia and depositing the instrument of ratification with the Swiss Federal Council, but has also acknowledged that the current armed conflict taking place in the country meets the conditions for applying the Protocol.
44. The government of Colombia's unilateral statements on the applicability of Protocol II to the Colombian armed conflict and their subsequent confirmation in a ruling by the Constitutional Court have put an end, in the judicial domain at least, to the controversy surrounding the instrument's applicability and the binding nature of its provisions on all parties to the conflict.
45. Widespread doubts remain among analysts, humanitarian actors and government entities regarding the capacity of the armed opposition groups to apply Protocol II. These doubts relate to their capacity to comply with obligations and prohibitions regarding persons deprived of their liberty by such groups, judicial guarantees in any penal prosecutions they undertake, the protection of the wounded and sick, etc.
46. Various points of view converge here. Some refer back to the question of the groups' control of territory and whether or not this would enable them to implement Protocol II; others relate to the group's methods and sources of funding, including the use of kidnapping for extortion; and others relate to the irregular nature of the armed groups' guerrilla war, the means and methods of warfare they adopt and their recruitment methods.
47. It is worth elucidating on the first set of arguments mentioned above, that is, the type of territorial control exercised by armed opposition groups, assessed against a strict reading of Protocol II, Article 1.
48. The fact that armed opposition groups exercise only weak, diffuse and temporary control over territory in various areas where they operate with relative stability poses obvious difficulties when it comes to complying with their obligations regarding persons deprived of their liberty (secure places of detention or internment, basic provision of food and drinking water, health and hygiene, location away from the combat zone, etc.) and those who are sick or wounded. The obstacles to complying with the provisions of Article 6 of Protocol II, regarding judicial guarantees in the event of penal prosecutions, are even more acute, given the difficulty of setting up independent tribunals.
49. It should be noted, however, that despite the considerable and almost insuperable obstacles that some guerrilla fronts experience, in particular less developed armed groups or those decimated by the actions of the regular armed forces, in other cases such factors do not prevent groups complying relatively adequately with their obligations. In cases where guerrilla groups have deprived soldiers or police of their liberty, they have been in a position to respect humanitarian standards and have done so in practice, at least to a minimum satisfactory degree.
50. This does not appear to be the case when it comes to criminal proceedings. Here, the precarious nature of territorial control and the application of a particular concept of "revolutionary justice" mean that armed opposition groups have not developed a body of norms establishing which

⁵Speech by the President of the Republic during the presentation of the first report on the state of peace. Popayán, 17 November 1994. In, *Paz Integral y Diálogo Util* (Comprehensive Peace and Useful Dialogue). Oficina del Alto Comisionado para la Paz, Presidencia de la República (Office of the High Commissioner for Peace, Presidency of the Republic). Vol. I. Bogotá, November 1996, pp.91-92.

offences are punishable, nor have they set up judicial bodies to carry out penal prosecutions whose roles are clearly differentiated and independent from the armed group and its military command structure.

51. To a certain extent, the more or less precarious control that armed opposition groups exert over parts of the country affects their means of funding and supply. Operations carried out by the state armed forces since 1992 against the “rearguard” and “funding sources” of the guerrilla groups undermined some aspects of their control over people and territory, affecting their supplies. The FARC-EP’s control over several areas of coca production provides it with an important source of income. The group charges an obligatory contribution in exchange for allowing the trade in coca leaf and paste.
52. In Colombia, the type of territorial control exercised by armed opposition groups affects their sources of income to a greater extent than in other countries of the region or other parts of the world, due to the increasingly autarchic nature of the Colombian armed groups since they stopped receiving support from Communist regimes.
53. The decline in sources of revenue resulting from the armed groups’ precarious control over territory cannot, however, be used to justify depriving civilians of their liberty for financial ends, a practice which has led to grave breaches of international humanitarian standards protecting life, liberty, integrity and human dignity.

The forces in confrontation

54. From the early 1960s to the late 1970s the conflict was seen as a straightforward confrontation between opposing armed forces: the state armed forces on one side and armed opposition groups on the other.
55. Even during this period the situation was in fact more complicated, as armed clashes or hostilities would at times break out between armed opposition groups, for ideological, political or military reasons. Towards the mid-1980s this situation began to resolve itself as the groups took steps towards the creation of a sole military force in opposition to the state’s armed forces: the *Coordinadora Nacional Guerrillera* (National Guerrilla Coordination - CNG).
56. The signing of peace agreements between the government and some of the armed groups who made up the CNG led to a recomposition of the coordinating body, which became the *Coordinadora Guerrillera Simón Bolívar* (Simon Bolivar Guerrilla Coordination - CGSB)⁶. The CGSB took significant steps towards the creation of a single armed group, carrying out joint military operations and national conferences and acting in a concerted manner during peace talks with the government of César Gaviria Trujillo (1990-1994) which began in 1992 and broke down in November that year.
57. For various reasons, the CGSB has gradually dissolved over time. Although some armed opposition groups maintain contact and undertake joint operations, everything indicates that their efforts to form a single military force have failed. Highly publicised differences exist between groups over such issues as the current handling of peace talks with the government and the question of international humanitarian law and armed confrontations have resumed between the FARC-EP and the EPL.

⁶ The CGSB included the FARC-EP, the ELN and the EPL, the oldest guerrilla groups and those who in 1990 had not laid down their arms against the state, not having entered peace talks with the government of President Virgilio Barco (1986-1990).

58. On the opposing side, the situation has become even more complicated. A policy emerged in the mid-1960s authorising the state armed forces to form self-defence groups made up of armed civilians. This policy was implemented in full across the country at the beginning of the 1980s. Presented to national and international public opinion as spontaneously formed groups of defenceless civilian victims of guerrilla activities, these groups soon went from self-defence to active collaboration with regular military units, providing them with military intelligence, participating in joint operations and, ultimately, carrying out offensive armed actions aimed at “cleansing” the areas where they operated of guerrillas and their sympathisers.
59. As early as 1988 the Colombian government acknowledged the existence of 140 paramilitary groups⁷. Five years earlier, the then *Procurador General de la Nación* (National Procurator General), Carlos Jiménez Gómez, had denounced the criminal nature of the paramilitary groups, holding them responsible for grave human rights violations and pointing to the involvement of 59 high and middle-ranking officers of the National Army in setting up and collaborating with these groups.
60. Legal provisions allowing for the creation of self-defence groups were repealed by President Virgilio Barco and new legislation to stop their activities was introduced, following numerous massacres of unarmed civilians by these groups between 1987 and 1989, in which high and middle-ranking officers and soldiers of the state armed forces were revealed to have been involved either actively or passively.
61. The legislation introduced to halt the actions of the paramilitaries was rendered ineffective by the half-hearted approach of that government and its successors and the deliberate refusal of the government’s armed forces to combat and disband them, based on the belief prevalent among high and middle ranking commanders that the paramilitaries were militarily useful in countering the armed opposition groups’ irregular warfare.
62. Despite being illegal, paramilitary groups multiplied and spread to all regions of the country. Their actions became so significant that in several cases they forced guerrilla groups to leave areas traditionally under their control. By the mid-1990s they had created a centralised military structure named *Autodefensas Unidas de Colombia* (United Self Defence Groups of Colombia), under the command of Carlos Castaño, claiming recognition as an autonomous armed political actor to be included in any peace negotiations.
63. The paramilitary groups’ main strategy has been to attack civilians whom they categorise as armed opposition group sympathisers, collaborators or militants, coining the generic term “para-guerrilla” to label their victims “parties to the conflict” and thus justify their attacks.
64. Within a few years, the actions of paramilitary groups had altered statistical patterns of grave human rights violations, with paramilitaries overtaking the state armed forces as the main perpetrators.⁸
65. President Ernesto Samper noted that:

Those who are violating these (human) rights to an ethically outrageous extent are not agents of the State, as happened in the Southern Cone during the harsh periods of dictatorship, but agents of armed violence.

⁷ César Gaviria Trujillo acknowledged this in 1988 in an intervention before Congress as Minister of the Interior in the government of President Virgilio Barco.

⁸ In 1998 the databases of human rights organizations attributed 78.7% of grave human rights violations (massacres, extrajudicial executions, torture and disappearances) to paramilitary groups, while state armed forces were held responsible in 3.7% of cases. Five years earlier, in 1993, the same sources attributed 18% of violations to the paramilitaries; 35% in 1994 and 46% in 1995.

This has been proven conclusively in the figures given in international reports which show that human rights violations attributable to state agents have decreased dramatically in recent years and that armed subversives, groups administering private justice or armies at the service of drug-trafficking are responsible for 93% of the most significant violations.⁹

66. The consolidation of self-defence or paramilitary groups into a unified military force and their efforts to present themselves in public statements as an autonomous armed force with no links to the state's armed forces have reinforced the notion that these groups constitute a third armed actor in the conflict.
67. Moreover, there is a widespread tendency among analysts and humanitarian actors to see the conflict as a confrontation between armed opposition groups and self-defence or paramilitary groups, where the state armed forces would appear to be acting as a passive observer.
68. A factor complicating the situation further is that ex-combatants of armed opposition groups which have signed peace agreements have become incorporated into paramilitary groups or have devoted themselves to purely criminal activities. The situation is even more confused in cases such as that of *Esperanza, Paz y Libertad* (Hope, Peace and Freedom)¹⁰ in the Urabá region¹¹, where the decision to return to arms, either in alliance with or as part of paramilitary groups, is not taken by an individual ex-combatant but by the group as a whole; it is more complicated still where the group wields considerable political influence over the population and leaders of social or labour organisations, or where it acts as the recognised local authority.

THE LOCAL DEBATE ON INTERNATIONAL HUMANITARIAN LAW

69. In order to understand better how the debate on international humanitarian law has evolved locally, the key elements of that debate are presented and structured below. It should be borne in mind that each of these elements impacts on the others, determining the various positions humanitarian actors adopt.

The debate between the government and human rights NGOs

70. Civilian and military state officials, including those responsible for the promotion, protection and defence of human rights, have systematically complained to non-governmental human rights organisations that they only take into account human rights violations committed by state agents in their domestic or international denunciations and that they omit any reference to those committed by armed opposition groups.
71. These statements by President Ernesto Samper (1994-1998) are illustrative:

The Colombian Government is not at all opposed to international monitoring of the political violence and violations of fundamental human rights, as long as it includes violations committed by armed groups.

⁹ Speech by President Samper at the inauguration of Congress, 20 July 1998, p.3.

¹⁰ Name adopted by the faction of the *Ejército Popular de Liberación* which signed a peace agreement with the government of César Gaviria in 1991. The minority faction which did not reach agreement with the government continued to use the name *Ejército Popular de Liberación*.

¹¹ A recently settled region in the northwest of the country, near the border with Panama, in the departments of Antioquia and Chocó. The region is devoted to the production of bananas for export and large-scale investment mega-projects are planned there. It has experienced extremely high levels of military confrontation and abuses in the context of the conflict.

To limit this monitoring to the actions of State bodies generates reservations and distrust among broad sectors of society who suffer the consequences of subversive actions (...)

We would like to see extrajudicial executions attributable to state officials, 'paramilitaries' and guerrilla groups denounced internationally with the same emphasis.

We would like to hear condemnation of both forced disappearances and abductions, of torture and the laying of anti-personnel mines or the execution of police or military officers in riots or cowardly ambushes.

We would like to see both the massacres of the extreme right and those of the extreme left pilloried by international public opinion.

We are therefore concerned that the mandate of international bodies and mechanisms for the protection of human rights is limited by their governing statutes to the monitoring of violations committed by state agents alone.¹²

72. Some of the opinions expressed by President Samper contradict the humanitarian principle of "non reciprocity":

Just as we have signed a commitment to human rights, we demand and will continue to demand that this commitment be reciprocated, and we will file complaints before international organisations, as the armed groups do, regarding these flagrant human rights violations (anti-personnel mines, attacks on oil pipelines, kidnappings).¹³

73. Government discourse went as far as introducing the concept of "co-responsibility" in matters relating to human rights:

In this section on responsibility we would also like to move forward on the issue of co-responsibility, because it is not the State alone which is responsible for the human rights violations committed in this country. If such violations are committed by state agents, they are totally sporadic, exceptional and isolated cases, which can in no way be attributed to institutional behaviour.¹⁴

74. The way the Colombian government characterises the problem of abuses by armed opposition groups before domestic public opinion and at international fora has been a source of intense debate with human rights organisations. These argue that, although some state officials may be motivated by a genuine concern to prevent abuses by guerrilla groups, the prevailing government attitude invokes the serious abuses committed by armed opposition groups as a way of denying, concealing, minimising or justifying violations by state agents. According to this view, the government may also cite armed opposition group abuses as a way of portraying the violations committed by both sides (anti-state and state forces) as equally "balanced", allowing it to play down its responsibility as a State Party to international human rights treaties and to lessen the impact of international criticism.

75. Domestic human rights organisations believe that it is inappropriate to categorise armed opposition group abuses as human rights violations, since international human rights standards refer to the exclusive responsibility of States to protect and ensure the rights contained in them.

¹² Statement by President Samper during the inauguration of the *Red Nacional de Comunicaciones para la Protección de los Derechos Humanos* (National Communications Network for the Protection of Human Rights), 19 March 1996. In *Paz Integral y Diálogo Util*. Oficina del Alto Comisionado para la Paz, Presidencia de la República. Bogotá, 1998. Vol. III p.139.

¹³ Statement by President Samper on the anniversary of the *Escuela Superior de Guerra* (War Academy), 9 May 1996. In *Paz Integral y Diálogo Util*. Oficina del Alto Comisionado para la Paz, Presidencia de la República. Bogotá, 1998. Vol. III p. 163.

¹⁴ Human Rights Agenda presented by President Samper, 12 December 1996.

They argue that any shift in the interpretation of these standards might encourage States to argue that they are not obliged to comply with them or are less obliged to do so.

76. These organisations, or at least some of them, have welcomed the approach taken by the United Nations Commission on Human Rights and the General Assembly of the Organization of American States in responding to calls by certain States for inter-governmental human rights bodies to give reciprocal or equivalent treatment to abuses by state agents and members of armed opposition groups.
77. Human rights NGOs have highlighted several UN Human Rights Commission resolutions recommending that UN bodies examining human rights situations in countries where armed conflicts exist should take into account how the activities of irregular armed groups affect the enjoyment of human rights. According to Colombian NGOs this approach avoids the risk of diminishing the responsibility of States, while allowing for the behaviour of armed opposition groups to be scrutinised.
78. Many domestic NGOs consider it more appropriate to monitor the behaviour of armed opposition groups from the perspective of humanitarian standards applicable in non-international armed conflict, that is, Article 3 common to the four Geneva Conventions and Additional Protocol II of 1977.
79. In the debate between the government and NGOs this proposal has received consensus support.
80. Nevertheless there are other points of contention between human rights NGOs and the government in this area. One relates to the often incorrect way in which certain authorities, mainly the police and army, denounce abuses or breaches of humanitarian standards. In some cases, armed actions which are not prohibited by international humanitarian standards are denounced as breaches; in others, abuses committed by self-defence groups, paramilitaries or even members of the state armed forces are attributed to armed opposition groups.
81. The controversy arises from the inappropriate use of humanitarian standards for the purpose of condemning armed opposition groups on ethical or political, if not legal, grounds, even though these standards may not in fact have been breached or may have been breached by another armed force. NGOs have called on the authorities to handle information regarding supposed breaches with greater clarity and caution, especially in cases where the authorities press domestic NGOs for statements or opinions on the basis of such information.
82. NGOs have also demanded free and independent access to sources of information, to witnesses and to judicial investigations, so as to be able to make their own assessment of the behaviour of armed opposition groups, unencumbered by what is likely to be biased and partial interpretations of events.
83. Another source of controversy is the pressure which the government puts on NGOs regarding their decisions on armed opposition group abuses. This pressure takes many forms and is sometimes expressed very aggressively in ways that put at risk the credibility, legitimacy and security of NGOs, as well as their freedom to go about their work.
84. Indeed NGOs are often accused publicly by civilian and military state officials of being “part of the strategy”, “fronts” or “sympathisers and collaborators” of armed opposition groups, when they do not express an opinion on actual or alleged abuses by armed groups or else voice an opinion in terms which certain authorities consider sympathetic or moderate.

85. NGOs (regardless of the differences that exist between them on this issue) have insistently called on the government to continue the debate on the behaviour of armed opposition groups in a less pressured atmosphere.

The internal debate among human rights NGOs

86. An issue of keen interest to domestic human rights NGOs is the relevance and legitimacy of seeking to influence the behaviour of armed opposition groups and the appropriate approaches to adopt.
87. This discussion has been a source of acute internal controversy, as can be seen from the diversity of public positions on armed opposition group abuses in general and on investigations into particular cases of abuse attributed to these groups.
88. There are at least five controversial areas of debate among NGOs regarding the legitimacy of efforts to influence the behaviour of armed opposition groups.
89. The first is whether it is a legitimate task of NGOs to demand that armed opposition groups respect humanitarian standards.
90. A considerable number of NGOs believe that it is fitting for organisations defending human rights to scrutinise the behaviour of armed opposition groups, in the light of international humanitarian law standards which oblige all parties to a non-international armed conflict not to carry out certain prohibited acts and to respect certain obligations when conducting military operations.
91. This view is based on the following phrase from Article 3 common to the four Geneva Conventions:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (...)
92. This body of opinion argues that, in contrast to international human rights treaties and the other standards contained in the four Geneva Conventions, common Article 3 places obligations not only on High Contracting Parties but also on other parties to a non-international armed conflict, regardless of whether these parties have indicated their willingness to abide by these obligations.
93. Other NGOs or their members are reluctant to accept that armed opposition groups can be obliged to respect international standards that they have not signed, not being High Contracting Parties to the Geneva Conventions or Protocol II. They argue that the irregular war waged by armed opposition groups, in conditions which place them at a military disadvantage relative to the state's armed forces, is not susceptible to regulation according to standards drawn up for conventional warfare. They also argue that armed groups are not in a position to implement international humanitarian law, making it necessary to search for other means of influencing their behaviour.
94. According to this school of thought, calling on these groups to abide by international standards would mean undermining their military capacity to confront the state's armed forces. From this perspective, the only appropriate approach to armed opposition groups is to seek to obtain commitments from them to respect certain humanitarian principles, based not on international legal standards but on the groups' own ethical values.

95. Underlying this controversy is the difference of opinion among NGOs regarding armed opposition groups. Some NGOs or individual members of them retain a somewhat messianic view of armed opposition groups and have not developed a critical approach to their behaviour in the course of the armed conflict, which as many international and domestic organisations have documented, has included very serious abuses against civilians and unarmed combatants.
96. For several decades armed opposition groups exerted a strong influence on various sectors of the population seeking to transform an economic, social and political system which they saw as unjust, inequitable and repressive. For years these groups were seen as the genuine expression of the aspirations of these oppressed sectors; significant groups of people within the unarmed political left and social organisations came to accept the image the armed groups portrayed of themselves as the “vanguard of the revolution” inspired by a new ethic.
97. Human rights NGOs, some of which emerged during this period as part of the same aspiration for change, were not immune from the influence that armed opposition groups sought and still seek to exert over them. This may account for the absence of a critical approach to the behaviour of such groups.
98. Some NGOs have refrained from taking action on armed opposition group behaviour for fear that this may be instrumentalized, as some state and private bodies have attempted to misuse humanitarian standards to hold armed opposition groups responsible for cases where no breach of humanitarian standards has occurred or where the perpetrator was another armed party, as mentioned above.
99. A second arena of controversy is the interpretation of the scope of prohibitions contained in humanitarian standards and, consequently, the different ways in which NGOs categorise certain acts by armed opposition groups.
100. There are differences of opinion regarding the scope of humanitarian standards, in particular when determining who has absolute or relative protection and whether practices such as deprivation of liberty are totally or partially prohibited.
101. Particularly controversial is the question of who should be considered “persons who do not take a direct part in hostilities”¹⁵ in the context of the Colombian armed conflict and who should therefore enjoy protection under Article 4 of Protocol II and Article 3 of the Geneva Conventions.
102. There are different readings of what “tak[ing] a direct part in hostilities” means: one sector of the NGO community interprets it as restrictively as possible in the interest of protecting a greater number of people, thus setting more limits on what parties to the conflict are permitted to do, including, of course, armed opposition groups; another sector is much more flexible in its interpretation, thereby limiting protection of individuals in the interest of the military needs of parties to the conflict.
103. Differences of position also exist regarding certain practices by armed opposition groups which are illegal under domestic law but not prohibited under international humanitarian law. The most relevant example, because of its frequent occurrence and the suffering it entails, is the kidnapping of people, normally civilians, for political ends or for extortion.
104. This issue has provoked intense and lengthy debate among human rights NGOs, a debate which cannot be examined in detail here. Positions range from one extreme, which considers that this

¹⁵ The terms used in Article 4.1 of Protocol II which defines who is protected by the provisions of this clause and establishes absolute prohibitions on the parties to the conflict.

practice does not constitute a breach of humanitarian standards since it is not explicitly prohibited, to another which considers all kidnapping – including depriving active soldiers of their liberty - as hostage-taking.

105. A third area of debate among human rights NGOs relates to the type of action to be taken to influence the behaviour of armed opposition groups. That is, whether the forms of intervening should be similar to those used by NGOs when calling on the government to respect human rights and international humanitarian law or whether other means should be used, and if so why.
106. One school of thought considers that the most appropriate modes of action are public denunciation, drafting reports, making recommendations to armed opposition groups and demanding that they implement them, as well as calling for grave breaches of international humanitarian law to be investigated and for disciplinary measures to be taken against those responsible.
107. On the whole, these NGOs do not discount the possibility of making representations to armed opposition group leaders in order to persuade them to modify their conduct, just as they have done actively with senior Colombian state authorities. However, they consider that this approach should not be seen as incompatible with the legitimate use of methods of public scrutiny and protest regarding the actions of armed opposition groups.
108. By contrast, other NGOs consider that methods of public scrutiny and protest are inappropriate or inadvisable. They argue that, since the mass media are controlled by economic and political sectors seeking to make political capital out of armed opposition group abuses, any such action by NGOs will be compromised by other agendas not motivated by strictly humanitarian concerns.
109. These NGOs prefer to intervene using confidential procedures, making contact with the armed opposition group leadership to persuade it to end practices contrary to humanitarian standards, thus avoiding the risk that their humanitarian action will be manipulated by the government or other politically motivated sectors.
110. Although the use of confidential procedures is potentially an area of common ground between the two positions, in practice differences in other areas have made it very difficult for NGOs to agree on a joint approach to the use of confidential contacts as a means of applying effective pressure on armed opposition groups.
111. A fourth area of controversy arises from the fact that NGOs have different mandates.
112. In internal debates between NGOs, some have argued that they cannot take action regarding the behaviour of armed opposition groups because their mandate is restricted to the field of human rights and does not cover international humanitarian law. These organizations have called for the legitimacy of this option to be respected and their freedom to continue working within the limits of their mandate to be guaranteed.
113. Other NGOs have deemed it necessary to broaden their mandate to include international humanitarian law, agreeing in essence with the first set of NGOs that the behaviour of armed opposition groups has to be analysed from the perspective of humanitarian law rather than human rights law.
114. This is an important area of agreement between most of the human rights NGOs, one that might allow for joint or complementary action strategies vis-à-vis armed opposition groups, while

avoiding public disagreements which could undermine the organisations' credibility, legitimacy and effectiveness.

115. For this to be possible, NGOs would have to respect each other's positions on this issue and avoid criticising each other's actions or omissions. However, there are still too many areas of controversy on this point, as each NGO sees the choice of a broad or restricted mandate as a statement of position regarding the behaviour of armed opposition groups. This makes it difficult for many to accept that the action taken under different mandates can be complementary rather conflicting.
116. Although most organizations agree that human rights responsibilities apply solely to the behaviour of States, in recent years a view has emerged and taken hold among human rights organisations that the behaviour of armed opposition groups, as well as that of any other armed actor, whether or not politically motivated, can and should be analysed from the perspective of either body of international standards (human rights or international humanitarian law).
117. A fifth point of debate is whether NGOs have the necessary means, capacity and freedom to monitor the behaviour of armed opposition groups effectively and independently, so as to bring about increased respect for humanitarian standards.
118. Some organisations refrain from taking action in this area, considering that they cannot divert scarce resources towards activities whose effectiveness and independence cannot be ensured and which demand enormous efforts in terms of gaining access to credible sources, to victims and to the groups believed responsible for the abuses, in order to corroborate the facts about an incident. These organisations often criticise NGO statements on armed opposition group abuses, arguing that they are not based on thorough investigations but on press or official sources lacking in credibility.
119. The criticised NGOs acknowledge the need to monitor armed opposition group abuses in more appropriate conditions, so as to avoid errors in attributing responsibility. Nevertheless they consider that monitoring armed opposition group abuses involves similar steps to those taken by NGOs when following up human rights abuses or breaches of humanitarian law by state agents, beginning with a minimum verification of basic facts, then taking action to ensure that the case is investigated, the circumstances clarified and the identity of those responsible for the abuse determined more precisely.
120. These NGOs consider it inappropriate to remain silent on cases attributed at a preliminary stage to armed opposition groups solely for fear of issuing an incorrect assessment. They argue that in these circumstances inconclusive or tentative language should be used regarding allegations of responsibility and the group concerned should be asked either to acknowledge responsibility or to refute the allegations by providing proof that it was not involved in the case or that the circumstances were not as portrayed.

Other humanitarian actors

121. The debate about how to influence the behaviour of armed opposition groups also involves humanitarian actors other than the government and human rights NGOs. The most significant and active are those organisations dedicated to promoting peace and a political solution to the armed conflict.
122. These include organisations made up of ex-guerrillas reintegrated into civilian life following peace agreements. Any action they take to encourage armed opposition groups to respect

humanitarian principles often risks lapsing into a critique of armed struggle as a means of effecting social and political change.

123. Although a critique of armed struggle is relevant to political debates about legitimate means of achieving social or political change, some humanitarian actors consider it inappropriate to bring this up in any humanitarian initiatives, because of the somewhat inevitable risk of subjectivity or the likely resistance of armed opposition groups to such an initiative.
124. Other organisations part from an extreme pacifist position which often means that they make no distinction between “acts of war” and “war crimes” when pronouncing on the actions of armed opposition groups, or else “criminalise” or “demonise” such groups *per se* solely for using violence. They are not very effective when it comes to influencing the behaviour of these groups, for reasons similar to those given in the previous paragraph.

WAYS IN WHICH HUMANITARIAN ACTORS SEEK TO INFLUENCE THE BEHAVIOUR OF ARMED OPPOSITION GROUPS

Reasons for trying to exert influence

125. A range of domestic human rights and humanitarian actors have sought to influence the behaviour of armed opposition groups. These efforts gradually became more widespread from the mid-1980s as it became clearer that many of the groups’ actions went beyond certain ethical parameters and began to affect the poorest and most defenceless sectors of the population on a massive scale, in obvious contradiction to the armed groups’ claims to represent the interests of the most vulnerable social sectors.
126. Many humanitarian actors consider that armed opposition groups do not have the requisite humanitarian convictions to regulate their means and methods of combat on their own initiative, that they are unaware of the most basic standards of humane behaviour and that the unlawfulness of many of their actions has never been subject to public, external criticism by independent humanitarian actors. This has motivated them to take action to try to influence the armed groups’ behaviour.
127. This was particularly the case with humanitarian actors intimately involved in social struggles for political change. Influenced to some extent by a sympathetic view of the armed group’s political aspirations, they expected the groups to behave according to certain ethical and humanitarian principles and to maintain a capacity for self-criticism with regard to abuses committed by their combatants, but saw that in reality the groups’ actions did not meet these expectations.
128. Another decisive factor for some humanitarian actors was the realisation that their work to promote, defend and speak out on human rights, scrutinised by national public opinion and international organisations, would be undermined if they did not take a position on abuses by armed opposition groups, which had caused so much suffering and torment.
129. The threat of losing credibility regarding the objectivity, professionalism and seriousness of their work and the risk of undermining their already precarious legitimacy (in terms of public recognition) as a result of their reluctance to take a position on abuses by armed opposition groups led several humanitarian actors to take on the task of pressuring the groups to alter their behaviour.

130. Several humanitarian actors included in their mandate from the beginning the task of monitoring the behaviour of armed opposition groups as parties to the conflict within the framework of international humanitarian law.
131. It should be noted that, for some humanitarian actors, this decision has been a conscious and well-reasoned choice, following internal debate about the consequences and context of such a decision, the principles which should guide any action, the procedures to follow and the difficulties to be overcome.
132. For others, the decision, even if consciously adopted, has not been accompanied by specific and thorough mechanisms and guidelines for effective action vis-à-vis armed opposition groups.
133. At times the decision has come about as a result of pressure, legitimate or otherwise, from the government, the media or international organizations. In these cases, humanitarian actors have not had the opportunity to think through their approach and put in place clear procedures to enable them to take coherent and effective action in this area.
134. In extreme cases, highly ineffective action has resulted where humanitarian actors have not had the necessary freedom to decide on the appropriateness of taking action with regard to armed opposition group abuses, nor on the procedures to follow. Humanitarian actors in small towns or villages, who are often accused of being guerrilla sympathisers because of their work against abuses by state officials, are pressured and threatened, both physically and psychologically, by military commanders or paramilitary groups, so as to force them to make a statement regarding the behaviour of armed opposition groups. In such circumstances their freedom to make a reasoned decision on this matter is severely limited.
135. Without wishing to undermine the efforts of domestic humanitarian actors, it should be pointed out that it has not been possible for humanitarian actors seeking to influence the behaviour of armed opposition groups to reach a basic consensus about how to carry out this task effectively, for the reasons outlined in the section above on the state of the debate in Colombia.
136. Some work has been done on the theoretical and methodological framework for reporting and following up on abuses committed by armed opposition groups, although there is still little agreement as to how to approach such cases. The work of the *Centro de Investigación y Educación Popular* (Center for Research and Popular Education - CINEP), the *Comisión Intercongregacional de Justicia y Paz*¹⁶ (Intercongregational Justice and Peace Commission - CIJP) and the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists - CCJ), in this regard is highlighted below.
137. Other joint or individual efforts by humanitarian actors have included: investigating cases attributed to armed opposition groups; raising the groups' awareness of international humanitarian law standards; dialogue with the groups to discuss humanitarian issues and promote a change in attitude towards them; and making humanitarian representations to those groups for the protection of people held by them.
138. Despite progress in this area, it has still not been possible to devise concerted strategies, based on a proper assessment of the appropriateness, relevance and effectiveness of the approach to follow.

¹⁶ The work of these two human rights organizations resulted in the design of a common conceptual framework for statistics relating to human rights and humanitarian law in the database on political violence maintained by the two organizations.

Techniques and strategies adopted

Reporting and following up on cases

139. For several years CINEP and CIJP have been working separately to develop systems for data capture and processing relating to the political violence and human rights.
140. Using different approaches and at times contradictory criteria, these organizations gradually introduced methods of presenting statistical information which took into account the actions of armed opposition groups and indicated the percentage of victims attributed to them.
141. However these statistics left it unclear whether the victims were protected under humanitarian standards, as they included deaths in combat between the parties to the conflict.
142. In 1996, following a rigorous discussion, CINEP and CIJP agreed to merge their databases into one. They drew up a conceptual framework which would allow the statistics to distinguish between “human rights violations”, “conflict-related operations” and “breaches of international humanitarian law”, the latter category including reference to which party was responsible.
143. The quarterly publication of consolidated statistics¹⁷ in the magazine *Noche y Niebla* (Night and Fog), distributed to the media and to relevant national and international organizations, reveals the extent to which armed opposition groups are responsible for different types of breaches: non-combat killings or wounding, torture, threats, disappearances, forced recruitment and hostage-taking.
144. The *Comisión Colombiana de Juristas* has been publishing annual reports on human rights since the beginning of the decade, based on its own sources and statistics from the CINEP and CIJP database. These reports have increasingly included reference to the behaviour of armed opposition groups, whether statistical references or references to particularly relevant cases of grave breaches of international humanitarian law.
145. The CCJ’s annual report is launched amid great publicity and is distributed to researchers, governments and relevant national and international organizations.
146. Another example of reporting on breaches of international humanitarian law is the study on forced internal displacement carried out by the Catholic church in 1995 and subsequently updated. It examines the degree of responsibility for forced displacement of each of the parties to the conflict and includes recommendations to armed opposition groups.
147. At a regional level, the *Instituto Popular de Capacitación* (Popular Training Institute - IPC) has in recent years published an annual report on violence, human rights and humanitarian law in the department of Antioquia, based on press or official sources (i.e. state bodies of various kinds) as well as information gathered directly through field work.
148. These are the most significant examples of periodic or statistical reporting on breaches of international humanitarian law. Common to all of them is the commitment to seek out information relating to breaches attributed to armed opposition groups, to issue reports or statistics setting out their degree of responsibility for these abuses and thus to influence their behaviour.

¹⁷ These statistics are published in the magazine *Noche y Niebla* which is distributed to the media and to relevant national and international organizations, as well as to governments.

149. The basic premise is that issuing reports or figures indicating responsibility for acts considered grave breaches of international humanitarian law serves to put public pressure on an armed group, which will be effective to the extent that the group is concerned about its public image.
150. A different kind of reporting was carried out for the first time by a commission of eight non-governmental organizations looking into the case of a massacre in the La Chinita district of Apartadó in Urabá, department of Antioquia, in January 1995, in which 35 people were killed. The massacre was initially attributed to the Fifth Front of the FARC-EP.
151. This method of reporting had been used before by several NGOs to investigate grave human rights abuses, in order to dispel doubts regarding the identity of the perpetrators, which is frequently disputed. The scale of the massacre and the questions surrounding similar events in the region prompted the setting up of a commission of inquiry.
152. The commission travelled to the region to interview numerous witnesses, relatives of victims, local civilian and military officials and church leaders. Following thorough analysis of the different versions of events, it issued a report concluding that the armed group had been responsible. Its report was published in the different media and distributed to relevant national and international organisations and to governments.
153. For a number of reasons, some of which relate to the debates outlined in section 2-b of this paper, this kind of initiative was not repeated when other similar or even more serious cases subsequently arose.

Dialogue with armed opposition groups

154. Various humanitarian actors have made numerous efforts to establish contact with armed groups in order to influence their behaviour.
155. Organized communities in conflict zones, local public officials and religious leaders often try to limit abuses committed by some armed groups by making direct representations to a local or regional commander.
156. Many such interventions have been successful in reducing levels of abuses by armed opposition groups in particular areas, although almost always temporarily and only with regard to certain kinds of abuses arising from excesses by individual combatants or local commanders.
157. The effectiveness of this kind of intervention depends on one or more of the following factors being present: a- the victims are not seen as hostile (politically, ideologically or militarily) by the armed group; b- the persons making representations to the group are not seen as hostile and are recognised as legitimate interlocutors; c- the abuses are “excesses” by individual members and do not arise from a deliberate decision by the group; d- the local commander responsible is willing to hear complaints, to investigate them and adopt corrective measures; e- the local commander has the authority to discipline his/her troops.
158. This kind of action has almost always been ineffective in cases where: it has sought to tackle widespread or deliberate practices by an armed group (especially if these practices are seen as legitimate by the group); it has aimed to have a longer-term effect; it has been carried out on behalf of victims or sectors of the population perceived or labelled by the armed opposition

group as hostile or “the enemy”¹⁸ or when the group has abandoned any intention of winning over the population by political means and has decided to impose its authority through fear.

159. Various armed opposition groups have set down codes of conduct for dealing with the civilian population, in the hope of winning its support by treating it with respect, in line with their claim to be an army of and for the people. These codes categorise certain abuses by combatants against the population as disciplinary offences or serious crimes, with punishments ranging from minor sanctions to the death penalty.

160. The EPL’s *Normas Morales* (Moral Standards), issued in the early 1970s, include the following commitments:

1. To express in every action our deep love of the people and our irreconcilable hatred of the enemies of the people. 2. To respect and defend the life and interests of the people. 3. To treat their mothers as our mothers, their daughters as our daughters and their sons as our sons.¹⁹

161. The statutes of the FARC-EP’s Bolivian militias state that:

Art.13: The following crimes carry disciplinary sanctions:

The murder of fellow members of the militia or members of the masses; the rape of women (...)

Art.14. The following apply to the crimes set out in Article 13:

Crimes with no extenuating circumstances: [judgement by] war council in accordance with the FARC’s disciplinary regulations. Crimes in extenuating circumstances: disciplinary sanction consisting of certain specific physical tasks, reduction in rank in the case of a commander, expulsion from the Militias and from the region and all regional and national revolutionary organizations to be informed of the action taken (...)

Art. 15: The following will be considered serious offences within the jurisdiction of the higher courts:

Attempted murder of fellow members of the militia, the mass movement or revolutionary organizations; theft from individuals; trafficking and use of narcotics; extortion and blackmail (...)

Art. 16. The penalties applicable to Article 15 are:

Public criticism and self-criticism by the offender; pledge by the offender to make reparation for the harm done and to correct his/her behaviour; imposition of practical tasks aimed at the political instruction of the offender.

In the case of a repeat offender: expulsion from the Militia movement and all revolutionary organizations to be informed of the action taken.²⁰

162. It is difficult to ascertain to what extent these codes, adopted by armed opposition groups in previous years, are still in force and what capacity the groups have to implement them, given that the conflict has degenerated and frequently resulted in armed reprisals against the civilian population.

¹⁸ It should be noted that armed opposition groups do not restrict the concept of “hostile” or “enemy” to the military sphere exclusively, but also apply it to the political and ideological sphere. They do not accept that they should respect an unsympathetic population, which they label “hostile” in order to deny its civilian status.

¹⁹ Cited in Villarraga A. and Plazas N., *Para reconstruir los sueños – una historia del EPL* (Rebuilding dreams – a history of the EPL), Fondo Editorial para la Paz Fundación Progresar (Progress Foundation - Editorial Peace Fund). Bogotá, 1994, p. 89.

²⁰ Bolivian Militia Statutes. In *Resistencia*. No.113. 1986, p.33.

163. Nevertheless experience has shown that in areas where an armed opposition group exerts territorial control and influence over the population through a combination of armed presence and political proselytism, and where that population is perceived as sympathetic rather than hostile, representations to the group regarding abuses committed by its members are more likely to be viable and to be heeded, leading to improvements in some aspects of the group's behaviour.
164. Since the last decade, rural and indigenous communities have maintained a dialogue with armed opposition groups and with the state armed forces and paramilitaries with the aim of signing agreements respecting the communities' neutrality in the conflict and thereby promoting an end to abuses and clashes in these areas.
165. In some cases commitments have been made or agreements signed between the communities and armed opposition groups, preceded or followed by agreements between the communities and other parties to the conflict, respecting their declaration of neutrality. Some of these agreements or commitments have been respected by the armed opposition groups²¹, albeit temporarily, leading to a decrease in abuses. But these agreements are usually very fragile, as each party considers that it is only bound by the agreement as long as the other party respects it and any incident can be invoked as a justification for not complying.
166. In most cases armed opposition groups and other parties to the conflict do not recognise neutrality as a valid option for the community, interpreting it as a sign of hostility or sympathy with the enemy, and so they refuse to sign such commitments.
167. Several humanitarian actors have developed other kinds of contacts and dialogue with armed opposition groups in order to intercede on behalf of specific individuals deprived of their liberty or under threat and to bring about their release, facilitate contact with relatives, improve their situation or ensure that the threat is temporarily or definitively lifted.
168. This kind of intervention is principally humanitarian in nature, aimed at protecting particular victims rather than influencing the general behaviour of the armed group. Moreover, those involved in this type of initiative claim that it is often more effective in such cases to avoid raising any issue in a way that could be perceived by the armed group as an attempt to scrutinise or analyse its behaviour.
169. Nevertheless, humanitarian actors involved in this kind of initiative believe that the effect it can have on the group's behaviour should not be underestimated. Their dialogue with the groups inevitably includes reference to the group's obligations with regard to victims and the limits set by humanitarian standards. The group is then compelled to explain and justify its behaviour in light of those standards or of its own regulations.
170. This type of action has principally involved international humanitarian actors such as the International Committee of the Red Cross, state actors such as the *Alto Comisionado para la Paz* (High Commissioner for Peace), *Defensoría del Pueblo* (Office of the People's Defender) and *Personerías Municipales* (local Ombudsman's Offices), as well as church representatives.
171. In some cases these measures have been effective in improving the victim's situation, preventing further harm to them and halting other actions which could lead to further victims. In many other cases they have been partly or totally unsuccessful, either because of the practical difficulties of undertaking humanitarian action or because of lack of political will on the part of the group.

²¹ An illustrative example is the agreement signed in 1997 between an indigenous community in southern Tolima and the FARC-EP Front, which put an end to a series of abuses by the armed group in that region.

172. Another form of action is the creation of a dialogue with armed opposition groups in order to explore their willingness to examine their general behaviour in the light of international humanitarian standards and to promote compliance with the prohibitions and obligations they include.
173. Frequent contact and dialogue with armed opposition groups has been maintained by organizations involved in promoting peace processes -- including the *Comisión de Conciliación Nacional* (National Conciliation Commission), *Mandato Ciudadano por la Paz* (Citizens' Mandate for Peace), *Comité de Búsqueda de la Paz* (Committee for the Search for Peace), *Asamblea por la Paz - Unión Sindical Obrera* (Peace Assembly - Workers' Union), *Red de Iniciativas por la Paz* (Peace Initiatives Network) -- as well as the *Conferencia Episcopal de la Iglesia Católica* (Catholic Church Episcopal Conference) and human rights NGOs. In the course of this dialogue, these organizations have put forward and discussed their views about the behaviour of the armed opposition groups, urging them to take corrective measures to prevent abuses and crimes.
174. These contacts have primarily involved armed opposition group spokespersons deprived of their liberty, in particular from the ELN and EPL, given their emphasis on the "humanisation of the conflict".
175. Conversations with the groups have analysed abuses such as the detention of civilians for political or economic reasons, the recruitment of children under fifteen, the indiscriminate use of antipersonnel mines, killings out of combat, massacres and reprisals against the civilian population, forced displacement, "revolutionary trials" and the application of the death penalty.
176. This dialogue has also explored the possibility of armed opposition groups signing humanitarian agreements with the government, as provided for in Article 3 of the Geneva Conventions, so as to formalise their commitment to respect humanitarian principles and enable humanitarian work. ELN and EPL spokespersons have expressed an interest in doing so since 1994 and called on the government to enter into such an agreement, to which the government responded favourably. Humanitarian actors have drafted various proposed humanitarian agreements and have discussed these with armed opposition group spokespersons. However, the indefinite postponement of the start of formal talks between the groups and the government has prevented an agreement being signed.
177. The *Defensoría del Pueblo*, the Office of the High Commissioner, the Colombian Red Cross and the International Committee of the Red Cross have taken steps to disseminate international humanitarian principles and standards among armed opposition group leaders and combatants in their camps.
178. A series of projects were initiated in 1997 to raise awareness of international humanitarian law among political prisoners in Bogota belonging to the three main armed opposition groups, involving the *Alto Comisionado para la Paz*, the International Committee of the Red Cross and the domestic NGO *Comité de Solidaridad con los Presos Políticos*.
179. This kind of dissemination work promotes awareness of international standards, what they include and how they should be interpreted. It also promotes debate within the groups about their position with regard to these standards and facilitates an analysis of steps to be taken by parties to the conflict to ensure compliance.

Public pressure on armed opposition groups

180. In parallel with the above types of action, various humanitarian actors have increasingly brought public pressure to bear on armed opposition groups in order to promote respect for humanitarian standards.

181. A wave of mass protests against armed opposition group abuses has been gathering momentum, due to a number of factors: the prevalence and gravity of the abuses; the resort to atrocities and reprisals such as the massacre of defenceless civilians; increased actions against leaders of indigenous, peasant, workers' and civic organizations; the recent killing of three US indigenous rights activists supporting the U'wa people in their cause against an oil multinational; the use of "miraculous trawls"²² and the large-scale, indiscriminate kidnapping of civilians.

182. Perhaps the most significant initiative of this kind was the *Mandato Ciudadano por la Paz, la Vida y la Libertad* (Citizens' Mandate for Peace, Life and Freedom), led by the *Red de Iniciativas por la Paz y contra la Guerra* (Peace and Anti-War Initiatives Network), the *Fundación País Libre* (Free Country Foundation), the *Comisión de Conciliación Nacional*, (National Conciliation Commission), the *Conferencia Episcopal* (Episcopal Conference) and the *Comité de Búsqueda de la Paz* (Committee for the Search for Peace), with the support of numerous social organizations. In an unofficial referendum on 10 October 1997, ten million people gave their "vote for peace, life and freedom" by subscribing to the following text:

I hereby give my commitment to help build Peace and Social Justice, to defend life and reject all violent action, and I subscribe to the Children's Peace Mandate.

My demands to all actors in the armed conflict are: NO MORE WAR: resolve the armed conflict by peaceful means. NO MORE ATROCITIES: respect International Humanitarian Law.

- Do not involve those under 18 years of age in the conflict.
- Do not commit murder.
- Do not kidnap people.
- Do not disappear people.
- Do not attack the civilian population nor forcibly displace it.
- Do not involve civilians in the armed conflict.

183. As can be seen from the text, the aim of this initiative was not solely to influence the behaviour of armed opposition groups, but the behaviour of all parties to the conflict. But this does not detract from the significance of this initiative in demanding that armed opposition groups also put an end to atrocities committed in violation of international humanitarian law, in the context of a broader condemnation of the atrocities committed by all parties to the conflict.

184. Since the Mandate for Peace, Life and Freedom there have been recent mass protests in several cities as part of the National Campaign against Kidnapping and Forced Disappearance, led by a range of different non-governmental organizations and supported actively by the media and state institutions. The organisers include the *Fundación País Libre*, the *Corporación Viva la Ciudadanía* (Long Live the Citizenry Corporation), the *Asociación de Familiares de Detenidos Desaparecidos* (Association of Relatives of the Detained and Disappeared), the Colombian Commission of Jurists and several churches.

185. The *Organización Nacional Indígena de Colombia* (National Indigenous Organisation of Colombia) and organizations representing each community have intensified their protests against attacks by guerrilla groups, in particular the FARC-EP, on many of their leaders. The Indigenous

²²A type of abduction by armed opposition groups carried out at roadblocks with the aim of holding large numbers of people for political, military or economic reasons.

Organisation of Antioquia, which represents the Embera community, proposed in Europe in March 1999 that an international tribunal be set up to try those responsible for the ethnocide to which the community has been subjected by the regular armed forces, paramilitary groups and guerrilla groups. The proposal was well received in Spain where it was supported by Judge Garzón, one of the initiators of the proceedings against General Augusto Pinochet.

186. In June 1999 social organizations in the department of Arauca organized demonstrations over several days against abuses by all actors in the conflict, including the FARC-EP and the ELN. This demonstration was especially significant given that these two guerrilla groups have traditionally exerted a strong influence over the population in this department.
187. In this type of approach it is important to distinguish between action motivated by purely humanitarian concerns and action which has the more political aim of delegitimizing the group's use of violence itself. Humanitarian actors do not always manage to maintain this distinction or prevent other politically motivated actors from blurring it.
188. Indeed, some demonstrations with clearly humanitarian intentions often end up attracting support from governmental entities, mainly the Army or the Police, or from certain sectors of the media portraying the issues behind the event in inappropriate and biased terms.²³
189. This is not to undermine the importance and positive impact of this type of action. The intention is simply to highlight the risk that such action may be compromised if armed opposition groups see it as serving the state's war strategy. This perception can lead to a hardening of militarist positions within the groups and undermine the position of those who advocate respect for humanitarian standards and are more self-critical with regard to abuses. The latter are labelled as "weak" in the face of the enemies of revolutionary struggle.
190. Nevertheless the increasingly widespread national debate about international humanitarian law in recent years has had a positive impact on the activities of many different humanitarian actors, who are now more aware of the need to avoid political manipulation and to be as rigorous as possible when carrying out humanitarian actions of this kind.
191. The effectiveness of such action will depend on the receptiveness of armed opposition groups to this kind of political pressure and the importance they attach to their public image. A significant obstacle is the marked tendency of these groups to adopt self-legitimizing mechanisms and to reject external criticism as "counter-revolutionary".
192. Although "military considerations" always take precedence for armed opposition groups, there are grounds for believing that public pressure, increasingly involving social organizations fighting for social change, will generate an internal political debate within these groups about the political cost of committing widespread abuses against the population.
193. Statements and pressure from renowned international organizations can make an effective contribution, particularly those organizations which armed opposition groups have praised for the seriousness and professionalism of their reports and recommendations highlighting the government's responsibility for large-scale human rights violations in Colombia.

²³ Official statements and press reports often refer to the behaviour of parties to the conflict in terms that are clearly biased towards the state armed forces. Analogous practices are described differently depending on which party was responsible. When reporting on the outcome of armed clashes, guerrillas who have been killed are referred to as "casualties" whereas soldiers or police are described as "murdered or massacred", without any attempt to clarify which of these killings were in fact legitimate and which violated humanitarian standards. It should be noted that military sources have often deliberately attributed massacres against defenceless civilians to guerrilla groups, in full knowledge that they were in fact committed by paramilitary groups and members of the state armed forces (e.g. the massacre in Segovia, Antioquia in 1988).

194. As Colombian guerrilla groups increasingly claim recognition and support from the international community (i.e. governments, development and other specialized agencies), it will be all the more important to them to safeguard their political legitimacy in the eyes of their international contacts and they can therefore be expected to be more sensitive to international criticism.
195. Various domestic humanitarian actors have welcomed the fact that some international humanitarian actors have begun to condemn and protest against abuses and crimes committed by armed opposition groups and to call for effective preventive measures.
196. Significant examples include the chapters devoted to the behaviour of guerrilla groups in the Amnesty International report of 1994 and recent Human Rights Watch reports, as well as several joint statements by European and North American organizations condemning abusive and criminal acts by these groups.
197. The reaction of the ELN to Amnesty International's report indicates the influence that international humanitarian actors can have on the behaviour of armed opposition groups:

What I can say for now is that we are willing to give the country a sign of our good faith by adopting in their entirety the six recommendations Amnesty International makes to armed opposition groups. To summarise them: prisoners, the wounded and others under our control should be treated humanely and, [whether civilians or] members of the armed forces, should never be killed. Deliberate and arbitrary killings should be prohibited. Captives should not be used as hostages. Mines should not be used to kill or deliberately mutilate civilians. Any abuse alleged to have been committed by our forces will be investigated. Any errors committed in relation to the above will be subject to disciplinary action. We consider that we have been complying with all these recommendations out of principle. But we wish to state publicly our commitment to adopt these recommendations.²⁴

198. For various reasons, domestic and international humanitarian actors have not yet worked together to try to influence the behaviour of armed opposition groups, partly because the first initiatives taken by international organizations were not properly understood by certain domestic actors. Nevertheless, there is an increasing trend towards agreeing joint projects in this area, following those already undertaken in the field of human rights, which have allowed for active exchange of information and joint lobbying of European and North American governments to generate political pressure on the Colombian authorities to modify the behaviour of their officials and to put an end to human rights violations.

Obstacles to humanitarian action

199. Reference has already been made above to the obstacles facing humanitarian actors seeking to promote respect by armed opposition groups for humanitarian standards. This section presents a brief outline of these obstacles.

Taking a neutral or non-neutral position on the conflict

200. The positions adopted by different humanitarian actors with regard to the armed conflict have often directly influenced their approach to the behaviour of each party.
201. For several years, the fact that some humanitarian actors supported the aims of one or more armed opposition groups stopped them from criticising the groups' abuses and seeking to change their behaviour.

²⁴ Media interview with Manuel Pérez, 24 May 1995. In *Paz Integral y Diálogo Util*. Oficina del Alto Comisionado para la Paz, Presidencia de la República. Bogotá, 1996, V. II, p. 231).

202. However, as some humanitarian actors became aware of the gravity of these abuses and the scope of humanitarian standards, their position on the conflict did not prove an insurmountable obstacle to taking action vis-à-vis the groups' behaviour. To some extent, their intervention was all the more effective because, as civil organizations not seen as hostile to the groups' aims, they stood a better chance of being listened to and not being branded as biased or lacking in objectivity by the groups, who may also be more concerned about losing legitimacy in the eyes of the affected population.
203. For other humanitarian actors, the decision to take action against armed opposition group abuses was informed by their opposition to the groups' aims and use of force. In several cases, their objectivity in addressing the guerrilla groups' conduct has not been affected by their position on the conflict. Other humanitarian actors, however, have blurred the distinction between criticising the resort to arms and protesting against breaches of humanitarian law, undermining the objectivity of their assessment of the groups' behaviour.
204. In both cases, although to a different extent, this position has undermined the effectiveness of the humanitarian action taken, since armed opposition groups, who may or may not be acting in good faith, tend to perceive criticism from these humanitarian actors as politically motivated and aimed at delegitimizing the armed struggle, leading them to reject such criticism as biased and subjective, regardless of the influence that these actors may have.
205. Adopting a position of neutrality on the armed conflict enhances the possibility of influencing the behaviour of armed opposition groups, as it reduces the pressure on humanitarian actors from all parties to the conflict, it boosts their public credibility and makes it less likely that the parties will evade their responsibilities by alleging bias or lack of objectivity in the analysis of their behaviour.
206. However, it should be noted that statements of neutrality are often rejected as unacceptable by armed opposition groups and other parties to the conflict, either because they see "friend" or "enemy" as the only options, or because they claim that neutrality means silence, non-intervention or confidentiality, or because they consider any statement holding them responsible for abuses as an act of hostility or "non-neutrality".
207. International humanitarian actors provoke a less negative or resistant reaction from armed opposition groups, even if their ideology is very different from the groups'. Ideological differences are often irrelevant to the analysis of an armed opposition group's conduct. Moreover, these groups are generally more willing to respect the political neutrality of an international actor than that of a domestic one.

Involvement in humanitarian tasks on behalf of victims of the conflict

208. The involvement of certain actors in providing humanitarian assistance to victims of the conflict at times poses difficulties when seeking to influence the behaviour of armed opposition groups, particularly when assistance is given to people or communities seen by the groups as hostile. Like other parties to the conflict, guerrilla groups may fail to distinguish between doctor and patient; they therefore view these humanitarian actors with hostility or suspicion, rejecting any attempt by them to influence the groups' behaviour.
209. Perhaps the most illustrative example of armed opposition group resistance to the work of those providing humanitarian assistance to certain victims of the conflict is that of the *País Libre* Foundation, which provides assistance to victims of kidnapping.

210. In the case of the International Committee of the Red Cross, armed opposition groups understand its position of neutrality with regard to the conflict, while not totally accepting it. As a result, its work to provide humanitarian assistance to all victims is not generally seen as hostile. The confidential nature of its efforts to influence the groups' behaviour through dissemination, mediation and dialogue minimises the risk that its opinions or analyses will affect its capacity to assist victims. As regards the Colombian Red Cross, guerrilla groups have traditionally seen it as biased towards the government, although this perception has been changing gradually.

Interference by government forces

211. Government interference in the actions and efforts of humanitarian actors to influence the conduct of guerrilla groups has taken several forms.

212. One particularly harmful type of interference is the misuse of official propaganda, mainly from military or police sources, using inappropriate language and misleading accounts of events, to instrumentalize international humanitarian law with the political aim of discrediting guerrilla groups or presenting a favourable "balance-sheet"²⁵ of violations of human rights and humanitarian law by all sides.

213. Another related obstacle is the pressure from civilian, military and police authorities on various humanitarian actors to make statements and take action on alleged abuses by armed opposition groups, without allowing them access to appropriate sources of information. This pressure, often accompanied by accusations that domestic and international humanitarian actors are part of a "guerrilla strategy against military honour", poses very serious obstacles to free and independent humanitarian work.

214. In certain cases where pressure of this kind has led domestic humanitarian actors to issue inappropriate statements or action, these actors have been perceived as government or armed forces allies, undermining the effectiveness of their work. Clearly, if a humanitarian actor does not have the freedom and independence to carry out its own investigation of events and is pressured to condemn or denounce legitimate acts of war as war crimes, or to hold armed opposition groups responsible for acts they did not commit, its capacity to influence the behaviour of those groups will be drastically undermined, as it will be seen as a political tool rather than as a humanitarian actor.

215. Of course it should be borne in mind that even when humanitarian actors are able to act with complete freedom and independence from government interference, their decision to act against abuses by armed opposition groups is often denounced by the groups as an alliance with the government, in an attempt to discredit any criticism or condemnation. Humanitarian actors have nevertheless persisted in demanding that the government respect its freedom and independence to act on humanitarian matters.

216. A third obstacle is the difficulty that most humanitarian actors experience in making contact freely with armed opposition groups in order to carry out their humanitarian tasks and influence the groups' behaviour. The risk of being accused of criminal association with these groups in many cases inhibits contact, hinders the investigation of cases of alleged breaches, blocks the possibility of dialogue and impedes humanitarian measures aimed at helping the victims. This interference is even more serious now in view of the criminal attacks by paramilitary groups on human rights organizations and organizations promoting peace.

²⁵ This refers to government attempts to portray guerrilla groups as the main violators of human rights and humanitarian law and to show that violations by the state armed forces are decreasing.

217. The most representative example relates to the kidnapping of civilians or combatants by guerrilla groups. A harsh law introduced to suppress this crime went as far as criminalising the steps taken by relatives of the victim to arrange payment of the ransom.
218. The policy of the last two governments of exploring avenues for a peaceful solution to the conflict has gradually and fitfully opened spaces for contact between sectors of civil society and armed opposition groups, either for the purposes of peace talks or for dialogue or intervention on humanitarian matters.
219. As mentioned earlier, the International Committee of the Red Cross and the *Defensoría del Pueblo* have been authorised to carry out humanitarian law dissemination programs in guerrilla camps. The Catholic Church Episcopal Conference, the Congressional Commissions on Human Rights and Peace and representatives of the business sector and social organizations maintain frequent contacts with armed opposition groups in order to carry out humanitarian tasks, discuss the groups' conduct or promote humanitarian agreements.

The attitude of armed opposition groups

220. One of the biggest obstacles to influencing the behaviour of armed opposition groups is their unwillingness to accept unequivocally their obligation to comply with the standards of international humanitarian law.
221. The FARC-EP does not recognise any obligation to comply with these standards. It argues that they are only binding on States who ratify them, that the group has not ratified the Geneva Conventions or Protocol II and that it has its own regulations and codes of war which include provisions for the respect of the civilian population. Nor does the group acknowledge clearly the need to sign humanitarian agreements; in its opinion, any agreement with the government should be to end the war rather than to regulate it:

The Protocol [II] obliges states experiencing armed conflict to abide by it. It is the government which must comply with it. They want us to recognise things that we are not: drug- traffickers, kidnappers, extortioners. They do this in order to deny us our place at the negotiating table. The president should be asked to ensure that the army complies with the law, as it is the army which is in control of this country. And that they stop disappearances and torture. (...)

The Farc does not violate human rights. We rose up precisely to fight for those rights. (...)

Of course. But the government should also do so. (FARC reply to the question whether they would be willing to agree to international monitoring.) They would need to allow members of international organizations into our camps. We are accused of massacres and things we have not done (...)

We do not carry out executions. We do not murder the civilian population, whatever they do. That goes against our statutes.²⁶

The president has indicated that he wants the guerrillas to abide by the Additional Protocols to the Geneva Conventions, but at the same time he blocks the possibility of the government and Farc meeting in La Uribe for peace talks. Neither will he allow us to meet with national and international organizations. Where is the sense in that? Does he want us to abide by agreements we have not signed and have not discussed?²⁷

²⁶ Interview with 'Mono Jojoy' in the magazine *Cambio 16*, April 1995. In *Paz Integral y Diálogo Util*, Oficina del Alto Comisionado para la Paz, Presidencia de la República, Bogotá, 1996. Vol. II, pp. 68-71.

²⁷ Statement by the National Secretariat on the organization's 31st anniversary, May 1995. In *Paz Integral y Diálogo Util*, Oficina del Alto Comisionado para la Paz, Presidencia de la República, Bogotá, 1996, Vol. II, pp. 83-85.

Of course defending the civilian population not involved in the conflict is a very important issue. Our policy is based on that principle. We have probably made mistakes, since conflict always occurs in unpredictable circumstances, but these are not part of our strategy. Terrorism is state policy and practice in Colombia, born of the national security doctrine and cause of our long-standing conflicts.

The issue of 'humanizing the war' is also very important and must be addressed. But quite honestly, humanism and war contradict each other. If you 'humanise' the war you do so in order to prolong it and what we want is to end it, by eradicating the factors which have given rise to it. Today the top priority is to build paths for reconciliation.²⁸

222. It should be acknowledged that since the mid-1980s the ELN placed the issue of humanizing the conflict on the agenda at a time when the Colombian government was reluctant to ratify Protocol II and many humanitarian actors were using human rights standards as the sole framework for their action in this area. This despite the fact that many of the group's actions could be criticised as breaches. The ELN has unilaterally indicated its willingness to abide by international humanitarian law standards, although it has expressed reservations about their inadequacy when applied to conflicts such as the war in Colombia and has called for humanitarian agreements to be signed defining the scope of humanitarian standards:

For these reasons we are willing to abide by Protocol II (...), we consider that we are covered by it, as an Armed Group which is part of the Simón Bolívar Guerrilla Coordination (...) and we are an insurgent armed force, under a single leadership and responsible command. We exercise control over part of the national territory such as to enable us to carry out sustained and concerted military operations and to comply, as we guarantee to do, with what is contained in the Geneva Protocol II (...)

Moreover we believe that in the particular context of Colombia we have to reach agreement on the meaning and scope of some of the terms and categories used in these documents, because we do not agree with the many accusations made against us in light of the Protocols or Common Article 3 to the Conventions which are based on particular interpretations of certain concepts (...) or of Protocol II. For this reason, we consider it necessary to clarify what is meant by hostages (...) How should civilians be respected? Who should be considered civilians and how?²⁹

We have already replied to Amnesty International concerning the recommendations it makes for tackling the situations described and we have said that we are willing to comply with the provisions and recommendations Amnesty makes to the insurgent movement... We have replied on each point and we are willing to see an international monitoring body appointed.³⁰

223. The ELN's acceptance of international humanitarian law may be partly motivated by a political interest in obtaining international legitimacy and it has shown ambivalence and lack of political will to implement these standards. Nevertheless, the importance of such unilateral statements should not be underestimated, as they open up possibilities for dialogue with the organization about the behaviour of its combatants and the need to put into effect their public and voluntary commitment to respect these norms.

²⁸ Letter from the National Secretariat to the Committee for the Search for Peace and the Network of Peace and Anti-War Initiatives, June 1995. In *Paz Integral y Diálogo Util*. Oficina del Alto Comisionado para la Paz, Presidencia de la República, Bogotá, 1996, Vol. II, p. 93.

²⁹ The ELN and Humanitarian Law. Public statement by Commander Manuel Pérez, broadcast on 15 July 1995. In *Conversaciones de Paz. Frente al horror: Acuerdos Humanitarios* (Peace Talks. Confronting the horror: Humanitarian Agreements) Mandato Ciudadano por la Paz, la Vida y la Libertad. Bogotá, September 1998, pp. 58-60. The statement contains a "code of war" which sets down obligations and prohibitions for combatants relating to the protection of the civilian population and means and methods of warfare.

³⁰ Reply to a question about the ELN's willingness to apply Protocol II. In "Transcript of an interview by various media with Manuel Pérez, Nicolás Rodríguez and Antonio García", December 1994. In *Paz Integral y Diálogo Util*. Oficina del Alto Comisionado para la Paz, Presidencia de la República. Bogotá, 1996, Vol. II, p. 156".

224. It is more difficult to monitor the conduct of armed opposition groups when these refuse to abide by any specific set of standards, whether international instruments or their own regulations on the means and methods of warfare and respect for the civilian population and those *hors de combat*.
225. Colombian armed opposition groups either do not have their own humanitarian regulations or else have blatantly inadequate rules, consisting of general expressions of intent to respect the civilian population and to treat enemy combatants deprived of their liberty humanely, as well as establishing certain offences and penalties.
226. In the absence of adequate and well-developed internal regulations, it is extremely important that guerrilla groups take steps to abide by international standards, even if those steps are purely declaratory or motivated by political expediency, and even if there is scarce political will to comply with these standards and they are interpreted in ways that restrict their protective scope.
227. Certain interpretations by Colombian guerrilla groups regarding the nature of the conflict, the participants involved and the means and methods of warfare, limit the scope of personal protection provided for in humanitarian standards. The groups are willing to treat with respect those sectors of the population who support them ideologically or politically, or who form their “social base”. But they are not willing to give similar treatment to those who appear to be closer to the state armed forces or who are perceived as the “social base of the paramilitaries”:

Together with other popular forces in the region and the organizations which make up the Simón Bolívar Guerrilla Coordination, we have decided to launch the ‘Guerrilla Dignity’ campaign, (...) whose main objective from now on is the total eradication of paramilitarism in the area and the recovery of territory currently in the hands of Fidel Castaño’s lackeys.

From now on the following are military objectives:

1. Paramilitary informants and collaborators;
 2. Traders who sell goods to hired gunmen;
 3. Farmworkers on farms which are paramilitary bases;
 4. So-called “hope commandos”, shown to be linked to those who massacre the people;
 5. Peasant farmers who receive earnings from recognised paramilitaries;
 6. Peasant farmers who sell their products to cooperatives which are paramilitary fronts, such as Coramar;
 7. Police and soldiers who carry out massacres in collusion with hired gunmen;
 8. The Urabá regional prosecutor’s office based at the 17th Brigade headquarters;
 9. Anyone who knows something about this phenomenon but does not inform the Farc-Ep disciplinary commissions;
 10. In general, anything that smells paramilitary, including farmers, politicians or members of the military who support the paramilitaries.”³¹
228. By not distinguishing between ideological or political hostility and military hostility, armed opposition groups do not respect the civilian status of communities which support or sympathise with their military enemies, in what is a very particular interpretation of the concept of “civilian population not taking a direct part in hostilities”.
229. Moreover, given the tendency among armed opposition groups to perceive communities exclusively as “allies” or “enemies”, communities which declare their neutrality for fear of reprisals or of being caught in the conflict are often labelled “hostile”.

³¹ Communique by the *Bloque José María Córdoba*, December 1994. In *Paz Integral y Diálogo Util*, Oficina del Alto Comisionado para la Paz, Presidencia de la República, Bogotá, 1996, Vol. II, pp. 48-49.

230. The armed opposition groups' definition of the conflict as a "social, economic, political and armed conflict", aimed at legitimising the resort to war as a means of transforming existing social and political conditions, has had consequences for the groups' military actions. The pursuit of a revolutionary struggle, understood as "class struggle", has led to the Marxist term "class enemy" being applied to the military arena. The civilian status of wealthy individuals, large landowners and exploitative bosses is disregarded, making them legitimate targets of armed attack:

In financial matters, we will continue with our policy of charging a "tax for the new Colombia" on those people and entities whose wealth exceeds one thousand million pesos and who are enemies of democracy, because ours is a struggle against an unjust State and against the rich who support and benefit from it. And if they give money to the State to pursue its war against the people, then they also have to give money to the people so that they can defend themselves against aggression. The rest is misinformation (...)

Defending the people is the essence of the Farc. The interests of the people are our interests. We are part of the people. We do not defend the interests of multinationals, imperialism or oligarchies, nor those of landowners and the rich. If people not involved in the conflict are at times affected by this harsh confrontation, this does not reflect our policy or aims. For this reason we have a keen interest in seeing that this discussion is broached before the nation without further delay.³²

231. Many similar statements can be found in the ELN and EPL's justification of the widespread practice of deprivation of liberty for economic reasons (kidnapping for extortion, under Colombian law), which the groups refer to as "retentions" and justify as the application of "revolutionary justice" to those who refuse to pay the groups' "war tax". In their opinion these "retentions" do not constitute a breach of the prohibition on hostage-taking.

232. Armed opposition groups reject a broad interpretation of the scope of humanitarian standards, claiming that in the context of an irregular, class war it is impossible to comply with standards drawn up for conventional war between nations. On several occasions these armed groups have stated that the orthodox interpretations of the International Committee of the Red Cross and other humanitarian actors are an obstacle to the effectiveness and continuity of the rebels' actions and therefore place the state armed forces at a military advantage.

233. A major obstacle to dialogue with armed opposition groups regarding their compliance with humanitarian standards arises from the groups' restrictive and *sui generis* interpretation of these standards. It has been important to stress the breadth of protection they offer, clarifying for example that the term hostilities refers solely to military hostility and cannot be stretched to include political and ideological hostility. But this has not been sufficient to overcome the groups' resistance to a broad interpretation of international humanitarian law prohibitions and protections. A resistance which is grounded in the groups' fear of "having their hands tied" in a conflict in which they are the militarily weaker party.

234. Perhaps a way of moving forward in this area and stepping up the challenge to armed opposition groups to respect humanitarian standards is to promote the signing of humanitarian agreements, an issue explored below.

235. Another relevant factor in assessing the possibility of influencing the conduct of armed opposition groups is the extent to which the groups claim responsibility for their actions.

236. The ELN is generally willing to admit responsibility for its actions publicly, despite the political cost involved. This can be seen in the case of the killing of dozens of peasant farmers in an

³² Extracts from an interview by the news program *24 horas* with Alfonso Cano: retained soldiers, peace and the electoral process, 21 May 1997. In *Paz Integral y Diálogo Util*. Oficina del Alto Comisionado para la Paz, Presidencia de la República Bogotá, 1998, Vol. IV, pp. 348-349.

attack on an oil pipeline in Machuca in 1998, for which the ELN claimed responsibility. This facilitates the setting up of mechanisms for following up the organisation's compliance with its humanitarian commitments. However, claiming responsibility for carrying out the act does not always mean acknowledging responsibility for breaches of humanitarian standards, since in many cases the acts are justified as "legitimate acts of war", based on *sui generis* interpretations of those standards.

237. The FARC-EP's approach is different; it often denies that it carried out certain armed actions, evading all responsibility. In some instances, for example concerning the kidnapping of civilians, its commanders have publicly condemned it as a "terrorist" practice, denying that their organization carries out such acts, despite indications that it is common practice within the FARC-EP.
238. A positive sign in this regard is the FARC-EP's recent acknowledgement of responsibility for the killing of three North American indigenous rights activists visiting Colombia to show solidarity with the struggle of the local U'wa indigenous community against an oil multinational. It is true that this acknowledgement was prompted by the international repercussions of the case and its political context, following the recent talks between the FARC-EP and the US government in San José, Costa Rica; perhaps this would not have occurred if the victims had been Colombian peasant farmers or indigenous people. In any case it opens the possibility of changing this group's practice of not admitting responsibility.
239. The question arises whether such formal claims of responsibility for certain acts are of any value unless accompanied by the decision to investigate them effectively and punish those responsible. There is no clear evidence that armed opposition groups carry out internal investigations to determine responsibility and hand down exemplary punishment, although there have been reports of certain kinds of trial for acts against the population, where disproportionate punishments, including the death penalty, have been applied. Such cases generally relate to abuses committed by combatants and junior officers as personal excesses against communities sympathetic to the armed group. Acts obeying the group's policy of targeting "hostile" communities are hardly ever brought to justice.
240. In the case of the three indigenous rights activists, the FARC-EP's statement that it would carry out its own internal investigation to establish responsibility caused great public controversy. The debate highlighted the FARC-EP's resistance to having its combatants tried before the courts of the government it is fighting, despite pressure on the group to accept this or to heed the US government's extradition request. Serious doubts also emerged about the independence of the group's proposed investigation and its capacity to ascertain the likely responsibility of senior commanders.
241. Debates such as these should serve to promote the search for mechanisms for investigating and punishing guerrillas who commit grave breaches, if the group is indeed willing to honour its responsibilities and demonstrate the political will to modify the behaviour of its combatants. From this perspective, the most appropriate approach would appear to be to allow the group to carry out its investigation and apply sanctions, as long as it offers certain guarantees for the independence and capacity of the investigation.
242. It should be acknowledged that armed opposition groups generally treat soldiers and police deprived of their liberty adequately and respectfully. Except in cases where certain high or middle-ranking officers are accused of crimes against humanity or war crimes, in which case the death penalty has been applied following summary trials, armed opposition groups have expressed total willingness to implement humanitarian standards.

243. Various humanitarian actors play down the significance of guerrilla group statements such as these regarding respect for soldiers and police deprived of their liberty. They argue that giving such statements and gestures too much importance advances the groups' strategy, which is to boost their humanitarian image and promote recognition that they can legitimately take "prisoners of war" and that guerrillas detained by the State can be similarly recognised. These humanitarian actors consider prisoner releases by armed groups highly propagandistic events, carried out in the presence of national and international observers who are presented as verifiers of the terms agreed for the release.
244. Although these statements and gestures reveal the political intention of the groups to be recognised as belligerents and to have their detained combatants recognised as prisoners of war, the significance of such public expressions of willingness to take on humanitarian commitments and comply with them is not to be underestimated, even if their compliance arises not from genuine ethical or legal conviction but from political expediency.
245. But perhaps there is another approach: building on these statements and gestures of respect as a basis for calling on armed opposition groups to broaden the scope of protection to all persons covered by humanitarian standards and for responding to their argument that it is impossible to eliminate certain types of abusive practices. This approach would avoid making concessions to the groups in exchange for their commitment to respectful practices and further arguments could be used to urge and pressure them to halt crimes and abuses (the same arguments they put forward when trying to demonstrate their respect for humanitarian standards).

OTHER HUMANITARIAN EFFORTS

Humanitarian agreements

246. A much-debated issue is the proposal to set up humanitarian agreements between the parties to the conflict, aimed at applying basic standards of behaviour to the conduct of armed hostilities. Most humanitarian actors and some of the parties to the conflict believe such agreements are desirable. Several proposals have been made about possible areas and issues to be included.³³
247. Nevertheless the main difficulty in signing an agreement, aside from the procedural problems which any negotiation entails, is the definition of issues to be included in the agreement. There has been considerable debate about whether it is acceptable for an agreement to be signed if the obligations and prohibitions it places on the parties fall below those contained in Common Article 3 of the Geneva Conventions and/or Protocol II.
248. Some humanitarian actors consider that any agreement is desirable, even if it goes below these minimum standards, as long as a monitoring mechanism is created to ensure that the parties to the conflict comply with their commitments. They argue that, although humanitarian standards place obligations on all parties to the conflict, it has not been possible to modify their conduct by invoking international humanitarian law alone. Humanitarian agreements can therefore become tools for holding parties to humanitarian standards, even if at first this means respecting some but not all of these norms.
249. Other humanitarian actors see this position as a rejection of the minimum humanitarian principles set down in Article 3 common to the four Geneva Conventions and in Protocol II, favouring the parties to the conflict. They argue that limiting the minimum prohibitions and

³³ Examples include proposals by the International Committee of the Red Cross, the National Conciliation Commission, the Colombian Commission of Jurists, and the *Asamblea por la Paz–Uso* (Peace Assembly-Uso), and some outlines presented by the ELN.

obligations contained in common Article 3 encourages the parties to the conflict to disregard minimum humanitarian standards, especially if there is no real guarantee that the parties will be any more willing to comply with a humanitarian agreement than they were to comply with the minimum obligations contained in humanitarian standards.

250. This debate has arisen particularly since the so-called *Puerta del Cielo* (Heaven's Gate) Agreement, signed by the ELN and Colombian civil society representatives in Mainz, Germany, in which the ELN gave a commitment not to kidnap certain categories of people. This prompted criticism from some analysts and humanitarian actors who felt that, by signing such an agreement, these civil society representatives had given the ELN the green light to kidnap other types of people.
251. There have been significant developments in the debate about the need for oversight mechanisms to verify compliance and to carry out independent, impartial and appropriate investigations into possible contraventions of the agreement. Such a mechanism would give the agreement a minimum guarantee of seriousness. Its acceptance by the parties at the outset would prevent the signatories from trying to discredit it in the event of being held responsible by the oversight mechanism following the investigation of specific cases.
252. The government of President Samper (1994-1998) and the ELN made separate requests to the International Fact-Finding Commission, provided for in Art. 90 of Protocol I, to verify possible humanitarian agreements in Colombia. It is worth recalling the remarks made by Frits Kalshoven, president of the International Fact-Finding Commission, during a visit to Colombia in 1998:

The International Fact-Finding Commission does not exist in Protocol II, but there is nothing to prevent the Commission applying the same norms to internal armed conflict.

As there are so many parties involved in the Colombian conflict, we realise it would be very difficult to get all of them to agree to the Commission coming in to carry out various different investigations (...)

We have been in conversation with people at different levels, including members of the ELN and we have reached a point where we are bringing the government and the ELN closer to sitting down and talking (...)

This good offices function has one objective, which is not to improve relations between the parties nor to bring peace to the country, but to reach a situation where the parties show greater respect for International Humanitarian Law, a situation where there will be less violations of IHL .

Good offices therefore allow us to help bring about negotiations between the government on the one hand and the ELN on the other.³⁴

The involvement of the United Nations

253. The agreement signed between the Colombian government and the United Nations High Commissioner in November 1996 establishing a permanent office in Colombia, mandated the office to monitor both human rights violations and breaches of international humanitarian law.
254. The signing of the agreement was preceded by active dialogue between the government and human rights NGOs, much of the debate centring on the appropriateness of including breaches of international humanitarian law.

³⁴ Presentation by Frits Kalshoven and Hernán Salinas, members of the International Fact-Finding Commission. In *Conversaciones de Paz. Frente al horror: Acuerdos Humanitarios*. Mandato Ciudadano por la Paz, la Vida y la Libertad, Bogotá, September 1998, p. 72.

255. NGOs were in favour of the issue being included, but expressed reservations about the government's apparent intention, revealed in the course of the discussions, of drawing up a kind of "balance-sheet" of violations committed by state agents and guerrilla groups. The NGOs were concerned that this might give the impression that the government's human rights record had improved and so reduce the capacity for criticism and pressure on the Colombian authorities to halt abuses committed by its armed forces or by paramilitary groups linked to them.
256. The formula finally agreed on appears, in principle, to safeguard the United Nations Office in Colombia against pressure from the authorities regarding the findings reported to the Commission on Human Rights based on the Office's verification work.
257. Nevertheless NGOs and other humanitarian actors want to see the International Fact-Finding Commission play a more active role, complementary to that of the United Nations Office and based on a humanitarian agreement signed by the parties to the conflict, given the Commission's experience and capacity for investigating breaches of humanitarian law.
258. Similarly, many NGOs support the creation of mechanisms to investigate past human rights and humanitarian law violations, as an alternative way of combating the prevailing climate of impunity.