

Washington University Global Studies Law Review

Volume 7 | Issue 3

January 2008

The International Labor Organization and a Possible End to Violence Against Union Members in Colombia

Daniel Richard Kuehnert
Washington University School of Law

Follow this and additional works at: https://openscholarship.wustl.edu/law_globalstudies



Part of the [Human Rights Law Commons](#), [International Law Commons](#), and the [Labor and Employment Law Commons](#)

Recommended Citation

Daniel Richard Kuehnert, *The International Labor Organization and a Possible End to Violence Against Union Members in Colombia*, 7 WASH. U. GLOBAL STUD. L. REV. 593 (2008), https://openscholarship.wustl.edu/law_globalstudies/vol7/iss3/7

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Global Studies Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

THE INTERNATIONAL LABOR ORGANIZATION AND A POSSIBLE END TO VIOLENCE AGAINST UNION MEMBERS IN COLOMBIA

I. INTRODUCTION

On February 27, 2006, the United States Trade Representative announced that the United States and Colombia had completed their negotiations for a bilateral trade agreement.¹ American labor unions immediately voiced their strong opposition to this agreement, describing Colombia as “the most dangerous country in the world for workers seeking to exercise their freedom to form unions.”² That statement is not an exaggeration.

Since the mid-1980s approximately 4,000 labor union members have been killed in Colombia, with more than half of those killings occurring since 1991.³ In 2002, Colombia accounted for 85% of the world’s killings of union members.⁴ These killings are often committed with the implicit or explicit approval of employers and the Colombian government.⁵ Most of

1. Press Release, Office of the United States Trade Representative, United States and Colombia Conclude Free Trade Agreement (Feb. 27, 2006), *available at* http://www.ustr.gov/Document_Library/Press_Releases/2006/February/United_States_Colombia_Conclude_Free_Trade_Agreement.html.

Even without this agreement, the United States has historically been Colombia’s largest trading partner. Bilateral trade between the United States and Colombia was an estimated \$8.7 billion in 2002. Embassy of Colombia, Washington, D.C., U.S.-Colombia Bilateral Trade (2006), <http://www.colombiaemb.org/opencms/opencms/trade/index.html>.

2. Letter from AFL-CIO to Senators in Opposition to Free Trade Agreements with Peru, Colombia, and Oman (Mar. 14, 2006), *available at* http://www.aflcio.org/issues/legislative/alert/alerts/upload/peru_colombia_oman_senateletter.pdf (citing INTERNATIONAL CONFEDERATION OF TRADE UNIONS, ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS (2005)).

It is worth noting that the labor standards in the proposed U.S.-Colombia Free Trade Agreement have been called “a major step back” from those currently in place under the Andean Trade Preference and Drug Eradication Act and the Generalized System of Preferences, both of which require compliance with International Labor Organization standards, whereas the proposed agreement merely requires Colombia to follow its own national law. THE AMERICAN CENTER FOR INTERNATIONAL LABOR SOLIDARITY, JUSTICE FOR ALL: THE STRUGGLE FOR WORKER RIGHTS IN COLOMBIA 63 (Fay Lyle ed., 2006) [hereinafter JUSTICE FOR ALL]. It should be noted that the current Colombian constitution incorporates a number of International Labor Organization (ILO) Conventions, although these provisions have not been followed. *See infra* note 81.

3. JUSTICE FOR ALL, *supra* note 2, at 11.

4. Daniel Kovalik, *War and Human Rights Abuses: Colombia and Corporate Support for Anti-Union Suppression*, 2 SEATTLE J. FOR SOC. JUST. 393, 398 (2004) (citing U.S. STATE DEPT., COLOMBIA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2002 1, 39 (Mar. 31, 2003), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2002/18325.htm>).

5. JUSTICE FOR ALL, *supra* note 2, at 18. The American Center for International Labor Solidarity states:

the time, the killers escape with impunity, with over 90% of reported crimes against trade unionists going unsolved in 2005.⁶

Yet there may be a reason for hope for the workers of Colombia: in June of 2006, representatives of the Colombian government, Colombian employers, and Colombian unions signed an historic agreement with the International Labor Organization (ILO)—the “Tripartite⁷ Agreement for the Right of Association and Democracy” (“the Agreement”). This Note examines the history of violence against union members in Colombia and the key provisions of the Agreement in order to evaluate the likely effectiveness of the Agreement in ending the violence.

II. BACKGROUND: COLOMBIA, UNIONS, AND VIOLENCE

The second half of the twentieth Century in Colombia was dominated by violence. From the mid-1940s to the mid-1950s a mostly rural civil war, referred to as “La Violencia,” led to the deaths of at least 180,000 Colombians.⁸ Unfortunately, the 1957 power sharing agreement that ended “La Violencia” led to a new conflict.⁹ This section describes the guerilla

In Colombia, a symbiotic relationship between government and employers, and the military or paramilitary forces that enforce their policies, works in concert to deny trade unions their rights. Selective and systemic violence against union leaders and members reinforces anti-union strategies used by private employers and the Colombian state, thus merging government repression with anti-union discrimination.

Id.

6. INTERNATIONAL CONFEDERATION OF TRADE UNIONS, COLOMBIA: ANNUAL SURVEY OF VIOLATION OF TRADE UNIONS RIGHTS (2006), available at <http://www.icftu.org/displaydocument.asp?Index=991223865&Language=EN>.

7. Whenever used in the ILO context the term “tripartite” means comprised of representatives of the government, employer’s organizations, and worker’s organizations.

8. As it was a chaotic internal conflict occurring in a mostly rural nation, the details on “La Violencia,” including its starting and ending dates, and the number of casualties, are unclear. See José E. Arvelo, Note, *International Law and Conflict Resolution in Colombia: Balancing Peace and Justice in the Paramilitary Demobilization Process*, 37 GEO. J. INT’L L. 411, 416–17 (2002). While I use Arvelo’s casualty numbers in the text, he admits in note 17 that “scholarly estimates are by no means uniform” and refers to other scholars who use the figures 194,000 and 300,000. JUSTICE FOR ALL limits the dates of “La Violencia” to 1948–1958, and puts the number of casualties between 200,000 and 300,000. No source is given for these figures. JUSTICE FOR ALL, *supra* note 2, at 4.

9. *Id.* The American Center for International Labor Solidarity writes:

In 1958, ‘La Violencia’ ended when Liberals and Conservatives formed the National Front, a two-party power sharing arrangement that excluded other social actors, planting the seeds for the emergence of the guerilla movement. Political exclusion of large sectors of civil society, an extremely skewed distribution of wealth, and the traditional power centers’ intolerance of dissent are widely considered the root causes of the conflict

Id. (citing Gary Leech, *Fifty Years of Violence*, COLOMBIA J. ONLINE, May 1999, <http://www.colombiajournal.org/fiftyyearsofviolence.htm>). See also Arvelo, *supra* note 8, at 416 (blaming the continuing social conflict regarding agrarian interest and the lack of a state presence in the interior of Colombia for the start of the guerilla conflict).

and paramilitary groups that have fought in the new conflict, examines the effect that this conflict has had on labor unions, and evaluates the recently enacted Law of Peace and Justice which represents the Colombian government's attempt to put its nation's bloody past behind it.

A. *The Guerillas and the Paramilitaries*

In 1964, the two largest leftist guerilla organizations, FARC (Colombia Revolutionary Armed Forces) and ELN (National Liberation Army), formed and have fought the government ever since.¹⁰ In the mid-1980s, wealthy drug lords started forming right-wing paramilitary groups, ostensibly to protect their holdings from attack by guerillas.¹¹ By 1997, many of these paramilitary groups had been organized into a loose confederation known as the AUC ("United Self-Defense Forces of Colombia") which has an estimated 32,000 members.¹² In areas they control, paramilitaries have effectively replaced the state, allowing them to freely participate in drug trafficking and other illegal activities in those areas.¹³ Despite the paramilitaries' challenge to state authority and the fact that they were outlawed in 1989,¹⁴ the paramilitaries and the Colombian government have collaborated in a "functional alliance" to fight the guerillas.¹⁵

The result of this three-sided civil war is that Colombia has become one of the most violent countries on Earth.¹⁶ Between 1997 and 2002, approximately 28,000 people were killed as a result of this conflict, with 17,776 of those deaths being non-combat killings of civilians.¹⁷

10. See Center for International Policy, Colombia Programs, Information About the Combatants (Dec. 5, 2004), available at <http://www.ciponline.org/colombia/infocombat.htm>. FARC is estimated to currently have 18,000 combatants, while ELN is believed to have 3,500. *Id.* To finance their operations both FARC and ELN have been involved in extortion and kidnapping. Arvelo, *supra* note 8, at 419.

11. JUSTICE FOR ALL, *supra* note 2, at 4.

12. Center for International Policy, *supra* note 10.

13. Arvelo, *supra* note 8, at 421-22.

14. See Center for International Policy, *supra* note 10.

15. Arvelo, *supra* note 8, at 421.

16. The yearly murder rate in Colombia is approaching 100 per 100,000 people. JUSTICE FOR ALL, *supra* note 2, at 11 (citing KIM CRAGIN & BRUCE HOFFMAN, RAND NATIONAL DEFENSE RESEARCH INSTITUTE, ARMS TRAFFICKING AND COLOMBIA (2003), available at <http://www.rand.org>).

17. Arvelo, *supra* note 8, at 411 (citing UNITED NATIONS DEVELOPMENT PROGRAM, INFORME NACIONAL DE DESARROLLO HUMANO PARA COLOMBIA: EL CONFLICTO, CALLEJÓN CON SALIDA [NATIONAL REPORT ON HUMAN DEVELOPMENT FOR COLOMBIA: THE CONFLICT, ALLEY WITH AN EXIT] 119-20, tbls. 5.1-5.2 (2003)).

B. Attacks on Union Members

Colombian unions have been devastated by the violence in their nation. Historically, Colombian unions were among the strongest in Latin America.¹⁸ However, this started to change in the late 1980s when paramilitaries gained power and attacks on union members increased.¹⁹ A study by one of Colombia's three major trade union centers found that as of 2005 only 4.8% of the Colombian workforce was organized,²⁰ and only 1.17% of the workforce was covered by collective bargaining agreements.²¹

The evidence clearly indicates that union members are specifically targeted for violence, rather than merely being caught in the crossfire.²²

18. JUSTICE FOR ALL, *supra* note 2, at 11 (noting that Colombian trade unions had “won significant benefits for workers” prior to the 1990s). Although I have been unable to locate statistics regarding the highest point of union membership in Colombia, JUSTICE FOR ALL states that the enactment of pro-labor legislation in the 1930s and 1940s led to union membership rising from 5% in 1947 to 15% in 1964, although noting that “it also made unions increasingly dependent on the state for protection and gains in collective bargaining.” *Id.* at 10.

Colombia's unions have also faced problems with government and employer sanctioned violence in the past, most notably with the 1928 banana worker strike in Cienaga, Colombia, when the “Colombian military massacred striking banana workers at the behest of the Boston-based United Fruit Company.” Kovalik, *supra* note 4, at 398 (citing GARRY M. LEECH, *KILLING PEACE: COLOMBIA'S CONFLICT AND THE FAILURE OF U.S. INTERVENTION* 10 (2002)). This strike was the inspiration for Gabriel Garcia Marquez's novel *One Hundred Years of Solitude*. JUSTICE FOR ALL, *supra* note 2, at 10.

19. *Id.* at 11. While the report refers to the “period beginning in 1990” as a turning point in the declining power of trade unions in Colombia, it gives no reason for the 1990 start date. I use the late-1980s as it was in this decade that most statistics regarding trade union murders in Colombia begin.

The American Center for International Labor Solidarity summarizes the connection between violence against union members and the decline in union membership: “The largest single obstacle to workers rights in Colombia today is the climate of violence with impunity, since the right to live is a fundamental prerequisite for the exercise of any other right.” *Id.* at 17.

20. *Id.* at 11 (citing U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2005 28 (Mar. 8, 2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61721.htm> and WORKERS CENTRAL UNION (CUT), SITUACIÓN LABORAL EN COLOMBIA, (Mar. 2005)).

21. INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, COLOMBIA: ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS (2005), available at <http://www.icftu.org/displaydocument.asp?Index=991222215&Language=EN>.

22. JUSTICE FOR ALL, *supra* note 2, at 11. A letter sent in December 2003 by AUC paramilitaries to a former employee and union activist at a mine owned by the American-owned Drummond Coal Company (then living in exile) demonstrates that the paramilitaries target union members because of their union activities:

We want to let you know that we have knowledge of your activities against Drummond Ltd. You should know that we have located you . . . as well as your family The command has decided to reactivate operations against you for being enemies of development and impeding foreign investment such as in the case of the Drummond company This position of yours is what has brought our organization to declare you as enemies and to make your extermination and subjugation our goal; therefore, we inform you, your colleagues, and the organizations that support them that they will be sought and executed in the country or place

One indication of this is that violence against union members is almost always carried out by paramilitaries or government forces.²³ When the paramilitaries and the government try to justify the killings, they claim the union members are guerrillas.²⁴ While that is true of a few individual members, guerrillas do not dominate any unions in Colombia.²⁵ Rather, the roots of the violence lie in the hostility of the government²⁶ and private employers²⁷ towards unions. Employers often bring in paramilitary members for “security” during labor negotiation—with the true goal being

where they are found; if they continue to pressure companies that bring investment and development to our country.

Kovalik, *supra* note 4, at 406–07. The name of the union activist was withheld for security reasons.

23. In 2005, a Colombian labor rights nongovernmental organization (NGO), ENS (National Labor School) attributed 52% of the violations against union members committed by a known assailant to paramilitaries and 45.7% to the government, with just 2.3% being attributed to guerrillas. JUSTICE FOR ALL, *supra* note 2, at 18 (citing ESCUELA NACIONAL SINDICAL (ENS), INFORMAL SOBRE LA VIOLACIÓN A LOS DERECHOS HUMANOS DE LOS Y LAS SINDICALISTAS COLOMBIANOS EN EL AÑO 2005 10, 12 (Mar. 15, 2006), available at http://www.ens.org.co/aa/img_upload/40785cb6c10f663e3ec6ea7ea03aaa15/INFORME_DE_DDHH_DE_SINDICALISTAS_COLOMBIANOS_EN_EL_2005.pdf). Note that my percentages are taken from dividing the percentage of violations that each group is known to be responsible for by the total percentage of violations for which the assailant is known (39.4% of cases). In ENS’s statistics, paramilitaries are responsible for 20.5% of total violations, with 18% being the work of state institutions .9% being attributed to guerrillas, and 60.6% attributed to unknown assailants. *Id.*

24. JUSTICE FOR ALL, *supra* note 2, at 11.

25. *Id.* The report states that “[a]s institution, trade union centers have rejected all armed actors in the conflict. They seek civil society participation in the peace negotiations, and reform of Colombia’s structural social inequality, which they see as the root cause of the armed conflict.” *Id.*

The report also states that “[t]hrough guerilla violence against trade unions has diminished in the last few years, union leaders are still viewed with suspicion by some guerilla leaders because they represent strong expressions of organized civil society that the guerillas do not control.” *Id.* at 19.

26. *Id.* at 18–19. Regardless of the laws that Colombia’s government has protecting workers’ rights to unionize, the government is hostile towards unions in the public sector where “[u]nion leaders who denounce corruption in public institutions are often labeled guerilla sympathizers by public officials who wish to deflect criticism, leaving union leaders vulnerable to paramilitary attacks.” *Id.* at 18. Teachers’ unions are especially hard hit as 71% of the violations in 2005 were against teachers who belonged to the Colombian Federation of Educators (FECODE). *Id.* at 19 (citing ESCUELA NACIONAL SINDICAL, INFORMAL SOBRE LA VIOLACIÓN A LOS DERECHOS HUMANOS DE LOS Y LAS SINDICALISTAS COLOMBIANOS EN EL AÑO 2005 9 (Mar. 15, 2006), available at http://www.ens.org.co/aa/img_upload/40785cb6c10f663e3ec6ea7ea03aaa15/INFORME_DE_DDHH_DE_SINDICALISTAS_COLOMBIANOS_EN_EL_2005.pdf).

27. Kovalik, *supra* note 4, at 398. Kovalik states that “[t]he paramilitaries, along with their Colombian military partners, are ideologically aligned with the interests of both domestic and foreign capital in Colombia and are many times assisted by the corporate elite, including multinational corporations based in the United States.” *Id.*

Earlier, Kovalik noted that: “In a number of cases, U.S.-based multinational corporations, some of which have been vocal supporters and direct beneficiaries of U.S. military aid to Colombia, have been complicit with both military and paramilitary forces in Colombia that intimidate, torture, and even assassinate . . . trade unionists.” *Id.* at 393.

to break the trade union.²⁸ These arrangements usually result in the deaths of the labor leaders.²⁹

A further indication that the attacks on union members are not coincidental is that the types of attacks have shifted over time. When wholesale massacres of union members drew international outrage in the mid-1990s, the murderers started targeting union officials and leaders.³⁰ Similarly, while the seventy trade union murders in Colombia in 2005³¹ represented a decrease from previous years,³² other forms of violence

28. JUSTICE FOR ALL, *supra* note 2, at 19. Even when foreign corporations do not seek the paramilitaries they often become entangled with them or the guerillas through extortion by the group that controls the area. *Id.* at 64–65. The report quotes Ron Oswald, general secretary of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers Association (IUF) (which has affiliates in Colombia) as stating, “It’s certainly a common understanding that in order to do business in Colombia, payments have to be made for at best security, or at worst extortion. The alternative, of course, is not to do business in Colombia.” *Id.* (citing Interview, CINCINNATI ENQUIRER (May 11, 2004)).

As an illustration, the report notes:

In May 2004, Chiquita Brands International, the world’s largest banana company, became the first company to acknowledge protection payments, when it revealed that it has been the subject of a U.S. Department of Justice investigation into this practice. The company said it alerted the Justice Department to the payments back in April 2003 when it became aware that the recipient of the payments was on the State Department’s list of foreign terrorist organizations and that such payments were therefore against the law.

Id. at 65. Indeed, the ELN, FARC, and AUC are all on the U.S. government’s list of foreign terrorist organizations. U.S. State Dept., Foreign Terrorist Organizations Fact Sheet, *available at* <http://www.state.gov/s/ct/rls/fs/37191.htm> (last visited Feb. 28, 2008). ELN is number 28, FARC is number 37, and AUC number 42.

29. *See generally* Kovalik, *supra* note 4 (detailing how a Coca Cola bottling plant and a Drummond Coal Company facility wound up in United States District Court under the Alien Tort Claims Act because of their relationship with paramilitaries who killed trade union members). JUSTICE FOR ALL also discusses Drummond Coal, *supra* note 2, at 32–34, and Coca Cola, *id.* at 34–37.

30. JUSTICE FOR ALL, *supra* note 2, at 18. While only 22% of union members killed between 1991 and December 2003 were leaders, 39.5% of union members killed in 2003 were leaders. *Id.* (citing ESCUELA NACIONAL SINDICAL (ENS), INFORME SOBRE LA VIOLACIÓN A LOS DERECHOS HUMANOS DE LOS SINDICALISTAS COLOMBIANOS ENERO 1–31 DE DICIEMBRE 2003 9 (2004), *available at* http://www.ens.org.co/aa/img_upload/40785c66c10f663e3ec6ea7en03aaa/IS/INFORME_DE_DDHH-DE_SINDICALISTAS_COLOMBIANOS-EN-EL_2005.pdf).

The percentage of union leaders amongst the murdered union members has declined slightly since 2003, with union leaders making up 31.4% in 2004 and 30.2% in 2005.

31. COLOMBIA: ANNUAL SURVEY OF VIOLATION OF TRADE UNIONS RIGHTS (2006), *supra* note 6. The Colombian government reports an even greater decrease in killings of union members, claiming only 40 occurred in 2005. Gustavo Capdevila, *Rights—Colombia: Some Hits, Some Misses on Int’l Report Cards*, RESOURCE CENTRE FOR THE RIGHTS OF INDIGENOUS PEOPLES (June 4, 2006), <http://www.galdy.org/web/index-php?odas=1209&giella1=eng>. It is likely that neither number is correct; I use ENS’s number because the Colombian government has more to gain by making the number as low as possible.

32. I have not yet located either ENS’s or the Colombian government’s numbers for trade union murders in 2004, but both the above cited sources call 2005’s numbers a decrease.

against union members, such as harassment and abductions, have increased.³³

In 2006, there were seventy-seven murders of union members,³⁴ seven more than in 2005, yet still a significant decrease compared to only four years prior. But whatever decrease there has been in union murders is not the result of effective law enforcement by the Colombian government, as very few of the murders have been investigated, let alone solved.³⁵ The violence will likely continue as long as the perpetrators are allowed to act with impunity.³⁶

C. *The Peace and Justice Law*

The problem of violence against union members must be understood in the larger context of the Colombian government's stance towards human rights violations by paramilitaries. The foundation of that policy is the Peace and Justice Law (*Ley de Justicia y Paz*) passed in June 2005.

In August 2002, recently elected Colombian President Alvaro Uribe offered to negotiate for peace with the AUC paramilitaries. On July 15, 2003, the government announced the Rilato Accord, wherein the

33. ENS reports that there was an 88.2% increase in "harassment and persecution" of trade unionists and a 20% rise in abductions of trade unionists. COLOMBIA: ANNUAL SURVEY OF VIOLATION OF TRADE UNIONS RIGHTS (2006), *supra* note 6 (citing information provided by ENS). In total, ENS reports that 2005 saw 444 attacks on trade unionists consisting of "70 murders, 260 death threats, 56 arbitrary arrests, seven attempted murders . . . , 32 cases of harassment, eight forced removals, three disappearances, and one eviction from a person's home." *Id.* ICFTU notes that these figures are not exact because of violations that are not reported. *Id.*

34. E-mail from Esperanza Avalos, Program Officer, Americas, American Center for International Labor Solidarity (Feb. 12, 2007) (spreadsheet listing the victims of trade union murders) (on file with author).

35. According to Colombia's National Prosecutorial Unit on Human Rights and Humanitarian Law, more than 3,000 trade unionists were killed between 1986 and 2002; however, there have only been 376 investigations into trade union murders, and only five guilty verdicts issued. JUSTICE FOR ALL, *supra* note 2, at 20 (citing REPORT TO THE 90TH INTERNATIONAL LABOR CONFERENCE SUBMITTED BY THE COLOMBIAN TRADE UNION FEDERATIONS (June 3–20, 2002), available at <http://www.ilo.org/public/english/standards/reln/ilc/ilc90/reports.htm>).

36. On the necessity of ending impunity to end the violence, the ILO's Committee on Freedom of Association remarked:

In these conditions, the Committee is bound to reiterate the conclusions it reached in its previous examinations of the case, namely, that the lack of investigations in some cases, the limited progress in the investigations already begun in other cases and the total lack of convictions underscore *the prevailing state of impunity, which inevitably contributes to the climate of violence affecting all sectors of society and the destruction of the trade union movement.*

Int'l Labor Organization Committee on Freedom of Association, Case No. 1787. Report No. 337, ¶ 539 (June 2005), available at <http://www.ilo.org/public/english/standards/reln/gb/docs/gb293/pdf/gb-7.pdf> (emphasis added).

paramilitaries agreed to end hostilities and demobilize.³⁷ In return, the government promised to help demobilized paramilitary members reintegrate into society.³⁸ After a tumultuous debate between the Uribe Administration's proposal, which emphasized reintegrating demobilized paramilitaries into society as swiftly as possible,³⁹ and counterproposals from legislators more concerned with holding paramilitaries accountable for their crimes,⁴⁰ the Peace and Justice Law emerged as something of a compromise.

The Peace and Justice Law sentences guerillas and paramilitaries guilty of serious crimes who demobilize to a "deprivation of freedom" of between five and eight years.⁴¹ To qualify under the law guerillas and paramilitaries must cease all illegal activity, confess the facts of their crimes, and promote activities aimed at the demobilization of their group,⁴² among other requirements.⁴³ Colombia's Constitutional Court struck down some of the more controversial provisions of the Law of Peace and Justice in May 2006,⁴⁴ such as placing strict time limits on criminal investigations of demobilized paramilitaries.⁴⁵ The Colombian

37. Arvelo, *supra* note 8, at 425–26 (citing Rialto Accord, arts. 2, 6).

38. *Id.* at 426 (citing Rialto Accord, art. 1).

39. The Uribe Administration's original proposal to meet this promise would have allowed former combatants who admitted to their crimes to be spared jail time and instead "simply lose their rights to (1) serve in any public capacity, (2) bear arms, or (3) move freely" provided they maintain good behavior and took "actions that would effectively contribute to the reparation of victims, the overcoming of the conflict, and the achievement of peace" such as transferring property back to victims or performing social work. *Id.* at 433–34 (citing PROYECTO DE LEY ESTATUTARIA 85 DE 2003, SENADO: POR EL CUAL SE DICTAN DISPOSICIONES PARA FACILITAR LA RECONCILIACIÓN Y CONTRIBUIR A LA REPARACIÓN DE LAS VÍCTIMAS, art. 2, 11(a)–(g), 6, available at <http://www.uasb.edu.ec/padh/revista7/actualidad/proyecto.htm>) (citations omitted).

40. Senator Rafael Pardo put forward an alternative bill, which was supported by human rights groups in Colombia and internationally. Pardo's bill emphasized the government's duty to "investigate, capture, and punish 'effectively' those responsible for grave breaches of human rights and international humanitarian law, and to . . . prevent the recurrence of such violations." *Id.* at 436 (citing LEY POR LA CUAL SE DICTAN DISPOSICIONES PARA LA REINCORPORACIÓN DE MIEMBROS DE GRUPOS ARMADAS ORGANIZADOS AL MARGEN DE LA LEY, QUE CONTRIBUYAN DE MANERA EFECTIVA A LA CONSECUCCIÓN DE LA PAZ NACIONAL (Dec. 14, 2004), art. 5, available at <http://www.seguridaddemocracia.org/does/pdf/extemos/VERDAD%20Y%20REPARACION%20BPPF.doc>).

41. *Id.* at 437–38 (citing Arvelo's translation of the Law of Peace and Justice, arts. 30, 31).

42. *Id.* at 438 (citing Arvelo's translation of the Law of Peace and Justice, arts. 10–11, 30).

43. These other requirements include returning all property illegally acquired as part of past crimes and committing to work, study, or teach during their "deprivation of freedom" period. *Id.*

44. AMNESTY INTERNATIONAL, COLOMBIA: KILLINGS, ARBITRARY DETENTIONS, AND DEATH THREATS—THE REALITY OF TRADE UNIONISM IN COLOMBIA 41 (2007), [http://asiapacific.amnesty.org/library/pdf/AMR230012007ENGLISH/\\$file/AMR2300107.pdf](http://asiapacific.amnesty.org/library/pdf/AMR230012007ENGLISH/$file/AMR2300107.pdf).

45. *Id.* at 41–42.

government responded to this ruling by issuing a decree in September 2006 which revived some of these provisions.⁴⁶

Labor unions in Colombia, and internationally, have been among the fiercest critics of the Law of Peace and Justice, dubbing it the “Law of Impunity.”⁴⁷ The law has been criticized on a number of grounds, perhaps most harshly for requiring sentences that are considered too lenient.⁴⁸ Most seriously of all, observers, including the U.S. State Department, have noted that the law has not stopped paramilitaries from violating the cease fire agreement and committing numerous human rights violations, including murdering union members.⁴⁹ Although the Colombian government sees it as necessary to end the violence, the Law of Peace and Justice could hinder future efforts to hold paramilitaries accountable for crimes against union members.⁵⁰

III. ISSUE: THE ILO AND THE AGREEMENT

The “Tripartite Agreement for the Right of Association and Democracy,” signed by representatives of the Colombian government, Colombian employers, Colombian unions, and the ILO, could lead to an end of the violence against Colombian union members. This section of the Note briefly examines the history of the ILO’s involvement in Colombia and describes the terms of the Agreement.

A. *History of the ILO’s Involvement in Colombia*

The International Labor Organization’s Committee on the Application of Standards has been investigating the violence against union members in

46. *Id.* at 42.

47. COLOMBIA: ANNUAL SURVEY OF VIOLATIONS OF TRADE UNIONS RIGHTS (2006), *supra* note 6.

48. *Id.* (stating that the Peace and Justice Law allows perpetrators of serious crimes to serve their sentences “on farms”). See also American Federation of Labor & Congress of Industrial Organizations (AFL-CIO), Workers’ Rights, Violence and Impunity in Colombia (Jan. 2008), http://www.aflcio.org/issues/jobeconomy/globaleconomy/upload/Colombia_briefing.pdf (detailing how the Law of Peace and Justice could result in the maximum sentence of forty years in prison being reduced to as little as three and a half years).

49. U.S. STATE DEPT., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2005 (Mar. 8, 2006), <http://www.state.gov/g/drl/rls/hrrpt/2005/61721.htm>.

50. The suggestion in JUSTICE FOR ALL, *supra* note 2, at 66, is that the Colombian government must “[p]rotect the human and civil rights of trade unionists by . . . [i]nvestigating, arresting, prosecuting, convicting, and punishing the persons responsible for the killings of approximately 4,000 trade unionists since 1986.” This seems to ignore the possibility that many of these individuals may have already demobilized, confessed, and served their “deprivation of freedom” period in accordance with the Peace and Justice Law, thereby closing the book on those cases.

Colombia for almost as long as the violence has been occurring.⁵¹ In October 2005, the ILO sent a delegation to observe the situation in Colombia.⁵² The committee found that violence against trade unions continued “despite the government’s recognition of the importance of the problem and the numerous efforts made to tackle it . . . the reality is that impunity prevails.”⁵³ The mission led to further dialogue among the Colombian government, workers, employers, and the ILO, which culminated in the creation of the “Tripartite Agreement for the Right of Association and Democracy.”⁵⁴

B. *The Agreement*

The Agreement consists of four components, each of which require action by either the ILO, the Colombian government, or both. The first component calls for “permanent representation” of the ILO in Colombia, focused on “technical cooperation to promote decent work, including the promotion and defense of the fundamental rights of workers” and specifically noting the workers’ right to life and right to organize.⁵⁵ On October 18, 2006, representatives of the Colombian government, unions, and employers organizations (the Tripartite Working Group), assisted by an ILO official, defined the mandate of the ILO representative in Colombia.⁵⁶ The second component calls for the Colombian government

51. Press Release, International Confederation of Free Trade Unions, Tripartite Agreement on a Permanent ILO Presence in Colombia (June 2, 2006), <http://www.icftu.org/displaydocument.asp?Index=991224505&Language=EN> (stating that the ILO’s Committee on the Application of Standards “has been examining the case of Colombia without interruption for almost twenty years”).

52. *Id.*

53. INTERNATIONAL CONFEDERATION OF TRADE UNIONS, *supra* note 6.

54. The Agreement was signed on June 1, 2006, in Geneva by the Deputy Minister of Industrial Relations, representatives of the three main trade union associations (CUT, CGT, and CTC) and a representative of ANDI, an employers association. “Tripartite Agreement for the Right of Association and Democracy,” E-mail from Maria Marta Travieso, Standards Dept. of ILO, to author (Sept. 9, 2006, 04:30 CST) (on file with author).

55. Agreement, *supra* note 54, para. (a). The paragraph reads in its entirety:

The Colombian Government will agree with the ILO Office and with the support of workers and employers on the renewed presence of this international Organization in the country, in the form of a permanent representation of the Organization, with as its principal priorities technical cooperation to promote decent work, including the promotion and defense of the fundamental rights of workers, their trade union leaders and organizations, particularly in relation to life, the right to organize, freedom of association and expression, collective bargaining, and free enterprise for employers. The parties urge the Governing Body to give effect to this agreement, as well as to the logistical and structural aspects of its implementation.

56. International Labor Organization Committee on Technical Cooperation, *Colombia: Tripartite Agreement on Freedom of Association and Democracy*, at app. I, para. 8, GB. 297/TC1512 (Nov.

and the ILO to ensure that the program has sufficient financial support,⁵⁷ while the third component calls for the parties to “give strict effect to the findings of the special investigation group established by the Office of the Attorney General of the Nation for the investigation and punishment of crimes against the life and freedom of trade union leaders and workers.”⁵⁸ The final component calls for a “National Dialogue Commission on Labour and Wage Policy” to be convened “with a permanent agenda,” with the ILO being invited to join these meetings.⁵⁹

IV. ANALYSIS

The major Colombian trade unions issued a statement declaring that they expect “significant progress to result from the implementation of this agreement.”⁶⁰ Colombia’s Deputy Minister of Labor Relations hailed it as “an historic document.”⁶¹ The United States Trade Representative’s statement on the signing of the U.S.-Colombia Trade Promotion Agreement noted that the Tripartite Agreement was a sign of the progress made by the Uribe Administration in the area of human rights.⁶² Yet despite these optimistic statements, it is uncertain whether this agreement will lead to an end to violence against union members in Colombia.

2006), <http://www.ilo.org/public/English/standards/relm/gb/docs/gb297/pdf/tc-5-2.pdf> [hereinafter *ILO Agenda*]. The signatories for the Colombian government, unions, and employers, were the same as those who signed the Agreement. Compare “Tripartite Agreement for the Right of Association and Democracy,” *supra* note 54, with *ILO Agenda*, app. III.

57. Agreement, *supra* note 54, para. (b). The paragraph reads in its entirety:

In relation to technical cooperation, the Colombian Government undertakes to work for economic support to guarantee the implementation of the proposed aims and will request the financial support of the ILO for this purpose. In this respect, the National Government will make available the resources to ensure the commencement and sustainability of the programme. We also request the ILO to seek additional resources from donor countries and other international bodies to strength the cooperation programme.

58. Agreement, *supra* note 54, para. (c). This paragraph is quoted in its entirety except for an introductory clause: “With a view to combating impunity, the parties agree . . .”

59. Agreement, *supra* note 54, para. (d). The paragraph in its entirety reads:

We, the Colombian Government, employers and workers, undertake to promote and achieve the aims of the ILO in relation to fundamental labour rights. For this purpose, the National Dialogue Commission on Labour and Wage Policy will be convened with a permanent agenda and the ILO will be invited to accompany its meetings.

Id.

60. Tripartite Agreement on a Permanent ILO Presence in Colombia, *supra* note 51.

61. Capdevila, *supra* note 31, at 1.

62. Press Release, Office of the United States Trade Representative, United States and Colombia Sign Trade Promotion Agreement (Nov. 22, 2006), http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Colombia_Sign_Trade_Promotion_Agreement.html.

This section evaluates the Agreement's chances for success by focusing on the establishment of an ILO representative in Colombia (the first component), and the Attorney General's investigations into the trade union murders (the third component), as these are widely regarded as the most important for the success of the agreement.⁶³ By examining the details of the ILO representative's mandate in Colombia and the efforts of the Colombian Attorney General's Special Investigative Group, it becomes clear that continued progress towards ending violence against union members in Colombia depends upon the Colombian government's commitment to the problem.

63. Press Release, International Labor Organization, ILO Governing Body Concludes 297th Session: Considers Labor Situation in Myanmar, Belarus and Other Countries (Nov. 17 2006), http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_080622/index.htm (noting that the Agreement included a permanent ILO representative and a "careful follow-up" of the findings of the Public Prosecutor). *See also* Capdevila, *supra* note 31 (an article about how the Agreement emphasizes an ILO permanent presence in Colombia and the problem of impunity; the article does not mention financing of the Agreement or the Commission on Labor and Wage Policy).

Focusing on the first and third components of the Agreement does not diminish the importance of the other two components to the Agreement's success. In particular, the second component—funding—is essential for the success of both the technical cooperation program and the Attorney General's investigation.

Both Colombia and the ILO have severe budget problems: Colombia had a \$5.132 billion budget deficit in 2007, and a public debt estimated at 53.9% of the GDP. CIA, *WORLD FACTBOOK* (2007), available at <http://www.cia.gov/library/publications/the-world-factbook/goes/co.html>. As of 2002, the ILO also had a deficit of \$37 million. Encyclopedia of Nations, *The International Labor Organization: Budget* (2007), <http://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-International-Labour-Organization-ILO-BUDGET.html>. Nevertheless, both Colombia and the ILO have already come up with some money to finance the Agreement. The Colombian government has announced its hope to spend \$5 million over the next four years to finance four projects under the technical assistance program, with \$1.8 million in the next budget earmarked for preliminary activities on these projects. *ILO Agenda Nov. 2006*, *supra* note 56, at app. I, para. 11. The ILO has set aside a "cash surplus fund" to "finance support activities for the implementation of the Tripartite Agreement," which currently amounts to just over \$1 million. *Id.* at app. I, para. 14 (as of November 2006, the cash surplus fund held \$1,093,041).

Both the ILO and Colombia have committed to seeking foreign aid to help finance the Agreement. The ILO's permanent representative in Colombia is "encouraging member States also to provide resources" in support of the Colombia program. *Id.* at app. I, para. 15. The Colombian government has put the issue of "decent work" in its National Development Plan, thus allowing it to request foreign aid in support of the program. *Id.* at app. I, para. 13.

The "National Commission on Wage and Labor Policies," *infra* text accompanying note 104, appears to be primarily an instrument for tripartite dialogue and is discussed briefly in that context. It also appears to have been originally created in the Colombian Constitution. *See infra* note 81.

A. *Workers' Rights and Technical Cooperation*

The first paragraph of the Agreement calls for the establishment of an ILO presence in Colombia focused on protecting workers' rights, especially their right to organize and other rights necessary for unionizing.⁶⁴ The heart of that paragraph is the declaration that the ILO will provide "technical cooperation" to Colombia to further the goals of the Agreement.⁶⁵

Since 1998, over fifty nations have sought ILO technical cooperation to improve their capacity for the realization of workers' rights, especially their right to organize.⁶⁶ The ILO's main types of technical cooperation programs for furthering workers' rights are awareness raising, labor law reform, administrative reform and promotion of alternative dispute

64. See Agreement, *supra* note 54, at para. (a).

65. The paragraph also mentions another key ILO concept, "decent work," which has been at the heart of the ILO's development programs since 1999. INTERNATIONAL LABOR ORGANIZATION COMMITTEE ON EMPLOYMENT AND SOCIAL POLICY, A REVIEW OF THE ILO DECENT WORK PILOT PROGRAM, 1, Nov. 2003. The ILO describes "decent work" as follows:

The overarching objective of the ILO has been re-phrased as the promotion of opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Decent work is the converging focus of the four strategic objectives, namely rights at work, employment, social protection and social dialogue. Decent work is an organizing concept for the ILO in order to provide an overall framework for action in economic and social development.

ILO, DECENT WORK: THE THEME IN BRIEF (2006), <http://www.ilo.org/public/english/bureau/integration/decent/index.htm> (website cannot be accessed without permission).

The ILO considers freedom of association and the right to organize essential parts of the decent work concept. ILO Director-General, *Your Voice at Work: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, VIII (2000).

In 2002–2003, the ILO and interested member nations began designing "Decent Work Pilot Programs" to help implement the decent work concept at the national level. A REVIEW OF THE ILO DECENT WORK PILOT PROGRAM, at 1–2. However, only one of the original seven countries with approved pilot programs, Bahrain, focused on the right to organize. See generally ILO, NATIONAL POLICY GROUP DEPARTMENT OF POLICY INTEGRATION, DECENT WORK PILOT PROGRAM COUNTRY BRIEFS 3–9 (July 2003). Therefore, although freedom of association is encompassed in the decent work concept, and is mentioned in the Tripartite Agreement, there is no history to indicate that a decent work program would be as useful in Colombia as the ILO's other technical cooperation programs. However, it should be noted that the International Trade Union Confederation considers a decent work program essential for the improvement of labor conditions in Colombia. INT'L TRADE UNION CONFEDERATION], INTERNATIONALLY-RECOGNIZED CORE LABOR STANDARDS IN COLOMBIA: REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF COLOMBIA 17 (Nov. 2006). However, the report also addresses forced labor, employment discrimination, and other labor problems besides violence against union members. *Id.*

66. ILO Director-General, *Organizing for Social Justice: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 82 International Labour Conference, Report 1(B) (92nd Session 2004), http://www.ilo.org/dgn/declares/DECLARATION_WEB.GLOBALREPORTDETAILS?var_language=Enofvar_PublicationsID=2973&var_ReportType=Report# [hereinafter *Organizing for Social Justice*].

resolution, and strengthening the organizing and collective bargaining ability of workers' organizations and employers' organizations.⁶⁷ All but the last of these types of programs are included in the mandate of the ILO representative in Colombia.⁶⁸

1. Case Studies: The Importance of Political Will

Before evaluating the technical cooperation program to be used in Colombia, it is worth noting the factors that have led to successful ILO programs elsewhere. While none of the ILO's past technical cooperation programs faced a situation as extreme as Colombia's in terms of violence against workers, a 2000 ILO report described two "success stories" in historically difficult situations that have some parallels to Colombia: Indonesia and South Africa.⁶⁹

In both Indonesia and South Africa, the ILO became involved in a situation that posed an extreme threat to workers' rights. In Indonesia, there were murders, disappearances, arrests, and detentions of trade union members.⁷⁰ In South Africa, Apartheid had created vast economic inequality, including the lack of recognition of unions founded by blacks.⁷¹ The types of ILO programs varied between the countries. While the Indonesian effort focused almost entirely on labor law reform,⁷² the South African programs included not only legal reforms, but also the formation of a tripartite National Manpower Commission and training programs that fostered the development of collective bargaining and alternative dispute resolution.⁷³

The ILO noted that in both cases, the key to the success of the technical cooperation programs was that the governments of the countries exhibited

67. *Id.* at 83.

68. The fourth method, capacity raising for unions and employers organizations, which teaches them how to handle everyday tasks such as grievance procedures, is primarily used in countries where these types of organizations have not historically existed. *Id.* at 92–93. Bulgaria, Romania, Niger, Benin, Senegal, Togo, and Burkina Faso are cited as nations where capacity building programs for unions and employer organizations have been a priority. *Id.* at 93. None of the programs in the ILO representative in Colombia's mandate appear to be capacity building functions.

69. *Your Voice at Work*, *supra* note 65, at 46–54. The other two case studies, which seem to have fewer parallels with Colombia, were Poland and Costa Rica.

70. *Id.* at 46.

71. *Id.* at 48.

72. *Id.* at 46. These legal reforms led to the formation of a number of new trade unions and the release of union members who were unjustly imprisoned. *Id.*

73. *Id.* at 48. The emphasis on creating a tripartite commission and promoting alternative dispute resolution is a notable similarity between the Colombian and South African ILO programs. *See infra* notes 104 and 105 and accompanying text.

the political will to resolve their labor problems.⁷⁴ Indeed, the ILO emphasized that while it was involved in the labor law reform process in Indonesia, the Indonesian government wrote the new laws with input from workers and employers.⁷⁵ Similarly, the ILO's South African programs reinforced a framework developed by the post-Apartheid government.⁷⁶

2. Awareness Raising

The ILO considers spreading awareness of the workers' right to organize to employers, workers, and government officials in ILO member nations to be one of its most important tasks.⁷⁷ Several of the responsibilities of the ILO permanent representative in Colombia include an awareness-raising component.

The ILO representative has a duty to "promote and organize training activities" for both unions⁷⁸ and all three branches of the government⁷⁹—yet it does not have a similar mission to organize training activities for employers (although it did provide such training in October 2006, at the invitation of the largest employer's association in Colombia).⁸⁰ The ILO representative in Colombia is also assigned a broader awareness-raising

74. *Your Voice at Work*, *supra* note 65, at 47, 48–49.

75. *Id.* at 47. In discussing the political and economic changes in Indonesia, the ILO emphasizes the importance of the 1997 Asian financial crisis. *Id.* at 46.

76. *Id.* at 48–49.

77. *Id.* at 98. The report states that:

[m]aking freedom of association and collective bargaining a reality for more people also involves spreading the word about what these rights mean, how they are exercised, and the possibilities they offer. In addition to encouraging a broader culture of freedom of association and collective bargaining, disseminating relevant information can facilitate specific organizing and collective bargaining efforts.

Id. See also *Your Voice at Work*, *supra* note 65. "Part of the key to promoting fundamental principles and rights lies in advocacy and awareness-raising measures." *Id.* at 84. That report also notes that awareness raising is especially important for gaining recognition of freedom of association:

The status of freedom of association and collective bargaining as fundamental rights is less firmly established in the minds of policy-makers, public opinion, and even the ILO's direct constituency, than is the case for the other three categories contained in the Declaration [child labor, forced labor, and discrimination]. The prospect for full realization of this category or principles and rights will be immeasurably enhanced if the climate of public opinion can be shifted in its favor.

Id. at 60. From 2000–2004, the ILO hosted 42 seminars on the subject around the world with approximately 1,175 participants. *Organizing for Social Justice*, *supra* note 66, at 101. Based on the location and the attendees of the seminars, the subject matter varied from freedom of association to a program promoting collective bargaining as a form of social dialogue, to a program about recourse to the ILO and its promotional and supervisory machinery. *Id.*

78. *ILO Agenda*, *supra* note 56, at app. III, para. 4.

79. *Id.* at app. III, para. 3.

80. *Id.* at app. I, paras. 22, 23.

task, which is to “[p]romote . . . a culture of dialogue and compliance with the obligations and rights derived from the Colombian Constitution⁸¹ and from the ILO’s conventions.⁸²” The representative will also have the duty

81. The articles of the Colombian Constitution that are most likely referred to here are Article 53, which declares, *inter alia*, that “international labor agreements duly ratified part [sic] of domestic legislation” which would include the ILO conventions that Colombia has ratified. In addition, Article 55 declares that “[t]he right of collective bargaining to regulate labor relations, with the exceptions provided by law, is guaranteed. It is the duty of the state to promote negotiation and other measures necessary for the peaceful resolution of collective labor conflicts.” Finally, Article 56 establishes that “[t]he right to strike is guaranteed, except in the case of essential public services defined by the legislature.” Article 56 also establishes the Labor and Wage Commission described in the fourth component of the Agreement. CONSTITUTION OF COLOMBIA.

Although the language of the Constitution seems to clearly establish many fundamental workers’ rights, the American Center for International Labor Solidarity notes that “[i]n effect, many constitutional protections for core labor standards are trumped by Law 50 of 1990, which gives employers broad powers to dismiss workers on the ground of business necessity.” JUSTICE FOR ALL, *supra* note 2, at 22 (citing International Labor Organization, *Estudio Comparado: Tendencias y contenidos de la negociación colectiva: Fortalecimiento de las Organizaciones Sindicales de los Paises Andinos*, Lima: 1998. Ch. 1., available at <http://www.oitandina.org.pe/publ/regional/doc88>).

Despite the fact that Article 93 of the Constitution declares that “[i]nternational treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically,” the ILO treaties, which do not allow for suspension in time of emergency, are often undermined by Law 50 of 1990, and other domestic laws. *Id.*

82. The relevant conventions refer to ILO Conventions Nos. 87 and 98. See “Tripartite Agreement for the Right of Association and Democracy,” pmb.

Convention No. 87, titled “Convention Concerning Freedom of Association and Protection of the Right to Organize” was written on June 17, 1948, and joined by Colombia in 1976. It contains, *inter alia*, the following provisions:

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

1. Workers’ and employers’ organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers’ and employers’ organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers’ and employers’ organizations.

International Labor Convention No. 87 Concerning Freedom of Association—Protection of the Right to Organize, June 17, 1948, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?CO87>.

of informing the Colombian government, employers, and workers of “comments made by the ILO’s supervisory bodies”⁸³ and of issuing a biannual progress report on the implementation of its mandate.⁸⁴

Programs informing government officials about the rights of unions, and programs informing union members themselves of these rights, could help develop the political will necessary to ensure an end to trade union violence. The promotion of tripartite dialogue will provide more opportunities for discussion among union members, employers, and the government, which may lead to a better understanding and increased respect among the three groups. Finally, by raising awareness of statements made by other ILO bodies about Colombia and issuing its own progress reports, the ILO representative will remind the Colombian parties that the international community is paying attention to Colombia’s labor problems, which should further increase their resolve to end this problem.⁸⁵

Despite the benefits of the awareness raising programs planned for the ILO representative in Colombia, the effectiveness of awareness raising is limited. To the extent that violence against union members stems not from ignorance of workers’ rights, but rather from hostility towards workers and unionization, awareness raising does not address the cause of the

Convention No. 98, titled “Convention Concerning the Application of Principles of the Right to Organize and to Bargain Collectively,” went into force on July 4, 1950, primarily forbids discrimination against union members. International Labor Organization Convention Concerning the Application of Principles of the Right to Organize and to Bargain Collectively, July 14, 1950, available at <http://www.ilo.org/ilolex/cgi-lex/convde.p1?CO98>. *ILO Agenda Nov. 2006*, *supra* note 56, at app. III, para. 2.

83. *Id.* at app. III, para. 10. This duty specifically mentions statements made by the Committee on Freedom of Association.

84. *Id.* at app. III, para. 15.

85. The way the international community, and particularly the ILO, views Colombia seems to concern the Colombian government. See Capdevila, *supra* note 31 (mentioning that Colombian official interviewed emphasized that the ILO presence in Colombia is not described as an “office,” which implies sanctions, and therefore, the Agreement should not be considered a sanction by the ILO).

A number of commentators on the Colombian situation have emphasized the constructive role that citizens of other nations could play by pressuring their governments into changing their policies towards Colombia. Daniel Kovalik writes:

Although lawsuits help shed light on atrocities, they are not sufficient to end the military and corporate support of human rights abusers in Colombia, or to save the lives of Colombia’s trade unionists. Such goals will only be attained when a critical mass of concerned citizens pressure the government and U.S.-based corporations to bring an end to anti-union violence in Colombia via activities such as lobbying within the U.S. Congress, petitioning and protests, organizing grassroots movements in Colombia, and providing direct assistance to trade unions.

Kovalik, *supra* note 4, at 407. See also, JUSTICE FOR ALL, *supra* note 2, at 69–73 (detailing ways the U.S. government, the international community, multinational corporations, and international trade unions could help improve the situation in Colombia).

problem.⁸⁶ Indeed, in March 2007, a representative of one of the Colombian unions at the ILO stated that “technical cooperation [is] useless unless it contribute[s] to reducing anti-trade union violence.”⁸⁷ That statement was echoed in January 2008 by the AFL-CIO, which criticized the Colombian government for interpreting the technical cooperation element of the Tripartite Agreement to “include only workshops and seminars” with no “verification or involvement of the office in protection of labor rights.”⁸⁸

3. *Legal Reform*

The ILO also helps member nations reform their labor laws to provide greater protection for workers and ensure their right to organize.⁸⁹ The ILO representative’s mandate includes two major legal reform responsibilities: to provide advice “on the formulation of proposals for standards related to its mandate,”⁹⁰ and to “attend meetings at which bills relating to the mandate are discussed.”⁹¹ It is notable that both legal reform tasks given to the ILO representative require the consent of the government before the ILO representative can participate in the process.⁹²

It is unclear whether the ILO representative will be limited to participating in the legal reform process with regard to bills and regulations relating to labor law, or whether he or she will also be able to be involved in criminal law reform. This is important because, while Colombia’s labor laws could be reformed to be more hospitable towards unions,⁹³ the problem of violence against union members will be most

86. See *supra* notes 22–23, 26–28 and accompanying text. It is unlikely that the paramilitaries who carry out many of the violent acts against union members would cease as a result of awareness raising programs.

87. International Labor Organization Governing Body, *Thirteenth Item on the Agenda: Report of the Committee on Technical Cooperation* [hereinafter *Governing Body Agenda*], Mar. 2007, at para. 57.

88. AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS, WORKERS’ RIGHTS, VIOLENCE AND IMPUNITY IN COLOMBIA 16 (2008).

89. *Organizing for Social Justice*, *supra* note 66, at 88.

90. *ILO Agenda Nov. 2006*, *supra* note 56, at app. III, para. 5.

91. *Id.* at app. III, para. 6.

92. The ILO representative can only provide advice “at the request of the Government and the social partners,” *id.* at app. III, para. 5, and can only attend legislative meetings “if invited by the legislature,” *id.* at app. III, para. 6.

93. The Colombian labor code recognizes the right to organize and the right to strike, although both are restricted in ways that have drawn criticism from the ILO. JUSTICE FOR ALL, *supra* note 2, at 21–25. For example, “[A]dministrative authorities allow employers to challenge legal procedures for union registration and to dispute the decisions of union executive boards to register a union. This violates the ILO’s core labor Conventions 87 and 98, which prohibits any employer interference in

effectively addressed through changes in criminal law, and particularly criminal law enforcement, rather than through labor law reform alone.⁹⁴

Criminal law reform related to violence against union members may be seen as part of the ILO representative's mandate to protect the "physical integrity" of workers⁹⁵ and to "[m]aintain contact" with the Office of the Attorney General regarding investigations into acts of violence against union members.⁹⁶ If the ILO representative chooses to become involved in criminal law reform, and if the government allows the ILO representative to be involved in criminal law reform, there would be an opportunity for significant gains in the effort to end violence against union members in Colombia.

4. *Administrative Reform and Dispute Resolution*

The ILO also assists nations in reforming how their executive and judicial authorities implement labor law,⁹⁷ which includes promoting alternative forms of resolution for disputes between workers and employers.⁹⁸ The ILO representative has numerous responsibilities that may impact how Colombian executive and judicial authorities administer labor law and other laws that affect the rights of union members.⁹⁹

trade union operation." *Id.* at 22 (citing Colombian Trade Union Federation, REPORT TO THE 90TH INTERNATIONAL LABOR CONFERENCE (June 3–20, 2002), available at <http://www.ilo.org/public/english/standards/reIm/ilc/ilc90/reports.htm>).

JUSTICE FOR ALL also notes the ILO Committee of Experts criticized various legal obstacles to striking in Colombia including the prohibition of federations and confederations of trade unions on calling strikes, and the ability of the minister of labor to order a strike to arbitration when it lasts longer than a certain time period. JUSTICE FOR ALL, *supra* note 2, at 24.

94. The American Center for International Labor Solidarity states that:

[A]chieving respect for workers' rights in Colombia will require not only addressing the typical needs of reforming labor law to meet international core labor standards while improving enforcement. It will also require an end to the violence and impunity stemming from a protracted armed conflict that has degenerated into military camps eager to protect their drug profits.

Id. at 59.

95. *ILO Agenda*, *supra* note 56, at app. III, para. 1.

96. *Id.* at app. III, para. 13.

97. *Organizing for Social Justice*, *supra* note 66, at 90–92.

98. *Id.* at 97–98. This is an area where the ILO has already been rather active in Colombia, training ninety Colombian labor court judges in international labor court standards. *Id.* at 92. Additionally, the ILO has worked with the United States Federal Mediation and Conciliation Service to advise Colombian workers and employers on alternative dispute resolution. *Id.* at 97.

99. The American Center for International Labor Solidarity criticizes the Colombian judiciary and executive's administration of labor law, stating:

Anti-union discrimination can be curtailed with effective enforcement. However, the Colombian labor courts frequently refuse to apply ILO conventions as a source of law, despite the constitutional case law on the subject. Even where judges acknowledge that

These responsibilities include the previously mentioned duty to contact the Attorney General regarding investigations into trade union violence,¹⁰⁰ the ability to participate in meetings of committees designed to speed up the investigations of violence against union members (at the Attorney General's request),¹⁰¹ the ability to provide advice about the implementation of various ILO conventions,¹⁰² and the ability to foster the creation of supervisory mechanisms related to those ILO conventions.¹⁰³

The ILO representative has also been given a number of duties that promote new forms of alternative dispute resolution, primarily through the creation of new forums for tripartite dialogue. These include the authority to “[p]articipate in the meetings of the Standing Committee on Labor and Wage Policies, and in all other tripartite social dialogue forums,”¹⁰⁴ and to “[p]romote the resumption of the work of the Special Committee on the Handling of Conflicts . . . and participate in its meetings.”¹⁰⁵

It is notable that the ILO representative's authority varies among these responsibilities, from being given the unqualified authority to participate in the meetings of the Standing Committee on Labor and Wage Policy, to needing to be invited by the Attorney General to participate on a committee that would speed up the investigations of trade union murders. As the ILO representative's responsibilities become more related to criminal law enforcement, as opposed to labor law, the more tentative his or her authority becomes.

5. Conclusion: Technical Cooperation and Political Will

The ILO's case studies of past technical cooperation successes in difficult situations note the importance of political will and government

unionists have been dismissed in violation of the union privilege for protection against dismissal (*fuero sindical*), they routinely refuse to order reinstatement, arguing that the right of the public administration to restructure the organization prevails, or that it is impossible to reinstate them because the positions no longer exist.

The Ministry of Social Protection exhibits a frequent lack of will, but in any case does not have the resources to effectively combat these anti-union practices.

JUSTICE FOR ALL, *supra* note 2, at 37 (citing COLOMBIAN TRADE UNION FEDERATIONS REPORT TO THE 90TH INTERNATIONAL LABOR CONFERENCE (June 3–20, 2002), available at <http://www.ilo.org/public/English/standards/reln/ilc/ilc90/reports.htm>, and cases discussed in ILO Committee on Freedom of Association, *Report No. 327*, Case No. 1962 (2002)).

100. *ILO Agenda*, *supra* note 56, at app. III, para. 13.

101. *Id.* at app. III, para. 14.

102. *Id.* at app. III, para. 9.

103. *Id.* at app. III, para. 11.

104. *Id.* at app. III, para. 7.

105. *Id.* at app. III, para. 8.

leadership in bringing about a societal change in the amount of respect given to the rights of workers to freely organize. Applying this to the Colombian situation, the success of the ILO permanent representative's goals depends on the Colombian government's interest in its success. While there are certainly ways the ILO representative can have an impact on the government's view of workers rights—such as through the awareness-raising programs and the tripartite dialogue forums—the government has more power in determining how effective the ILO representative can be in putting an end to violence against union members.¹⁰⁶

There are reasons to be cautiously optimistic about the Colombian government's interest in the success of the ILO representative. Although, in September 2006, labor groups organized an International Day of Action to protest the Colombian government's lack of progress on setting up the ILO representative in Colombia,¹⁰⁷ that was quickly followed by a tripartite meeting that led to the formation of the Working Group, which defined the mandate of the ILO Office.¹⁰⁸ The office was subsequently opened on November 23, 2006,¹⁰⁹ with the representative in charge of the office arriving in Bogota on January 15, 2007.¹¹⁰

B. Attorney General's Special Investigative Group

As beneficial as the ILO's technical cooperation program could be in resolving the problem of violence against trade union members in Colombia, only the Colombian government has the power to end the culture of violence with impunity. This is the role played by the Attorney General's Special Investigative Group, the third component of the Agreement.

Human rights groups have been critical of the Attorney General's Office under the Uribe Administration, claiming that it is hostile to human

106. See *supra* note 92 and accompanying text.

107. See Press Release, International Confederation of Free Trade Unions, International Day of Action for Colombia (Sept. 26, 2006), available at <http://www.icftu.org/displaydocument.asp?Index=991225067&Language=EN> (detailing Colombian trade unions' unhappiness with the government's pace in having the permanent ILO office set up).

108. *ILO Agenda*, *supra* note 56, at app. I, para. 4.

109. INTERNATIONALLY-RECOGNIZED CORE LABOR STANDARDS IN COLOMBIA, *supra* note 65, at 4. It should be noted that the same report calls the creation of an ILO office in Colombia the "key point" in the agreement. *Id.* at 3.

110. International Labor Organization Committee on Technical Cooperation, *Fourth Item on the Agenda: Technical Cooperation Program for Colombia*, para. 5, Mar. 2007.

rights.¹¹¹ In addition, the fact that under the Uribe Administration public sector unions have been the hardest hit by violence¹¹² leads some to believe that the Colombian government is not interested in respecting workers' rights.

However, the Attorney General's Office has made significant progress regarding the investigation of trade union murders since the signing of the Agreement. The Attorney General's Office set up "a special investigation group comprising of five special district attorneys" within the Human Rights Unit to investigate attacks on union members.¹¹³ After evaluating the caseload this unit would face, the number of attorneys was increased to thirteen.¹¹⁴ This investigative group will be supervised by a committee that includes union members, employers, and government officials.¹¹⁵ On September 11, 2006, Colombia's Attorney General held a meeting with major labor unions, employers' organizations, and the Vice-President, to discuss 120 cases of attacks on union members that the workers had pre-selected for investigation,¹¹⁶ using criteria to ensure that they would be representative of the violence Colombian union members typically face.¹¹⁷ The Attorney General also announced an inter-administrative directive that would speed up the investigative process for crimes against union members and develop plans to combat those crimes.¹¹⁸ Finally, the

111. JUSTICE FOR ALL, *supra* note 2, at 19. The Report states that:

Although the Colombian government has thousands of cases to pursue, it has failed to investigate, prosecute, and bring to justice those responsible for the vast majority of murders committed against human rights defenders, and has even eroded its own ability to do so. Within 72 hours of taking office in July 2001, Attorney General Osorio forced the resignations of a number of high ranking and veteran officials, among them the current and former directors of the Human Rights Unit.

Id. It is worth noting that Mr. Osorio is no longer Colombia's Attorney General. CIA, *World Leaders 2008, Chiefs of State and Cabinet Members of Foreign Governments*, available at <https://www.cia.gov/library/publications/world-leaders-1/index.html> (last visited Mar. 28, 2008).

112. JUSTICE FOR ALL, *supra* note 2, at 19. In 2005, forty-four of the seventy trade unionists murdered were teachers. *Id.* (citing Escuela Nacional Sindical, Informe sobre la violación a los derechos humanos de los y las sindicalistas colombianas en el año 2005 10 (2006), available at http://www.ens.org.co/aa/img_upload/40785cb6c10f663e3ec6ea7ea03aaa15/INFORME_DE_DDHH_DE_SINDICALISTAS_COLOMBIANOS_EN_EL_2005.pdf).

113. ILO Agenda, *supra* note 56, at app. I, para. 19.

114. INTERNATIONAL TRADE UNION CONFEDERATION, 2007 ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS: COLOMBIA (2007), available at <http://survey07.ituc-csi.org/getcountry.php?IDCountry=COL&IDLang=EN>.

115. ILO Agenda, *supra* note 56, at app. I, para. 20.

116. *Id.* at app. I, para. 16.

117. ILO Committee on Freedom of Association, *Report 343*, para. 383, 2006. These criteria include that the cases be diverse in terms of both where and when they happened, that they include cases with female victims, and, perhaps most importantly, that they include cases which implicate guerillas, paramilitaries, and state actors.

118. ILO Agenda, *supra* note 56, at app. I, para. 17.

government has financed the investigation, with \$1.7 million of the Attorney General's budget earmarked for the Special Investigative Group and other programs designed to speed up the investigations of trade union murders.¹¹⁹

Although the actions taken by the Attorney General's office are certainly positive, especially the involvement of unions in selecting the cases for investigation and supervising the investigations, a number of troubling questions still remain.¹²⁰ Most notably, there is the legal question of whether the Special Investigative Commission will be allowed to prosecute and sentence paramilitaries involved in union murders if the paramilitaries demobilize and confess to the crimes in accordance with the Peace and Justice Law.¹²¹ The ILO has noted that the government has not answered this question to its satisfaction.¹²² There is also the larger question of the breadth of the investigation and the freedom given to the investigators: will they be willing and able to address the issue of government and corporate complicity in the murders? The investigators have been assigned cases that implicate state actors,¹²³ but will they follow through on investigations when the killers are members of the Colombian military?

Perhaps most importantly, there is the question of whether the government's willingness to investigate trade union murders will translate into a willingness to change other government policies that contribute to the atmosphere of violence that surrounds trade unions in Colombia. For example, will they be willing to provide effective protection to trade unionists who believe their lives are in danger and end a policy of hostility towards public sector unions? It is only by making changes that go beyond the Agreement that the Colombian government could prove to critics that it sincerely desires to end violence against union members.¹²⁴

119. *Id.* at app. I, para. 12.

120. Despite repeated emails to the Colombian Attorney General and the Colombian embassy in Washington, D.C., including three in the two weeks before I finished this Note, I did not receive any response from them, and therefore do not have their answers to these questions.

121. *See supra* notes 41–48 and accompanying text.

122. ILO Committee on Freedom of Association, Report 348, para. 343, 2007.

123. *See supra* note 117 and accompanying text.

124. JUSTICE FOR ALL, *supra* note 2, at 66–68 (describing what the American Center for International Labor Solidarity sees as the role of the Colombian government in improving the condition for workers in Colombia, including going beyond solving the problem of violence against union members to other labor problems in Colombia, such as forced labor and child labor).

V. CONCLUSION

The problem of violence against trade union members in Colombia is one with a multitude of contributing factors. There is no way that the “Tripartite Agreement for the Right of Association and Democracy” can, by itself, end the violence. But the Agreement is a step in the right direction, and if the Colombian government demonstrates the political will to make the Agreement as effective as possible, it could be a very significant step.

A member of the American Center for International Labor Solidarity remarked that progress is occurring in Colombia, but it is slow.¹²⁵ In 2007, the first year that the ILO representative was stationed in Colombia, the number of trade union murders decreased to thirty-eight.¹²⁶ However, as the AFL-CIO noted, Colombia remains “in a class of its own.”¹²⁷ Although the establishment of the ILO office has been praised by all parties, workers’ groups express concern that the office is not currently receiving “adequate human and financial resources” in order to ensure its success.¹²⁸ Indeed, it consists of one representative and one secretary, with no legal or technical support.¹²⁹ Nevertheless, the mere fact that the Colombian government, employers, and unions have expressed a willingness to work together to create not only the Agreement, but to also define the scope of the ILO representative’s mandate, is very significant progress.

The progress made in the formation and funding of the Attorney General’s Special Investigative Group shows that the Colombian government appears to be fulfilling its role, although its commitment to the Agreement is doubted by some workers’ rights advocates.¹³⁰ Certainly, the government’s past record on workers’ rights, and human rights in general, provides reason to be skeptical about its interest in ending violence against union members.¹³¹ Nonetheless, given the importance the

125. Email from Esperanza Avalos, Program Officer, Americas, American Center for International Labor Solidarity, to author (Feb. 12, 2007) (on file with author).

126. WORKERS’ RIGHTS, VIOLENCE AND IMPUNITY, *supra* note 88, at 3.

127. *Id.*

128. Governing Body Agenda, *supra* note 87, para. 57.

129. WORKERS’ RIGHTS, VIOLENCE AND IMPUNITY, *supra* note 88, at 16.

130. *Id.* at 16 (stating the Colombian government has shown a “lack of respect for ILO” and that the AFL-CIO has “serious concerns about the lack of political support for the office”).

131. Email from ITUC TURights Representative (identified only as F.), to Nancy Ramirez and Manuela Chavez (Feb. 12, 2007), contained this quote from my email “I am interested whether they think the government is serious about its commitment to ending the violence” with the comment “I think we have some explaining to do!” Email forwarded to author by Nancy Ramirez, of International Trade Union Confederation, on Feb. 12, 2007 (on file with author).

ILO places on political will for the success of its technical cooperation programs, the success of the Tripartite Agreement depends largely on the will of the Colombian government.

This does not mean that there is nothing that anyone outside of the Colombian government can do to promote the success of the Tripartite Agreement. In the year since I first submitted this Note for publication, two reports on the issue of violence against union members in Colombia have been issued: one by Amnesty International¹³² and another by the AFL-CIO.¹³³ Hopefully these reports, and others like them, will keep the attention of the international community, especially the labor and human rights communities, focused on Colombia. It is essential that the issue of violence against union members in Colombia continues to be raised around the world. If other nations provide political and financial support for the ILO office in Colombia, either in lieu of or as a condition of other types of aid to Colombia,¹³⁴ that pressure would likely make President Uribe's government more willing to meet its obligations under the Tripartite Agreement. Indeed, the United States, which provided \$728 million in foreign aid (primarily military) to Colombia in 2006,¹³⁵ could have a substantial impact on this issue, if it desires.

While violence against labor unions in Colombia has been a serious problem for a long time, it does not have to remain so. The Tripartite Agreement for the Right of Association and Democracy represents an opportunity for the Colombian government, employers, and labor unions to work together to bring an end to this tragic problem. Hopefully the international community will encourage the Colombian government to meet its obligations. The success of the Agreement would be a triumph, not just for Colombian union members, or for the nation of Colombia, but for supporters of human rights worldwide.

*Daniel Richard Kuehnert**

132. COLOMBIA: KILLINGS, ARBITRARY DETENTIONS, AND DEATH THREATS—THE REALITY OF TRADE UNIONISM IN COLOMBIA, *supra* note 44.

133. WORKERS' RIGHTS, VIOLENCE AND IMPUNITY, *supra* note 88, at 3.

134. Governing Body Agenda, *supra* note 87, paras. 57, 65.

135. Amnesty International, US Military Aid to Colombia, http://www.amnestyusa.org/Colombia/US_Military_Aid_to_Colombia/page.do?id=1101863&n1=3&n2=30&n3=885 (last visited Apr. 23, 2008).

* B.A. (2004), Saint Louis University; J.D. (2008), Washington University School of Law. I would like to thank my mother, who always believed in me; my father, who sparked my interest in workers' rights; and my sister, who is the real writer in the family. I would also like to thank my friends Ted Chen and Adam Greenberg for their assistance when I experienced computer problems at inconvenient times.