

KIDNAPPERS WITHOUT BORDERS: AN EPIDEMIC IN NEED OF GLOBAL SOLUTIONS

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TABLE OF CONTENTS

I.	INTRODUCTION	808
II.	BACKGROUND.....	811
III.	WHY THE CURRENT FRAMEWORK FOR ADDRESSING THE KIDNAPPING EPIDEMIC IS INEFFECTIVE.....	814
	A. <i>Corrupt Government Officials</i>	815
	B. <i>Kidnap and Ransom Insurance Policies</i>	817
	C. <i>Efforts Taken by the International Community</i>	820
IV.	AVENUES FOR PREVENTING KIDNAPPING MORE EFFECTIVELY	825
	A. <i>Addressing Financial Instability</i>	825
	B. <i>Purging Corrupt Government Officials</i>	826
	C. <i>Properly Training Security Officials</i>	829
V.	CONCLUSION	831

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*Kidnapping is a serious crime and a violation of individual freedom. It undermines human rights, with adverse — and in most cases insurmountable — effects on victims and their family and community. Recently, there has been a significant and alarming increase in this phenomenon in different countries, as well as in the methods used.*¹

I. INTRODUCTION

On June 4, 2008, fourteen-year-old Fernando Martí, the son of one of Mexico's wealthiest businessmen, was riding through Mexico City in his family's bulletproof sedan when armed men dressed in Federal Investigations Agency (AFI) uniforms stopped the car at a checkpoint.² The driver was tortured and killed, the bodyguard was strangled and left for dead, and the boy was taken for ransom.³ Despite delivering more than \$2 million in ransom, Fernando was never released, and, on August 1, 2008, his body was found stuffed in the trunk of an abandoned car.⁴

In Barinas, Venezuela, the country's poorest state, a three-year-old girl was kidnapped in 2009 from the Mi Jardín slum.⁵ After receiving information that the only thing of value the girl's family owned was a refrigerator, the abductor advised the family to sell it in order to pay the ransom.⁶

The Martí family tragedy and the kidnapping of the young girl in Mi Jardín are two examples of the kidnapping epidemic that plagues Latin America—a phenomenon that crosses economic and class boundaries. Furthermore, the rise in globalization has not ameliorated the problem, but

¹ PERMANENT COUNCIL OF THE ORG. OF AMERICAN STATES, COMM. ON HEMISPHERIC SEC., CP/CSH/SA-166/11, RECORD OF THE MEETING OF MAR. 3, 2011, at 3 (Mar. 22, 2011) [hereinafter CHS MEETING], available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CDUQFjAA&url=http%3A%2F%2Fscm.oas.org%2FIDMS%2FRedirectPage.aspx%3Fclass%3DCP%2FCSH%2FSA%26classNum%3D166%26lang%3De&ei=KhtBUdGkAeqE2QXtk4GwBw&usq=AFQjCNEd7446g9bljZf7dCUHBldsyrhplA&sig2=6U09WbfcjBNGPHAJaSTYlw>.

² Marc Lacey & Antonio Betancourt, *A Boy's Killing Prods a City to Stand Up to Kidnappers*, N.Y. TIMES, Aug. 14, 2008, at A8.

³ *Id.*

⁴ *Id.*

⁵ Simon Romero, *State Ruled by Crime and Chávez Family*, N.Y. TIMES, July 21, 2009, at A4.

⁶ *Id.*

rather has contributed to the widespread problem of kidnapping.⁷ Among the areas of the world where this practice has become most prevalent, Latin America stands out as the most dangerous for kidnappings.⁸ Although Latin America constitutes only about 8% of the world's population, almost 75% of all kidnappings take place there,⁹ including 80% of kidnappings-for-ransom.¹⁰ In fact, in some countries, such as Colombia, Mexico, and Brazil, kidnapping has evolved from a crime into a business venture.¹¹ Due to efforts to combat the universal "War on Drugs," the drug cartels and gangs that afflict these countries have turned to kidnapping for ransom as an alternative source of income.¹² As a result, many Latin American countries have enacted laws to combat kidnapping, establishing harsh penalties for those who engage in kidnapping practices and, in some countries, for those who simply engage in ransom negotiations on behalf of the victim or his or her family.¹³

The UN Economic and Social Council addressed the issue of kidnapping in its March 2002 report, *International Cooperation in the Prevention, Combating, and Elimination of Kidnapping and in Providing Assistance to Victims*.¹⁴ In the UN resolution prompting the report, kidnapping was defined as the practice of "unlawfully detaining a person or persons against

⁷ See Samantha Kenney, Note, *Regional Shortcomings and Global Solutions: Kidnap, Ransom and Insurance in Latin America*, 14 CONN. INS. L.J. 557, 564–66 (2008) (noting the connection between rising kidnapping rates and the expansion of business in developing markets resulting from globalization).

⁸ *Id.* at 558.

⁹ Cecilia M. Bailliet, *Towards Holistic Transnational Protection: An Overview of International Public Law Approaches to Kidnapping*, 38 DENV. J. INT'L L. & POL'Y 581, 604 n.126 (2010).

¹⁰ *How to Address the Rising Risks of International Kidnapping*, SECURITY DIRECTOR'S REP., May 1, 2001, at 6 [hereinafter *Rising Risks of International Kidnapping*], available at 2001 WLNR 310569.

¹¹ Bailliet, *supra* note 9, at 583; Maria O'Brien, *Preparing for the Worst*, LATINFINANCE, June 1, 2001, at 42, available at 2001 WLNR 13020596.

¹² Bailliet, *supra* note 9, at 583.

¹³ See *Hargrove v. Underwriters at Lloyd's, London*, 937 F. Supp. 595, 600 (S.D. Tex. 1996) (describing Colombia's Anti-Abduction Act of 1993 and the penalties imposed for carrying out a kidnapping, engaging in ransom negotiations or participating in kidnap and ransom insurance contracts); see also Norma Gutierrez, *Mexico: New Anti-Kidnapping Law Promulgated*, GLOBAL LEGAL MONITOR (Dec. 8, 2010), http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402412_text (describing Mexico's newly enacted anti-kidnapping laws).

¹⁴ U.N. Economic and Social Council, *International Cooperation in the Prevention, Combating and Elimination of Kidnapping and in Providing Assistance to Victims: Rep. of the Secretary-General*, U.N. Doc. E/CN.15/2003/7 (Mar. 5, 2003) [hereinafter ECOSOC Kidnapping Report].

their will for the purpose of demanding for their liberation an illicit gain or any other economic gain or other material benefit, or in order to oblige someone to do or not do something.”¹⁵ The Resolution made clear that kidnapping is considered a serious crime and strongly recommended that all Member States adopt legislation addressing kidnapping.¹⁶

Many states have attempted to carry out legislative reforms and to purge corrupt law enforcement officials to combat the problem of kidnapping.¹⁷ Aside from increasing penalties for kidnapping and defining what aggravating factors enhance a penalty,¹⁸ several states have also targeted ransom payments by criminalizing the act, albeit with much milder penalties. In Colombia, the legislature passed Act 40, or the Anti-Abduction Act of 1993, which voided insurance contracts covering the payment of ransoms and penalized those persons who participate in such contracts.¹⁹ The Venezuelan National Assembly passed a law in 2009 forbidding private ransom negotiation and requiring citizens to report kidnappings so that assets of the victim’s family can be frozen to prevent ransom payment.²⁰ Despite this push to curb the growing incidence of kidnapping through national legislation and international cooperation, the epidemic continues to be a

¹⁵ International Cooperation in the Prevention, Combating and Elimination of Kidnapping and in Providing Assistance to Victims, ECOSOC Res. 2002/16, para. 1, U.N. Doc. E/RES/2002/16 (July 24, 2002) (requesting a progress report on the world kidnapping situation) [hereinafter UN Resolution Requesting Report].

¹⁶ *Id.* para. 2 (stating that Member States should “adopt the legislative or other measures necessary to establish as a serious crime in their domestic legislation kidnapping in all its modalities”).

¹⁷ Most recently, Mexico passed the National Program to Prevent and Sanction Kidnappings (Programa Nacional para Prevenir y Sancionar el Secuestro). *New Program Is Created to Prevent Kidnapping*, JUSTICE IN MEXICO PROJECT (June 30, 2011), <http://justiceinmexico.org/2011/06/30/new-program-is-created-to-prevent-kidnappings/>. The Program went into effect August 15, 2011, and was given a one-year trial period under the implementation and direction of the Attorney General’s Office. The plan focuses on increasing unity among forces, citizen participation in the prevention of kidnapping, and providing more support to victims and their families. *Id.*

¹⁸ See Bailliet, *supra* note 9, at 602 n.123 (noting Colombian punishment for kidnapping as 10–20 years for simple kidnapping and 18–28 years for extortive kidnapping); see also Gutierrez, *supra* note 13 (discussing Mexico’s new law establishing increased penalties of 20–40 years for kidnapping, 25–45 years for kidnapping when violence occurs against the victim, 25–50 years for kidnapping if the abductors belong to public safety institutions, and 40–70 years if the victim is killed).

¹⁹ Hargrove v. Underwriters at Lloyd’s, London, 937 F. Supp. 595, 600 (S.D. Tex. 1996).

²⁰ Charlie Devereux, *Venezuela’s Plague of Kidnappings*, TIME (Dec. 29, 2009), <http://www.time.com/time/world/article/0,8599,1950227,00.html>.

serious problem that affects thousands of families every year.²¹ Estimates indicate that anywhere from 12,500 to 25,000 reported kidnappings occur annually worldwide, although the true figures are estimated to be much higher.²²

This Note will discuss the current framework for addressing kidnapping in Latin American countries and the reasons why it has proven ineffective. This Note argues that there are three major reasons why current kidnapping prevention practices have been unsuccessful, and why a new international framework must be adopted: first, the affected countries are inundated with corrupt law enforcement officials who do not fully enforce existing laws; second, kidnap and ransom insurance policies are widely used to pay ransom demands, stimulating the growth of the criminal kidnapping market and promoting it as a viable means of income; third, the international community's efforts to combat the kidnapping phenomenon in countries like Colombia, Venezuela, and Mexico through measures such as Plan Colombia and increased law enforcement training support have been ineffective.

Part II of this Note discusses the historical background of kidnapping for ransom and the factors that make countries, such as Mexico, Venezuela, and Colombia, so susceptible to kidnapping. Part III assesses the problem of corrupt government officials, the negative legal and policy implications of kidnap and ransom insurance policies, and the insufficient actions taken thus far by the international community, such as the implementation of Plan Colombia and the United Nations Convention against Transnational Organized Crime. Part IV argues that more stringent measures must be taken to help stabilize countries affected by kidnapping, and recommends ways in which the United Nations and its Member States can help eradicate corrupt practices and enforce legislation to deter kidnapping.

II. BACKGROUND

Kidnapping is a crime that historically surges in times of social and economic transition.²³ It was originally used as a means of combat between warring gangs, families, tribes, and other groups.²⁴ In the past, kidnappers tended to target specific individuals based on gang, family or tribe affiliation,

²¹ Kenney, *supra* note 7, at 566; Frank Zuccarello, *Kidnapping for Ransom*, ROUGH NOTES, May 1, 2011, at 84, available at 2011 WLNR 9740946.

²² Zuccarello, *supra* note 21 (noting these numbers only account for the reported kidnappings, which might make up only 10% of the kidnappings that occur).

²³ Kenney, *supra* note 7, at 560.

²⁴ Bailliet, *supra* note 9, at 583.

or political power, and carried out the crime to retaliate or to make a statement.²⁵ Today, however, kidnapping serves a chiefly economic purpose and is an actual profession unto itself for many gangs and paramilitary groups that target civilians randomly or because of their perceived wealth.²⁶ The characteristics of the victims can vary depending on where the kidnapping takes place. For instance, in Guatemala, victims are usually the children of wealthy local or foreign businessmen, and the kidnappings are sophisticated and well planned.²⁷ On the other hand, in countries, such as Colombia and Mexico, the kidnappings range from those of opportunity, such as during illegal roadblocks where little discretion is used in choosing targets, to selective kidnappings that occur after a careful study of the economic potential and vulnerability of the victim.²⁸ Many of these well-organized kidnapping rings target CEOs and employees from wealthy multinational companies with operations in Latin America, as well as the families of professional athletes playing abroad.²⁹

The kidnapping numbers in Latin America are staggering. In 2007, Mexico reported 438 kidnappings³⁰ and a ransom market (money paid in ransoms) calculated at more than \$100 million.³¹ Only three years later, in 2010, the number of reported kidnappings peaked at over 2,000 according to data collected by the Mexican government.³² In Colombia, there were

²⁵ *Id.*

²⁶ *Id.*

²⁷ Kenney, *supra* note 7, at 568.

²⁸ *Id.* at 585; ECOSOC Kidnapping Report, *supra* note 14, para. 23.

²⁹ See Michael S. Schmidt & Simon Romero, *After Abduction, A Search in Venezuela*, N.Y. TIMES, Nov. 10, 2011, at B15. Several relatives of professional Venezuelan baseball players in particular have been kidnapped recently. "The 56-year-old mother of Victor Zambrano, a former pitcher for the Mets, was rescued in 2009 The 11-year-old son of Yorvit Torrealba, a catcher for the Texas Rangers, was abducted on the outskirts of Caracas the same year, along with two of the boy's uncles. The brother of Henry Blanco, a catcher for the Diamondbacks, was fatally shot in 2008 after being kidnapped near Caracas. The mother of the former pitcher Ugueth Urbina spent more than five months in captivity before being rescued in early 2005." *Id.*; see also Tracee Hamilton, *Wilson Ramos and All Venezuelan Ballplayers Should Be Safe at Home*, WASH. POST (Nov. 14, 2011), http://www.washingtonpost.com/sports/nationals/wilson-ramos-and-all-venezuelan-ballplayers-should-be-safe-at-home/2011/11/14/gIQAPwF6KN_story.html (noting that the Venezuelan baseball players are not usually the highest-paid, but that multi-million dollar ransom demands are made in hopes that the player's team or the MLB pays out).

³⁰ Dolly Mascareñas, *No Help for Mexico's Kidnapping Surge*, TIME (Aug. 8, 2008), <http://www.time.com/time/world/article/0,8599,1830649,00.html>.

³¹ Bailliet, *supra* note 9, at 604.

³² Nick Miroff, *As Kidnappings for Ransom Surge in Mexico, Victims' Families and Employers Turn to Private U.S. Firms Instead of Law Enforcement*, WASH. POST (Feb. 26,

approximately 465 kidnapping cases reported in 2008,³³ and kidnappings generate an estimated \$150 to \$500 million in revenue a year.³⁴ The National Statistics Institute estimated that in Venezuela, approximately 17,000 kidnapping cases occurred between July 2008 and July 2009, giving Venezuela one of the highest kidnapping rates in the world.³⁵ Even more astounding is the fact that these numbers are likely very low estimates due to massive underreporting by both victims and police.³⁶

Around the world, states with the highest kidnapping rates tend to be “failing states” where the laws are weak, corruption is rampant, and the government is fragmented.³⁷ Failing states, which include Argentina, Mexico, Colombia, Brazil, Venezuela, and Guatemala, all have “high levels of poverty, unemployment, income inequality, stratified social classes, and lower development”—elements which lead to a state’s inability to fulfill and protect the economic and social rights of its citizens.³⁸

Unfortunately, the kidnapping phenomenon in failing states is a circular problem. High levels of poverty and unemployment oblige people to seek alternative means of employment and steady incomes through participation in organized crime.³⁹ Yet these organized criminal groups hinder the economic and social development necessary to reduce poverty and unemployment, perpetuating the need for organized crime in the first place.⁴⁰ In Ciudad Juárez, Mexico, teenagers as young as fifteen are prosecuted for kidnapping.⁴¹ Teenagers whose parents are out of work, and even those from middle-class families, are tempted by the high dividends that a successful

2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/26/AR2011022603384.html>.

³³ Nicholas Schmidle, *Kidnapping: Business Is Booming, Countries Like Nigeria Are Recession Proof Growth Markets*, INT’L HERALD TRIB. (Dec. 5, 2009), available at 2009 WLNR 24516090.

³⁴ Luz E. Nagle, *Colombian Asylum Seekers: What Practitioners Should Know About the Colombian Crisis*, 18 GEO. IMMIGR. L.J. 441, 448 (2004).

³⁵ Schmidt & Romero, *supra* note 29.

³⁶ Kenney, *supra* note 7, at 566.

³⁷ Bailliet, *supra* note 9, at 582.

³⁸ *Id.*

³⁹ *Id.* at 609.

⁴⁰ See Schmidle, *supra* note 33. In an interview with a kidnapper, “De Don,” Schmidle discovered that De Don was a university graduate, but had been unable to find employment after graduation. In an effort to support his family, De Don joined a gang and became part of a kidnapping syndicate, earning enough to rent an apartment, buy a Mercedes, support his family, and open a beauty parlor for his girlfriend.

⁴¹ Julian Cardona, *Mexican Teens Turning to Kidnapping in Drug War City*, REUTERS (June 2, 2011), <http://www.reuters.com/article/2011/06/02/us-mexico-drugs-juarez-idUSTRE7513J820110602>.

abduction can produce.⁴² According to one of the city's juvenile judges, teenagers who are interested in kidnapping to make money typically obtain a gun on the city's black market, start tracking a wealthy individual, and kidnap him or her, often on their own or with only a few others.⁴³ In cities completely destroyed by the drug wars, opportunities for the younger population are few and far between, leaving them with joining a drug cartel, creating their own kidnapping rings, or leaving town as their only realistic options.⁴⁴ Thus, it is not surprising that many seek the allure of kidnapping's potentially high economic rewards.

In addition to these less systematic efforts by individuals, many highly organized drug cartels have turned to kidnapping as a response to the War on Drugs.⁴⁵ Efforts to eradicate the illegal drug industry have interrupted the cartels' main source of revenue—drug trafficking—causing them to shift their focus to kidnapping for ransom to maintain funding for their forces.⁴⁶ For example in 2000, the Colombian and U.S. governments instituted Plan Colombia, a program designed to support the peace process with the Revolutionary Armed Forces of Columbia (FARC), stimulate the economy, reform the judicial system, and reduce the drug market by half.⁴⁷ In response, FARC increased their number of kidnappings for ransom in order to compensate for the losses sustained in the drug market.⁴⁸ This same trend can be seen in many other Latin American countries where the attack on the illegal drug market is inadvertently forcing gangs and drug cartels to find alternative sources of income.⁴⁹

III. WHY THE CURRENT FRAMEWORK FOR ADDRESSING THE KIDNAPPING EPIDEMIC IS INEFFECTIVE

Current anti-kidnapping measures in Latin America have proven inadequate thus far for three primary reasons: the widespread problem of

⁴² *Id.* (discussing Toby, a Mexican teenager currently serving an eight-year prison sentence for kidnapping, who stated that he made up to \$45,000 per abduction).

⁴³ *Id.*

⁴⁴ *Id.* (quoting Marc Marquez, the deputy chief of juvenile services in El Paso County, Texas, on the issue of teenagers engaging in criminal activities such as kidnapping: "All the businesses are shutting down, so what opportunities do young people have . . . It is a vicious cycle. By the time they are 15, they are so desensitized.").

⁴⁵ Jason Beaubien, *Mexico's Drug War Spawns Wave of Kidnappings*, NPR (Aug. 26, 2010), <http://www.npr.org/templates/story/story.php?storyId=129426547>.

⁴⁶ Kenney, *supra* note 7, at 572.

⁴⁷ *Id.* at 570.

⁴⁸ *Id.*

⁴⁹ *Id.*

corrupt government officials, the emergence of kidnap and ransom insurance policies, and the lackluster measures taken by the international community.

A. *Corrupt Government Officials*

The number of reported kidnappings in states like Colombia, Mexico, and Venezuela are astonishingly high.⁵⁰ The real rate of kidnapping in these countries, however, is likely much higher due to a lack of reporting often caused by fear of retaliation by the kidnappers, distrust in law enforcement, or distrust in the state's ability to effectively negotiate with the kidnappers.⁵¹ All of these factors are a direct result of the rampant corruption among government officials.⁵²

These fears are not unfounded. Newspapers are constantly covering kidnappings for ransom, depicting the battle that families like the Martí face against criminal organizations and insurgency groups.⁵³ Instead of turning to local authorities after being contacted by the kidnappers, the Martí family hired a private security consultant to negotiate with the kidnappers because, as Mr. Martí explained, “[t]hose who grabbed him were police officers, and the last thing we wanted was for the police to be involved.”⁵⁴ After all, Fernando Martí was abducted at what appeared to be an AFI checkpoint, and the AFI is the federal agency charged with investigating kidnappings.⁵⁵ Unfortunately, Mexicans and others in high-risk Latin American countries have come to accept police corruption as a part of everyday life. Because so many police officers have been connected to criminal dealings such as kidnappings, families like the Martí are hesitant to rely on their expertise when dealing with kidnappers.⁵⁶

⁵⁰ See Miroff, *supra* note 32 (noting that the number of reported kidnappings in Mexico in 2010 was over 2,000); see also Schmidle, *supra* note 33 (stating there were approximately 465 reported kidnappings in Colombia in 2008); Devereux, *supra* note 20 (up to 9,000 kidnappings in Venezuela); Schmidt & Romero, *supra* note 29 (stating that Venezuela has one of the highest kidnapping rates in the world, with an estimated 17,000 kidnappings from July 2008 to July 2009).

⁵¹ Bailliet, *supra* note 9, at 609–10; see also Mascareñas, *supra* note 30 (stating that the Mexican Human Rights Commission believes less than one in three kidnappings are reported to the authorities in Mexico because of the lack of confidence in the law enforcement system); Devereux, *supra* note 20 (stating that as many as four out of ten kidnapping cases are never reported due to fear of corrupt police forces).

⁵² Bailliet, *supra* note 9, at 609–10.

⁵³ Lacey & Betancourt, *supra* note 2.

⁵⁴ *Id.*

⁵⁵ Mascareñas, *supra* note 30.

⁵⁶ *Id.*; Lacey & Betancourt, *supra* note 2.

Only days before Fernando Martí's body was found, an entire family of six was found murdered in their home in the city of Jalisco, Mexico, as a result of a botched kidnapping that involved a police officer serving in an anti-kidnapping unit.⁵⁷ One of the family's sons was kidnapped by the gang and released after the ransom was paid.⁵⁸ The gang went back and killed the entire family once they realized the family was aware of the police officer's participation.⁵⁹ Kidnappings involving law enforcement officials rightfully strengthen the perception that police in many high-risk countries are corrupt. As a result, many believe that they put themselves and the victim at greater risk by seeking police assistance in kidnapping cases. Alejandro Gertz Manero, a former Mexican Attorney General, lamented the collusion of criminals with the police saying, "99% of the cases go unsolved. So there is only a 1% chance of being caught, and even then, probably remaining free, because the local prosecutors are also corrupt."⁶⁰ Manero's statements demonstrate the hopelessness of the situation and total lack of deterrence that security officials and current legislation have on kidnapers.

In Caracas, Venezuela's capital, there are an estimated five abductions per day, and sources within Venezuela's Scientific, Penal and Criminal Investigations Unit (CICPC) have conceded that police are sometimes involved in kidnappings, and that even officers from CICPC's anti-extortion and kidnapping unit have been investigated.⁶¹ Joel Rengifo, a former head of the CICPC's anti-extortion and kidnapping unit, went so far as to estimate that, in Caracas, eight out of ten kidnappings had some level of police involvement.⁶² In 2009, Tarek el-Aissami, Venezuela's Minister of the Interior and Justice, made the startling admission that police commit 20% of crimes in the country.⁶³

⁵⁷ Mascareñas, *supra* note 30.

⁵⁸ *Fears About Cops Fuel Mexico Kidnap Outrage*, NBCNEWS.COM (Aug. 21, 2008), <http://www.nbcnews.com/id/26334297/>.

⁵⁹ *Id.*

⁶⁰ Mascareñas, *supra* note 30.

⁶¹ Devereux, *supra* note 20.

⁶² *Venezuela: Police Corruption Blamed for Kidnapping Epidemic*, SCOTSMAN.COM (May 30, 2011), http://www.scotsman.com/news/venezuela_police_corruption_blamed_for_kidnapping_epidemic_1_1667444.

⁶³ Rory Carroll, *Deadly Force: Venezuela's Police Have Become a Law unto Themselves*, GUARDIAN (Sept. 6, 2009), <http://www.guardian.co.uk/world/2009/sep/06/venezuela-police-law-themselves>.

Likewise, in Colombia, drug gang arrests often include law enforcement officers, soldiers, and court employees.⁶⁴ In June 2011, security officials detained thirty-nine alleged members of the drug gang the Rastrojos.⁶⁵ Of the detainees, seven were police officers, two were soldiers, one was a Marine, and one was a court employee.⁶⁶ It is no wonder, then, that the public's perception is often that the police and the criminals are one and the same.⁶⁷

B. Kidnap and Ransom Insurance Policies

Governments recognize that because kidnapping has evolved into a business that nets millions of dollars each year, it will continue to thrive until it is no longer seen as a profitable enterprise.⁶⁸ Unfortunately, the state police's inability to guarantee citizens' security has led to a dramatic growth in the number of private citizens willing to pay private security and insurance companies for protection against physical and financial destruction.⁶⁹ Multinational corporations and private individuals began purchasing kidnap and ransom insurance policies in droves in the 1980s.⁷⁰

Standard kidnap and ransom policies have five major components:

- (1) Direct Loss—"coverage for loss resulting from the payment of a ransom demand resulting from a kidnapping or extortion threat";⁷¹
- (2) Expenses Incurred—"coverage for expenses incurred in obtaining the release of a kidnapped victim or resolution of an extortion threat";⁷²

⁶⁴ Hannah Stone, *Arrests Point to Drug Gang's Power on Colombia's Pacific*, INSIGHT CRIME (June 2, 2011), <http://www.insightcrime.org/news-analysis/arrests-point-to-drug-gangs-power-on-colombias-pacific>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Carroll, *supra* note 63 (stating that a public opinion poll disclosed that 70% of respondents believed police and criminals to be practically the same).

⁶⁸ Kenney, *supra* note 7, at 574.

⁶⁹ *Id.* at 573.

⁷⁰ Meadow Clendenin, Comment, "*No Concessions*" with *No Teeth: How Kidnap and Ransom Insurers and Insureds Are Undermining U.S. Counterterrorism Policy*, 56 EMORY L.J. 741, 750 (2006).

⁷¹ *ISO's Kidnap/Ransom and Extortion Insurance Program*, ISO.COM, <http://www.iso.com/Products/Policy-Programs/Kidnap-Ransom-and-Extortion-Insurance-Program-from-ISO.html> (last visited Apr. 11, 2012).

⁷² *Id.*

- (3) Detention or Hijack—“coverage for various costs and fees associated with securing the release of a detained or hijacked person”;⁷³
- (4) In-Transit Delivery of Property—“coverage for loss of money being delivered as ransom while in the care and custody of a messenger”;⁷⁴ and
- (5) Consultation—access to security consultants for preventative measures and experienced hostage negotiators.⁷⁵

The upside to these policies is that they provide victims the benefit of an increased likelihood of being reunited with their families.⁷⁶ The downside, though, is that the practice of these insurance companies paying ransoms stimulates the growth of the criminal market of kidnapping by making it a viable means of survival.⁷⁷ Thus, while the victims from families wealthy enough to afford kidnap and ransom insurance are more likely to survive, victims from poor families suffer disproportionately since insurance policies encourage kidnappings generally.⁷⁸

Therefore, the use of insurance policies to pay kidnapping ransoms is controversial. On the one hand, critics argue that paying ransoms through these kidnap and ransom policies encourages kidnappers to continue in their line of work. Due to the increased awareness of the existence of kidnap and ransom insurance policies⁷⁹ and the media coverage of “successful” kidnappings where high ransoms are paid out, criminals and insurgents are encouraged to demand increasingly larger amounts.⁸⁰ This, coupled with the fact that coverage by these policies seems to reduce precautionary incentives,

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Kenney, *supra* note 7, at 561–62.

⁷⁶ Bailliet, *supra* note 9, at 609; *see also* Kenney, *supra* note 7, at 578 (stating that a kidnap victim is four times more likely to be killed by their abductors if they are not insured, in part because kidnap and ransom policies provide insured individuals with access to professional services when negotiating with the abductors).

⁷⁷ Bailliet, *supra* note 9, at 609.

⁷⁸ *Id.*

⁷⁹ *Id.* at 572–73.

⁸⁰ *Rising Risks of International Kidnapping*, *supra* note 10; *see also* Clendenin, *supra* note 70, at 746 (discussing how multinational corporations have established precedent for kidnappers by paying out huge ransoms; for instance, in 1975 Sears paid over \$1 million for release of an executive in Colombia; Exxon paid \$14.2 million for the release of one of its executives, and an Argentine multinational company paid a \$60 million ransom for an abducted employee).

has led critics to suggest that, if these policies continue, they should adopt a “no-payment” scheme in which they focus on preventative mechanisms and benefits such as access to professional negotiators and crisis management personnel, but should not cover the payment or reimbursement of ransoms.⁸¹

On the other hand, those in favor of allowing kidnap and ransom policies point to the fact that there is no alternative. With states unable to protect their citizens, wealthier families who are frequently targeted have little choice but to protect themselves physically and financially,⁸² or flee the country.⁸³ As Thomas Hargrove, an American kidnapped by Colombian guerrillas and held for eleven months, explained, “[f]ire insurance has been known to stimulate arson, and life-insurance policies have led to quite a few homicides, too.”⁸⁴ Yet, Hargrove asserts, “Are you going to quit taking out life insurance and fire insurance?”⁸⁵

For those who can afford the insurance, the answer to that question is no, if for no other reason than for the access to consultation and negotiation services, the fifth component of these kidnap and ransom insurance policies. As the only component not associated with compensation, these services likely make up the most important component for insureds. The benefits of having access to security consultants for preventative measures and access to experienced hostage negotiators in the event of an abduction⁸⁶ are important because the process of negotiating with kidnapers, if done properly, greatly enhances the victim’s chances of being returned safely.⁸⁷ For citizens who are deterred from looking to the police for help as a result of corruption or distrust in the adequacy of police training, these policies seem to be the only viable alternative. According to a member of the FBI’s kidnap response team in Latin America, without professional guidance, the victim’s chances of being released are diminished.⁸⁸

⁸¹ See generally Clendenin, *supra* note 70 (arguing that kidnap and ransom insurance should adopt a no-payment scheme so as to avoid undermining public policy, such as the U.S. “No Concessions” policy regarding the non-payment of ransom, or those promulgated by attempts at legislative reform in countries such as Colombia).

⁸² ECOSOC Kidnapping Report, *supra* note 14, para. 53 (indicating that kidnapping severely tests and damages family relations, particularly with regards to the family’s property).

⁸³ See Kenney, *supra* note 7, at 574 (commenting on how leaving the country as a “refugee in fear” is an alternative to taking the daily chance of being abducted).

⁸⁴ Schmidle, *supra* note 33.

⁸⁵ *Id.*

⁸⁶ Kenney, *supra* note 7, at 562.

⁸⁷ Annette Haddad & Scott Doggett, *Kidnapping-for-Profit Cases Growing Rampant in Some Countries*, PITT. POST-GAZETTE, Apr. 2, 2000, at H9, available at 2000 WLNR 3397656.

⁸⁸ *Id.*; see also Kenney, *supra* note 7, at 578 (stating that “kidnap victims are [four] times more likely to be killed by their abductors when they are uninsured than when insured,” in

Additionally, good advice can lead to the downward negotiations of ransoms to a fraction of the sum originally demanded.⁸⁹ The service thus mitigates the many risks in paying a ransom “incorrectly,” or recklessly. For instance, if the ransom is immediately paid in full, it sends the message that there is more money available and thus the victim will often not be released until an additional ransom is paid.⁹⁰ This problem can also manifest itself in the form of a second kidnapping, shortly after the first, for purposes of a double payment if a victim’s family too readily hands over a large ransom.⁹¹ Thus access to experienced ransom negotiators is an important service that kidnap and ransom policies provide in the absence of meaningful services available from the police and other government agencies.

One thing is certain: the purpose of kidnapping is almost always profit. Therefore, paying ransoms and meeting extortion demands, in whatever form, is counterproductive and serves to strengthen the resolve of criminal groups and to perpetuate the practice of kidnapping.⁹²

C. Efforts Taken by the International Community

According to the UN International Covenant on Civil and Political Rights, states have the duty to respect and ensure human rights for their citizens,⁹³ and a state of impunity, where criminals go free from punishment, is “considered to promote the violation of human rights.”⁹⁴ Consequently, over the last two decades many different international organizations, such as the United Nations and the Organization of American States, have addressed the kidnapping for ransom epidemic through conventions, resolutions, and treaties. In 2000, the United Nations General Assembly adopted the UN Convention Against Transnational Organized Crime (UNCTOC).⁹⁵ This document established a framework for addressing the growing problem of

large part due to the fact that those who are insured have access to professionals who know how to negotiate and handle the abduction properly).

⁸⁹ O’Brien, *supra* note 11.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² ECOSOC Kidnapping Report, *supra* note 14, para. 52.

⁹³ International Covenant on Civil and Political Rights art. 2, Dec. 16, 1966, 999 U.N.T.S. 171. Although Mexico has not signed and ratified this Covenant, Argentina, Bolivia, Colombia, Venezuela, and other Latin American countries have, recognizing the importance of protecting human rights.

⁹⁴ Bailliet, *supra* note 9, at 591.

⁹⁵ United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, T.I.A.S. No. 13127, 2225 U.N.T.S. 209 (entered into force Sept. 29, 2003) [hereinafter UNCTOC].

organized crime and discussed the need for international cooperation. The UNCTOC calls on governments to criminalize acts committed by organized criminal groups and to enact measures for confiscating the proceeds of criminal acts “by identifying, freezing, and seizing assets.”⁹⁶ In addition, it asks signatories to cooperate with other Member States in collecting evidence and exchanging pertinent information regarding suspects who have fled the country and methods that have proven effective in curtailing crime.⁹⁷ The UNCTOC also encourages Member States to establish training programs for their law enforcement officers and to institute witness protection programs to encourage those citizens who may have information crucial for criminal convictions to assist the government.⁹⁸ By 2005, most Latin American countries had ratified the UNCTOC, pledging their support to cooperate in the fight against organized crime, including kidnapping.⁹⁹

A criticism of the UNCTOC is that enforcement is left to individual nations.¹⁰⁰ Critics suggest instead that mechanisms must be established to ensure that offenders are arrested, properly charged and prosecuted, and punished fairly.¹⁰¹ International organized crime specialist Andreas Schloenhardt supports the idea of creating an international agency tasked with investigating, prosecuting and punishing “transnational organised crime when national authorities are unable, incapable or unwilling to intervene.”¹⁰² This would help prevent sophisticated criminal organizations from taking advantage of weaknesses in various legal systems and the uncooperativeness exhibited by many nations.¹⁰³

In 2003, the UN Economic and Social Council published a report entitled *International Cooperation in the Prevention, Combating and Elimination of Kidnapping and in Providing Assistance to Victims*, compiling information collected from Member States “on the practice of kidnapping and on relevant domestic measures that had been taken.”¹⁰⁴ Based on this report, the UN

⁹⁶ Draft United Nations Convention Against Transnational Organized Crime (Mar. 2000), <http://www.un.org/events/10thcongress/draft.htm>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ UNCTOC, *supra* note 95. The UNCTOC was ratified by Venezuela on May 13, 2002, by Ecuador on September 17, 2002, by Mexico on March 4, 2003, by Costa Rica on July 24, 2003, by Colombia on August 4, 2004, and by Bolivia on October 10, 2005, to name a few.

Id.

¹⁰⁰ Bailliet, *supra* note 9, at 597.

¹⁰¹ *Id.*

¹⁰² *Id.* at 598.

¹⁰³ *Id.* at 597.

¹⁰⁴ ECOSOC Kidnapping Report, *supra* note 14, para. 1.

Office on Drugs and Crime (UNODC) prepared a counter-kidnapping manual “of proven and promising practices” for use in the fight against kidnapping.¹⁰⁵ The manual outlines the different types of kidnappings and advises governments on appropriate legislation, preventative measures, and response plans, and includes a checklist for police investigators addressing negotiation, surveillance, and intervention techniques.¹⁰⁶ Partially funded by the Colombian government, the manual is a product of contributions from experts in sixteen different countries.¹⁰⁷ The irony surrounding this manual is that some of its contributors are officials in countries that have yet to curb the practice of kidnapping within their own borders.¹⁰⁸ In an effort to promote the proper use of the manual, the UNODC has held a couple of “train the trainers” courses.¹⁰⁹ One of these week-long training courses took place in Mexico City, Mexico in early 2009.¹¹⁰ Though these trainees included Mexican officials from the Attorney General’s office, its specialized Unit for Organized Crime, Crime Prevention, and state units of the Attorney General’s office, there were fewer than forty officials present.¹¹¹ In a country as large as Mexico where the federal police force alone numbers over 35,000,¹¹² training forty officials on the practices promoted by the manual seems somewhat meaningless.

In June 2010, the Organization of American States (OAS) adopted a resolution titled the *Hemispheric Cooperation Against the Crime of*

¹⁰⁵ International Cooperation in the Prevention, Combating and Elimination of Kidnapping and in Providing Assistance to Victims, G.A. Res. 59/154, para. 7, U.N. Doc. A/RES/59/154 (Feb. 3, 2005) (requesting that a handbook on the fight against kidnapping be prepared) [hereinafter UN Resolution Requesting Manual]. The manual has only been published in Spanish. MANUAL DE LUCHA CONTRA EL SECUESTRO, OFICINA CONTRA LA DROGA Y EL DELITO, NACIONES UNIDAS (UN) (2006), available at http://www.unodc.org/documents/southerncone/Topics_crime/Publicacoes/Manual_antisequestro_UNU.pdf.

¹⁰⁶ UNODC Launches Manual of Best Practices to Counter Kidnapping, UNITED NATIONS OFFICE ON DRUGS & CRIME (Apr. 26, 2006), http://www.unodc.org/unodc/en/press/releases/press_release_2006_04_26.html.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* Colombia is one of the main supporters and contributors to the manual and while the Colombian government has succeeded in reducing the number of kidnappings that occur, it is still a serious problem.

¹⁰⁹ *Id.*

¹¹⁰ *Stepping Up Counter-Kidnapping Work in Mexico*, UNITED NATIONS OFFICE ON DRUGS & CRIME (Feb. 4, 2009), <http://www.unodc.org/unodc/en/frontpage/stepping-up-counter-kidnapping-work-in-mexico.html>.

¹¹¹ *Id.*

¹¹² Elyssa Pachico, *Mexican Federal Cops Quitting Nearly As Fast As They Join*, INSIGHT CRIME (Oct. 10, 2011), <http://www.insightcrime.org/news-briefs/mexican-federal-cops-quitting-nearly-as-fast-as-they-join>.

Kidnapping and for Support for Victims.¹¹³ This resolution calls for many of the same initiatives identified in the UN General Assembly's resolution, the *International Cooperation in the Prevention, Combating and Elimination of Kidnapping and in Providing Assistance for the Victim*,¹¹⁴ and even references the Member States' responsibility to fully implement the obligations contracted to in the UNCTOC.¹¹⁵ Further, it resolves to increase preventative efforts and international cooperation and the exchange of information regarding kidnapping.¹¹⁶ The resolution also requests that information from Member States be compiled regarding their existing legislation concerning kidnapping for referential purposes¹¹⁷ and instructs the OAS General Secretariat to organize workshops for the exchange of best practices of combating kidnapping among States.¹¹⁸ However, the effectiveness of these requests is limited by the fact that the best practices for combating kidnapping involve advanced training methods and the use of technology such as that used by the United States, and not by fellow failing states. Additionally, the OAS resolution, more so than the UNCTOC, highlights "the need for strengthened citizen and community participation in the implementation of security plans, as well as improved citizen trust in the public security institutions."¹¹⁹

Although conferences between Member States have been held to discuss the crime of kidnapping, these focus mainly on unilateral efforts taken by individual Member States rather than on comprehensive efforts put forth by OAS as a whole.¹²⁰ In a meeting on March 3, 2011, Colombia again took the lead, speaking about the successful efforts implemented by their own

¹¹³ Organization of American States, *Hemispheric Cooperation Against the Crime of Kidnapping and for Support for Victims*, AG/RES. 2574 (XL-0/10) (June 8, 2010), available at <http://www.state.gov/p/wha/rls/160855.htm>.

¹¹⁴ UN Resolution Requesting Manual, *supra* note 105.

¹¹⁵ *Id.* ("RECOGNIZING that in the Declaration on Security in the Americas, the member states condemned transnational organized crime; renewed their commitment to confronting it by strengthening the domestic legal framework and multilateral cooperation respectful of the sovereignty of each state; and undertook to combat and define different crimes, including kidnapping, by fully implementing the obligations contracted by the states parties to the United Nations Convention on Transnational Organized Crime . . .").

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Bailliet, *supra* note 9, at 599.

¹²⁰ *See, e.g.*, CHS MEETING, *supra* note 1 (considering the topic of cooperation against the crime of kidnapping and discussing measures taken by Member States, particularly in Columbia and Mexico).

government.¹²¹ These efforts include a Colombian anti-kidnapping school that began its operations in 2003,¹²² and the creation of the Grupos de Acción Unificada por la Liberación Personal (Unified Personal Rescue Action Groups, GAULA), which joins together the police, military personnel, the Colombian Attorney General, and other activist groups¹²³ to perform rescue operations and dismantle criminal gangs responsible for kidnappings.¹²⁴ While these measures have certainly decreased the annual number of kidnappings in Colombia, they have not eradicated the practice, which still affects hundreds of Colombians every year.¹²⁵ Brigadier General Humberto de Jesús Carreño Guatibonza reported to the committee on an institutional audit program that involves Colombian officials advising other foreign agencies on kidnapping practices, and on international courses Colombia was organizing on the subject of kidnapping to be taught in 2011.¹²⁶ It is unclear, however, whether and to what extent these actions were carried out.¹²⁷

While the international community has taken a more hands-off approach in an attempt to respect state sovereignty and conserve resources, bodies such as the UN and the OAS make recommendations at an elevated level of generalization that fail to really grasp the situation in these Latin American states. Recommendations to adopt legislation that criminalizes kidnapping and foster international cooperation “through information exchange” are only helpful if they can be carried out effectively.¹²⁸ As in Mexico and Venezuela, the number of kidnappings has not dropped as a result of laws passed imposing stricter punishments for those involved in the crime.¹²⁹ This

¹²¹ *Id.*

¹²² Eric Green, *Latin America's First Anti-Kidnapping School Operating in Colombia*, STATE DEP'T PRESS RELEASES & DOCUMENTS (June 30, 2004), available at 2004 WLNR 2491665.

¹²³ The GAULA groups were established by law in 1996, and as of March 2011, there were twenty-six at the national level. CHS MEETING, *supra* note 1, at 2.

¹²⁴ *Gaula Groups*, EJÉRCITO NACIONAL DE COLOMBIA, <http://www.ejercito.mil.co/index.php?idcategoria=113937> (last visited Apr. 11, 2012).

¹²⁵ CHS MEETING, *supra* note 1, at 3 (noting that the number of kidnappings reduced from nearly 2,900 to fewer than 300 from 2002 to 2010).

¹²⁶ *Id.*

¹²⁷ *Id.* Guatibonza also reported at this meeting that training was conducted in Mexico, Brazil, Paraguay, Panama, and Honduras, and that direct consultations were carried out with Jamaica, Costa Rica, Honduras, and Brazil. However, there was no mention of what this “training” entailed, its effectiveness, or whether or not it would continue to be carried out in the future.

¹²⁸ UN Resolution Requesting Report, *supra* note 15, paras. 2–3.

¹²⁹ Jeremy McDermott, *Spike in Mexican Kidnappings in 2011*, INSIGHT CRIME (Jan. 1, 2012), <http://insightcrime.org/news-briefs/spike-in-mexican-kidnappings-in-2011> (stating that

is because neither country has been able to enforce the laws in a manner that renders them useful.

IV. AVENUES FOR PREVENTING KIDNAPPING MORE EFFECTIVELY

This Note suggests that in order to truly address the kidnapping epidemic, three objectives must be met: the financial instability of countries with high kidnapping rates must be addressed; corruption at the government level and within security forces must be eradicated; and security officials must be properly trained to deal with hostage negotiations.

A. Addressing Financial Instability

As noted by OAS Secretary General Horacio Cecchi, “there is a link between poverty, exclusion, marginalization, inequality and citizens’ security.”¹³⁰ Because kidnapping epidemics are often the result of systemic failure, issues such as a country’s financial instability must first be addressed. The most appropriate political bodies to address these concerns are the World Bank’s International Bank for Reconstruction and Development (IBRD)¹³¹ and the United Nations via the International Monetary Fund (IMF). These organizations should be used to help fund two initiatives. First, more jobs need to be created to increase employment levels and decrease the risk of citizens joining organized criminal groups as a means of procuring a steady income to provide for their families.¹³² Second, funding should be allocated to allow for a pay increase for police officers in order to increase the retention rate among officers and to discourage the

according to the NGO Consejo para la Ley y Derechos Humanos (CLDH), the average number of kidnappings a day in Mexico in 2011 was 32% higher than in 2010).

¹³⁰ Bailliet, *supra* note 9, at 608 n.160.

¹³¹ *What We Do*, WORLD BANK, <http://web.worldbank.org/> (last visited Apr. 11, 2012) (click on “About” and follow menu to “What We Do”). The World Bank is divided into two branches: the International Bank for Reconstruction and Development (IBRD) aims to reduce poverty in middle-income and creditworthy countries while the International Development Association (IDA) focuses on the world’s poorest countries. Based on this distinction, it is likely that the IBRD would be the most appropriate branch of the World Bank to address the issues in countries such as Colombia, Mexico, and Venezuela, which likely do not qualify as the world’s poorest countries, but rather as middle-income countries dealing with widespread poverty in a large portion of the population.

¹³² See Schmidle, *supra* note 33 (noting that patterns of kidnapping around the world were almost inverse to that of the global economy and that in a recessionary environment the kidnapping rate goes up).

practice of bribery and corruption.¹³³ Increasing the retention rate will ensure that trained professionals who have experience in dealing with kidnapers and criminal gangs will make up the majority of the police force, rather than new, poorly trained officers. Additionally, increasing officer pay will encourage more people to pursue careers in law enforcement while simultaneously decreasing the likelihood of corrupt officials.¹³⁴ Currently, police officers in many Latin American countries find themselves either teetering right above the poverty line, or even below it.¹³⁵ That officers are underpaid and can often double or triple their monthly salaries by colluding with criminal groups is a factor that leads to corruption.¹³⁶ Thus, the creation of a stable, well-paid police force would serve both as a means of ending the cycle of corrupt relationships between officers and gangs, and, more importantly, as a means of restoring public confidence and cooperation. Public confidence and cooperation are essential because without them, security forces are unlikely to be able to end the practice of kidnapping for ransom, even if economies become more stable.

B. Purging Corrupt Government Officials

Corruption among officials at the local and federal levels must be eradicated so that citizens have confidence when turning to government officials for help in kidnapping situations.

Studies point to several factors that weigh in on the prevalence of police corruption aside from low salaries.¹³⁷ These factors “include the likelihood of being caught and the severity of the resulting penalty; the moral cost and the degree of personal commitment to the job; and the probability of suffering physical attacks, both in cases of agreeing or refusing to work with the gangs.”¹³⁸ Thus an effective plan to decrease corruption would need to address all of these issues through measures such as tougher internal affairs

¹³³ Pachico, *supra* note 112. Over the last four years in Mexico, eight out of every ten federal police officers left the force. The salary for federal officers is about \$900 per month, whereas municipal police officers are paid only about \$300 per month. *Id.*; see also Patrick Corcoran, *Pay Rises Alone Won't Break Chain of Police Corruption*, INSIGHT CRIME (Sept. 29, 2011), <http://www.insightcrime.org/news-analysis/pay-rises-alone-wont-break-chain-of-police-corruption> (stating that Mexican police working in some of the most dangerous states are paid the least, finding themselves either teetering just above or even below the poverty line, while their counterparts in much safer states earn up to five times more).

¹³⁴ Corcoran, *supra* note 133.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

bureaus, vetting procedures such as polygraph and drug tests and financial evaluations,¹³⁹ and protection for threatened police officers and their families.¹⁴⁰

In order to help with this process, it might be necessary to bring in outside help such as UN peacekeeping troops or officials who would be less susceptible to corruption themselves and more likely to make objective decisions.¹⁴¹ However, this strategy would need to be carefully implemented so as to avoid offending local law enforcement officials. It would require government-wide cooperation, at both the federal and local levels, to allow UN officials to come in and examine the operations of government and law enforcement agencies. In order to avoid the likelihood of corrupt officials banding together to render these measures useless, there should be some type of amnesty provision for officials previously engaged in corrupt practices to either turn themselves in for reduced reprimanding, or to resign without punishment.

Although there is little precedent for an amnesty program dealing with kidnapping, these types of incentives are frequently used in other failing states across the globe to draw fighters away from militant groups and to enforce government plans.¹⁴² These plans elicit cooperation through the promise of complete amnesty and a viable alternative to a corrupt lifestyle.¹⁴³

¹³⁹ Jeanna Cullinan, *Veracruz, Mexico, Fires 980 Police in Corruption Purge*, INSIGHT CRIME (Oct. 20, 2011), <http://www.insightcrime.org/news-brief/veracruz-mexico-fires-980-p-olice-in-corruption-purge> (discussing a “confidence test” being used in some Mexican states to help root out corruption, involving polygraph and drug tests, as well as psychological, financial, and aptitude evaluations).

¹⁴⁰ *Id.*

¹⁴¹ *What is Peacekeeping?*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml> (last visited Apr. 13, 2012). A UN peacekeeping operation consists of military, police, and civilian personnel working together to provide security and peace-building support. These missions are deployed in war-torn countries, but can also be established to protect civilians, protect and promote human rights, and assist in restoring the rule of law. Before deciding to take on a mission, a country must invite UN peacekeeping forces and then UN Member States vote to pass a resolution. Thus in order for this solution to work, Latin American countries first need to request UN peacekeeping assistance. *Id.*

¹⁴² Senan Murray, *Nigerian Amnesty Program Viewed with Caution*, N.Y. TIMES, Oct. 5, 2009, at A9; *see also* Amnesty Act (2000) § 3(2) (Uganda), *available at* <http://www.ulii.org/ug/legislation/consolidated-act/294> (granting amnesty to Ugandans fighting under the Lords Resistance Army (LRA) and the assurance that they will not be prosecuted or punished in any way for their actions during the war).

¹⁴³ *See, e.g.*, Murray, *supra* note 142. Here, the Nigerian government provided a sixty-day period for fighters from the Movement for the Emancipation of the Niger Delta (MEND) to come forward and turn over their weapons in exchange for a \$13 daily stipend. *Id.*

Latin American governments would have to provide similar incentives to their government officials in order for such programs to be successful. Not only would they have to allow officers the opportunity to keep their jobs, but they would also need to include the promise of a pay raise, better training, and better personal protection for officers and their families to ensure that the benefit of coming forward outweighed the risk.¹⁴⁴

Because all security officials should receive a pay increase, one way to reward non-corrupt officers would be to suspend the application of the pay raise to those corrupt officers who come forward. For example, a ninety-day amnesty period could be enacted, during which all government officials would have the opportunity to come forward and admit their participation in corrupt practices, as well as provide information to the government regarding their criminal contacts and connections. However, a secure means of coming forward must be established to protect officers from the repercussions likely to be inflicted by angry gangs and drug cartels. After this ninety-day period, the pay increase would go into effect, but would be suspended for a certain amount of time for those previously corrupt officials. Although this time period would need to be sufficient enough to reward non-corrupt officials, it could not be so long that it deterred officers from turning themselves in. A “grace” provision should also be included to allow those who do not originally come forward in the ninety-day period to do so, but at a greater expense.¹⁴⁵ In the alternative, if an officer did not want to admit their involvement and provide the government with information (due to either fear of gang retaliation or other personal reasons), they should have the option to resign without penalty.¹⁴⁶

¹⁴⁴ See *supra* Part IV.A (regarding the need for increased pay for police and security officials to prevent the need for income supplementation via corrupt practices).

¹⁴⁵ This would require docking their pay for the increase in salary they had already received up to that point, or at least retroactively enough to make up for the fact that they failed to come forward during the original ninety-day time frame. For example, if it was decided that former corrupt officials should have their salary increase suspended for six months, an officer who came forward one year after the ninety-day program would be docked for six months of his pay increase, plus an additional week for every month after the ninety-day period it took to come forward. In this case, the officer would be docked a total of nine months of pay increase.

¹⁴⁶ This does not necessarily mean that they should be afforded all benefits that may accompany a resignation from a government position under normal conditions, but rather that they would be discharged without penalty. This is important because if these former officers are not able to get another job due to penalties associated with their resignation, they would be more likely to turn to the drug cartels and organized gangs as a means of providing for their families.

C. *Properly Training Security Officials*

The final strategy in addressing the international problem of kidnapping is to properly train security officials (including all local and state police, federal agencies, and other related government officials) so that they are able to enforce laws passed to deal with kidnapping. This approach requires that officials be trained to negotiate with kidnappers in an appropriate way, which could vary depending on the stakes and risks surrounding the individual victim.¹⁴⁷ If countries are able to drastically reduce the amount of corruption among officials and then properly train them to deal with hostage situations, the public will be more likely to trust in their abilities to secure the return of a loved one.¹⁴⁸ This increased trust and reliance on police forces would have a couple of effects. First, it would decrease the perceived need for kidnap and ransom insurance policies. Although reimbursement for ransom payments can be important for a family, the cost of negotiation services can supersede the actual amount demanded in ransom, thus creating a need for insurance policies that require smaller payments for these guaranteed services if they are needed in the future.¹⁴⁹ If security officials were trained and able to provide these services, citizens would no longer feel the need to invest in kidnap and ransom insurance policies. Providing a viable state-run alternative would make it much easier for states to prohibit the purchase of these policies which incentivize kidnappers to continue their practices.

Second, turning to state security officials instead of private companies would also have the likely effect of decreasing the number of kidnappings carried out generally. One of the main reasons that gangs and individual criminals have taken up kidnapping is that the risk of being caught by police or prosecuted by the government is so low.¹⁵⁰ If the police became more involved and punishments were actually enforced against kidnappers, the practice of kidnapping would lose its appeal as an easy means of supplementing income or funding drug cartels.

¹⁴⁷ See O'Brien, *supra* note 11 (discussing the importance of providing good advice during negotiations with kidnappers to avoid paying excessive sums and to ensure the victim is released unharmed).

¹⁴⁸ Bailliet, *supra* note 9, at 609 (discussing how families often turn to private insurance firms rather than the state to negotiate with kidnappers because of corruption among state officials and their ineffectiveness in returning victims to their families).

¹⁴⁹ *Id.*

¹⁵⁰ *Rising Risks of International Kidnapping*, *supra* note 10 (stating that countries with weak central governments and law enforcement agencies often have higher kidnapping rates because kidnappers have less fear of retribution).

The question then becomes: What constitutes sufficient training? Colombia's Anti-Kidnapping School provides a solid foundation on which other training programs can be based. The school was established with the help of the U.S. Office of Antiterrorism Assistance, which provided a six-year, in-country program starting in 2003 that included anti-kidnapping instruction and equipment.¹⁵¹ The school focuses on training officers in negotiation and rescue techniques, as well as on using technology to track and locate kidnapers and their victims.¹⁵² To date, the Colombian school has housed students from eighteen different countries; in two courses held in 2011 alone, eighty students from different nations were present.¹⁵³

In order to be truly effective, however, the training of security officials in all susceptible states must be the rule, not the exception. It is not enough to simply train a handful of officers from each state; rather, in order to really make these trainings useful, all officers required to deal with hostage or kidnapping situations must take part.¹⁵⁴ Because Colombia's training methods seem to be effective,¹⁵⁵ a possible solution to the training deficiency in Latin America might be to turn Colombia's anti-kidnapping school into a "trainers" training school, bringing in delegates from around the country and other Latin American states who would then take the knowledge imparted to them back to their city or country to establish local training schools.

Ideally, all security officials would eventually be trained in negotiation skills, tracking down kidnapers, and other preventative measures. However, a reasonable starting place would be requiring all officers in specialty kidnapping units such as the GAULA groups in Colombia, the Federal Investigations Agency (AFI) in Mexico, and the CICPC's anti-extortion and kidnapping unit in Venezuela, to undergo such training. Though it might make more sense to start this training with all incoming officers to these units, this might undermine efficiency, as more tenured

¹⁵¹ U.S. DEP'T OF STATE, OFFICE OF ANTITERRORISM ASSISTANCE, FISCAL YEAR 2009 YEAR IN REVIEW (2010), available at <http://www.state.gov/documents/organization/143139.pdf> (discussing the six-year antiterrorism assistance program in Colombia and the final phase of the program, which specifically emphasized the establishment of a self-sustained training program using fully qualified Colombian instructors).

¹⁵² *Id.*

¹⁵³ *Representatives of 25 Countries Participate in Anti-Kidnapping Meeting in Bogotá*, DIÁLOGO (Oct. 21, 2011), http://dialogo-americas.com/en_GB/articles/rmisa/features/regional_news/2011/10/21/feature-ex-2610 [hereinafter *Bogotá Meeting*].

¹⁵⁴ For example, in Mexico only forty officials of 35,000 federal officers were trained in practices promulgated by the UN's counter-kidnapping manual. This represents only .01% of Mexico's security officials, and that includes only federal officers. Pachico, *supra* note 112.

¹⁵⁵ See *Bogotá Meeting*, *supra* note 153 (noting a significant drop in kidnapping numbers from January 2011 to June of 2011 as compared to the same months in 2010).

officers are unlikely to take orders from newer, less experienced colleagues. To avoid creating this friction, training should begin with the senior officers who head up the anti-kidnapping units. This would at least ensure that those officers who are assigned to deal with kidnapping situations are working under the guidance of those who have undergone training in the appropriate techniques. Eventually, all incoming officers should be sent to an anti-kidnapping “school” or other training center as part of a mandatory training requirement before sitting for police exams. Having all officers specifically trained to deal with kidnapers and hostage situations could decrease the number of officers who succumb to corrupt practices as a result of fear brought about by coercion on the part of gang members and drug cartels engaging in kidnapping practices.

V. CONCLUSION

In the past few decades, kidnapping for ransom has become a widespread practice affecting thousands of victims and their families every year in places like Latin America. Despite efforts by Latin American governments to combat the kidnapping epidemic through local legislation and enforcement, as well as the efforts of international bodies such as the United Nations and the Organization of American States, kidnapping for ransom continues to plague countries like Mexico, Colombia, and Venezuela. In order to truly eradicate the practice of kidnapping, the international community must partner with local governments and address kidnapping through more proactive, collective efforts.

Instead of simply encouraging Member States to adopt anti-kidnapping legislation and to share information regarding kidnapping prevention techniques,¹⁵⁶ the UN and OAS should provide meaningful assistance to governments through comprehensive training on effectively negotiating with kidnapers on a much larger scale.¹⁵⁷ Additionally, because they are likely to be more objective, the UN should provide peacekeeping troops to aid in the process of eradicating corrupt officials in Latin American countries through the administration of vetting procedures. These efforts, coupled with financial aid provided for by the World Bank’s International Bank for Reconstruction and Development and the International Monetary Fund to help fund these training programs and the necessary pay increases for

¹⁵⁶ See *supra* Part III.C.

¹⁵⁷ Thus, instead of holding training sessions for fewer than forty officials, mass training programs should be established to accommodate several hundred officers at a time. See *supra* notes 110–13 and accompanying text.

security officials, are likely to see greater results than the measures being taken today.