

REGIONAL SHORTCOMINGS AND GLOBAL SOLUTIONS: KIDNAP, RANSOM AND INSURANCE IN LATIN AMERICA

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It takes only a few clicks of the mouse while on the internet to realize the face of insurance in America, and much of the Western world, has changed dramatically since its inception. Insurance agencies no longer offer just the traditional auto, health and life insurance policies. Today, certain types of specialty insurance have become increasingly popular and are now available from major insurance companies.¹ With consumers having the option to purchase plans that protect their weddings, household help, college students, “twenty-somethings”, and even their identity from theft,² it seems that insurance can protect anyone from anything so long as they are willing to pay the premium.

As such, it is unsurprising that in today’s increasingly global, and often volatile, world, the demand for a unique specialty insurance to protect against kidnap for ransom has grown.³ With boundaries that once created a marked separation between countries growing more and more obsolete in the business world,⁴ kidnap and ransom insurance (“K & R”) is being purchased by large fortune 500 companies, as well as small to midsized companies, manufacturing and service firms and financial institutions to protect their employees.⁵ This insurance is not limited to companies

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1. Three major insurance companies offering specialty insurance are Lloyds of London, AIG, and Victor O. Schinnerer & Company offer specialty insurance. This can be found on their websites at http://www.lloyds.com/About_Us/What_is_Lloyds/at_a_glance.htm, http://www.aig.com/specialty_20_7402.html, and <http://www.schinnerer.com/index.html> respectively.

2. Insurance Information Institute, Major Types of Specialty Insurance, <http://www.iii.org/individuals/other> (last visited Jan. 24, 2008).

3. Maria O’Brien, *Preparing for the Worst*, LATIN FINANCE, June 2001, at 42.

4. V.A. Tommy, *Managing Risk While Crossing Treacherous Boarders*, GULF NEWS, May 24, 2006, <http://archive.gulfnews.com/articles/06/05/24/10042030.html>.

5. Barbara Bowers, *Hostage Situations: Kidnappings for Ransom are on the Rise and Insurers are Selling More Policies to Protect Executives Who Travel in High-Risk Countries*, BEST’S REVIEW, Mar. 2001, at 70, 71.

though; increasingly more often, individuals are even purchasing plans to protect themselves and their families.⁶

Latin America has long held the dubious honor of being the most dangerous area in the world for kidnappings.⁷ Of the countries with the highest risk of kidnapping for ransom or hostage taking, Mexico, Colombia and Brazil all top today's list.⁸ In fact, Colombia has been dubbed "the kidnapping capital of the world"⁹ where kidnapping is more than a crime; it is a business.¹⁰ Specifically troubling in Latin America is the kidnapping activity of the Revolutionary Armed Forces of Colombia (FARC), a rebel group who uses kidnapping as their second largest source of financial support.¹¹ As such, K & R policies are being purchased more frequently; providing an abductee's family the financial means necessary to ensure their loved one's safe and reasonably swift return.¹²

Despite its benefits, K & R insurance has recently come under scrutiny for providing customers with precisely what they have paid for; the assurance that if abducted, their families will be able to pay the ransom demanded and bring them home safe.¹³ Alleging that K & R plans are undermining American counterterrorism policies, it has been suggested that the insurance industry adopt a voluntary no-pay policy, whereby K & R insurance could continue to exist, but without providing reimbursement for any ransoms paid.¹⁴ Instead of reimbursement, the focus of K & R policies under a no payment scheme would be enhanced kidnap prevention training and providing crisis management services.¹⁵ This proposal is intended to

6. *Id.* at 72.

7. *In Latin America, a New Breed of Kidnappers is More Brutal*, USA TODAY, Aug. 14, 2004, available at http://www.usatoday.com/news/world/2004-08-14-samerica-kidnapping_x.htm.

8. V. A. Tommy, *supra* note 4.

9. Susan Hansen, *High Net Worth Families, Kidnapping Risk*, TRUSTS & ESTATES, April 2003, at 35.

10. *Id.*

11. O'Brien, *supra* note 3, at 42.

12. These policies help ensure the return of kidnapping victims by providing the money necessary to pay the demanded ransom. They have a proofed effective because kidnappers' motives are more often than not financially driven. *Id.*

13. Meadow Clendenin, *No Concessions with No Teeth: How Kidnap and Ransom Insurers and Insureds are Undermining U.S. Counterterrorism Policy*, 56 EMORY L. J. 741, 741-42 (2006).

14. *Id.*

15. *Id.* at 743.

bring the insurance industry in line with the U.S. government's "no concessions" stance regarding terrorism.¹⁶

This Comment takes the position that a necessary element of any K & R policy is its ability to reimburse an insured's family or employer for payment of a demanded ransom. While kidnap prevention training and crisis management services are valuable and necessary, absent payment, they are insufficient in the event of abduction. Moreover, if payment reimbursement is removed from K & R policies, these plans will be effectively eliminated. Looking at the situation of the Northrop Grumman employees being held in Colombia,¹⁷ this Comment will demonstrate how the alternatives suggested in a no payment policy would not only be ineffective in preventing kidnappings but instead, would increase barriers between kidnap victims and a safe return home. Additionally, this Comment will demonstrate that, given its international nature, instituting a no payment policy for the entire insurance industry is simply not possible. Instead, an international solution ought to be sought through the United Nations.

Part I of this Comment describes the history of K & R insurance, the general coverage provided by a policy and the history and law governing the American insurance industry. Part II discusses the statistical realities of kidnapping, including data on those groups of individuals most at risk for abduction worldwide and more specifically, within Latin America. Part II also addresses the increased rate of kidnapping in Latin America. Part III discusses how citizens of the most affected Latin American countries are adapting and dealing with this crisis, and Part IV relates the saga of the three defense contractors of Northrop Grumman who have been held hostage in Colombia since 2004.¹⁸

Part IV will also assert how it is the "no concessions" policy of the U.S. and the absence of the ability to make a ransom payment which has kept these men from a safe return. Lastly, Part V discusses the potential alternatives to the proven ineffective "no-concession" approach.

16. *Id.*

17. See *infra* Part IV A. While this Comment was pending for publication, the three Northrop Grumman employees, along with former Columbia presidential candidate Ingrid Bentacourt and eleven other hostages were rescued from the FARC. See Bentacourt, U.S. Contractors rescued from FARC, CNN.COM, July 3, 2008, available at <http://edition.cnn.com/2008/WORLD/americas/07/02/bentacourt.colombia/index.html> (last visited Aug. 11, 2008). This was achieved only after the Columbian military secretly infiltrated the group. *Id.*

18. See *infra* Part IV A.

It discusses why the appropriate way to deal with the Latin American situation, an international crisis, is through an international system of accountability and assistance from the United Nations, rather than unilateral American action.

I. THE HISTORY AND COVERAGE OF K & R POLICIES

A. HISTORY OF K & R

Kidnapping is a centuries old crime; a crime historically prolific during times of great social and economic transition.¹⁹ Many countries are currently experiencing this type of social and economic transition.²⁰ Just as the crime of kidnapping is not new, neither are efforts to protect oneself and ensure access to necessary means to pay a ransom. The first K & R policy dates back to 1932²¹ and was offered by Lloyd's of London.²² This specialty insurance was first offered shortly after the highly publicized kidnapping of Charles Lindbergh's baby son.²³

Despite its early entrance on the insurance scene, K & R policies did not achieve prominence until the 1960's when a series of bank executives' wives were kidnapped.²⁴ After that point, the market for K & R insurance exploded and became Lloyd's single most important growth area from the middle of 1970 to the mid-1980s.²⁵ This trend has generally continued. As recently as 2005 80% of Fortune 500 companies had purchased K & R policies.²⁶ While a seemingly untraditional corporate investment, these

19. Hansen, *supra* note 9, at 35.

20. *Id.*

21. *Id.* at 36.

22. Lloyd's is the world's leading insurance market providing specialist insurance services to businesses in over 200 countries and territories. Lloyd's About Us, *available at* http://www.lloyds.com/About_Us/ (last visited July 9, 2008). In 2007, 66 syndicates were underwriting insurance at Lloyd's. *Id.* Lloyd's has long been a pioneer in the insurance industry, beginning in 1688 when it was operated in Edward Lloyd's Coffee House. Lloyd's Chronology, *available at* http://www.lloyds.com/About_Us/History/Chronology.htm (last visited July 8, 2008). Starting with its roots in marine insurance, Lloyd's has grown over 300 years to become the world's leading market for specialty insurance. *Id.*

23. Hansen, *supra* note 9, at 36.

24. Clendenin, *supra* note 13, at 750.

25. *Id.*

26. *Id.* The total of the annual premiums paid for those policies was estimated at more than \$250 million. *Id.* The Lloyd's of London syndicate, Hiscox, held between 60% and 70% of these policies. *Id.* at 751.

policies have become popular for filling the gaps that other, more customary forms of insurance do not cover.²⁷

B. MAIN AREAS OF K & R POLICY COVERAGE

Though Lloyd's of London was the first to offer K & R policies, today, they are just one among many who offer this specialty insurance.²⁸ A standard K & R policy has five main components, four of which encompass reimbursement of money lost from a kidnapping.²⁹ These four reimbursement components are as follows: (1) reimbursement of any ransom paid; (2) reimbursement for expenses related to securing the release of a kidnap victim or resolution of extortion threat;³⁰ (3) reimbursement of expenses relating to securing the release of a detained or hijacked victim; and (4) reimbursement of money lost when being delivered as ransom.³¹ The fifth, non-reimbursement component of a K & R policy is access to

27. *Id.* at 748-49.

28. While many insurers offer K & R plans, the coverage varies greatly from policy to policy. *Id.* at 753. This Comment will be looking at the K & R plan by Victor O. Schinnerer & Company, carried by Great American Insurance Company and underwriting support provided by the Lloyd's of London syndicate Hiscox. Victor O. Schinnerer Policy Highlights, available at http://www.schinnerer.com/product_info/kidnap_ransom/k_r_program.html (last visited July 9, 2008). The Schinnerer K & R policy is available for any for profit or non profit organization, including religious organizations and educational institutions. Victor O. Schinnerer Frequently Asked Questions, available at http://www.schinnerer.com/product_info/kidnap_ransom/k_r_faq.html (last visited July 9, 2008). It also may be converted to provide coverage for high net worth individuals and families. Elisabeth Eaves, *Most Dangerous Destinations 2007*, FORBES.COM, Feb. 1, 2007, available at http://www.forbes.com/travel/2007/01/31/most-dangerous-destinations-forbeslife-ee_0201dangerousdestinations.html (last visited July 9, 2008). Most individual policies purchased will pay for the cost of dealing with a kidnapping, but unlike the corporate plans, do not reimburse the amount of the ransom payment. *What Does Kidnap and Ransom Insurance Cover*, INSURANCE INFORMATION INSTITUTE available at <http://www.iii.org/individuals/business/optional/kidnapandransom/> (last visited July 9, 2008).

29. Clendenin, *supra* note 13, at 751-52.

30. Extortion is defined by the Victor O. Schinnerer & Company policy as the following types of threats made in conjunction with a ransom demand: "A threat to kill, injure or abduct, [a] threat to damage property, [a] threat to contaminate products; [a] threat to divulge trade secrets, [a] threat to introduce a computer virus." Victor O. Schinnerer Extortion Highlighted, available at http://www.schinnerer.com/product_info/kidnap_ransom/pdfs/extortart.pdf (last visited July 9, 2008).

31. Clendenin, *supra* note 13 at 752-53.

security consultants for preventative measures as well as access to individuals experienced in hostage negotiation, risk management and crisis response in the event of an abduction.³² The “crisis management team” to whom the insured’s family or employer has access to are often consultants with military, intelligence and police backgrounds.³³ Specifically, they have extensive experience dealing with kidnap and extortion situations.³⁴

While the above mentioned are the main components of a K & R policy, plans can be tailored to an individual or company’s specific needs. The options for coverage outside the five main areas are expansive and can cover everything from providing reimbursement of reward money provided to an informant, reimbursement of fees incurred in securing and employing an interpreter,³⁵ and reimbursement of lawyers expenses³⁶ to reimbursement of personal financial loss of a kidnap victim,³⁷ and payment of a victim’s cosmetic surgery for injuries sustained as a result of kidnap.³⁸ These options, along with the varying level of danger posed in different countries and an individual clients’ history with kidnap incidents, cause plan premiums to vary greatly.³⁹ Just as important as the area where the work is being done, the type of work in which a client is engaged can also affect the cost of a K & R policy.⁴⁰

32. *Id.* at 752.

33. See Victor O. Schinnerer Policy Highlights, *supra* note 28. These services are provided by an outside company like the international crisis and response company, Control Risk. *See id.* When handling a case, Control Risk has four main objectives: (1), in the event of a kidnapping, a “safe, timely and secure” victim release, (2) handling extortion within the interests of their client, (3) for business clients, safeguarding the continued business operations and (4) to always act within the law. *Id.*

34. *Id.*

35. Victor O. Schinnerer Extortion Highlighted, *supra* note 30.

36. Clendenin, *supra* note 13, at 752.

37. Victor O. Schinnerer Extortion Highlighted, *supra* note 30.

38. Victor O. Shinnerer Policy Highlights, *supra* note 28.

39. See Clendenin, *supra* note 13, at 753. While the premiums vary dependent upon the policy limit, the area of the world in which an individual is looking to be covered for is of greater consequence. *See id.* For example, a policy with a \$1 million limit can be purchased by some for as little as \$700 a year. Monica Perin, *Kidnapping for Ransom a Rising Risk Overseas*, HOUSTON BUSINESS JOURNAL, (Mar. 4, 2005), available at <http://houston.bizjournals.com/houston/stories/2005/03/07/story5.html> (last visited July 9, 2008). However, for coverage somewhere with as great a risk as Colombia, for the same \$1 million policy limit the premium can be as much as \$20,000 a year. *Id.* This does not mean that only those able to pay a premium in the tens of thousands can afford a K & R policy for higher risk areas around the world. Other corporate K & R policies are offered between \$1,500 and \$5,000 a year for companies in high risk situations. *Id.*

40. See Clendenin, *supra* note 13, at 753.

C. HISTORY OF AMERICAN LAW GOVERNING INSURANCE

American law governing insurance has had a long and complicated history. The greatest difficulty surrounding insurance law has been the struggle between the Federal and State governments as to who should regulate it.⁴¹ Until 1944, insurance regulation was left to the sole discretion of the states, as insurance was not considered “commerce” and thus, was not subject to federal jurisdiction.⁴² This distinction was made largely because insurance was not a tangible good⁴³ and therefore, not commerce. This left insurance regulation to the discretion of states, rather than Congress.⁴⁴

However, in 1944, the case of *United States v. South-Eastern Underwriters Association*, the Supreme Court held that persons engaged in the insurance business are subject to federal regulation since insurance involves the transmission of “money, documents, and communications across dozens of states lines.”⁴⁵ In 1945, with the passage of the McCarran-Ferguson Act, 15 U.S.C. §§ 1011, Congress declared the power of the states to regulate the insurance industry, but retained Federal authority over areas of the insurance industry that were unregulated by the states.⁴⁶ Within 3 years of the passage of the McCarran-Ferguson Act, states enacted similar anti-trust laws to those passed by the Federal Government; allowing them to maintain regulatory control of the insurance industry after July 1, 1948. Consequently, until recently, states have maintained complete control over the insurance regulation.⁴⁷

The most recent action in the struggle to balance state and federal insurance regulation came late in 1999 when President Clinton signed the

41. *Who Regulates Insurance*, Bayland Insurance Group, available at <http://www.baylandinsurance.com/regulatinginsurance.html> (last visited July 9, 2008).

42. Cornell University Law School Insurance Law: An Overview, <http://www.law.cornell.edu/topics/insurance.html> (last visited Jan. 24, 2008).

43. Bayland, *supra* note 41.

44. *Id.*

45. *United States v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533, 549-553 (1944).

46. Cornell, *supra* note 42. Specifically, Congress held that the Sherman Act, the Clayton Act, and the Federal Trade Commission Act are applicable to insurance business to the extent it is unregulated by state law. *Id.*

47. Bayland, *supra* note 41. There are specific Federal statutes that regulate insurance other than 15 U.S.C. § 1011, among them are 15 U.S.C. § 6701 and 18 U.S.C. § 1033 (f). *Id.*

Gramm-Leach-Bliley Financial Services Modernization Act.⁴⁸ This Act was signed into law as a response to the changes and developments in both the marketplace and technology that have blurred the lines demarcating traditional roles of various financial service providers.⁴⁹ The Gramm-Leach-Bliley Act removed then existing distinctions between insurance companies, banks and investment services and as a result, impacted insurance industry regulation.⁵⁰ The probable long term impact of the Act will be greater federal regulation of the insurance industry.⁵¹ However, as the implications of this Act are still being understood and playing out in Washington, navigation of both state and federal insurance statutes still determines whether state or federal law is applicable in a given situation.⁵²

Though state statutes for insurance override most federal laws, some portions of federal law are *always* commanding.⁵³ Therefore, when determining whether state or federal law governs a particular insurance issue, the inquiry ought to be whether the issue is related to the "business of insurance", making state law applicable, or whether the issue relates to issues related to of the insurance industry,⁵⁴ where federal law governs.⁵⁵ The essential point of this analysis is that each issue must be looked at individually to see whether state or federal law applies.⁵⁶ What makes this problematic is that when state law is applicable rather than federal, the same claim could potentially have a different result in every state.⁵⁷

II. WHERE, WHO AND WHY OF KIDNAPPINGS

The world that we live in today is dramatically different than it was just a short time ago. As a result of globalization and easy, cheaper travel,

48. Bayland, *supra* note 41.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Cornell, *supra* note 42. An example of where portions of federal law are always commanding is federal tax law. *Id.*

54. Some examples of peripheral related issues would be labor, tax or securities issues. *Id.*

55. *Id.*

56. Looking at the applicable laws of every state is the only way to determine whether state or federal law applies. See generally Cornell University Law School Law By Topic, available at http://www.law.cornell.edu/topics/state_statutes3.html#insurance (last visited July 9, 2008).

57. *See id.*

business is expanding into regions once thought too risky to work.⁵⁸ This kind of expansion is occurring so as to allow companies to minimize the cost of materials and labor in order to maximize profit margins.⁵⁹ With this explosion of globalization comes the need to evaluate the areas in which companies are moving. Particularly important for a company to consider in selecting an international location is the danger that will result from being in a foreign and often less developed and volatile country. With many companies capitalizing on the absence of import tariffs from fellow NAFTA countries and moving production cites into Latin America, it is necessary to consider that area's epidemic of kidnap for ransom; where the most dangerous countries within Latin America are, who faces the greatest risk of abduction, and why kidnapping is so problematic in these countries.

A. WHERE: THE MOST DANGEROUS PLACES IN THE WORLD

There are many places in the world which American's traveling for both business and pleasure know to be dangerous. The threat of being mugged or murdered while in a foreign country is not something that people often forget when traveling abroad and they often take measures to prevent its occurrence. However, being kidnapped and held for a ransom is not something for which many people plan. This is likely because there is little concern of being kidnapped while traveling within the United States.⁶⁰ Here, kidnappings are few and far between and when they do occur, 95% of all kidnappers are caught and punished.⁶¹ However, in other areas of the world, this is not the case. Those areas where the risk of kidnapping for extortion is the greatest are the regional trouble spots of Southeast Asia,⁶² areas of the former Soviet Union, and Latin America.⁶³

It is this last region where kidnapping has reached a point that the number of abductions are deserving of the term epidemic. Of the known kidnappings worldwide between 2000 and 2004, 73% were in Latin

58. Eaves, *supra* note 28.

59. *Id.*

60. Hansen, *supra* note 9, at 35.

61. Steve Macko, *Kidnapping: A Latin American Growth Industry...*, ENN DAILY INTELLIGENCE REPORT, (April 30, 1997), available at <http://www.emergency.com/latnkdnp.htm>. (last visited July 9, 2008).

62. Specifically, the Philippines has been most problematic area in Southeast Asia. *Id.*

63. Hansen, *supra* note 9, at 35; V.A. Tommy, *supra* note 4.

America.⁶⁴ Despite the dynamic and widely publicized videotaped kidnappings that have recently occurred in Iraq, Latin America has not received the same media attention for what is a more serious problem than the Middle East kidnappings.⁶⁵ In fact, in 2005 that figure continued to increase, up to 75%.⁶⁶

It is estimated that 7,500 kidnappings a year occur in Latin America⁶⁷ and in Colombia and Mexico alone, each year there are between 2,000 and 4,000 kidnappings annually.⁶⁸ While these statistics are individually astounding and terrifying, it is even more disconcerting when the following is considered. The number of annual abductions released is more likely than not significantly lower than the true number of kidnappings.⁶⁹ These numbers are prone to deflation since so few kidnappings are actually reported.⁷⁰ Kidnapping may not be reported for a number of reasons. Mainly because (1) a victim's fear of re-kidnap if they come forward to report the crime and (2) a victim's sensitivity after the trauma they experienced.⁷¹ While Colombia has long held the dubious honor of being the kidnapping capital of the world,⁷² in 2007 Mexico saw an increase in violence and kidnappings that resulted in higher kidnapping rates than Colombia. This caused Mexico to garner the title of ransom capital of the world.⁷³

The situation in Mexico has been getting progressively worse since 1994.⁷⁴ In March of that year, Alfredo Harp Helu, a prominent executive in Mexico's largest financial group and close friend to then President Carlos

64. Victor O. Schinnerer Partnering With Experience, available at http://www.schinnerer.com/product_info/kidnap_ransom/pdfs/kbrochure.pdf (last visited July 9, 2008).

65. Hansen, *supra* note 9, at 35.

66. See *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7.

67. *Id.*

68. Perin, *supra* note 39.

69. *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7. It is estimated that 1 in 10 kidnappings go unreported. *Id.*

70. *Id.*

71. V.A. Tommy, *supra* note 4

72. See Hansen, *supra* note 9, at 35.

73. Jay Root, *Mexico Crime Continues to Surge*, McClatchy, Sep. 22, 2007, <http://www.mcclatchydc.com/homepage/story/19879.html>. That Mexico surpassed Colombia in kidnappings in 2007 may be a result of not only increased violence in Mexico, but also the spread of kidnapping out of Colombia to neighboring countries such as Ecuador, Brazil and Venezuela. See Hansen, *supra* note 9, at 35.

74. Macko, *supra* note 61.

Salina, was kidnapped and released after a ransom was paid.⁷⁵ The \$30 million ransom was paid to the kidnappers and Helu's family announced it's payment on television.⁷⁶ This announcement seemed to inspire other kidnappers in Mexico and in April of 1994, another prominent businessman, Angel Losada Moreno, vice president of a Mexican supermarket chain, was abducted and released for a \$50 million ransom.⁷⁷ After 1994, kidnappings in Mexico became more frequent and kidnappers were requesting increasingly higher ransoms.⁷⁸ As a result, kidnapping in Mexico has grown to be more prominent than anywhere else in the world.

B. WHO: MOST COMMON KIDNAPPING VICTIMS

Between 2000 and 2004, the two most common victims for kidnapping were dependents⁷⁹ and business personnel.⁸⁰ These two groups constituted one half of the world's abduction victims.⁸¹ The remaining 50% of victims were made up of non professional employees,⁸² government officials and security forces,⁸³ professionals, including journalists,⁸⁴ ranchers,⁸⁵ project workers, including engineers,⁸⁶ tourists, aid workers, religious staff, and sports and media personalities.⁸⁷ At the start of 2006, dependents and business employees remained the most common victim of kidnapping and abduction of foreign nationals has increased by over 275% since 1996.⁸⁸

75. *Id.*

76. *Id.*

77. *Id.*

78. See *id.*

79. 27% of all kidnappings worldwide were of dependents. Victor O. Schinnerer, Partnering With Experience, *supra* note 64.

80. 23% of all kidnappings worldwide were of business personnel. *Id.*

81. *Id.*

82. 14% of all kidnappings worldwide were non professional employees. *Id.*

83. 8% of all kidnappings worldwide were government officials and security forces. *Id.*

84. 6% of all kidnappings worldwide were professionals including journalists. *Id.*

85. 4% of all kidnappings worldwide were ranchers. *Id.*

86. 3% of all kidnappings worldwide were project workers including engineers. *Id.*

87. These groups are among those constituting the "other" category of abduction victims. 15% of all kidnappings worldwide consist of victims that fall into the "other" category. *Id.*

88. See Victor O. Schinnerer Why Kidnap, Ransom and Extortion Coverage, available at http://www.schinnerer.com/product_info/kidnap_ransom/pdfs/why_kr.pdf (last visited July 9, 2008).

While important, raw statistics can only tell part of the story in identifying those at highest risk for kidnapping within Latin America. When considering who may be a potential victim in Latin America, it is important to account for where the business, and hence a kidnapping, would take place. For example, in Guatemala, where only about 100 people a year are kidnapped, the victims tend to be children of wealthy local or foreign businessmen.⁸⁹ Kidnappers who “do their homework” on their victim, following them and learning their habits, are present everywhere though people with no ties to the area are less likely to be abducted. These kidnappers will patiently investigate potential targets and take husbands, wives, children or the elderly from wealthy citizens in order to garner a large ransom.⁹⁰ In these kidnappings, the victims are carefully chosen, the kidnappers are highly sophisticated and they go to great lengths to get valuable information for selecting their victims.⁹¹ Therefore, tourists, people visiting briefly or those passing through a country generally are not there long enough to fall prey to this kind of abduction.⁹²

Other kidnappings are kidnappings of opportunity; in the Colombian cities of Bogata, Medellin, Cali and Cartagena, abductions in taxis are particularly prolific.⁹³ As are abductions late at night, close to midnight, where a victim is taken and held only long enough to make withdrawals from an ATM on two separate posting days.⁹⁴ Anyone alone late at night could fall victim to this kind of kidnapping.⁹⁵ These abductions have great prominence in the big cities of Brazil, Mexico and Colombia⁹⁶ and even those passing through the country driving an expensive car or drawing attention to themselves for their wealth could be taken, even if only in the country for a few hours.⁹⁷ On the other hand, also in Brazil, it is usually local residents, rather than foreigners, that fall victim to the sequestros relampagos.⁹⁸ As can readily be seen, the type of kidnappings most

89. Macko, *supra* note 61.

90. Jennifer Litz, *Kidnapped in Mexico*, SAN ANGELO LIVE, (June 3, 2007), available at <http://www.sanangelolive.com/node/491> (last visited July 9, 2008).

91. *Id.*

92. *Id.*

93. O’Brien, *supra* note 3, at 42.

94. Litz, *supra* note 90.

95. While anyone is potentially a victim of this kind of kidnapping, executives visiting the area are more vulnerable to these kinds of random, opportunistic kidnappings. O’Brien, *supra* note 3, at 42.

96. *Id.*

97. Litz, *supra* note 90.

98. Sequestros relampagos are “lightning kidnappings”. O’Brien, *supra* note 3, at 42.

prominent in a given area will influence those most at risk for becoming a victim of abduction.

C. WHY: KIDNAPPING FOR PROFIT

Kidnapping in Latin America is a business.⁹⁹ Like any business, individuals may have different way of accomplishing their work, but their ends are ultimately the same: to make as great a profit as possible. If nothing else, kidnapping for profit is certainly profitable in Latin America. Whether it is the secuestro al paso¹⁰⁰ which are increasing all over Latin America,¹⁰¹ sequestros relampagos which are particularly prolific in Brazil and Colombia,¹⁰² cross boarder kidnappings, where one group kidnaps a victim and then sells them to another group,¹⁰³ virtual kidnappings,¹⁰⁴ or a more traditional kidnap for ransom, where an individual is kidnapped by one group and held by them until they receive the ransom they desire, kidnappers are making huge profits.¹⁰⁵

A combination of factors has led to the current kidnapping crisis overtaking Latin America. Drastic social change and an increase in the economic split between the rich and the poor have both contributed to the growing problem.¹⁰⁶ As discussed, a recent increase in violence and crime

99. *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7.

100. Secuestro el paso are “express kidnappings” where the victim is abducted and held long enough to be taken to an automatic teller machine where they are instructed to empty their bank account. O’Brien, *supra* note 3, at 42. After emptying their accounts to their kidnappers, they are released. *Id.*

101. Though increasing all over Latin America, the majority of these kidnappings occur in the big cities of Brazil, Colombia and Mexico. *Id.*

102. *Id.*

103. Bowers, *supra* note 5, at 72. This particular type of abduction is illustrative of the “business” like nature of kidnappings in Latin America. Some kidnappers have taken on a division of labor concept that has long been successful in business. *Id.* In this division of labor, one group skilled in staking out a victim does just that, while another group does the actual kidnapping. *Id.* Then finally, another group altogether holds the victim and negotiates ransom. *Id.*

104. Virtual kidnapping occurs when a caller demands money from someone for the promise that they will not be kidnapped. Anna Cearley, *Kidnap Fears Causing Some to Leave Tijuana*, UNION-TRIBUNE, (May 21, 2005), available at <http://www.signonsandiego.com/news/mexico/tijuana/20050521-9999-1n21kidnap.html> (last visited July 9, 2008).

105. See Schinnerer Kidnap, Ransom and Extortion Protection Insurance, http://www.schinnerer.com/product_info/kidnap_ransom/pdfs/pol_highlights.pdf (last visited June 15, 2008).

106. See V.A. Tommy, *supra* note 4; Macko, *supra* note 61.

can be tied to the present surge in kidnapping in Mexico,¹⁰⁷ while in Colombia, the history of socio-political factors that have made kidnapping for ransom problematic for so long are still present. With many victims refusing to cooperate with the local police, few suspects are ever being caught¹⁰⁸ and weak, inefficient and corrupt law enforcement in these areas¹⁰⁹ make Latin America a particularly attractive niche for the kidnap for ransom industry.

The United States also bears some responsibility for the surge of kidnappings in Latin America. In 2000, former President Clinton signed into law Plan Colombia; a \$6.7 billion program set to receive \$1.7 billion in U.S. aid¹¹⁰ intending to change the face of Colombia.¹¹¹ Originally called the Marshall Plan for Colombia,¹¹² the goals of Plan Colombia were simple; support the peace process with FARC (who make up the largest and oldest rebel group within Colombia), reactivate the Colombian economy, reform the Colombian judicial system, increase respect for human rights and reduce the drug market by fifty percent.¹¹³ While all the objectives of Plan Colombia seem worthwhile, it was the promise to reduce cocaine trafficking to the United States by fifty percent over five years that led the plan to receive the necessary congressional support for passage.¹¹⁴

By 2005, however, Plan Colombia had racked up \$10.6 billion in aid, \$3 billion over the stated budget, and achieved none of its stated goals.¹¹⁵ Analysis showed an increase in both cocaine trafficking and use., as well as

107. Jay Root, *Mexico Crime Continues to Surge*, McClatchy, Sep. 22, 2007, <http://www.mcclatchydc.com/homepage/story/19879.html>.

108. Macko, *supra* note 62.

109. *Id.*

110. The United States agreed to provide \$1.7 billion to the project, so long as it had the power to determine how the money was spent. J. Thomas Ordóñez, *Plan Colombia*, CENTER FOR LATIN AMERICAN STUDIES, UC BERKELEY (October 23, 2006), <http://www.clas.berkeley.edu:7001/Events/fall2006/10-23-06-coronell/ordonez.html>.

Another \$1 billion was provided by the European Union and the remaining \$4 billion was to be borrowed by Colombia from the Inter-American Development Bank as well as the World Bank. *Id.*

111. See Bowers, *supra* note 5, at 74.

112. Ordóñez, *supra* note 110.

113. *Id.*

114. DANIEL CORONELL, PLAN COLOMBIA: COCA MOVES TO THE RIGHT, <http://socrates.berkeley.edu/7001/Publications/newsletters/Fall2006/CLASFall2006-Coronell.pdf> (last visited June 15, 2008).

115. *Id.*

a decrease in its street price¹¹⁶ translating into more, cheaper cocaine on American streets.¹¹⁷ As of 2007, the amount of cocaine trafficked between Colombia and the U.S. has continued to increase.¹¹⁸ Despite receiving some of the highest amounts of financial aid from the United States government, third only to the Middle East and Afghanistan,¹¹⁹ Plan Colombia seems to have thus far, failed on all fronts.¹²⁰ While Congress has recently taken steps towards improving where the plan has failed,¹²¹ until such improvements are put in place and proven effective, Colombia, Latin America and ultimately the rest of the world, are left to deal with the consequences of its failure.

By instituting Plan Colombia, the United States has aided in causing economic upheaval in Colombia.¹²² This has led to major unanticipated side effects. One unanticipated side effect of Plan Colombia is the marked increase in kidnappings.¹²³ It would be easy to think that Plan Colombia only had an impact on its target country of Colombia. However, the effects of the plan can be seen all around Latin America. It is particularly notable with the increase of kidnappings in Colombia's neighboring Latin American countries of Ecuador, Panama and Venezuela.¹²⁴

Another unanticipated effect of Plan Colombia is that as large numbers of Colombian citizens have fled the country, they export crimes.¹²⁵ This phenomenon is known as the Ecuador effect¹²⁶ and is just another way in which the plan's negative effects can be seen around Latin America. Additionally, it is estimated that the FARC makes between \$250 and \$300 million each year between protecting and promoting the illegal drug

116. *Id.*

117. *See id.*

118. Stephen Heidt, *Keep the Freeze on Colombia*, FOREIGN POLICY IN FOCUS, June 20, 2007, <http://www.fpif.org/fpiftxt/4316>.

119. Marcela Sanchez, *Rethinking 'Plan Colombia': U.S. Aid Should Focus on Getting Justice Done*, WASHINGTONPOST.COM, Mar. 16, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/15/AR2007031501555.html> (last visited June 15, 2008).

120. CORONELL, *supra* note 114.

121. June 5, 2007, the House Appropriations Committee released the 2008 draft foreign aid budget that would make significant changes to President Bush's request to merely provide Colombia with continued military assistance. Heidt, *supra* note 118.

122. CORONELL, *supra* note 114.

123. *See supra* Part II C.

124. *See* Bowers, *supra* note 5, at 74.

125. *Id.*

126. *Id.*

industry and collecting ransoms from kidnappings.¹²⁷ Therefore, by interrupting the FARC's main source of revenue, drugs, Plan Colombia has likely been responsible for the increase in the FARC's kidnap for ransom.¹²⁸ While increased kidnappings may have been an unanticipated side effect of Plan Colombia, the United States failure to take any action to mitigate this negative and dangerous consequence is short sighted and irresponsible.

These factors collectively, coupled with the unavoidable fact that kidnapping is a relatively safe crime to commit in Latin America,¹²⁹ provide some insight as to why kidnap for ransom has become so widespread in Brazil, Colombia, Mexico and the rest of Latin America. It also helps shed some light on America's shared responsibility for the increase in kidnap for ransom in Latin America; that despite setting out with good intentions, American dictation of policy in other parts of the world does not assure improvement.

III. LATIN AMERICAN OPTIONS

A. DEALING WITH THE KIDNAPPINGS: LOCAL PERSPECTIVES

With the kidnapping industry netting hundreds of millions of dollars each year, criminals once engaged in Latin America's more petty crimes, such as drug smuggling or car theft, have begun to shift their focus.¹³⁰ Seeing huge ransoms paid, coupled with little success for prosecutors seeking kidnappings conviction, these criminals have started to move into what they see as a career with less risk and more reward.¹³¹ While American businesspeople have been targeted for kidnapping, at least within Mexico, many kidnapping groups seem to avoid such foreigners.¹³² In Mexico, for example, only 1 in 10 kidnappings are estimated to be reported each year,¹³³ the effect on locals is undeniable.

127. Columbia's Civil War Revolutionary Armed Forces of Columbia, available at <http://cocaine.org/colombia/farc.html> (last visited Aug. 15, 2008).

128. *See id.*

129. Macko, *supra* note 61.

130. Victor O. Schinnerer Kidnap, *supra* note 105; Cearley, *supra* note 104.

131. Victor O. Schinnerer Kidnap, *supra* note 105.

132. Diane Lindquest & Anna Cearley, *U.S. Exec Abducted in Tijuana*, UNION-TRIBUNE, Apr. 7, 2006, <http://www.signonsandiego.com/news/mexico/tijuana/20060407-9999-7m7kidnap.html>. It is speculated that this may be a result of the logistical challenges posed by an international transaction as well as the risk of attention. *Id.*

133. Victor O. Schinnerer Kidnap, *supra* note 105.

While wealthy Americans and corporations have turned to the insurance industry for protection, their counterparts in Latin America have taken a more conventional approach. Guarded by security, they move in armored cars, rarely traveling anywhere other than to and from work because the risk of going to or being elsewhere is just too great.¹³⁴ For those daring enough to travel outside the armored fortresses equipped with expensive security systems they call home, security guards are an indispensable part of their lives.¹³⁵ They stand watch outside restaurants and private schools, giving the appearance of protection for those whom they are protecting.¹³⁶ They provide a sense of safety in Latin America to those whose lives have come to be built around fear,¹³⁷ and a legitimate fear at that.

However, the presence of these guards, reminiscent in appearance to the United States Secret Service,¹³⁸ comes neither cheaply nor with any assurances. With the bare minimum security measures for a company's vice president coming to about \$80,000 in the first year,¹³⁹ and the cost of armoring a sport utility vehicle being about \$70,000,¹⁴⁰ it is easy to see why only the very rich are able to afford the luxuries of such protection. Even when these security measures are in place, safety is not assured. A notable instance of this was in August of 1996 when Mamoru Konno, Vice President of Sanyo Video Components, was kidnapped in Tijuana, Mexico surrounded by employees at a company picnic and baseball game.¹⁴¹ While Latin America's wealthiest citizens are able to try and hide behind the protection their money provides, kidnappers are turning to those citizens in Latin America's middle class and as a result, treating victims more brutally.¹⁴²

The effect of these actions against Latin America's citizens is that the people are calling for government action.¹⁴³ Taking to the streets, they are demanding their presidents do something to stop these brutal abductions, though realistically, in the short term, there is little the government can

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7.

139. *Id.*

140. Cearley, *supra* note 104.

141. Lindquest & Cearley, *supra* note 132.

142. *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7.

143. *Id.*

do.¹⁴⁴ As stated before, kidnapping in Latin America is a business.¹⁴⁵ Just as with any other industry netting millions of dollars each year, the business of kidnap for ransom will continue to thrive until it is no longer profitable.¹⁴⁶

With governments unwilling and, truthfully, unable to protect its citizens, many of the middle class living in Latin America are left with only two choices; stay in the country they have known their entire life and take their chances at being abducted or killed, or be a “refugee from fear”¹⁴⁷ and start a new life in the safety of America. Those families opting to move to the United States generally have dual citizenship or achieve United States residency status through family or marriage.¹⁴⁸ But for those unable to meet the requirements to cross the border, the remaining options are limited. Generally, they have little choice, but to remain in their home country. As kidnapping increasingly affects the middle class, rather than just the wealthy, growing numbers of families are desperately trying to emigrate.¹⁴⁹

This trend has been noted by both United States law enforcement and observers of crime trends, as well as real estate agents.¹⁵⁰ Agents in San Diego County claim to be seeing more clients from Tijuana and in affluent Tijuana neighborhoods, more houses seem to be for sale.¹⁵¹ Moreover, real estate agents are capitalizing on this market, traveling to countries such as Colombia, Venezuela and Mexico to sell properties located in Miami, Florida,¹⁵² and making it that much easier for those inclined to leave Latin America for the United States to have their lives established here as soon as they arrive. For Latin American citizens without the means to procure armored vehicles and a private force of security guards, leaving the country has become the best and most common course of action. These “refugees from fear” are clear examples that preventative measures can only take you so far before more drastic steps must be taken in order to afford one true protection from abduction.

144. *Id.*

145. *Id.*

146. *Id.*

147. Cearley, *supra* note 105.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7.

IV. "NO CONCESSIONS": POLICY ON PAPER ONLY

Like many K & R insurance plans the Schinnerer plan, one of the most comprehensive of it's kind, covers more than just the individual insured.¹⁵³ Included under the plan are all directors, officers and employees of the assured, relatives¹⁵⁴ of the insured, individuals who work or reside in the insured's household, guests in the insured's household, guests and customers of the assured either on their premises or during transport and the individual negotiating and/or delivering a ransom.¹⁵⁵ However, despite this extensive coverage, government employees cannot be covered under such a plan.¹⁵⁶ In fact, governmental institutions are specifically noted as being ineligible for coverage.¹⁵⁷

That K & R policies specifically preclude governmental institutions from taking out plans and covering their employees seems irrelevant, as most plans providing financial assistance to the insured do so in the form of reimbursement. In order to be reimbursed, the initial payment must be made and since the government has been unwilling to make payment for any abductees, reimbursement would be unnecessary. As reimbursement is one of the most important features of an effective K & R plan, if government institutions were permitted to purchase and carry K & R insurance, it would be unlikely any government institution would find it worth the price. This isn't to say however, that the government has not been using other means at its disposal to undermine its own "no concessions" policy.

A. NORTHROP GRUMMAN EMPLOYEES ABDUCTED IN COLOMBIA

While abduction of government officials accounts for less than eight percent of all abductions worldwide,¹⁵⁸ there are obviously situations where K & R plans would be most beneficial to those employed by governmental institutions and private corporations simultaneously. This point is most

153. Eaves, *supra* note 28.

154. Relative is broadly defined and includes domestic partners, fiancées, and foster children. Victor O. Schinnerer Kidnap, *supra* note 105.

155. *Id.*

156. *See id.*

157. *Id.*

158. Victor O. Schinnerer, *supra* note 64. While 8% of kidnappings worldwide is the estimate for government officials, that number includes security forces, therefore the actual percentage of abductions that are government officials is somewhere less than 8%. *Id.*

readily illustrated by the kidnapped Northrop Grumman employees being held hostage in Colombia by members of the FARC.

Thomas Howe, Keith Stansell and Marc Gonsalves are three American citizens employed by the Los Angeles based Northrop Grumman Corporation.¹⁵⁹ Northrop Grumman is the fifth biggest multinational defense corporation in the United States and has been involved with the cocaine eradication missions in Colombia.¹⁶⁰ In 2003, while in a small airplane doing drug surveillance over a rural Colombian jungle, these three Americans were shot down and captured by the FARC.¹⁶¹ Since their abduction, little progress has been made towards achieving the safe return of the three men.¹⁶² This is because the FARC is designated as a terrorist group by the United States government and hiding behind their "no negotiations with terrorists" policy, the government has yet to secure their release.¹⁶³ If these men were just employees of a private corporation, they would likely already be free.¹⁶⁴ It is however, the fact that they are government contractors and it is a direct result of the governments refusal to negotiate with the FARC which has kept these three men imprisoned for over 4 years.¹⁶⁵

The "no negotiations with terrorists" is the very same justification given by some as to why insurance companies ought to adopt a voluntary no payment scheme for K & R policies.¹⁶⁶ The allegations are that by meeting the ransom demands of terrorists, American companies are undermining United States public policy.¹⁶⁷ However, the situation of Thomas Howe, Keith Stansell and Marc Gonsalves seems to clearly demonstrate that the "no negotiations" stance does little more than reinforce that abducted individuals will be held indefinitely by groups like the FARC until they are paid.

159. Heidt, *supra* note 118.

160. Max Jourdan, *Private War: Protecting People or Profit* (BBC Two (UK) radio broadcast Dec. 14, 2004), (transcript available at http://news.bbc.co.uk/1/hi/programmes/this_world/4079691.stm).

161. Heidt, *supra* note 118.

162. Anderson Cooper Blog 360° (June 7, 2007), <http://www.cnn.com/CNN/Programs/anderson.cooper.360/blog/2007/06/key-moment-nears-for-three-american.html> (last visited June 20, 2008).

163. *Id.*

164. Interview with Joe Fender (ABC 7 KMGH- CO radio broadcast Aug. 27, 2007), (transcript at WL 16762299).

165. *Id.*

166. Clendenin, *supra* note 13, at 741-42.

167. *Id.*

Recently, the ineffectiveness of the “no negotiations” approach in the Colombian situation seems to have reached its peak and come to the attention of those in the government. In July of 2007, the United States Justice Department made a move in direct contrast with the “no negotiations” policy in an attempt to get Howe, Stansell and Gonsalves home.¹⁶⁸ The Justice Department offered the FARC leniency in the sentencing of Ricardo Palmera, an influential member of the FARC who was convicted in federal court of helping in the three men’s kidnapping in exchange for his release.¹⁶⁹ The men still remain held captive in Colombia.

This recent action by the Justice Department is an indication that America’s “no concessions” stance in Colombia is not as inflexible as initially thought. As such, to say that reimbursement for ransom payments by insurers to individuals holding K & R policies is contrary to American policy, is misleading and untrue. The payment of ransom by a private corporation cannot be held out as contrary to an American governmental policy when the government itself is not consistent with that policy. The government seems to have recognized that in order to assure the safe return of the abductees, they will have to give into the demands of the FARC somehow; hence the offer for leniency. An offer for leniency to a prisoner in exchange for a kidnap victim’s release is, however, a luxury to which the government is privileged but private corporations are not.

Where the government can offer leniency, the only weapon at an individual or private corporation’s disposal to get kidnap victims back is payment of the ransom demanded. A non payment scheme would emulate hundreds of times over the scenario of the Northrop Grumman employees. Moreover, to hold private corporations to a higher standard, regarding the government policy, than the government holds itself to is hypocritical and unjustified.

B. SHORTCOMINGS OF A NO PAYMENT SCHEME

America has yet to find an adequate and effective solution to the kidnappings epidemic in Latin America. It is sheer American arrogance to believe that if the United States insurance companies instituted a voluntary no payment policy in kidnap for ransom situations that kidnappings in

168. *A Convicted Colombian Rebel Leader is Offered Leniency as Part of Efforts to Free Three American Hostages*, SOUTH FLORIDA SUN SENTINEL, July 16, 2007, at 22A, available at 2007 WL 13526075.

169. *Id.*

Latin America and around the world would decrease, or even stop. Any domestic insurance regulation by the United States has no authority over the insurance industry in other countries. As such, insurance companies in these other countries will still be selling K & R policies to corporations and businesspeople, all the while repaying the ransoms the United States insurance industry will not. Absent a voluntary no payment agreement from every insurance company in the world that provides K & R policies, the end result of such a scheme would be to put American citizens at greater risk.

Further, kidnap victims are 4 times more likely to be killed by their abductors when they are uninsured than when insured.¹⁷⁰ Partially, this is because insured victims have the benefits of professionals who know how to handle the abduction properly.¹⁷¹ The benefit of these crisis management professionals is that, in handling the abduction, they do not make the same fatal mistakes that relatives of an uninsured victim tend to make.¹⁷² While this seems to lend support to the supposition that a voluntary no payment policy would be effective, as the professional support a K & R policy can provide is often highly effective, there are additional factors that warrant consideration in this situation.

First, as many K & R policies provide crisis management services as well as reimbursement for ransoms paid,¹⁷³ it must also be considered that these numbers reflect a decrease in the likelihood of a victim being killed when a ransom is paid, as opposed to not paid. Up until 2001, the killing of kidnap victims was relatively rare.¹⁷⁴ However, when seven oil workers were taken in the northeast Amazon region of Ecuador and one was killed after the deadline for payment expired,¹⁷⁵ this seemed to be the beginning of an increasingly violent breed of kidnappers.¹⁷⁶ This breed of kidnapper is the kind that will hold oil workers abducted from Colombia in Guerrilla hideouts for years, rape women after taking them from shopping mall parking lots in Brazil, torture businessmen in Argentina while negotiating a multimillion dollar ransom and return children taken in Mexico one finger at a time to their parents as they await the meeting of their demands.¹⁷⁷

170. Macko, *supra* note 61.

171. *Id.*

172. *Id.*

173. *Id.*

174. O'Brien, *supra* note 3, at 42.

175. *Id.*

176. *In Latin America, a New Breed of Kidnappers is More Brutal*, *supra* note 7.

177. *Id.*

This is also the kind of kidnapper that, if their demands are not met, will simply kill an abducted victim and keep taking others until they get paid.

A no payment policy will put American business people at greater risk because their families may lack the means necessary to secure their release.¹⁷⁸ In America in 2007, seventy percent of Americans held mortgages on the homes they lived in,¹⁷⁹ and the average household carried close to \$8,500 in credit card debt.¹⁸⁰ If the average American is taken while out of the country on business, there is a good chance his family will not have the means to obtain the ransom without liquidating their life. Even then, there is a chance that an abductee's family will still lack the necessary funds, as ransoms have in the past been reported to be as high as over one hundred million dollars.¹⁸¹ And increasingly often, lack of payment translates out into loss of life.

Because of the secret nature of K & R insurance,¹⁸² foreign businesspeople in Latin America are not taken because it is known that they have K & R policies.¹⁸³ In fact, many, if not most, abductees do not even know that there is a K & R policy in place for them.¹⁸⁴ This is because it is a fundamental condition of most policies that its existence be kept confidential and a policy can be voided if this is breached.¹⁸⁵ Rather, individuals are taken because, as a fact of life, people will pay whatever they have to in order to get their family member back.

Kidnappers in Latin America do not care if American law suggests an insurance company not pay reimbursement. What they know is how to run their business; they know if they send the fingers of someone's husband, wife or child to them, they will do anything to get them back. All a K&R

178. This point is clearly illustrated in the case of *Hargrove v. Underwriters at Lloyd's*, London, where the family of Thomas Hargrove, an American employee of a company in Colombia kidnapped by the FARC, wanted to pay the ransom demanded by the FARC but could not afford to pay the multi-million dollar ransom. Clendenin, *supra* note 13, at 766. While Thomas Hargrove was eventually released by the FARC, it was only after 11 months in captivity *in addition* to two ransom payments by his family totaling \$250,000. *Id.* at 767.

179. Credit Card Debt Statistics, MONEY-ZINE (2007) <http://www.money-zine.com/Financial-Planning/Debt-Consolidation/Credit-Card-Debt-Statistics/> (last visited June 20, 2008).

180. *Id.*

181. Victor O. Schinnerer Why Kidnap, *supra* note 88.

182. See O'Brien, *supra* note 3, at 42.

183. See Hiscox Frequently Asked Questions, HISCOX ASM, <http://www.hiscox.com/hiscox-asm/41.html> (last visited June 20, 2008).

184. O'Brien, *supra* note 3, at 42.

185. Hiscox, *supra* note 183.

policy does is ensure that a family not lose everything of value they have in trying to get back the one thing they value most.¹⁸⁶

Secondly, it is necessary to consider the premiums paid for these plans. About fifty percent of the world's K & R policies specifically cover Latin America,¹⁸⁷ and depending on the risk of the country where coverage is provided, plan premiums vary greatly.¹⁸⁸ For example, the annual premium for a family of 5 ranges between \$18,000 to \$30,000 for a \$1 million policy.¹⁸⁹ For a \$5 million policy, the premium would be about \$70,000.¹⁹⁰ When companies¹⁹¹ pay out such high premiums, they expect results. If a company pays for a K & R policy that only provides prevention training and access to security experts in the event of an abduction,¹⁹² the need for the insurance itself is eliminated.

Rather than pay out, conservatively, \$25,000 a year for a policy with a \$1 million premium covering an executive living and working in Colombia, the company would be in a better position to save that money and in the event an abduction takes place, hire the same security experts the insurance policy would provide.¹⁹³ By doing this, the company would pay only for service when it was needed rather than pay out hundreds of thousands, even millions, of dollars in premiums over the years.¹⁹⁴ While paying such high

186. *See id.*

187. Macko, *supra* note 61.

188. *Id.*

189. *Id.* The premium of a \$1 million policy would be lower somewhere like Brazil, where the premium for that policy would be only about \$9,000 - \$10,000. *Id.* By contrast, the same plan would be much higher in Colombia. *Id.*

190. *Id.*

191. Companies that are wealthy enough to afford a high end K & R plan with a premium in the tens of thousands of dollars.

192. Macko, *supra* note 61.

193. The three security companies used by the top K & R insurers are Kroll Associates, Ackerman Group and Control Risks Group. *Id.* These security companies can all be readily found on the internet at their websites, available at <http://www.kroll.com>; <http://www.ackermangroup.com>, and <http://www.control-risks.com>, respectively.

194. Under the Schinnerer policy, as representative of K & R policies, once a company receives notification of an abduction, the company then contacts the crisis management company, Victor O. Schinnerer Extortion Highlighted, *supra* note 30. A crisis management team has 4 main objectives; the safe, timely and secure release of the victim, the correct handling in the interest of the client, of extortion, safeguard the continued operations of a client, and to act within the law at all times. *Id.* To achieve these goals they work with management to develop a strategy and tactical options as well as using the company's database and research for support. *Id.* Also, in the even that the story becomes public, the crisis management team may act as a media liaison. *Id.* It is clear that a crisis management team provides everything that would still be permitted under a non payment scheme, as the

premiums over time might be worth it to a company who will be reimbursed for any ransoms paid out, from a financial perspective, it makes much more sense to, rather than pay premiums, to use that money to pay a ransom the company would have to pay out on its own anyway. Additionally, the prevention training which is emphasized by the non payment scheme¹⁹⁵ could be provided in the same manner by these private companies; on an as needed basis. The voluntary no payment scheme is effectively a complete elimination of K & R policies.

V. AVENUES FOR CHANGE

Having determined that a voluntary non-payment scheme is an impractical, and potentially dangerous approach to take in an attempt to improve the kidnapping situation in Latin America, the question becomes what is the appropriate avenue to make the necessary changes. While the American infrastructure provides a few different options, none are particularly suited for this issue and the only way in which Latin America will make any kind of meaningful change is to deal with the underlying issues on an international scale.

A. US COURT INVOLVEMENT

The American court system has litigated issues arising from K & R policies in the past; most notably in *Curtis v. Beatrice Foods*¹⁹⁶ and more recently in *Hargrove v. Underwriters at Lloyd's London*.¹⁹⁷ It has been claimed that the court's decision in *Beatrice Foods* stands for the supposition that in general, employees do not have a duty to rescue employees who have been abducted that were warned they may be a target of kidnapping.¹⁹⁸ That ruling has been taken to say¹⁹⁹ that because of extensive media coverage on international kidnappings in areas like Iraq and Colombia, it is unreasonable for Americans to claim they are unaware

only link in the abduction process for the insurance company the reimbursement of costs and fees associated with abduction, including payment of ransom. *See id.*

195. Clendenin, *supra* note 13, at 773-774.

196. 481 F. Supp. 1275, 1289 (S.D.N.Y. 1980).

197. 937 F. Supp. 595 (S.D. Tex. 1996).

198. Clendenin, *supra* note 13, at 768-69.

199. This case has not been interpreted by the Court since it was decided and the 1980 ruling is still the controlling decision.

of kidnapping risks and as such, employers have no duty to rescue them if abducted.²⁰⁰

However, in the *Beatrice Foods* case, Curtis had been personally warned by the U.S. Embassy that he might be at risk of kidnapping after his picture was obtained from an underworld figure.²⁰¹ Though Curtis attended a security briefing with Control Risks and another arranged by the State Department's Office to Combat Terrorism, he still remained in the country and made none of the suggested changes to his behavior.²⁰² The only action he took to change his routine, predictable behavior and to increase security was investigatory.²⁰³ Analogizing the situation of Curtis, who had extensive warning of his particular personal risk of kidnapping and still failed to take any meaningful action, to the general knowledge possessed by Americans that certain areas of the world pose a greater risk of kidnapping, is to stretch the *Beatrice Foods* decision beyond it's practical limit.

Moreover, to imply that a corporation only pays a ransom because they fear litigation from a victim's family if that person is killed or injured, is to appeal to the lowest common denominator. This assumes the worst of multinational corporations; that they would chose not to pay a ransom for financial reasons. It is not unreasonable to believe that a corporation would go to great lengths to secure the safe return of their employee because they do not want to see anything happen to them.²⁰⁴ Or, to take a more selfish, self serving approach to their actions, it is not unreasonable to think that a corporation would pay out a ransom to avoid negative publicity or to deter future employees from being willing to take overseas positions.

In essence, the courts have been involved with K & R policies in the past but only in the role that they were meant to fill; interpretation of the law. Any action by the courts to limit the scope or application of K & R policies would amount to judicial activism and be an improper exercise of their power. Since there is no law regarding K & R policy repayment (or non repayment), there is nothing for the courts to interpret. Therefore, until

200. Clendenin, *supra* note 13, at 770.

201. *Curtis v. Beatrice Foods*, 481 F. Supp. 1275, 1280-81 (S.D.N.Y. 1980).

202. *Id.* at 1280.

203. *Id.*

204. Particularly this was seen in the *Beatrice Foods* case. Given that Curtis had clear personal knowledge he was a target for kidnapping, the court states "Faced with a staggering demand for \$5 million, Beatrice could have washed its hands of the whole affair without incurring any legal liability. However, it instead took the conscientious course of hiring a firm it knew to have dealt with kidnap situations previously to master-mind the negotiations." *Id.* at 1293.

legislative action is taken, the courts do not have a role in the modification of K & R insurance coverage. Moreover, a voluntary non payment scheme is not legislative action; it creates no law for the court to interpret. This lends further weight to the futility of the adoption of a voluntary scheme, as any insurance company who chooses to reimburse the payment a ransom could not be brought into court for violation.

B. LEGISLATIVE ACTION

As established above, a necessary precursor to a court response to the payment of ransom for those taken in Latin America is American legislative action. However, previous attempts to curb kidnappings through legislative action by both the United States and Colombia have proven ineffective.²⁰⁵ Colombia's failed Anti-Abduction Act of 1993 and the United States' Patriot Act and Hostage Taking Act of 1984 illustrate the many difficulties of a legislative solution to this problem.²⁰⁶

Moreover, American legislation, in the form of Plan Colombia, shares partial responsibility for pushing kidnapping into its current state. Congress' failure to understand the interconnection between Colombian economics, illegal drugs and kidnappings, as well as their failure to simultaneously take precautionary measures to ensure United States citizens and Latin Americans alike were protected from consequences. This demonstrates that the American legislature is improperly situated to address and resolve the issue. In fact, as we have seen, unilateral American action²⁰⁷ has resulted in unanticipated side effects that have only made the situation worse.

C. INTERNATIONAL ARENA

Having resolved that neither American judicial nor legislative action is the appropriate avenue to address the kidnap for ransom epidemic ravaging Latin America and Latin American countries domestic regulation has proven time and again to be ineffective, it seems that if the kidnap for

205. Clendenin, *supra* note 13, at 760-763, 765, 773.

206. *Id.* at 773.

207. The action is being categorized as unilateral because even though Plan Colombia was a bilateral plan between America and Colombia to which the European community gave financial contribution, America's resolution that it determine what any money contributed be spent on makes it's use the functional equivalent of American unilateral action.

ransom problem is going to find resolution, it will come as a result of international cooperation. This Comment takes the stance that international assistance and accountability is the only way the cycle of abduction established in Latin America will ever stop. This Comment takes the position that it is not the insurance companies selling K & R policies, nor the United States who ought to be taking the forefront in the battle against kidnap for ransom.

Instead, it is the United Nations (UN)²⁰⁸ who ought to be taking steps towards resolving this crisis. Today, there are 192 member states in the UN, representing almost every nation in the world.²⁰⁹ As such, it is unsurprising that the two countries where kidnapping for ransom has reached its peak, Mexico and Colombia, are both UN member states.²¹⁰ When a country becomes a member to the UN, they agree to accept the obligations set forth in the UN Charter,²¹¹ an international treaty setting out basic principles of international relations.²¹² They are also able to take advantage of the UN to help resolve international conflicts and create new policies.²¹³

The UN has had involvement in everything from improving telecommunication to assisting refugees, and despite its efforts in drug trafficking and terrorism,²¹⁴ it has yet to take any specific action directed at reducing the kidnapping problem in Latin America. While it has created the International Convention against the Taking of Hostages,²¹⁵ this was

208. The United Nations, or UN, was established October 24, 1945 by 51 countries. How the UN Works, http://www.un.org/Overview/uninbrief/chapter1_intro.html, (last visited July 12, 2008). These 51 countries were committed to preserving peace through international cooperation and collective security. *Id.* Though the UN is not a world government, nor does it make laws, it provides the means to help resolve international conflicts and help create policies on matters that affect everyone. *Id.*

209. United Nations Member States, <http://www.un.org/members/list.shtml#m> (last visited July 12, 2008)

210. *Id.*

211. The UN charter establishes four basic purposes for the UN; one, to maintain international peace and security, two, to develop friendly relations among nations, three, to cooperate in solving international problems and in promoting respect for human rights and four, to be a center for harmonizing the actions of nations. How the UN Works, *supra* note 208.

212. *Id.*

213. *See id.*

214. Not So Well Known..., <http://www.un.org/Overview/uninbrief/index.html> (last visited July 12, 2008).

215. What the UN does for Justice, Human Rights and International Law, http://www.un.org/Overview/uninbrief/chapter3_law.html (last visited July 12, 2008).

aimed at combating terrorism against a country, not an individual.²¹⁶ The first step that the UN needs to take is for the Security Council to create the International Convention against Kidnap for Ransom.

This Convention would be a resolution that member states could either have the option to sign or the Security Council could require, setting forth the general expectations for a country experiencing dramatic numbers of kidnap for ransom. It would include expectations of the average numbers of cases that ought to be prosecuted each year as well as unannounced reviews of a given country's police reports and investigations. It would also lay out repercussions for countries which fell short in these areas, but rather than provide negative consequences, their failure to alert to the UN that further action must be taken on their part to assist governments losing the battle against kidnappings.

This international agreement would simultaneously further the four basic goals set forth in the UN charter while giving these countries serious about resolving their problems with kidnap for ransom the opportunity to reply to their citizen's outcry for governmental action.²¹⁷ It also provides international accountability for those countries both party to the agreement and who have not signed. For those who have signed the agreement, it is an assurance that they are not alone in their fight to improve their citizen's lives. For those who have not signed, their failure to do so is a message to the world that they are not doing all they can to stop kidnap for ransom in their country. While this may not seem that devastating, it may serve as a deterrent for companies that set up manufacturing sites and therefore create an economic incentive for Latin American governments to sign onto the agreement.

Another point to address is the reason kidnap for ransom developed. While poverty in these countries has played a large part, one of the main reasons kidnap for ransom has flourished in Latin America has been weak, inefficient and corrupt law enforcement.²¹⁸ While a kidnapper's ability to demand and secure ransom payments has had some effect on their continued abductions, it is not the payment of ransom alone that has caused kidnappings to spiral out of control. Rather, it has been kidnappers' ability to abduct people without personal consequences. Because Latin American kidnappers are rarely caught and prosecuted,²¹⁹ there is nothing stopping

216. See *id.*

217. In Latin America, a New Breed of Kidnappers is More Brutal, *supra* note 7.

218. Macko, *supra* note 61.

219. See SCHINNERER KIDNAP, *supra* note 105.

them from taking people time and again. A key service which the UN could provide Latin America would be UN Police.

UN Police have become an increasingly important part of the UN.²²⁰ First deployed in 1960's to the Congo, playing a role in the 30 years of UN presence in Cyprus and in 1988 taking part in the UN mission in Namibia, the UN Police have been a key element in restoring conditions that create social, economic and political stability.²²¹ Consisting of 7,000 police officers from 80 different countries, the UN Police have been proven to deter, disrupt and prevent criminal activity.²²² While the UN Police have been involved in a number of missions spanning many activities,²²³ in Latin America, they would be most effective in their "supervisory", monitoring local police services, and training roles.

By bringing UN Police officers to these countries to monitor local police, corruption would be more apt to become discovered and reported. Since these UN Police officers would be there specifically to monitor the local police, they would not face the moral challenge of reporting a fellow officer in the way another Latin American officer would. Additionally, where police are simply weak or inefficient, UN Police would be able to work with existing officers to improve their skills and help train new recruits. Given time, with the improved Latin American officers leading the forces, the training provided by the UN Police could be continually passed on.

By taking the necessary actions to improve the police forces in Latin America, absent corruption, the domestic laws and legal system within these countries could operate as they are supposed to. When this is realized, kidnappers will be prosecuted and convicted, much as they are in the United States, and this ought to effectively curb kidnapping. The UN also plays a role around the world reducing poverty.²²⁴ As poverty does play a part in this epidemic, many of the countries where kidnap for ransom is so profound are already benefiting from the United Nations Development Programme (UNDP).²²⁵ The UNDP, coupled with the UN Police and an

220. The Growing Role of the UN Police, <http://www.un.org/Depts/dpko/dpko/civpol/2.htm> (last visited Jan. 25, 2008).

221. *Id.*

222. United Nations Police, <http://www.un.org/Depts/dpko/dpko/civpol/civpol1.html> (last visited July 12, 2008).

223. *Id.*

224. Not so Well Known, *supra* note 214.

225. To name a few of these countries, Brazil, Colombia, Ecuador and Panama are all receiving aid under the UNDP. Countries, <http://www.undp.org/countries/> (last visited July 12, 2008).

International Convention against Kidnap for Ransom would address the causes of the kidnap for ransom epidemic and as such, be a much more effective remedy than adoption of a voluntary no payment scheme by the American insurance industry.

There are of course potential draw backs to the involvement of the United Nations in Latin America. The first is that the Security Counsel may not consider the Latin American situation an appropriate arena in which it should get involved. As the Security Counsel generally resolves issues of armed conflict,²²⁶ they may consider the kidnapping issues in Latin America too trivial to warrant UN involvement. Even if a resolution or an optional agreement were passed, it may receive no member state signatures and then, it has as little effect on the problem as a voluntary no payment scheme.

Assuming the UN were willing to get involved, a possible problem to the placement of UN Police in the affected countries would be twofold. First, there is the potential that local police would resist the UN Police's involvement or worse, refuse their assistance. There is an element of insult in sending another police force to monitor the Latin American police departments. Given that, there is a chance that the local officers would not be receptive to the help offered by the UN and their cooperation and willingness to learn is crucial to the success of the UN Police in Latin America.

Finally, there is the problem that the UN Police will not be sufficient to meet the needs of police forces in Latin America. While there are 7,000 police officers in the UN Police,²²⁷ they are currently spread across 13 missions. The number of officers needed to achieve any real results may number greater than those available. Moreover, the involvement of the UN Police in Latin America may have the unanticipated effect of worsening other situations around the world. This could happen if UN Police are taken out of other places around the world where they are just as needed to fill the demand in Latin America. However, despite any potential problems and difficulties, the fact remains that the UN is the single body most appropriately situated body to handle this crisis and they could, and should, take action to reduce or stop its occurrence.

226. See The Security Counsel, http://www.un.org/Overview/uninbrief/chapter1_sc.html (last visited July 12, 2008).

227. United Nations Police, *supra* note 222.

VI. CONCLUSION

Kidnap for ransom in Latin America is a growing problem and something needs to be done to stop it. United States and Latin American policies alike have been ineffective in creating change and a voluntary no payment policy will serve no purpose other than to take a spot on the list of actions proven to provide no results. International intervention by the United Nations is the best option available to make real improvements to the kidnap for ransom issue and effect the kind of change needed to save lives and restore order in Latin America.

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