

Law & Ethics

International Internet Governance

Oh What a Tangled Web We Could Weave

Catherine L. Mann

The Internet marketplace is global, technologically dynamic, information rich, and network driven. Policymaking, however, tends to be nation bounded, rule oriented, and issue specific. There are two areas where meshing domestic and cross-border policies presents challenges. First is balancing the value of personal information collected by firms against the individual's desire for limits and confidentiality. Equally challenging is balancing the creator's intellectual property rights with promoting the dispersion of technology to encourage innovation that will benefit society. How policymakers respond to these issues in their own and in their overlapping jurisdictions will materially affect the extent to which individuals, firms, and countries will benefit from the global Internet marketplace.

Many policymakers have been cautious in formulating new initiatives just for the Internet, and indeed, the basic Internet policy issues of data privacy and intellectual property rights are not new. However, because the Internet heavily involves cross-border activity and because it is technologically dynamic, it tends to exacerbate issues germane to domestic

Catherine L. Mann

is a senior fellow at the Institute for International Economics. Previously she held several positions at the Federal Reserve Board of Governors, was a senior economist on the President's Council of Economic Advisors (1979-84), and was a Ford Foundation Fellow.

policy, highlight differences in national approaches toward policy, and strain international agreements.

In the area of personal information, some nations, such as the United States, lean toward a market-oriented approach that favors creating incentives for technological solutions. Other policymakers, such as those of the European Union, lean toward directives or mandated solutions that promote a harmonized approach across the EU. Reconciling these two different courses is a key challenge.

In the area of intellectual property, general principles have been agreed upon by the World Intellectual Property Organization (WIPO), but implementing them in an Internet environment has proven to be problematic. Signatories to the Trade Related Intellectual Property Rights (TRIPs) agreement in the World Trade Organization (WTO) agreed to global standards, yet these might not be appropriate for the Internet age either.

Policymakers must ensure that they meet the demands of the majority of their constituents, yet also allow for minority preferences within the nation. On an international level, the mere relief of negotiating a multilateral agreement should not excuse leaving in place policies that stifle innovation and perhaps exacerbate the digital divide. The outcome of an overly-rigid approach—domestically and internationally—could be a tangled web of inconsistent and conflicting rules for governing the Internet. A preferable alternative strategy would place a greater burden on technology and the will of policymakers to allow innovation to meet the varied needs within and across national borders.

Balancing Economic Benefits and Privacy Concerns.

Networked information technologies, and increasingly information itself, are driving the benefits of the Internet marketplace. For example, when all members of a global supply chain can follow the whole process, operating efficiency increases, throughput quickens, and all members of the supply chain benefit. A person using the Internet can tailor the information that appears in her newspaper, and firms can meet detailed product preferences, thus saving time and targeting specific demands more effectively. When information from both buyers and sellers appears on a business-to-business (B2B) auction site or exchange, better pricing of products (for example, office supplies), superior usage of equipment (for example in trucking), and quicker elimination of excess (say of past-season fashion clothing) become possible. The opportunities for global electronic commerce created by information technology increase the value of information and the ease of obtaining valuable content. However, with this much information the potential for misuse also arises.

There is a tension between collectors of information—the few firms that aggregate information—and providers of information—the numerous individual business or consumer users. Aggregators such as DoubleClick highly value the collection of information because they can dissect, combine, and either use or sell the information to produce better-tailored products and more efficient processes. As a result, these firms will want to collect information from everyone and will tend to ignore individual users' desires for less collection of personal data. Under these circumstances, concerned individuals face an

undesirable choice: Use the Internet, but be fearful that the information collected may be used inappropriately, or don't use the Internet, and lose the benefits of this new medium for information and business activity.

What is the role of policy intervention in balancing the demand of individuals to control and protect their personal information against the desires of those who want it to create new products and services? There are two broad strategies. Policymakers can mandate a specific standard that all firms must follow for how data are collected and used. For example, the EU Privacy Directive mandates a specific standard for the treatment of most personal data of EU residents. Alternatively, policymakers can promote incentives so that the market innovates and improves the range of choices on whether and how data are collected, compiled, and cross-referenced. The U.S. approach, with minimal legislation that addresses only financial, medical, and children's information, is an example of a more market-oriented strategy.

In an economic sense, is there a winner between the mandate and market approaches to balancing the benefits of and concerns about the use of data? In economics, the Theory of the Second Best suggests that the market solution and the mandate solution cannot be ranked. In neither case will the needs of all individuals be met, nor can we be sure that society's well-being is maximized.

On the one hand, because there are many users and few aggregators, the market approach is likely to yield an incomplete set of "information-use" policies. As a result, the privacy preferences of each unique user may not be met. What are the consequences? Consider a business example. Suppose a firm worries so

much about revealing strategic business information by participating in a B2B marketplace that it refuses to participate; the benefits from having such an exchange would be reduced by having fewer players. More generally, the value of the Internet derives from its participants, and increases exponentially with the number of users. When fear of participating prevents its use, the benefits of the Internet to both individuals and society are exponentially reduced.

On the other hand, the mandate solution is a sort of "one-size-fits-all" policy that assumes that each person or business has the same preference over revealing information. Because people and businesses are not all alike in their attitudes toward privacy, some specific preferences will not be met. In this case, those left out probably would be willing to disclose more information to get more tailored products and services. Consequently, with a mandate policy some buyers and sellers won't bother to log on. As in the case above, the value of the Internet is reduced exponentially by the lower level of participation.

One cannot really tell which policy approach will result in the greater number of unhappy users, and this is why one cannot rank the alternative policies in terms of their impact on efficiency or society's well-being. So what is the difference between the two approaches?

Under the market approach, firms continue to face incentives to try to satisfy specific and heterogeneous privacy demands, particularly if those demands are effectively communicated to the information aggregators and are backed by enforcement. The incentives come from the very network benefits (translated into potential profits) that are being lost if the privacy options are insufficient

and users defect. By contrast, under the mandate approach, the private sector has fewer incentives to innovate to resolve market imperfections since there are common rules for all to follow, and the enforcement issue remains.

Beyond the theory of these alternatives and how they might work within the domestic marketplace is the important issue of overlapping government jurisdictions. One example of an interoperable strategy for two different approaches to privacy protection is the March 14, 2000 "safe-harbor" agreement between the United States and the European Union. Under the agreement, U.S. firms receiving personal data from the EU can subscribe to self-regulatory organizations such as the Better Business Bureau's BBBOnline, thereby making a commitment to follow the EU rules for data on EU individuals. The firms could be subject to legal action by the U.S. Federal Trade Commission if they do not abide by their commitment.

Does "safe harbor" truly represent an interoperable approach? It would appear to ensure continuity of U.S.-EU cross-border data flows, but this solves only part of the problem. Countries not party to the safe-harbor agreement wonder what will happen to their firms. Must they follow the EU Privacy Directive? Can they enter the U.S. safe harbor? Do they need to carve out their own agreement? If so, with whom? The possibility exists that cross-border data flows could be fragmented, or routed around some countries and through other countries, with the potential for great losses of efficiency and global network benefits. More importantly, the safe-harbor arrangement between the United States and the EU does not yield new privacy options for users, which is the true crux of the matter.

In such a technologically dynamic environment, retaining the incentive for private sector innovation is crucial. The market-oriented approach and cutting-edge technology offer the greatest potential to come up with innovative solutions to meet the greatest variety of demands. Innovations such as Anonymizer and Pretty Good Privacy (PGP) come from individual firms. The Platform for Privacy Preferences (P3P) is the outcome of an industry group discussion and could become a standard feature on Internet browsers.

Yet the combination of market incentives and technological prowess may not be enough. Policymakers in the United States must push harder to get firms to respond to demands, including calls for privacy products that are easy to use. One method is to threaten what might happen if privacy demands are ignored and opportunities to improve information-use policies are squandered. For example, the plethora of privacy legislation put before Congress in 2001 threatens the market-oriented approach and could yield mandated standards. U.S. policymakers need to state their objectives and outline their threats more clearly if the private sector is to respond appropriately.

Balancing Creator Rights and Innovation Promotion.

The architects of intellectual property law must strike a balance between protecting property that is expensive to produce but easy to replicate and allowing its replication in order to promote competition and further innovation from existing knowledge. Accordingly, an analysis of intellectual property (IP) issues in the Internet environment must proceed along several fronts at once. To balance the rights of innovators and users at a point in time, IP law needs to

address how to extend protection to materials created and transmitted over the Internet. To balance the rights of incumbents against the objective of promoting innovation for societal benefits, IP law needs to address the scope and duration of protection for IP materials. Finally, because the Internet and innovation know no borders, international cooperation is essential.

How has the Internet changed the nature of the balance between users and creators of information? First, information is an increasingly important

entrants. It would be especially unfortunate if latecomers—in developing countries, in rural or poorer areas in industrial countries, or among smaller businesses—face IP barriers that make it too difficult for them to use global technologies and tailor them to local needs.

The issue of IP for transmitted materials was the first to be addressed by national and international bodies. In December 1996, under the auspices of WIPO, nations outlined the principles of strong IP protection on the Internet, negotiating the WIPO Copyright Treaty

It would be unfortunate if latecomers...face IP barriers that make it too difficult to use global technologies and tailor them to local needs.

component of the product or service, and information, by itself, is "non-rival"—that is, my consumption of it does not limit yours. Aggregations of information, such as databases, have value beyond just the individual data points. Second, the digital medium of the Internet means that "copying" is easy and perfect. All this adds up to the need for strong IP protection, not only to preserve the value to the innovator but also to ensure the integrity of the copy.

Having said this, the ability of innovators to build freely onto existing software was key to the exceedingly rapid growth of the Internet. Going forward, global policy needs to consider the balance between incumbents and new entrants, particularly as this may impact the so-called "digital divide." Excessively strong IP protection could favor incumbents, keeping out innovative new firms and participants and exacerbating the divide between early adopters and later

and the WIPO Performances and Phonograms Treaty. However, key elements regarding the implementation of these agreements were not addressed, including third-party liability, application of the "fair use" doctrine, and how to treat devices that defeat copyright protection. The Internet has heightened disagreements in these areas.

For example, with respect to third-party liability, eBay.com has become involved in policing its auctions for software. Yet how far should its responsibility extend? Is it okay to resell shrink-wrapped software but not downloaded software? Concerning fair use, a furor has developed between software companies on one hand and libraries and educational institutions on the other over the terms of the Uniform Computer Information Transaction Act (UCITA), which re-wrote the Uniform Commercial Code to cover computer information. While few states

have ratified UCITA, the issue of what represents "fair use" when copying only takes a couple of mouse clicks is unresolved. In terms of devices that defeat copyright protection, several cases are pending concerning the legal responsibilities of Internet sites that offer DeCSS, a means to decode and copy DVD format entertainment.

Even though technologies that enable perfect copying raise the potential for infringement, they can also produce many potential benefits. The ability to make perfect and authentic copies of radiological images, databases used for medical research, and semi-

growth of an operating system that could challenge Microsoft Windows. Or consider what might happen if suits against Napster spill over to affect the MP3 music format and exchange to force significant changes and restrictions. Whereas artists and record companies with previous copyrights desire their music to be protected and royalties to be paid, some new artists want to use this type of music format and exchange to build an audience directly and cheaply, without having to pay for an agent.

In the same vein, fundamental questions concerning patent rights for software need to be addressed. Taken

In this fast-paced and technologically dynamic environment, policymakers must avoid predetermining how the private sector should act.

conductor chip designs are only a few of the useful applications of this technology. Therefore, policy concerning IP protection should primarily focus on authentication and encryption of copyright-protected works.

IP protection cannot be just about limiting use. The presence of network externalities means that information increases in value the more people have access to it, use it, and augment it (consider an auction site, for example). IP protection that limits the ability of firms to create interoperable software will constrain the development and therefore the value of the whole network, as well as potentially reduce competition among existing firms and applications. Innovation could suffer.

Consider, for example, if Linux software writers were forced to copyright their product. This would limit the

together, recent court decisions, U.S. legislation, and new policies by both the U.S. Patent Office and the European Patent Convention are expanding eligible subject matter. For example, business-method software is now the fastest-growing category of new patents. In particular, developers of basic e-commerce software, looking to apply to their innovations the same patent protection afforded Amazon.com's One-Click feature and Priceline.com's reverse auction method, are likely to be among the plethora of new patent applicants. Such patents could undercut innovation in Internet business methods to the detriment of the development of electronic commerce as well as later-stage adopters.

Business-method patents also expose the jurisdictional tensions concerning the duration of protection between

national approaches and commitments under international agreements (TRIPs in the WTO). Specifically, international patent protection extends twenty years but allows reverse engineering of software. Neither of these stipulations make sense for business-method software. On the one hand, reverse engineering allows new entrants to build on and augment existing platforms, which can yield the tailored approaches that benefit different classes of users and also enhance network benefits by ensuring the interoperability on which those benefits depend. On the other hand, such reverse engineering scuttles the very protection that is being granted to the developer of the business-method software. With respect to duration, while nearly everyone agrees that a life of twenty years is too long for patents covering business-method software, this is the policy that was negotiated in the international forum. Individual countries have little incentive to change domestic laws and certainly no ability to change the length of patents agreed to in international jurisdictions.

For policymakers, there are two real issues: deciding what to protect and how to protect it. Of the two, the former—within countries' borders, let alone across them—is the greater challenge, and the way to accomplish it is not clear. Nevertheless, if policymakers could agree on what should be protected, the private sector could invest in the technological solutions to comply. But without any agreement on what to protect, there is no mandate or incentive to create such solutions.

Demand More to Get More. Personal and strategic business information and intellectual property and innovation are issues where conflicts can develop

between individuals and information aggregating firms, the global marketplace and domestic policy jurisdiction, and current profits to producers and future value to society. What should policymakers do? Ignore the individual and allow the information aggregator to rule the relationship? Ignore the global marketplace and impose national regulations and mandates? Bet on current innovators to the detriment of the next generation? Policymakers must carefully consider their approach.

In this fast-paced and technological-dynamic environment, policymakers must avoid predetermining how the private sector should act. The key is to create incentives for the private sector to help manage the differences between individuals and society and the problems of cross-border jurisdictional overlap. Because the private sector reaps the rewards from network benefits as well as from niche markets, it will seek interoperable approaches to solve the problems of spillovers and jurisdictional overlap.

In terms of cross-border privacy solutions, market-oriented policymakers such as those of the United States must press harder on firms to enable easier P3P-type solutions, while mandate-strategy policymakers such as those of the EU must allow this platform to serve their residents. In terms of IP protection, policymakers need to be sure that protection and competition are balanced. The one-size-fits-all approach of the TRIPs is not appropriate, but neither is the broad extension of protection of the business-method patent.

Policymakers have the ability to set specific objectives—including for the management of information. Imposing rules and mandates, however, runs the risk of

locking in sub-optimal solutions and creating a tangled web of inconsistent and conflicting rules to govern the Internet. Instead, policymakers must ensure that domestic and international policy creates

an environment conducive to technological innovation and absorption. Clearly, this will not solve all the problems of the Internet marketplace, but it is a prerequisite for solving many of them.

Colombia: Between Terror and Reform

Miguel Ceballos and Gerard Martin

From the 1970s to the early 1990s, Colombia's domestic security situation grew rapidly out of control. This owes much to the combined influence of rising levels of violence led by organized crime, guerrilla groups, and paramilitary organizations, against the backdrop of weak instruments of law and order and high levels of impunity. What most fail to recognize, however, is that since 1991, Colombia has been able to reduce its national homicide rate by a significant 27 percent.¹ This reduction is even more impressive because it has occurred amidst steep economic recession and unsuccessful peace negotiations with the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) guerrilla groups. The observed reduction in homicide rates not only contradicts the widespread view that the situation in Colombia is merely getting worse, but also provides some hope for the future.²

Yet despite improvements since 1991, Colombia's most violent year to date, homicide rates in Colombia continue to compare poorly with those of all other countries in the region, as does the brutality and terror associated with violence in Colombia. Colombia has nevertheless made progress in the past ten years. A better understanding of the factors behind the observed decline in homicides will help in the formulation of

Miguel Ceballos
is Director of the
Colombia Program of
the Center for Latin
American Studies at
Georgetown University.

Gerard Martin
is Research Director for
the Colombia Program.

appropriate policies to fight crime and violence in Colombia. This requires assessing the domestic security crisis both in its historical context and in light of past and current efforts in Colombia to reduce and prevent violence and crime.

Colombia's current domestic security crisis is embedded in a tradition of violence. Historically, the state has never managed to assert exclusive authority over all its territory or monopolize the recourse to violence force.¹ This incomplete monopoly on violence explains, at least in part, why violence and crime since 1977 have been able to spread so fast and proven so difficult to bring under control.² As the crisis is deeply rooted in institutional failure, an effective solution will include strengthening the performance and legitimacy of core public institutions, especially ones involved in the administration and provision of law and order.

Roots of Violence. Colombia suffered an early major breakdown of domestic order during the 1940s and 1950s in the wake of a civil war between Liberals and Conservatives. During this period, better known as *La Violencia*, an estimated 200,000 people lost their lives. *La Violencia* ended in 1958 when the two parties agreed to a ceasefire and a far-reaching administrative and political power-sharing agreement that lasted for the next 16 years—a period known as the National Front. The National Front was installed through a referendum that was widely backed by large parts of Colombian society. The bi-partisan formula—much more open and flexible than is generally argued—proved a well-adapted solution to bring at least the partisan component of the violence under control.³ During the National Front's

regime, the annual homicide rate decreased significantly and stabilized at about 25 per 100,000 individuals.

Since the power-sharing agreement seemed to be sufficient in bringing homicide rates down and restoring public order, after modest initial reforms, subsequent National Front governments came to neglect the need to strengthen law enforcement agencies and the judiciary. During the 1960s and 1970s, homicide rates remained somewhat higher than those observed in neighboring countries and reflected a wide range of problems, particularly small guerrilla insurgencies, common crime, post-*Violencia* political vendettas, local death squads, and rural frontier violence.

What these problems had in common was poor institutional performance, expressed in terms of high levels of impunity as well as inefficient and often corrupt law enforcement agencies. Low priority for institution-building was even more problematic since Colombia was at the same time rapidly and dramatically transforming. Its population grew from about 12 million in 1951 to an estimated 42 million today. At the same time, the urban population increased from 57 percent of the total population in 1951 to about 74 percent currently. Agriculture now contributes less than 15 percent to GDP—about the same as manufacturing, but less than the financial or public sectors.

Thus, during the 1980s, in the double context of a fast-growing illegal drug economy and hardening guerrilla groups, crime and violence rapidly increased without major institutional resistance or reaction. In the cities, this trend expressed itself through the proliferation of urban militias controlled by guerrilla groups and hit squads financed

by the drug cartels. These gangs maintained large degrees of autonomy, lending their services to all kinds of agents and objectives. A significant portion of homicides over the last twenty years occurred in urban areas. Whole city areas were transformed into ganglands with extremely vicious turf wars. In rural and frontier areas, guerrilla groups rapidly increased their military strength and territorial influence, forcefully aligning social organizations while installing brutal racketeering schemes on agriculture, commerce, and transportation. These efforts to gain territorial control often resulted in violent confrontations with other guerrilla groups, armed vigilantes (*acodigemas*), hit squads controlled by drug lords, paramilitary groups, and, to a lesser degree, government forces.

society organizations, were executed by hitmen employed by drug cartels, guerrilla groups, and paramilitary gangs.

As for the political dimensions of the crisis, it is important to stress two points. First, the domestic security situation was derailed after the National Front collapsed (1974) in the context of a widening of the political arena. This transition was characterized by many third parties obtaining political representation on the local, regional, and national levels in addition to internal fragmentation of traditional political parties. Consequently, during the post-National Front period the country was faced with even more limited government capacity to formulate coherent policies to confront major social problems like crime and violence.

While there were reforms of the criminal justice sector in 1971 and 1987, these

Trying to explain the Colombian crisis in purely political terms is a dead-end road.

Illegal resources from the drug economy infiltrated the entire social and political framework. Violent intimidation and bribery undermined the state's capacity to react and thus its legitimacy. Illegal drug money also became an easy source of political campaign finance on the local, regional, and national levels.

Terrorist actions of organized crime and armed groups weakened the judicial institutions even further, or simply—and literally—blew them away. Police posts in rural areas were assaulted, and many had to be evacuated, leaving about 200 of the 1080 Colombian municipalities without police stations. Judges and justice ministers, as well as hundreds of mayors, city council members, and members of civil

reforms were inadequate in addressing the seriousness of corruption and growing intimidation by armed groups and organized crime. The complexity and brutality of the violence itself further undermined institutional capacities.¹ Rather than a consequence of supposed shortcomings of the National Front regime, the new violence and crime wave seems to be, at least in part, a result of the lack of capacity of post-National Front governments to seriously confront new challenges. This includes professionalizing institutions, fighting crime, preventing political and administrative corruption, and creating forms of regulation appropriate for a rapidly modernizing and urbanizing society.

Second, trying to explain the Colombian crisis in purely political terms is a dead-end road. The booming drug business and its fueling of violence is more of an autonomous factor than a political one. The decision of guerrilla groups to adopt a revolutionary agenda and celebrate violence and terror as legitimate means to obtain their goals has to do with strategies of individual actors and not regime characteristics. Given Colombia's constitutional democracy, non-authoritarian regime, free elections, and free press, there is no clear political dimension to this conflict. Nor is there much reason to believe that poverty, inequality, and political exclusion should produce stronger forms of violence in Colombia than they tend to produce in other Latin American countries—which sometimes have more serious social problems than Colombia.¹³ The current violence is rooted in an institutional crisis rather than a regime crisis, and the country confronts an explosive mix of organized crime and terrorism rather than political violence *per se*.

Reforms and Disillusions. The seriousness and particularities of Colombia's security crisis went largely unrecognized both domestically and abroad until the late 1980s. There are three main reasons why this may have occurred. First, Colombia was a relatively stable country in various respects until recently. The national economy continued to perform well. Colombia did not experience a debt crisis, hyperinflation, or a "lost decade," unlike many countries in the region. Increased violence did not seem to translate, at least in the beginning, into an obstacle to socio-economic development.

Second, Colombia maintained democracy and extraordinary regime stability—whatever the institutional limitations might have been. The absence of military or authoritarian regimes in Colombia also contributed to low visibility of the crisis. Only toward the end of the 1980s, when violence reached unprecedented levels, characterized by car bombings, assassinations, kidnappings, and massacres, did the costs of the crisis start to become widely visible.

Third, the international community was late to react to the situation in Colombia—and not only in political circles. Academia and NGOs have traditionally been more interested in outspoken political forms of violence, including ethnic and minority struggles, and failed and rogue state issues. These themes are not easily applied to the typical Colombian case. In the 1990s, the serious threat posed by armed groups and organized violence was finally acknowledged as a major obstacle for development and political stability.¹⁴

Even if efforts to curb the wave of crime and violence came late and were often incoherent or inadequate, it would be incorrect to conclude that the current crisis is the result of a lack of government initiatives. Peace negotiations and institutional reform have been underway since the 1980s and have changed the character of the crisis as well as the strategies of its main protagonists.

Peace negotiations with the guerrilla groups started during the government of Belisario Betancourt (1982–86). They were more inspired by presidential goodwill than by a coherent negotiation strategy, at least on the governmental side. The guerrilla groups, including FARC, declared a cease-fire in exchange for quasi-conditional amnesties and the

release of hundreds of their imprisoned members. Those who were released were provided with government pensions and financial aid to study or make a professional start. However, the guerrilla groups—inspired by the victorious armed struggle in Nicaragua—never seriously intended to give up their arms, even if they repeatedly told the country otherwise. While formally participating in

total of 4,000 members, demobilized and disarmed one after another at the end of the 1980s and early 1990s. Among these were M-19, Quintin Lame (formed by members of Indian communities but co-opted by FARC), and the EPL (formed by a Maoist group that split from the Communist Party, which traditionally supported FARC). Their members were reincorporated as common cit-

It would be incorrect to conclude that the current crisis is the result of a lack of government initiatives.

peace negotiations, the guerrillas secretly decided to increase ranks and strengthen military capacity by capturing new resources—particularly through widespread extortion (including kidnapping) and increased rent-seeking in profitable sectors such as oil, agriculture, and narcotics.

Betancourt's peace efforts went up in flames in November 1985 when the M-19 (arguably the only Colombian guerrilla group ever to mobilize any popular political sympathy) assaulted the National Palace of Justice in the heart of Bogotá, taking 300 people hostage, including nearly the entire High Court of Justice. The army stormed the Palace and fierce fighting ensued. The drama left about 100 dead, including almost all of M-19 and eleven supreme court justices, as well as a scorched Palace of Justice.

The unfortunate outcome of Betancourt's attempts did not prevent subsequent presidents Virgilio Barco (1986–90) and Cesar Gaviria (1990–94) from continuing negotiations with the guerrilla groups. To general surprise, eight guerrilla groups, with a combined

total of 4,000 members, demobilized and disarmed one after another at the end of the 1980s and early 1990s. Among these were M-19, Quintin Lame (formed by members of Indian communities but co-opted by FARC), and the EPL (formed by a Maoist group that split from the Communist Party, which traditionally supported FARC). Their members were reincorporated as common cit-

izens in Colombian society. Several of the former guerrilla groups transformed into legal political parties, competing in local, departmental, and national elections—and not always without success. The most evident political result of the peace process was the writing of a new constitution in 1991. A Constitutional Assembly was formed through general elections—albeit with a high rate of abstention—and a third of the seats were obtained by Alianza Democrática M-19, the political party formed by the demobilized M-19. Representatives of all other demobilized and disarmed guerrilla groups also obtained seats through election or by special presidential decree. The new constitution defined conditions for political and institutional modernization, such as strengthened political, financial, and administrative decentralization and a deepening of democracy. The process was inspired by domestic factors, the general regional trend toward decentralization, democratization, and institutional reform, and wider issues such as economic globalization. It also built on processes already underway in

Colombia such as political decentralization, especially the introduction in 1986 of elections for mayors instead of nomination by the national government.

At the same time, international aid and pressure, mainly from the United States, helped Colombian police and intelligence agencies develop more efficient strategies to fight organized crime. For Colombia, this meant open confrontation with extremely violent crime syndicates, especially the drug cartels. The cartels—accustomed to imposing their own terms of negotiation—replied with terror campaigns using car bombings, massacres, and assassinations of judges, lawyers, and police officers. The cost in terms of human losses and trauma was enormous, but the crackdown led to the relatively successful break-up of important drug cartels, particularly in Medellín (1991–93) and Cali (1994–95). At the same time, the police corps—traditionally underfunded, disorganized, and affected by corruption—underwent major reforms and significantly improved its performance and public image.

The Current Situation. The 1991 constitution outlines the conditions for political reform and institutional modernization, and a variety of measures have been implemented even if other changes have yet to take place. Nevertheless, FARC and ELN have continued their armed struggle, despite the Pastrana administration's generous scope for peace negotiations. The illegal drug economy continues to prosper, and paramilitary organizations have become major protagonists in the conflict.

The 10-year-old "new" constitution thus seems to have been less effective in its effort to bring peace, at least in the

short term, than the 1958 referendum that installed the National Front. This is in part due to the different underpinnings of *La Violencia* and the current spate of violence. *La Violencia* had a much stronger political dimension, while the current violence is comprised of a variety of components, such as organized crime, illegal armed groups, urban gangs, and terrorism. Still, 1991 is something of a watershed: The homicide rate has decreased since then, and Colombia has started to take firmer control of its institutions. Consequently, the character of the conflict and the strategies of its main protagonists have once again changed.

For FARC and ELN, the discrepancy between their military potential and the weakness of their political and social support has only increased during the 1990s.³ FARC continues to argue that peace is not a viable alternative given the assassinations (in the late 1980s and early 1990s) of hundreds of members of social and political organizations who were sympathetic to FARC and the Communist Party by paramilitary organizations, competing guerrilla groups, or unknown agents. But the argument has proven hard to sell now that eight other guerrilla groups have de facto dropped their arms and reintegrated into Colombian society. The assassination, mainly by FARC, of hundreds of demobilized guerrilla fighters during the first part of the 1990s (largely of EPL), dealt an additional blow to what sympathy remained for the radical left and the armed struggle.

More recently, brutal assaults on hamlets and villages, kidnappings, massacres, and other acts of terror have exasperated local populations. To a certain extent, these conditions have pre-

pared the terrain for the rise of paramilitary forces. Tensions inside the guerrilla groups and continued violent confrontation for territorial influence between FARC and ELN are constant problems as well. Since 1994, more than 1,500 guerrillas have individually deserted ranks and reintegrated into society through a government-sponsored reinsertion program.³² To maintain their ranks, the guerrillas often resort to forced recruitment and the enlistment of juveniles. Opinion polls reveal the immense unpopularity of the guerrilla movement. Some have argued that the guerrillas' political weakness, involvement in organized crime, and massive human rights violations are the main obstacles for a negotiated peace.³³

As for the paramilitaries, they have rapidly augmented their ranks and territorial influence since 1995. They have expelled FARC and ELN from strategic areas and broken guerrilla networks in areas such as Uraba and Magdalena Medio through terror tactics including torture and massacres. These paramilitary groups reflect opportunistic alliances among drug traffickers and local political and economic elite seeking private protection and "clean" areas free of guerrillas. In areas where paramilitaries have wiped out the guerrillas, support for them is sometimes firmly established—though seldom by free choice. Extreme brutality rapidly diminishes the political pretensions of both the paramilitaries and the guerrillas.

The historically under-equipped, poorly-trained, and poorly-educated Colombian army has been accused of corruption, human rights violations, and different forms of support for the paramilitaries. With U.S. and European training and support (largely as a result

of Plan Colombia), the Colombian army has entered a process of professionalization and has intensified operations against paramilitary organizations.

In areas where guerrillas and paramilitaries fight for control of the crime market—both its territory and resources—and forcefully align the population, polarization can become so intense that a dimension of civil war seems to be present. Civilians are obliged by armed groups to align with one side or the other, lacking any real choice: pledge support, leave, or be killed. Despite these kinds of situations, the Colombian conflict does not seem to be evolving into a civil war, nor does it deserve to qualify as such. There are too many actors, too many local theaters of conflict, and too many components of organized crime. On the national level, public opinion is not divided into two camps, nor is there any significant popular support for a guerrilla, paramilitary, or openly military solution to the conflict.

Organized crime groups, including networks of drug-trafficking organizations, are the only real beneficiaries of the mayhem. After the breakup of the larger cartels—which led to significant decreases in the homicide rates in cities like Medellín—drug barons have moved to medium-sized cities and more isolated rural areas of the country. They maintain much lower profiles with less obvious use of violence, which has enabled them to operate with greater effectiveness and impunity.

While narcotics are one of the most important financial resources for armed groups, illegal drugs are far from the only resource that fuels the conflicts. Armed groups can operate without the drug business by further strengthening their racketeering practices on multinationals and

While narcotics are one of the most important financial resources for armed groups, illegal drugs are far from the only resource that fuels the conflicts.

entrepreneurs involved in the exploitation of oil, coal, gold, emerald, and coal mines, cattle, bananas, and even coffee. Over the last year, FARC has violently and successfully contested traditional ELN influence in the lawless, oil-rich eastern area of Arauca. This seems to reflect a FARC strategy to neutralize losses from decreasing incomes from the drug economy due to increased counternarcotics operations in southwestern Colombia. Armed groups can also strengthen their racketeering of municipal administrations through intimidation, kidnapping, and murder of elected mayors and city council members, as has been the case over the last few years.

Bringing the State Back In.

Colombians are convinced that the overall cost of the drug trade—in terms of violence, corruption, and organized crime—outweighs its economic benefits. The priority for Colombians, however, is not fighting the narcotics economy *per se*, but further reducing acts of violence and terror such as homicides, kidnappings, car bombings, assaults on villages, illegal roadblocks, and so forth. These occurrences represent the main source of daily trauma and brutalization of life for Colombians.

Analyzing the policies that contributed to the observed decrease in homicides since 1991 can contribute to a better understanding of how to proceed in order to bring Colombia's domestic secu-

rity crisis further under control, while fully acknowledging the limits and difficulties imposed by continuing guerrilla and paramilitary warfare. Cities like Cali (population 2 million), Medellín (2.2 million) and Bogotá (5.5 million) have introduced, since the early 1990s, rather similar programs of urban violence reduction. These efforts have combined strategies of law enforcement, risk reduction, and public information campaigns. Bogotá—which reduced its homicide rate from 80 per 100,000 individuals in 1993, to 35 per 100,000 in 2000—is now a significantly less violent city than Caracas or São Paulo in terms of the murder rate, though kidnapping rates are still significantly higher in Bogotá.

In Colombia, the highest homicide rates are now found in the municipalities that are under pressure by illegal armed organizations.³³ About 90 percent of the most violent municipalities (in terms of homicide rates) are those with guerrilla presence; 70 percent, those with heavy narco-trafficking; and about 65 percent, those with a strong paramilitary presence.³⁴ Many of these municipalities have no police posts anymore, since guerrillas assaulted them repeatedly. In other words, violence is most intense in areas with a strong presence of armed groups and low institutional density. Massacres and international human rights violations are also concentrated in these "lawless" areas.

There is increasing consensus in

Colombia that solutions for the current crisis can only be obtained through a long-term process of institutional strengthening, and that only improved institutional performance can guarantee sustainable peace and security, social development, and the deepening of democracy. The need for institutional reform in the political, economic, and judicial areas is also expressed in a recent report by a group of internationally renowned specialists on these topics, coordinated by the Colombian think tank Fedesarrollo.¹¹

In the context of a wider strategy of "bringing the state back in," priority should be given to strengthening law enforcement agencies and the judiciary sector *at the local level*, particularly in medium-sized cities, which account for about 125 of Colombia's 1080 municipalities,

including thirty with more than 100,000 inhabitants. Relatively sustainable results can be expected here. New efforts should profit from lessons already learned in larger cities such as Bogotá, Cali, and Medellín.¹²

Judiciary control over violence and crime is in line with strong demands by Colombian citizens for increased security and lower levels of crime and violence. It is also the only sustainable strategy in the long term. Strengthening institutions and deepening democracy must go hand-in-hand.

NOTE 5

1 Other crime indicators, such as robbery, have also decreased, but kidnappings have increased since 1995.

2 The Council on Foreign Relations describes Colombia's "worsening crisis," but does not provide homicide rates or any other crime data to sustain the argument. See "U.S. Interests and Objectives in Colombia: A Commentary," Council of Foreign Relations Working Paper (Washington, D.C., 2002).

3 Gerard Martin, "The Tradition of Violence in Colombia: Material and Symbolic Aspects," *Meanings of Violence: A Cross-Cultural Perspective*, eds. G. Aijmer and J. Albin (Oxford: Berg Publishers, 2002) 161-192.

4 Since 1977, the homicide rate increased from 28 per 100,000 people to 86 per 100,000 people in 1991—Colombia's most violent year to date. As of 2000, it has decreased to 62 per 100,000 people. The rate for the first quarter of 2001 is estimated at 58 per 100,000 people.

5 The Liberal and Conservative parties had parity in all appointed and elected offices, except the presidency. The presidency alternated between the two parties, but elections took place among candidates of the corresponding party.

6 For an excellent assessment of the crisis in the Colombian Justice Administration, see *El Colapso del Poder Judicial en Colombia*, eds. Boyerana de Sousa Santos and Mauricio García Villegas (Bogotá: Col-

ciencias, 2002).

7 Armando Montenegro and Carlos Esteban Posada, *La Violencia en Colombia* (Bogotá: Editorial Alhambra-Cambio, May 2002).

8 The World Bank, *Colombia—Country Assistance Strategy Progress Report 1999*, CAS Progress Report Number 29805 (Washington, D.C., November 1999). In general, the homicide rate continues to be a widely neglected indicator in country analyses performed by international institutions, including the World Bank and the Inter-American Development Bank.

9 Guerrilla presence is increasingly concentrated in the nine eastern lowland departments, which constitute about 54 percent of Colombia's area, but have less than 3 percent of the population and a density of less than two persons per square mile.

10 E/PB, 6 May 2002.

11 Daniel Pezart, *Guerra contra el Estado* (Bogotá: Espasa Editores, 2002).

12 The largest cities continue to have the highest homicide rates. The three largest cities alone (Bogotá, Cali, and Medellín) account for 35 percent of total national homicides and contain 26 percent of the national population.

13 Fabio Sánchez and Jaime Nunez Mender, "Determinantes del Crimen Violento en un país altamente violento: el caso Colombia," *Exponencia Género y Conflictos*, eds. Astrid Martínez Ortiz (Santa Fe de Bogotá: Universidad Nacional de Colombia,

1991) 293.

24 For background papers to the report, see <http://www.fidesarrollo.org>.

25 Malcolm Deas, "Violence Reduction in Colombia: Lessons from Government Policies over the Last Decade," Background paper for The World Bank, St. Anthony's College, Oxford, 1999; Joanne

Kleyns, "Evaluations of Interventions to Prevent or Reduce Violence in Bogotá," unpublished paper, Bogotá, 1998; Gerard Martin, "Crime and Violence in Cali, Colombia: a Diagnosis and Policy Propositions," Background paper for the World Bank's City Development Strategy for Cali (World Bank: Washington D. C., 2000).

GEORGETOWN UNIVERSITY

MASTER OF SCIENCE IN FOREIGN SERVICE



MSFS Admissions
Georgetown University, Washington, D.C. 20577
Tel: (202) 687-6716 Fax: (202) 687-5115

The MSFS Program is a two-year program of interdisciplinary course work in international affairs.

Concentrations include development, security, business-government relations, finance and commerce, foreign policy, and self-designed concentrations including regional studies.

Within six weeks of graduation, 91% of the Class of 2001 was employed.

Joint degree programs with Georgetown's Business and Law schools, and with the Economics, History, and Public Policy departments, are also available.

Students typically complete two to four internships.

www.georgetown.edu/sfs/msfs

msfsinfo@georgetown.edu