

An overview of the terrorism in Colombia: context, national legislation and anti-terrorism measures

Bosquejo sobre el terrorismo en Colombia: contexto, legislación nacional y medidas antiterrorismo

COLCIENCIAS TIPO 3. ARTÍCULO DE REVISIÓN

RECIBIDO: SEPTIEMBRE 26, 2012; ACEPTADO: NOVIEMBRE 15, 2012

Diego Fernando Tarapués Sandino
tarapues@gmx.de

Georg-August-Universität, Göttingen - Germany

Abstract

This article makes a general overview of the terrorism in Colombia through three different aspects. Firstly the article summaries the traditionally events which understood like acts of terrorism in Colombia; in this point is specially mentioned a first phase named like 'Narcoterrorism' and a second phase named like 'the Permanent Terrorist Threat' framed inside the internal armed conflict. Secondly the article analyzes the anti-terrorist national legislation and the offences of terrorism; here is especially studied in depth the conducts of terrorism related with the global strategies against the terrorism. Finally, the article makes a general review about the main international instruments, like multilateral measures against the terrorist acts and against the terrorist organizations, which Colombia has signed and ratified.

Keywords

Terrorism; penal code; anti-terrorist measures; international instruments; armed conflict.

Resumen

El presente artículo realiza un bosquejo general sobre el terrorismo en Colombia en tres ámbitos diferentes. En primer lugar se hace un resumen de los hechos entendidos tradicionalmente como actos de terrorismo, al igual que de los respectivos actores denominados como terroristas; en este punto se hace mención a una primera fase denominada como 'narcoterrorismo' y a una segunda fase denominada como 'amenaza terrorista permanente' enmarcada dentro del conflicto armado interno. En segundo lugar se hace un análisis de la legislación nacional antiterrorista y de las conductas penales de terrorismo que se han tipificado en Colombia, profundizando especialmente en los tipos penales de terrorismo vinculados con la lucha global contra el terrorismo. Por último, se hace una revisión general a los principales instrumentos internacionales que ha suscrito y ratificado Colombia como medidas multilaterales para evitar actos terroristas y combatir a las organizaciones terroristas.

Palabras Clave

Terrorismo; código penal; medidas antiterroristas; instrumentos internacionales; conflicto armado.

Paper based in author's contribution for the *Report on the Terrorism and Anti-terrorism in South America* submitted to the *Third Session of the International Forum on Crime and Criminal Law in the Global Era: Basic Trend of Worldwide Terrorism and Countermeasures in the Post- Bin Laden Era*, Beijing, October 2011.

I. INTRODUCTION

In Colombia there is research and publications concerning terrorism; although none if only the political and military significance of the issue is considered. Most of them refer to concepts developed by important security agencies (Nagle, 2005, pp. 26-28), international summits and decisions of the Colombian courts (Martínez, 2006, pp. 333-351) or of the Government (Marulanda, 2007, p. 23). An important element for the analysis of the concept of terrorism, with regard to the national perspective, is the official position that the Colombian State has sustained in international discussions and summits about the issue. In this respect, the Colombian government has manifested its definition of terrorism in the following way:

The acts, methods and practices of terrorists are criminal acts that are unjustifiable and contrary to the purposes and principles of the United Nations. They are a threat to the peaceful and civilized co-existence of our peoples, to the stability of our institutions and to global peace and security. (...) Colombia is of the view that international terrorism differs from other serious crimes because its aim is to sow terror among the population and to destabilize or force a government or an international organization to take or refrain from taking some action. (...) We must once and for all isolate terrorism from its political context in order to be able to combat it for what it is, namely, a grave crime against the lives of innocent persons (Valdivieso, 2001).

One of the few authors who has analyzed the concept of terrorism in Colombia is *Rafael Nieto*, the ex-judge of the International Criminal Tribunal for the former Yugoslavia. He points out that an important feature of the conceptualization of terrorism is its particular aim, which is to terrorize the population with the purpose of achieving a specific goal (Nieto, 2008, p. 151). Of course, he explains that there are several goals (political, religious, etc.) which can vary according to the type of terrorism; therefore he makes a difference between international terrorism and domestic terrorism.¹ Likewise, domestic terrorism is divided between spontaneous terrorism and terrorism perpetrated by rebels. According to *Nieto's* approach, the Colombian illegal armed groups fit into this last category of terrorism (Nieto, 2008, p. 152).² In this regard, an

analysis on the long armed conflict in Colombia is necessary for an approach to the Colombian view on terrorism as well as the Colombian anti-terrorism legislation.

II. FROM NARCOTERRORISM TO THE PERMANENT TERRORIST THREAT

In Colombia, by virtue of the complex situation resulting from armed conflict for nearly 50 years, one can observe different demonstrations and groups related to terrorism. The internal armed conflict in Colombia can be characterized by different actors and different expressions of violence. In the beginning, the conflict was marked only by a war between armed insurgent groups and armed forces of the Colombian State. At that time, the conflict was understood as an attempt of revolution or Communist guerrilla warfare similar to the processes which were taking place in other Latin American countries.

However, the long duration of the guerrilla warfare evolved along with other criminal expressions associated with organized crime. In this respect, both the illegal drug trade and the growing illegal arms trade in the 1980s and 1990s produced a first transformation in the Colombian conflict and its actors. Afterwards, the *dehumanization* of combatants in the last two decades, which was a new transformation of the Colombian conflict, led to the perpetration of cruel practices as tools to achieve their respective political and military purposes. Consequently, the perpetration of kidnappings (and the taking of hostages),³ the perpetration of terrorist attacks through the medium of explosive devices and indiscriminate attacks against civilians have been frequent within the conflict.

In general, as a result of this transformation of the Colombian conflict and its actors, terrorist demonstrations in Colombia can be classified historically into two temporal phases: on the one hand, a first phase of domestic terrorism with a solid connection to the violence caused by the drug cartels between 1980 and 1995 (before the terrorist attacks of 9/11); on the other hand, a later phase (ongoing) of redefining the actors involved in the conflict as terrorist organizations, this as a result of both its atrocities and the global concerns about international

¹ This differentiation is according to the definitions used by the FBI. For more details about the domestic terrorism and the international terrorism, see Nagle (2005, p. 26).

² In contrast, in the framework of a joint legal and political vision, *Alberto Ramos* not only puts forward the concept of *political terrorism* but also *terrorism of the State*. In this aspect, he points out that terrorism and terror must be differentiated between. Terror comes from top down and refers specifically to the *terrorism of State*. Instead, real terrorism comes

from the bottom up, from the public to the State. Therefore, in his concept, terrorism is described as an excessive use of violence, with political purposes, from certain sectors of the public against the State (Ramos, 2008, pp. 15-16).

³ For more details about the kidnappings and other terrorist acts, see Hanson (2009).

terrorism (since the terrorist attacks of 9/11).

The first phase as mentioned above refers to a series of bombings by drug cartels in a war between these cartels and also between these criminal organizations against the Colombian State. These acts were known as *narcoterrorism* in the late 1980s and in the early 1990s.⁴ Generally speaking, narcoterrorism was a series of terrorist attacks with a great impact, where the principal purpose was to generate fear in the State and the society which were taking measures against the illegal drug trade. Among the most significant terrorist incidents were: the bombing of a major newspaper in Colombia *El Espectador* (September 2nd 1989), the bombing of *Avianca* Flight 203, causing 110 deaths (November 27th 1989) and the *DAS* Building bombing with 104 people reported dead and approximately 600 injured (December 6th 1989).

In the same way, there were a huge number of assassinations and targeted attacks against presidential candidates, ministers, judges and policemen with the purpose of breeding fear and terror among the population. These terrorist acts were ordered primarily by *Pablo Escobar*, who at that time was the leader of a major drug cartel in Colombia. These drug cartels made use of both paramilitaries⁵ and guerrillas⁶ for the perpetration of other terrorist incidents.

Because of this delicate situation of security and public order, Colombia was ruled through a State of Siege for many years.⁷ Through the declaration of a State of Siege, the government adopted many effective measures against narcoterrorism; however, the constitutional rights of the citizens were systematically violated. In the early 1990s, within the Penal Code and the Code of Penal Procedure, too drastic of reforms were implemented as a result of

these serious incidents of terrorism.⁸ The main counter-narcoterrorism emergency measure was named *Estatuto para la Defensa de la Justicia* [Statute for the Defense of Justice] (Decreto 2790 of 1990) and involved a consequent reform of the criminal justice system (Decreto 2700 of 1991). These counter-terrorism measures created a Public Order Jurisdiction (*Jurisdicción de Orden Público*), where the identities of judges, prosecutors and sometimes even witnesses were reserved.⁹

The second phase mentioned above refers to the current redefinition of the conducts developed by the actors of the Colombian conflict in the context of the global fight against terrorism. Not only the guerrillas, but also the paramilitaries have perpetrated acts considered to be terrorism several times. Both criminal organizations have systematically executed multiple crimes against humanity, most of them with the purpose of building fear and terror among the civilian population and authorities. One can say that the illegal armed groups have learned *the strategies to sow the fear and terror* of narcoterrorism. In this aspect, one of the most important terrorist incidents in recent history was the car bombing at the *Nogal Club* in Bogota, causing 36 deaths and over 200 injured (February 7th 2003).

For this reason, in academic and political contexts, the term *terrorist organization* is increasingly used to refer to the illegal armed groups of the Colombian internal conflict. For the Colombian government guerrillas, the *FARC-EP* and the *ELN*,¹⁰ as well as the paramilitary organization, *AUC*,¹¹ are considered as terrorist organizations. This status of terrorist organizations has transformed the classical official view of the conflict. With this in mind, the official policy of the Colombian government has changed its military and political language surrounding the armed

⁴ In the present the word *narcoterrorism* is also used with regard to the connection between the Colombian illegal armed groups and the drug trade as dual objectives of the Colombian and American governments. For more details about this conflict and the drug trade, see: Tarapués (2008, pp.137-144). With regard to the cocaine drug trade, the Colombian civil conflict and the US War on Drugs and Terror see also: Villar (2009, pp.90-99).

⁵ Paramilitary groups were formed to fight the enemy organizations, for example: the *MAS: Kill the Kidnappers* [*Muerte a secuestradores*] and the *PEPES: Victims of persecution by Pablo Escobar* (*Perseguidos por Pablo Escobar*). See Nagle (2005, p.18).

⁶ With regard to the connection between drug cartels and guerrillas, the most important terrorist incident was *The Palace of Justice siege* (*Toma del Palacio de Justicia*), when 95 people died (November 6th 1985).

⁷ During the term of the previous Constitution, Colombia was ruled more than half a century through the State of Siege (*Estado de Sitio*). For more details, see Palacios (1995, p.189-191); with regard to the State of Exception (*Estado de Excepción*) and to the last years of the State of Siege in Colombia, see also: Orejuela (2011, p.70-77).

⁸ In the 1970s and 1980s, other statutes were instituted with different names but with the same purposes. For example, the *Statute for the Defense of Democracy* [*Estatuto para la Defensa de la Democracia*] and the *Anti-terrorist Statute* [*Estatuto Antiterrorista*]. With regard to the *Statute for the Defense of Democracy*, see Nagle (2005, p.31) and Orozco (2006, pp.180-188).

⁹ The justice with reserved identity (*justicia sin rostro*) had its basis in the *Decreto 2700 of 1991*, Art. 158. The Constitutional Court said in the Decision C-053/1993, that this article was not adverse to the Constitution, but later the same Court rejected the Law 504 of 1999, which extended the validity of this Art. 158, in the Decision C-393/2000.

¹⁰ The *Revolutionary Armed Forces of Colombia - People's Army* [*Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo*] and the *National Liberation Army* [*Ejército de Liberación Nacional*]. For information about the role of the *FARC* and the *ELN* in the violence in Colombia, see Cragin and Hoffman (2003, p.4-6). Only about the *ELN*, see also Sancho (2003, p.23-32).

¹¹ The *United Self-Defense Forces of Colombia* [*Autodefensas Unidas de Colombia*]. For information about the role of the *AUC* in the violence in Colombia, see Cragin & Hoffman (2003, p. 6-7).

conflict. So one could say that in Colombia there is not an internal armed conflict, but there is an ongoing *permanent terrorist threat* (Nagle, 2005, p. 63-65). Furthermore, the constant cooperation between Colombia, the United States,¹² the European Union¹³ and other states¹⁴ in the war against terrorism and organized crime has allowed for the *FARC*, the *ELN* and the *AUC* to constantly be on their official list as terrorist organizations.¹⁵

With regard to the national legislation against this type of terrorism, the Colombian Anti-terrorist Statute represented one of the most controversial counter-terrorism measures related to the global strategies of anti-terrorism after 9/11. This statute was the main strategy against domestic and international terrorism which has been discussed in recent years in Colombia. The Anti-terrorist Statute wanted to confer judicial and police powers to the members of the armed forces. With these extraordinary powers, they could arrest suspects for up to 36 hours, interrogate people, spy on private communications, search homes, etc., and all these without a legal warrant or judicial oversight.

This anti-terrorism project consisted of a constitutional amendment (2003) and of a regulatory law (2004), which wanted to restrict several constitutional rights of the citizens with the aim of effectively combating terrorism in Colombia. Particularly, this counter-terrorism measure attempted to reform art. 15 (Right to Privacy), art. 24 (Freedom of Movement), art. 28 (Right to Individual Freedom), and art. 250 (Functions of the Prosecutor) of the Colombian Constitution (Nagle, 2005, p. 43-44). The constitutional amendment was passed by Congress through the *Acto Legislativo 02* (December 18th 2003). However, this amendment was later declared

unconstitutional by the Constitutional Court through the Decision C-816/2004 (August 30th 2004). Therefore, given that the *Acto Legislativo 02* was rejected, its regulatory Anti-terrorism Law (Estatuto Antiterrorismo) had neither reached validity (Sentencia C-1119/04).

III. ANTI-TERRORISM NATIONAL LEGISLATION IN FORCE

The valid national legislation on terrorism can be summarized into five laws which articulate the various international instruments on terrorism ratified by Colombia. The Penal Code is the main law of the juridical national framework on terrorism, because the Code contains the description of the conducts and offences on this issue. In the same way, there are four other laws covering various measures against terrorism, concerning both the judicial aspect for the punishment of terrorist acts and the administrative control of the financing of terrorism. These laws are outlined in the Table 1¹⁶

Table 1. Laws covering various measures against terrorism

Law	Short Summary
Law 526 of 15/08/1999	Creating a <i>Department of Information and Financial Analysis</i> with a focus on money laundering and financing of terrorism.
Law 599 of 24/07/2000	Penal Code that includes the description of the various terrorist offences.
Law 733 of 31/01/2002	Measures against kidnapping, terrorism and extortion.
Law 1.121 of 30/12/2006	Measures for the prevention, detection, investigation and punishment of the financing of terrorism.
Law 1.142 of 28/07/2007	Legal reform of the Penal Code and Code of Penal Procedure and incorporation of measures for the prevention and suppression of crimes of particular significance for coexistence and citizen security.

In relation to the measures against the financing of terrorism, there are two special laws. On the one hand, Law 526 of 1999 has created a system of financial control on this issue. On the other hand, Law 1.121 of 2006 has created various measures which reinforce the prevention and detection of financial transactions related to the financing of terrorist organizations. The later law increased the number of criminal conducts and elevated punishment related to the management and financing of terrorism, according to the anti-terrorist international covenants for the economic decline of terrorist organizations.¹⁷

¹² For the list of Foreign Terrorist Organizations see (US Department of State, 2012).

¹³ See Official Journal of the European Union (2009) for the European Union list of terrorist groups and individuals. For more details about the European Security Strategy and the measures against terrorism, see Pastrana (2005, p.312-313).

¹⁴ For example the Canadian government also considers the *AUC* and the *FARC* as a terrorist organization, see the Canadian list of terrorist organizations (Public Safety Canada, 2012).

¹⁵ Another important aspect is the possible connection between these Colombian terrorist organizations with other international terrorist organizations. In particular, there have been some initial criminal inquiries in some countries, which are seeking to clarify the possible connection between terrorist organizations in different countries and those in Colombia. In fact, both the Colombian and Spanish authorities have identified some links between the *FARC* and the *ETA*, especially in matters of cooperation to carry out specific attacks. For more details about this connection, see BBC News (2010). In the same way, the U.S. State Department has linked the *FARC* to *Al-Qaeda*, but on issues related to the illegal drug trade, illegal arms trade and the protection of routes in strategic areas. For more details about this connection, see Kouri (s.f).

¹⁶ For a chart with more details about the historical Colombian laws against terrorism see Nagle (2005, p.32-35).

¹⁷ Before this law, the offence for the financing of terrorism was called *Management of Resources related to Terrorist Acts (Administración de recursos relacionados con actividades terroristas)*, with imprisonment

In regards to the other two laws, Law 1.142 of 2007 and Law 733 of 2002, both are legal reforms of the Penal Code and the Code of Penal Procedure in order to prevent and punish terrorist acts which endanger the public security. Law 733 of 2002 especially introduced several measures against terrorism. This law was a response to the kidnappings perpetrated by the guerrilla groups. The enactment of this law as a criminal emergency measure coincided with the first counter-terrorism measures of different countries in the months following 9/11. This law increased the punishment for crimes of kidnapping, extortion, terrorism and the illicit association for the perpetration of crimes of terrorism.

Finally, Law 599 of 2000 is the Penal Code that contains the description of terrorist conducts. In Colombia there are a lot of offences in connection with terrorism, although there is no special law that expressly manifests those offences as in other countries.¹⁸ Therefore, it is necessary to make a comprehensive analysis of the Colombian Penal Code in order to classify the crimes of terrorism.

IV. CONDUCTS OF TERRORISM ESTABLISHED IN COLOMBIA

In general, the measures against terrorism are presented in different articles, which can be classified into three groups:

- Firstly, one can distinguish main conducts directly related to terrorism, according to the global strategies of anti-terrorism.
- Secondly, a series of ancillary offences related to the conducts for the preparation of terrorist acts exists.
- Thirdly, terrorism plays an important role as an aggravating factor, of the punishment, of other crimes.

In this respect, there are murders, kidnappings, extortions, etc., which are punished as crimes of terrorism, when they are perpetrated within a terrorist act or with a purpose eminently terrorist (Aponte, 2007, p. 104-111).

With regard to the first group, one can distinguish four

between six and twelve years. Currently this crime is called *Financing of Terrorism and Management of Financial Resources related to Terrorist Acts* (*Financiación del terrorismo y [...] y administración de recursos relacionados con actividades terroristas [...]*), with imprisonment between Thirteen and twenty two years (Penal Code, 2000, Art. 345).

¹⁸ For example the Law 18.314 of 1984 in Chile or the Bill of Law *Exp. Nr. 5179-D-2010* in Argentina.

offences of the Colombian Penal Code related specially to the international conducts of terrorism. The following chart contains the conducts which can be classified as the main terrorist offences:

Table 2. Offences related specially to the international conducts of terrorism in the Colombian Penal Code

The Main Terrorist Offences	Imprisonment ¹⁹	Fine ²⁰ (LMMW)
Terrorism (art. 343)	160-270 months	13333 - 15000
Terrorist Acts (art. 144)	240-450 months	2666 - 50000
Financing of Terrorism and Management of Financial Resources related to Terrorist Acts (art. 346)	13-22 years	1300 - 15000
Hijacking of Aircraft, Ships or any Means of Public Transportation (art. 173)	160-270 months	1333 - 4500

Within these terrorist offences, one can point out that the crime of *Terrorism* is the most important. This conduct is described in the Penal Code in following way: *Any person who provokes or maintains a situation of terror in the population or a sector of it, through acts that endanger the life, physical integrity or freedom of persons or endanger buildings or means for the fluid conveyance, using means capable of causing havoc (...)* (Penal Code, 2000, art. 343).

Nevertheless, there is another conduct of terrorism in this same offence with regard to mild acts of terrorism. In this aspect, if the situation of terror is caused through a telephone, video format or anonymous letter, the punishment shall be a term of imprisonment only between 32 and 90 months. The crime of terrorism, in both forms, is punished without prejudice of the punishment for other crimes, which are caused for this same conduct (Penal Code, 2000, art. 343).

Besides, the crime of terrorism has five aggravating factors; consequently the punishment shall be a term of imprisonment between 192 and 360 months. Those five circumstances, aggravating factors, are the following:

- when in the perpetration of the crime there is an accomplice who is a minor (under 18 years old);
- when the attempt is against facilities of the Armed Forces, an embassy or a consulate;
- when the conduct is perpetrated against Democratic events;
- when the perpetrator or the accomplice is an

¹⁹ In Colombia, the measurement of the imprisonment is determined through months according to a legal reform made by Law 890 of 2004, Art. 14. For some specific crimes, according to other reforms, the measurement of the imprisonment is determined through years.

²⁰ In Colombia, the measurement of the fines is determined through the Legal Monthly Minimum Wage [LMMW].

employee of the Armed Forces;

- when the attempt is against an internationally protected person, a diplomatic or against buildings of friendly countries (Penal Code, 2000, art. 344).

In addition, there is another conduct related to the crime of terrorism, but this conduct is focused to restrict the *acts committed during the course of a combat within an armed conflict (actos de combate)* related to International Humanitarian Law. In this regard, the crime of *Terrorist Acts* is very appealing, because it was created to severely punish conducts considered as terrorism, which are perpetrated within an armed conflict. Therefore, this offence is included in the chapter of *Crimes against People protected by International Humanitarian Law* of the Colombian Penal Code²¹. Specifically, the norm, which describes this conduct, points out: *Any person who, during the course of an armed conflict, undertakes or orders indiscriminate or excessive acts, or targets the civilian population for attacks, reprisals, violence or threats for the main purpose of terrorizing them (...)* (Penal Code, 2000, art. 144).

In relation to the offence of the financial suppression of terrorist organizations, the Penal Code includes this crime with the description of several conducts (acts) within the *Financing of Terrorism and Management of Financial Resources related to Terrorist Acts*: *Any person who, directly or indirectly, provides, collects, delivers, receives, manages, supplies, custodies funds, properties or financial resources, or makes any other act, which promotes, organizes, supports or finances (...) foreign or domestic terrorist organizations, terrorists or terrorist acts (...)* (Penal Code, 2000, art. 346).

Finally, there is another offence that can also be interpreted as a major crime of terrorism within this first group. This offence is the *Hijacking of Aircraft, Ships or any Means of Public Transportation*, because the inclusion and description of this crime into the Colombian Penal Code is due to the international conventions against terrorism, and was ratified by Colombia. The article about this conduct states: *any person who, through violence, threats or deceptive maneuvers, takes over a ship, aircraft or any other means of public transportation or changes its itinerary or takes control thereof (...)* (Penal Code, 2000, art. 173).

Besides the main offences of terrorism, the Colombian Penal Code contains other conducts related to the preparation of terrorist acts and the creation of terrorist

organizations. These conducts are incorporated in a chapter about the *Terrorism, Threats and Instigation*, whose aim is to protect public safety as an object of legal protection.²² Within these offences, one can highlight the *Illicit Association for the Perpetration of Crimes of Terrorism*, which is the crime through which the members of terrorist organizations are currently prosecuted in Colombia. On the whole, the ancillary offences which are related to terrorism can be summarized as follows (see Table 3).

Table 3. Ancillary offences related to terrorism

Ancillary Offences Related to Terrorism	Imprisonment	Fine (LMMW)
Illicit Association for the Perpetration of Crimes of Terrorism (art. 340)	8 - 18 years	2700 - 30000
Training for the Perpetration of Terrorist Acts (art. 341)	240 - 360 months	1333 - 30000
Threats with Intention to Cause Terror (art. 347)	4 - 8 years	13 - 150
Instigation of Military Crimes for the Perpetration of Terrorist Acts (art. 349)	32 - 90 months	13 - 150

To conclude, it should be pointed out that the Colombian Penal Code also includes fifteen other conducts which are common offences, but which shall be considered as crimes of terrorism, if such crimes are committed with terrorist purposes (Marulanda, 2006, p. 225-226). In this regard, terrorism as an aggravating factor of other conducts can be outlined as follows (see Table 4).

V. COLOMBIA AND THE ANTI-TERRORIST INTERNATIONAL INSTRUMENTS

Colombia has ratified nine international instruments of counter-terrorism measures. In addition, Colombia has signed two conventions, which have not yet been ratified (the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* and the *International Convention for the Suppression of Acts of Nuclear Terrorism*). On the whole, within the international framework against terrorism, Colombia is part of the several conventions (see Table 5).

On the other hand, Colombia has ratified two regional conventions with regard to the measures and strategies of anti-terrorism of the Organization of American States. After the signature of the *Inter-American Convention Against Terrorism* (June 3rd 2002), Colombia incorporated this international convention through Law 898 of 2004, but this was rejected by the Constitutional Court through

²¹ See the single chapter of the Title II: *Delitos contra personas y bienes protegidos por el Derecho Internacional Humanitario*.

²² See Chapter 1: *Del concierto, el terrorismo, las amenazas y la instigación*, Title XII: *Delitos contra la seguridad pública*, Art. 340 to 349.

Decision C-333/2005. Later, after several reforms made by the Congress through Law 1.108 of 2006, this convention was declared constitutional through Decision C-537/2008.

In general, the regional conventions in matters of terrorism ratified by Colombia can be summarized as Table 6 shows.

Table 4. Terrorism as an aggravating factor of other conducts

Description	Imprisonment	Fine (LMMW)
Homicide with Terrorist Purposes or in the Perpetration of Terrorist Acts (art. 103 and 104, n. 8)	400 - 600 months	--
Kidnapping with Terrorist Purposes (art. 169 and 170, n. 7)	448 - 600 months	6666 - 50000
Illegal Coercion with Terrorist Purposes (art. 182 and 183, n. 1)	13 - 36 months	--
Illegal Coercion for the Perpetration of Crimes, when the Conduct Seeks the Entry of People in Terrorist Organizations (art. 184 and 185, n. 1)	16 - 54 months	--
Illicit Use of Transmitters or Receivers with Terrorist Purposes (art. 197)	8 - 16 years	--
Extortion for the Perpetration of Terrorist Acts (art. 244 and 245, n. 5)	192 - 288 months	4000 - 9000
Environmental Contamination with Terrorist Purposes (art. 332, n. 1)	55 - 112 months	140 - 50000
Instigation to Crime with Terrorist Purposes (art. 348)	80 - 180 months	666 - 1500
Damage to Communications Services and Infrastructure of Energy and Combustibles with Terrorist Purposes (art. 357)	32 - 90 months	13 - 150
Use of Dangerous Substances or Objects with Terrorist Purposes (art. 359)	80 - 180 months	134 - 750
Poisoning of Water with Terrorist Purposes (art. 371)	4 - 10 years	--
Alteration of Food, Medical or Prophylactic Material with Terrorist Purposes (art. 372)	8 - 15 years	200 - 1500
Usurpation and Abuse of Public Offices with Terrorist Purposes (art. 427)	4 - 8 years	--
Perverting the Course of Justice in Terrorism Cases (art. 413-415)	32 - 144 months	13 - 300
Favoring Escape of Prisoners of Terrorism (art. 449)	80 - 144 months	--

Table 5. Conventions signed by Colombia

Convention	Incorporation into national law	Ratification of Colombia
Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (UN, 1969)	01/02/1973, Law 14 of 1972	06/07/1973
Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 ²³ (UN, 1973)	01/02/1972, Law 14 of 1972	03/07/1973
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 (UN, 1975)	15/10/1974, Law 4 of 1974	04/12/1974
Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, Including Diplomatic Agents, 1973 (UN, 1977)	09/12/1994, Law 169 of 1994	16/01/1996
International Convention against the Taking of Hostages, 1979 (UN, 1983)	18/07/2003, Law 837 of 2003	14/04/2005
Convention on the Physical Protection of Nuclear Material, 1979-1980 (UN, 1987)	30/12/2001, Law 728 of 2001	28/03/2003
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988 ²⁴ (UN, 1990)	05/08/2002, Law 764 of 2002	14/01/2004
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 ²⁵ (UN, 1992a)	--	No
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 ²⁶ (UN, 1992b)	--	No
Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991 ²⁷ (UN, 1999a)	14/07/2003, Law 831 of 2003	No yet ²⁸
International Convention for the Suppression of Terrorist Bombings, 1997 (UN, 1998)	02/04/2003, Law 804 of 2003	14/09/2004
International Convention for the Suppression of the Financing of Terrorism, 1999 (UN, 1999b)	28/05/2003, Law 808 of 2003	14/09/2004
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 (UN, 2005)	--	No yet ²⁹
Amendment to the Convention on the Physical Protection of Nuclear Material, 2005 ³⁰ (IAEA, 2006)	--	No
Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation ³¹ (UNODC, 2005a)	--	No
Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf ³² (UNODC, 2005b)	--	No

²³ Signed at The Hague on 16 December 1970 and entered into force on 14 October 1971

²⁴ Signed at Montreal on 24 February 1988 and entered into force on 6 August 1989.

²⁵ Adopted on March 10th 1988 and entered into force on March 1st 1992.

²⁶ Completed at Rome on March 10th 1988 and entered into force on March 1st 1992.

²⁷ Signed in Montreal on March 1st 1991 and entered into force on June 21st 1998.

²⁸ The Colombian Signature was on December 13th 1991, but there is not yet ratification.

²⁹ The Colombian Signature was on November 1st 2006, but there is not yet ratification.

³⁰ Adopted on 8 July 2005 at Vienna and has not entered into force yet.

³¹ Completed in London on October 14th 2005 and entered into force on July 28th 2010.

³² Completed in London on October 14th 2005 and entered into force on July 28th 2010.

Table 6. Regional conventions ratified by Colombia

Regional Convention	Incorporation into national law	Ratification of Colombia
Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (OAS, 1971) ³³	12/07/1995 Law 195 of 1995	13/08/1996
Inter-American Convention Against Terrorism (OAS, 2002) ³⁴	07/12/2007 Law 1108 of 2006	24/06/2008

VI. CONCLUSION

In Colombia there have been terrorist incidents both in the past and in the present. However, it can be considered a domestic terrorism which has had international relevance because the terrorist acts have been perpetrated within a very prolonged armed conflict. Particular elements of the Colombian conflict have facilitated the existence of terrorist organizations. In fact, the organized crime related to drug trafficking – in all its phases – and the *political violence* of more than half a century are two inseparable components of the terrorism in Colombia.

Nevertheless, the Colombian government has often taken a set of measures to prevent and counteract the effects of the terrorist organizations and of their acts. Colombia has a serious commitment in the fight against terrorism. At the international level, almost all international conventions against terrorism have been ratified. In addition, Colombia is currently a non-permanent member of the United Nations Security Council and has defended the ongoing fight against terrorism in this council and in various international summits. Internally, in Colombia there is a very solid legal framework against terrorism. In this regard, the large number of offences under the Penal Code is an indicator of legal measures against terrorism. Likewise, in the political and military aspects, the Colombian government has a stable public policy in place for the suppression of the terrorist organizations and for the prevention of terrorist attacks.

In sum, in the Colombian case, one can see a parallel and constant development between terrorism and counter-terrorism measures. Colombian law has tried to adjust to the several transformations of its internal armed conflicts and the respective changes in the behavior of terrorists. However, throughout the political and military fight against terrorism there have sometimes been decisions made which are considered detrimental to human rights.

³³ Signed in Washington (USA) on February 2nd 1971.

³⁴ Signed in Bridgetown (Barbados) on June 3rd 2002.

Fortunately, some institutions of the State, as in the case of the Constitutional Court in relation to the Anti-terrorist Statute, have achieved that the anti-terrorism measures respect human rights and constitutional principles. In this regard, the main commitment of the Colombian State in the global fight against terrorism is to continue preventing terrorist acts and suppressing terrorist organizations while respecting the human rights of both terrorists and non-terrorists. Thus, the State guarantees that it is not repeating the atrocities perpetrated by the terrorists who it is trying to punish.

VII. REFERENCES

- Acto legislativo 2 de 2003, *Diario Oficial No. 45.406* (2003, Dec. 19th). Available at http://www.secretariassenado.gov.co/senado/basedoc/cp/acto_legislativo_02_2003.html
- BBC News (2010, March 1). *Venezuela helped Eta and Farc plot against Uribe* [on line]. Available at <http://news.bbc.co.uk/2/hi/europe/8543349.stm>
- Corte Constitucional - Decision C-053/1993. Available at <http://www.corteconstitucional.gov.co/relatoria/1993/C-053-93.htm>
- Corte Constitucional - Decision C-393/2000. Available at <http://www.corteconstitucional.gov.co/relatoria/2000/C-393-00.htm>
- Corte Constitucional (2004, August 30th). *Decisión C-816/2004*. Available at http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/2004/c-816_2004.html#1
- Corte Constitucional. (2004, November 9th). *Sentencia C-1119/04*. Available at http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/2004/c-1119_2004.html
- Cragin, K. & Hoffman, B. (2003). *Arms Trafficking and Colombia*. Pittsburgh, PA: RAND National Defense Research Institute
- de Olloqui, J.J. (2003). Reflexiones en torno al terrorismo, in: J.J. de Olloqui (ed.), *Problemas jurídicos y políticos del terrorismo*, México DF, Universidad Nacional Autónoma de México, 1-30.
- Decreto 2700 of 1991 (1991, Nov. 30th, Nuevo Código de Procedimiento Penal. *Diario Oficial No. 40.190*. Available at ftp://ftp.camara.gov.co/camara/basedoc/codigo/codigo_procedimiento_penal_1991.html
- Decreto 2790 of 1990 (Nov. 20th, 1990), Estatuto para la Defensa de la Justicia. *Diario Oficial No. 39.584* Available at ftp://ftp.camara.gov.co/camara/basedoc/decreto/1990/decreto_2790_1990.html
- Decreto Legislativo 1923 de 1978 (1978, Sep.21th). Estatuto para la Defensa de la Democracia. *Diario Oficial No.35.101*. Available at ftp://ftp.camara.gov.co/camara/basedoc/decreto/1978/decreto_1923_1978.html
- Estatuto Antiterrorista. *Gaceta del Congreso 218* (2004). Available at http://www.elabedul.net/San_Alejo/Estatuto/estatuto_antiterrorista.php
- Estatuto Antiterrorista. *Gaceta del Congreso 218*. Available at http://www.elabedul.net/san_alejo/estatuto/estatuto_antiterrorista.php
- Hanson, S. (2009). FARC, ELN: Colombia's Left-Wing Guerrillas, in *Council on Foreign Relations Website*. Available at <http://www.cfr.org/colombia/farc-eln-colombias-left-wing-guerrillas/p9272#p5>
- International Atomic Energy Agency [IAEA] (2006). Amendment to the Convention on the Physical Protection of Nuclear Material. Vienna, Austria: IAEA
- Kouri (s.f). *Al-Qaeda/FARC connection: running drugs to U.S.* [on line - The land of the free web site]. Available at <http://www.thelandofthefree.net/conservativeopinion/2010/06/12/al-qaedafarc-connection-running-drugs-to-us/>
- Ley 504 de 1999 (1999, June 29th). *Diario oficial No 43.618*. Available at

- http://www.secretariasenado.gov.co/senado/basedoc/ley/1999/ley_0504_199_9.html
- Ley 890 de 2004 (2004, July 7th). *Diario Oficial No. 45.602*. Available at http://www.secretariasenado.gov.co/senado/basedoc/ley/2004/ley_0890_200_4.html
- Martínez, J. (2006). Terrorismo: acercamiento conceptual y breve análisis del tratamiento jurisprudencial de la Corte Constitucional colombiana en el marco del derecho internacional público. In Cavelier y Abello (Eds.) *Derecho internacional contemporáneo: lo público, lo privado, los derechos humanos*, Bogotá, Universidad del Rosario, 333-351.
- Marulanda, J. (2006). El delito de terrorismo en la región andina (aproximaciones). *Elementos de Juicio*, 3, 223-230
- Marulanda, J. (2007). *Terrorismo en Colombia ¿un delito inútil?*, Bogotá, Colombia: JGHG
- Nagle, L.E. (2005). Global Terrorism in Our Own Backyard: Colombia's Legal War against Illegal Armed Groups. *Transnational Law & Contemporary Problems*, 15(5), 6-86. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1807421
- Nieto, R. (2008). ¿Hay o no hay conflicto armado en Colombia? *ACDI*, 1, 139-159
- Official Journal of the European Union (2009, January 27th). *Council Common Position 2009/67/CFSP of 26 January 2009. Updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2008/586/CFSP* [on line]. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF>
- Orejuela, N. (2011). *Los estados de excepción en Colombia*, Cali, Colombia: USABU
- Organization of American States [OAS] (1971). *Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance*. Available at <http://www.oas.org/juridico/english/treaties/a-49.html>
- Organization of American States [OAS] (1971). *Inter-American Convention Against Terrorism*. Available at <http://www.oas.org/juridico/english/treaties/a-66.html>
- Orozco, I. (2006). *Combatientes, rebeldes y terroristas: guerra y derecho en Colombia*. Bogotá, Colombia: Temis
- Palacios, M. (1995). *Entre la legitimidad y la violencia. Colombia 1875-1994*. Bogotá, Colombia: Norma
- Pastrana, E. (2005). Europa: el largo camino hacia una política de seguridad y defensa común. *Revista Papel Político*, 18, 291-334.
- Privacy International (2004). *Terrorism Profile: Colombia* [in Privacy International Website]
- Public Safety Canada (2012, November 20). *Currently listed entities* [on line]. Available at <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx>
- Ramos, A. (2008). Terrorismo internacional y nuevo orden mundial. In Ramos y Cárdenas, *Terrorismo, globalización y Estado nación*, pp. (11-100). Cali, Colombia: Universidad Libre
- Report on activities during the first five years of the declaration on security in the Americas (DSA) in combating traditional threats and new threats to security*, Permanent Council of Organization of American States, Committee on Hemispheric Security, OEA/Ser.G, CP/CSH-1085/09, 13.09.2009.
- Sancho, R. (2003). *Guerrilla y terrorismo en Colombia y España: ELN y ETA*, Bucaramanga, Colombia: UNAB
- Tarapués, D. (2008). Diferencias ideológicas y aumento del narcotráfico: la posición ambivalente de Venezuela. In Pastrana, Wieland y Vargas (Eds.), *Vecindario agitado. Colombia y Venezuela: entre la hermandad y la conflictividad*, (pp. 137-173). Bogotá, Colombia: Konrad-Adenauer Stiftung
- United Nations (1998). *International Convention for the Suppression of Terrorist Bombings* [General Assembly resolution 52/164]. Available at <http://treaties.un.org/doc/db/Terrorism/english-18-9.pdf>
- United Nations (1999b). *International Convention for the Suppression of the Financing of Terrorism* [General Assembly resolution 54/109]. Available at <http://treaties.un.org/doc/db/Terrorism/english-18-11.pdf>
- United Nations (2005). *International Convention for the Suppression of Acts of Nuclear Terrorism*. Available at <http://treaties.un.org/doc/db/Terrorism/english-18-15.pdf>
- United Nations [UN] (1969). *Convention on Offences and Certain Other Acts Committed on Board Aircraft*. [United Nations Treaty Series No.10106]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv1-english.pdf>
- United Nations [UN] (1973). *Convention for the Suppression of Unlawful Seizure of Aircraft*. [United Nations Treaty No.12325]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv2-english.pdf>
- United Nations [UN] (1975). *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* [United Nations, Treaty Series, Vol. 974. No. 14118]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv3-english.pdf>
- United Nations [UN] (1977). *Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, Including Diplomatic Agents* [United Nations, Treaty Series, Vol. 1035. No. 15410]. Available at <http://treaties.un.org/doc/db/Terrorism/english-18-7.pdf>
- United Nations [UN] (1983). *International Convention against the Taking of Hostages* [United Nations, Treaty Series, Vol. 1316. No. 21931]. Available at <http://treaties.un.org/doc/db/Terrorism/english-18-5.pdf>
- United Nations [UN] (1987). *Convention on the Physical Protection of Nuclear Material* [United Nations, Treaty Series, Vol. 1456. No. 24631]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv6-english.pdf>
- United Nations [UN] (1990). *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation [United Nations, Treaty Series, Vol. 1589. No. A-14118]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv7-english.pdf>
- United Nations [UN] (1992a). *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* [United Nations, Treaty Series, Vol. 1678. No. I-29004, pp. 221-234]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf>
- United Nations [UN] (1992b). *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* [United Nations, Treaty Series, Vol. 1678. No. I-29004, pp. 304-310]. Available at <http://treaties.un.org/doc/db/Terrorism/Conv9-english.pdf>
- United Nations [UN] (1999a). *Convention on the Marking of Plastic Explosives for the Purpose of Detection*. Available at <http://treaties.un.org/doc/db/Terrorism/Conv10-english.pdf>
- United Nations Office for Drugs and Crime [UNODC] (2005a). *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*. Available at https://www.unodc.org/tldb/en/2005_Protocol2Convention_Maritime%20Navigation.html
- United Nations Office for Drugs and Crime [UNODC] (2005b). *Protocol of 2005 to the Protocol for the Suppression of Unlawful acts against the safety of fixed platforms located on the continental shelf*. Available at <https://www.unodc.org/tldb/pdf/Protocol%20Fixed%20Platforms%20EN.pdf>
- US Department of State (2012). *Foreign Terrorist Organizations* [on line]. Available at <http://www.state.gov/ct/rls/other/des/123085.htm>
- Valdivieso, A. (2001). *Defining Terrorism & its Root Causes: Colombian Statement discussed in the UNGA debate 'Measures to eliminate international terrorism'*, New York, United Nations, October 2nd 2001. Available at <http://www.reachingcriticalwill.org/political/1com/terror.html>
- Villar, O. (2009). Inside the Crystal Triangle: The US War on Narcoterrorism' in Colombia. *International Review of Business Research Papers*, 5(3), 90-99

VIII. CURRÍCULO

Diego Fernando Tarapués Sandino. Lawyer from Universidad Santiago de Cali (Colombia) and Political Scientist (Universidad del Valle, Cali). At the present LL.M and Ph.D. student at Georg-August-Universität Göttingen (Germany).