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9 September 1997

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Re: Payments to *guerrilla* groups.

Dear [REDACTED]:

During our recent telephone conference, you asked us about the legal consequences in Colombia of a foreign owned company making payments to a *guerrilla* group, in a case of extortion or kidnapping. In this respect we have the following comments:

1. Colombia enacted an "anti-kidnapping" legislation which prohibited the administrators of any Colombian or foreign company to effect, participate in, or hide, any payments made to release an employee of the company from a kidnapping<sup>1</sup>.
2. The cited law was challenged as unconstitutional, at various occasions, before the Constitutional Court. As a result, the Constitutional Court voided some articles in the law. In reviewing the constitutionality of Law 40 of 1993, Article 25, the court indicated that the prohibition stated in that article may not be applicable when the person acts under conditions that justify the action, in accordance with criminal law. That is when the person acts under necessity and does not incur in any illegal conduct. In this sense we point out that:

2.1. Colombian criminal law recognizes as a justification of the criminal action the condition of necessity.

<sup>1</sup> Law 40 of 1993, Article 25.

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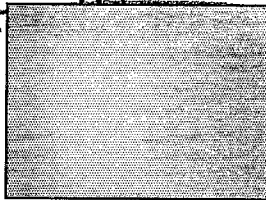
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- 2.2. He who pays with his funds or goods to save a life or terminate a kidnapping acts under a legal justification and, therefore, under the Constitution.
- 2.3. A legal provision, that characterizes as a crime the reasonable activities of the individuals directed to protect the life and freedom of other individuals, is unconstitutional.
- 3. The Court indicates, however, that he who obtains a personal benefit from a state of necessity (like a kidnapping or an extortion) incurs in a criminal action.
- 4. A new law enacted on the matter<sup>1</sup>, created special government programs directed to fight kidnapping, such as the creation of *Gaula* (special forces), provides for other measures and empowers the Director of the Program (*Zar Antisecuestros*) to authorize the conduction of negotiations in case of a kidnapping.
- 5. Although not specially contemplated in the legislation, we consider that the case of a extortion is not different from that of a kidnapping, for purposes of the above legal analysis. Accordingly, a payment made in case of extortion in order to defend the life and freedom of individuals, without obtaining any personal benefits or committing any other unlawful action, should not be consider against the law.
- 6. The President of the Republic has been insisting recently in that payments from multinational companies to *guerrilla* groups shall be severely sanctioned. We consider that, unless there is a legislation amendment, any such sanction must be considered within the foregoing legal frame.

Should you have any questions or require additional information, please let us know.

Best personal regards,



<sup>1</sup> Law 282 of 1996.

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