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## Removing Drug Lords and Street Pushers: The Extradition of Nationals in Colombia and the Dominican Republic

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# Removing Drug Lords and Street Pushers: The Extradition of Nationals in Colombia and the Dominican Republic

Joshua H. Warmund

## Abstract

This Comment explores the interplay between drug trafficking and extradition policy in the U.S.-Latin American-Caribbean region by focusing upon the recent legal shift in Colombia and the Dominican Republic. Part I describes the status of current international extradition law, focusing on modern extradition policy. In particular, this part details the respective extradition treaties of Colombia and the Dominican Republic with the United States. Part I also explores the roles that these two nations assume trafficking drugs into the United States and highlights the corresponding U.S. anti-drug enforcement response. Finally, Part I examines the challenges that drug trafficking and certain anti-drug policies traditionally posed to developing extradition-friendly laws in Colombia and the Dominican Republic. Part II inspects the new extradition reforms in Colombia and the Dominican Republic and notes reactions to the new laws. Part III probes in closer detail the motivations responsible for the shift in extradition policy in both Colombia and the Dominican Republic. This Part argues that the form and content of the new laws, although influenced by U.S. anti-drug enforcement policies, strongly reflect domestic power struggles occurring within Colombia and the Dominican Republic. This Comment concludes that the motivations that shaped the new extradition reforms will adversely impact the laws' effectiveness in combating drug trafficking.

REMOVING DRUG LORDS AND STREET PUSHERS:  
THE EXTRADITION OF NATIONALS IN COLOMBIA  
AND THE DOMINICAN REPUBLIC

Joshua H. Warmund\*

INTRODUCTION

Francisco Medina, known on the street as Freddie Krueger,<sup>1</sup> participated in drug trafficking and racketeering and committed over fourteen murders during the 1980s and 1990s.<sup>2</sup> Medina operated in a drug gang known as the Wild Cowboys.<sup>3</sup> The gang expanded its crack cocaine and heroin distribution ring in upper Manhattan, New York and the Bronx, New York by murdering or assaulting its competitors.<sup>4</sup> In addition to his affiliation with the Wild Cowboys, Medina contracted his skills to a variety of drug gangs.<sup>5</sup> He provided expensive services, reportedly commanding US\$10,000 per rival hit.<sup>6</sup>

Medina fled the United States in 1994.<sup>7</sup> He lived freely in the Dominican Republic until 1997, when Dominican law enforcement officials captured and transferred him into U.S. custody.<sup>8</sup> U.S. Marshals secured Medina on August 13, 1997, at 10:30 A.M. in Santo Domingo and immediately transported him

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1. *A NIGHTMARE ON ELM STREET: FREDDIE'S REVENGE* (New Line Cinema 1985). Freddie Krueger refers to a character from the horror film series, "A Nightmare on Elm Street." *Id.* Also known as "the bastard son of a thousand maniacs," Freddie exists in the dreams of those children whose parents at one point burned him to death. *Id.* He preys upon these children, mutilates them in their dreams with his signature metal-clawed glove, and keeps their souls. *Id.*

2. See Christopher S. Wren, *In 2 Extraditions, Drug Officials Sense a Shift in Dominican Policy*, N.Y. TIMES, Aug. 14, 1997, at A1 (describing scope of illegal activity conducted by Wild Cowboys); see also Shelly Emling, *Dominican Criminals Escaping United States Justice*, ATL. JOUR. & CON., Apr. 13, 1997, at 7B (listing Wild Cowboy's death count at seventeen).

3. See Wren, *supra* note 2, at A1 (describing Medina's role in Wild Cowboys as "enforcer").

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

to New York, where he faced trial in the United States District Court.<sup>9</sup>

Maximo J. Reyes led a Brooklyn, New York drug distribution organization known as the Company in the early 1990s.<sup>10</sup> The Company allegedly distributed hundreds of pounds of cocaine on street corners, employing murder and violence to eliminate competitors and to maintain internal order.<sup>11</sup> One well-publicized Company hit concerned a 1989 sniper shooting of an individual lured into range by a fake 911-telephone call.<sup>12</sup> In total, the Company committed more than seven murders,<sup>13</sup> and the New York Police Department connected Reyes with four slayings before he fled back to the Dominican Republic in 1993.<sup>14</sup> In 1997, Reyes was caught and, together with Medina, he was extradited back to the United States.<sup>15</sup>

The cases of Medina and Reyes expose a recent shift among certain South American and Caribbean nations towards extraditing their own nationals.<sup>16</sup> These nations are strategically important to both global and U.S. anti-drug efforts because of their involvement in the production, manufacture, trafficking, and distribution of illegal drugs.<sup>17</sup> Whereas the United States

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. See Greg B. Smith, *2 Fugitives Likely Won't Face Death*, *DAILY NEWS*, Aug. 15, 1997, at 38 (reporting that Dominican officials conditioned extradition of Medina and Reyes upon United States's promise not to seek death penalty).

15. *Id.* Reyes subsequently pleaded guilty to racketeering charges. The court sentenced him to thirty years in prison. Peter Bowles, *Cocaine Ring Leader Arraigned: Fugitive Arrested in Santo Domingo*, *NEWSDAY*, Jan. 8, 1999, at A49.

16. Compare CONSTITUCIÓN POLÍTICA DE COLOMBIA tit. I, art. 35 (1991) ("Se prohíbe la extradición colombianos por nacimiento"), with ACTO LEGISLATIVO NUMERO 01 DE 1997 (diciembre 16, 1997) (Colom.) ("Además, la extradición de los colombianos por nacimiento se concederá por delitos cometidos en el exterior, con siderados como tales en la legislación penal colombiana"); compare No. 489 LEY DE EXTRADICIÓN DEL 22 DE OCTUBRE DE 1969 (Dom. Rep.) ("La extradición de un dominicano no se concederá por ningún motivo"), with LEY 278-98 DEL 29 DE JULIO DE 1998, que modifica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (Dom. Rep.) ("El Poder Ejecutivo es competente para conceder la extradición de un dominicano").

17. See R.I.R. Abeyratne, *International Initiatives at Controlling the Illicit Transportation of Narcotic Drugs by Air*, 63 J. AIR L. & COM. 289 (1997) (listing statistical information concerning role of different nations in drug production and trafficking). Colombia is the world's leading supplier of cocaine base, while most of the base is imported from Peru and Bolivia. *Id.* Private and commercial vessels in the Caribbean collect the contraband and transport it via commercial air and land routes to points along the South-

strongly promotes anti-drug policies through its War on Drugs,<sup>18</sup> the proliferation of illegal drugs in the U.S. black market<sup>19</sup> is a

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eastern coast of the United States. *Id.*; see *Committee Hearing of the House Judiciary Subcommittee on Crime: Hearing on Colombian Drug Cartels*, Oct. 16, 1997, available in LEXIS, Legis Library, Hearing File [hereinafter *Hearings I*] (statement of Rep. Bill McCollum) (explaining role of South American and Caribbean nations in international drug trafficking). In 1997, U.S. officials expected Colombian cocaine trafficking to eclipse 600 metric tons. *Hearing I, supra* (statement of Rep. McCollum). Caribbean nations such as the Dominican Republic serve as transit points. *Id.* (testimony of Mr. "Rodriguez," former Medellin drug trafficker).

18. See John T. Schuler & Arthur McBride, *A Symposium on Drug Decriminalization: Notes from the Front: A Dissident Law Enforcement Perspective on Drug Prohibition*, 18 HOFSTRA L. REV. 893 (1990) (describing history of term "War on Drugs"); see also Leslie Maitland, *President Gives Plan to Combat Drug Networks*, N.Y. TIMES, Oct. 15, 1982, at A1 (reporting President Reagan's declaration of "war" on drugs prior to 1982 midterm Congressional elections); Stephen Y. Otera, *International Extradition & the Medellin Cocaine Cartel: Surgical Removal of Colombian Cocaine Traffickers for Trial in the United States*, 13 LOY. L.A. INT'L & COMP. L.J. 955, 955 (1991) (explaining that President George Bush treated drug policy enforcement as if it were military campaign); Gregory H. Williams & Sara C. Williams, *America's Drug Policy: Who Are the Addicts?*, 75 IOWA L. REV. 1119, 1120 (1990) (arguing that interdiction and eradication are ineffective anti-drug policies). The historical U.S. approach to its domestic drug problem has been to attack external factors, specifically through limiting the availability of drugs in society. Williams & Williams, *supra*, at 1120. There are two principal strategies currently used to combat drug trafficking: interdiction, the interception of drug shipments before they enter the United States, and eradication, the destruction of coca plants in drug producing areas of South America. *Id.*; see Foreign Assistance Act, 22 U.S.C. § 2291 (1994 & Supp. 1997) (authorizing U.S. President to "certify" countries that cooperate with United States to end drug trafficking). Additionally, countries are eligible for U.S. aid or assistance if they actively support anti-narcotic efforts. 22 U.S.C. § 2291; see *id.* § 2492 (stating that if foreign nation does not cooperate, President must suspend U.S. aid to that nation in form of trade sanctions). Furthermore, the President must direct U.S. representatives in multilateral development banks to vote against loans to the "deficient" or "decertified" nation. *Id.* § 2492; see *Senate Committee on Foreign Relations, Subcommittee on the Western Hemisphere, Peace Corps, Narcotics and Terrorism: Perspectives on Certification*, Feb. 26, 1998, available in LEXIS, Legis Library, Hearing File [hereinafter *Hearings II*] (testimony of Rensselaer W. Lee, III, Global Advisory Services) (describing role of decertification policy in anti-narcotics law enforcement). Many officials and commentators have suggested revising the current certification policy. *Hearings II, supra* (testimony of Rensselaer W. Lee, Global Advisor). The changes range from "multilaterizing" the process to include international review and the development of objective standards, to scrapping the program altogether. *Id.*

19. See J.J. Juan R. Torruella, *One Judge's Attempt at a Rational Discussion of the So-Called War on Drugs*, 6 B.U. PUB. INT. L.J. 1, 6 (1996) (arguing that high demand in United States for narcotics fuels illegal drug trade). By Fall of 1996, there were almost 12 million illicit drug users in the United States. *Id.* Judge Torruella recounted the following conversation with a Salvadorian attorney:

'Honorable Judge, we very much appreciate your presence and advice that you have given us, but don't you think the United States could help us in solving this problem?' I answered that as I understood the situation we were already sending considerable sums in aid, and that we had a lot of resources commit-

powerful economic incentive for drug cartels<sup>20</sup> to produce and to distribute enormous quantities of drugs.<sup>21</sup> Indeed, the production or manufacture of drugs is vital to the economies of many nations in the Latin American region.<sup>22</sup> In response, the United States has sought various means of obtaining wanted

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ted to the interdiction of drugs from Latin America and the prosecution of violators. He responded, 'Excuse me, your Honor, that is not the help we are in need of. What we need is for your country to stop consuming these drugs. If your people were not buying drugs, we would not be growing and selling them. We would rather sell you coffee, or oranges, or bananas, if you would only stop buying and consuming drugs.'

*Id.*; see *Hearings I*, *supra* note 17 (statement of Rep. McCollum) (describing pervasiveness of illegal drugs in U.S. society). As one U.S. Congressman noted,

In October 1997, the story in Washington, DC, Orlando, Florida, and almost every city around the country is a sad one when it comes to drugs. Drugs are more plentiful, pure, and cheaper than they were in the early 1990s. And this has meant that far more of our children are becoming drug users.

*Hearings I*, *supra* (statement of Rep. McCollum).

20. See *Hearing Before the Senate Foreign Relations Committee, Subcommittee on the Western Hemisphere, Peace Corps, Narcotics, and Terrorism: Drug Certification*, Feb. 26, 1998, available in LEXIS, Legis Library, Hearng File [hereinafter *Hearings III*] (testimony of Thomas A. Constantine, Drug Enforcement Agency ("DEA") Administrator) (describing structure of Colombian cartel operating in United States). Cartels are sophisticated and comprehensive crime syndicates that have been compared to mid-twentieth century Italian-American, Irish-American, or Jewish-American criminal organizations. *Id.* As one official has noted, however, "[w]hile organized crime in the United States during the 1950's through the 1970's affected certain aspects of American life, its influence pales in comparison to the violence, corruption, and power that today's drug syndicates wield." *Id.* Individuals possessing enormous power lead these syndicates. *Id.* They micromanage all operational decisions, including shipping and storage arrangements, how to properly package the cocaine, and who will be bribed and who will be murdered. *Id.* They own airplanes, boats, vehicles, radar, communications equipment, and weapons. *Id.*; see *Hearings I*, *supra* note 17 (testimony of Mr. "Rodriguez," former Medellin drug trafficker) (detailing internal management structure of Medellin cartel). A "cartel," as described by a former Medellin trafficker is "similar to a federation. It is organized by autonomous groups. They unify their efforts and resources for common targets." *Hearings I*, *supra* (testimony of Mr. "Rodriguez"). The Medellin cartel, for example, had approximately 20 well-organized groups and other minor groups. *Id.* The former drug trafficker explained that

the main purpose of this federation is to ship drugs . . . . Each member of the group contributes [drugs] in order to lessen the risks and the costs. This getting together is generally referred to as a 'pool.' Generally, the group that makes up the pool is the group that has the connection with the contractor for the transportation.

*Id.*

21. See Joseph B. Treaster, *Colombia Fears for the Economy*, N.Y. TIMES, Sept. 11, 1989, at 5 (arguing that illegal drug trafficking supports Colombian economy). For instance, one source suggests that the 1988 Colombian cocaine trade yielded US\$4 billion. *Id.*

22. See *id.* (arguing that if illegal drug trade diminishes, then Colombian economy will suffer deleterious economic effects). In 1990, U.S. officials estimated that US\$1.5

drug criminals, including extradition.<sup>23</sup> Nations that prohibit the extradition of their nationals, however, hamper U.S. law enforcement efforts to combat its own domestic drug problem.<sup>24</sup>

Colombia and the Dominican Republic occupy specific roles in the international drug trade extending from Bogota to Santo Domingo to Miami or New York.<sup>25</sup> Both nations are major actors in either narcotics production, smuggling, or street distribution.<sup>26</sup> U.S. efforts to curb drug trafficking through treaty practice with these two nations, however, has historically met with limited success.<sup>27</sup> Indeed, both Colombia and the Domini-

billion of cocaine profits circulated within the Colombian economy, comprising almost 20% of the nation's total export earnings. *Id.*

23. See Mark Andrew Sherman, *United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia*, 15 NOVA L. REV. 661, 663-64 (1991) (explaining that U.S. employs irregular rendition techniques such as deportation, exclusion, and abduction).

24. See Mark Fineman, *In Court: Cocaine, Caribbean, Conspiracy; Drugs: Federal Case Against Texas-Born Man Calls Dominican Republic Pivotal for Narcotics Trade*, L.A. TIMES, Oct. 22, 1997, at A10 (arguing that Dominican non-extradition policy frustrates U.S. anti-drug law enforcement). *But see* Williams & Williams, *supra* note 18, at 1120 (arguing that U.S. culture is responsible for its own drug problem). Other commentators have observed that focusing on external factors such as foreign drug cartels, coca farmers, money launderers, and even other governments prevents the United States from recognizing that its drug problem actually stems from its own society's addictive tendencies. Williams & Williams, *supra*, at 1120.

25. See Abeyratne, *supra* note 17, at 302-03 (reporting Colombian statistical role in international drug trafficking). Colombia is the world's leading supplier of processed cocaine. *Id.*; see Fineman, *supra* note 24, at A10 ("With a coastline of more than 1,000 miles, a 193-mile border with Haiti and its location in the Caribbean, the Dominican Republic is a convenient staging area for the outward movement of drug shipments from South America.").

26. See *Hearings I*, *supra* note 17 (statement of Rep. McCollum) (stating that Colombia leads world in cocaine production, while Dominican Republic provides drop off and transit points for shipping purposes); see Wren, *supra* note 2, at A1 (stating that Dominican drug gangs have overtaken drug distribution role in New York City).

27. See Smith, *supra* note 14, at 38 (describing denial of U.S. extradition requests because of Dominican notions of sovereignty); Mark Fineman, *Lone Superpower's Shadow Darkens the Frustration of Caribbean Nations; Diplomacy: Island States Stand Firm Against What Is Seen as Post-Soviet Bullying by Washington*, L.A. TIMES, July 8, 1998, at A4 [hereinafter Fineman II] (describing Dominican refusal to capitulate to U.S. extradition demands due to displeasure with U.S. foreign policy in Caribbean); Mark Fineman, *World Perspective; Dominican Republic; End to Extradition Ban to Put Criminals Within Law's Reach*, L.A. TIMES, July 24, 1998, at A5 [hereinafter Fineman III] (reporting that U.S. extradition requests directed at Dominican Republic have historically failed because of Dominican fears concerning sovereignty); see also Luz E. Nagle, *The Rule of Law or the Rule of Fear: Some Thoughts on Colombian Extradition*, 13 LOY. L.A. INT'L. & COMP. L.J. 851, 865 (1991) (describing Colombian denials of U.S. extradition requests out of fear of violent response from drug cartels).

can Republic statutorily prohibited the extradition of nationals.<sup>28</sup> Yet, both nations recently repealed this policy and enacted new laws that provide for the extradition of nationals.<sup>29</sup>

This Comment explores the interplay between drug trafficking and extradition policy in the U.S.-Latin American-Caribbean region by focusing upon the recent legal shift in Colombia and the Dominican Republic. Part I describes the status of current international extradition law, focusing on modern extradition policy. In particular, this part details the respective extradition treaties of Colombia and the Dominican Republic with the United States. Part I also explores the roles that these two nations assume trafficking drugs into the United States and highlights the corresponding U.S. anti-drug enforcement response. Finally, Part I examines the challenges that drug trafficking and certain anti-drug policies traditionally posed to developing extradition-friendly laws in Colombia and the Dominican Republic. Part II inspects the new extradition reforms in Colombia and the Dominican Republic and notes reactions to the new laws. Part III probes in closer detail the motivations responsible for the shift in extradition policy in both Colombia and the Dominican Republic. This Part argues that the form and content of the new laws, although influenced by U.S. anti-drug enforcement policies, strongly reflect domestic power struggles occurring within Colombia and the Dominican Republic. This Comment concludes that the motivations that shaped the new extradition reforms will adversely impact the laws' effectiveness to combat drug trafficking.

### I. *EXTRADITION, DRUG TRAFFICKING, AND ASSOCIATED CHALLENGES*

Extradition is an international law enforcement mechanism

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28. See CONSTITUCIÓN POLÍTICA DE COLOMBIA tit. I, art. 35 (1991) ("Se prohíbe la extradición colombianos por nacimiento"); see No. 489 LEY DE EXTRADICIÓN DEL 22 DE OCTUBRE DE 1969, art. 4 (1969) ("La extradición de un dominicano no se concederá por ningún motivo") (Dom. Rep.).

29. ACTO LEGISLATIVO NUMERO 01 DE 1997 (diciembre 16, 1997) (Colom.) ("Además, la extradición de los colombianos por nacimiento se concederá por delitos cometidos en el exterior, con siderados como tales en la legislación penal colombiana"); LEY 278-98 DEL 29 DE JULIO DE 1998, que modifica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (Dom. Rep.) ("El Poder Ejecutivo es competente para conceder la extradición de un dominicano en los casos en que exista Convenio de Extradición entre el Estado requeriente y el Estado Dominicano").



that can be utilized to realize anti-drug policy.<sup>30</sup> Colombia, the Dominican Republic, and the United States assume different roles in the illegal drug trafficking trade.<sup>31</sup> Numerous competing interests, however, have historically challenged the implementation of an extradition policy in Colombia and the Dominican Republic that contemplates the extradition of nationals.<sup>32</sup>

### A. International Extradition Law

Modern extradition law is based upon concepts that have developed and evolved over centuries.<sup>33</sup> As newer crimes arose which extradition theory originally did not contemplate,<sup>34</sup> nations entered into treaties or conventions to develop procedures for issuing or handling extradition requests and to enumerate offenses that reflected these modern criminal trends.<sup>35</sup> Colom-

30. See Otera, *supra* note 18, at 956 ("International extradition promises to be one of the most powerful weapons the United States and Colombia have at their disposal to battle with the Medellin cartel and cocaine trafficking."); Nagle, *supra* note 27, at 870 ("Extradition has become the only effective instrument for Colombia to sanction narco-traffickers."). *But see* Sherman, *supra* note 23, at 698-700 (arguing that extradition is ineffective method to combat drugs).

31. See Abeyratne, *supra* note 17, at 302-03 (reporting Colombian and U.S. statistical role in international drug trafficking). Colombia is the world's leading supplier of processed cocaine, while the United States is the world's leading consumer. *Id.*; see Fineman, *supra* note 24, at A10 (explaining that Dominican Republic's location in Caribbean is convenient for shipping illegal drugs); *Hearings I*, *supra* note 17, (statement of Rep. McCollum); *Hearings II*, *supra* note 18, (testimony of Rensselaer W. Lee, Global Advisor); *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator).

32. See Smith, *supra* note 14, at 38 (stating "the Dominican Republic has for years rebuffed as intrusive U.S. efforts to extradite dozens of fugitives hiding in the Caribbean nation" who seek extradition of Dominican nationals). See generally Steven W. Krohne, *The United States and the World Need an International Criminal Court as an Ally in the War Against Terrorism*, 8 IND. INT'L & COMP. L. REV. 159, 180-81 (1997) (describing failure to extradite Colombian nationals due to "bitterness and resentment on the part of the Colombian population toward the American government"); Mitchell J. Matorin, *Unchanging the Law: The Legality of Extraterritorial Abduction in Lieu of Extradition*, 1992 DUKE L.J. 907 (describing general ineffectiveness of extradition treaties with countries involved in narcotics trade); Sherman, *supra* note 23, at 698 (describing failure to extradite Colombian nationals due to lack of rule of law in Colombia).

33. See Kai I. Rebane, Note, *Extradition & Individual Rights: The Need for an International Criminal Court to Safeguard Individual Rights*, 19 FORDHAM INT'L. L.J. 1636, 1644-46 (1996) (stating that extradition developed over three thousand years); M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 1, 3 (1974) (explaining that extradition originated in Middle Eastern and Asian cultures as symbol of respect).

34. See Rebane, *supra* note 33, at 1665 (commenting that drug trafficking and terrorism created new challenges for international extradition law after World War II).

35. See *id.* (stating that international community attacked new criminal concerns

bian and Dominican procedures for assessing incoming extradition requests are exemplified through their respective bilateral treaties with the United States.<sup>36</sup>

### 1. Historical Development of Extradition

Extradition is the surrender of a criminal or accused criminal by one sovereign to another.<sup>37</sup> Extradition originally developed as a formal process to recover fugitives, as sovereign entities grew to respect the territorial integrity of other nations.<sup>38</sup> Whereas the principle of reciprocity<sup>39</sup> is the fundamental mutual concern underscoring an extradition relationship,<sup>40</sup> the principle of extraterritoriality<sup>41</sup> constitutes its basic limitation.<sup>42</sup>

The treaty system anchors modern extradition practice.<sup>43</sup>

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through development of multilateral treaties addressing new crimes, as supplemented by bilateral treaties).

36. Extradition Treaty with the Republic of Colombia, Sept. 14, 1979, U.S.-Colom., S. TREATY DOC. NO.97-8 (entered into force Mar. 4, 1982) [hereinafter *Columbian Treaty*]; Convention Between the United States and the Dominican Republic for the Extradition of Criminals, June 19, 1909, U.S.-Dom. Rep., 36 Stat. 2468 [hereinafter *Dominican Treaty*].

37. BASSIOUNI, *supra* note 33, at 572; see CHRISTOPHER L. BLAKESLEY, *TERRORISM, DRUGS, INTERNATIONAL LAW, AND THE PROTECTION OF HUMAN LIBERTY: A COMPARATIVE STUDY OF INTERNATIONAL LAW, ITS NATURE, ROLE, AND IMPACT IN MATTERS OF TERRORISM, DRUG TRAFFICKING, WAR, AND EXTRADITION* 171 (1992) (defining extradition as "the international judicial rendition of fugitives charged with an extraditable offense and sought for trial, or already convicted and sought for punishment").

38. See Rebane, *supra* note 33, at 1645 (explaining that extradition spawns as far back as ancient Egypt and first appeared in Western Europe in twelfth century).

39. See *id.* (noting that under reciprocity, nations grant extradition requests in exchange for extradition or promise of future extradition of individual that they seek from requesting nations).

40. See *id.* (explaining that reciprocity formed foundation of extradition practice before advent of modern extradition treaties).

41. See *id.* (stating that extraterritoriality refers to sovereign right of each nation to regulate and govern any activity within its jurisdiction); see also Joshua S. Spector, *Extraditing Mexican Nationals in the Fight Against International Narcotics Crimes*, 31 U. MICH. J.L. REFORM 1007, 1017 (1998) (explaining that drug trafficking implicates concept of extraterritoriality because effects of international drug trafficking impact requesting nation).

42. See Rebane, *supra* note 33, at 1646 (explaining that concept of extraterritoriality dictates that each nation's sovereign and territorial integrity supercedes any criminal conduct triggering invasive enforcement operations). If a nation violates this tenet invasively, then the international community will compel the return of the individual and fine or reprimand the guilty nation. *Id.* at 1646-47 n.102.

43. See *id.* at 1647 (stating that treaty system gained prominence in late nineteenth century).

Most current extradition treaties are bilateral.<sup>44</sup> Common extradition treaty features include a dual criminality provision<sup>45</sup> or a list of specific criminal conduct warranting extradition,<sup>46</sup> a clause addressing the extradition of nationals,<sup>47</sup> a list of protected rights,<sup>48</sup> and a political offense exception.<sup>49</sup> Finally, although the treaty system, comity,<sup>50</sup> and reciprocity dictate international extradition procedures, each nation's domestic extradition process is governed by its own internal laws and policies.<sup>51</sup>

Traditionally, common law and civil law nations have had different extradition procedures.<sup>52</sup> In both systems, the usual practice is for a minister or agency of the executive branch to handle incoming extradition requests.<sup>53</sup> In common law nations, this executive agency usually decides whether to extradite, contingent upon a judicial finding of treaty compliance.<sup>54</sup> In contrast, civil law nations often provide exclusive executive control.<sup>55</sup> Further, whereas common law nations require a probable cause standard for charging the requested individual of the particular crime,<sup>56</sup> civil law jurisdictions consider the formal extradi-

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44. *See id.* at 1648 (stating that specific criminal trends necessitated creation of individually-tailored treaties between specified pairs of nations).

45. *See id.* at 1637 n.9 (noting that dual criminality requires that alleged conduct motivating crime must be illegal in both requesting and requested nations).

46. *Id.* at 1649.

47. *Id.*

48. *Id.*

49. *Id.*; *see* BLACK'S LAW DICTIONARY 486 (6th ed. 1991) (explaining that political offense exception is exemption from extradition for individual accused of "crime directed against the security or governmental system of a nation, such as treason, sedition, or espionage").

50. *See* Rebane, *supra* note 33, at 1649 (stating that comity refers to particular request and is not binding upon international law).

51. *Id.*

52. *See* BASSIOUNI, *supra* note 33, at 7-8 (describing development of extradition in civil and common law countries).

53. *Id.* at 505.

54. *See* Rebane, *supra* note 33, at 1650-51 (describing U.S. and British domestic extradition processes as examples of common law tradition). For instance, in the United States, the Secretary of State renders the final decision to extradite after a reviewing court certifies that sufficient evidence exists to extradite the wanted individual. *Id.* In the United Kingdom, a Secretary of State decides whether to issue a warrant of surrender after a special magistrate reviews the request. *Id.*

55. *See id.* at 1651 (explaining that most civil law nations now require at least minimal judicial review of extradition process).

56. *Id.*; BASSIOUNI, *supra* note 33, at 508.

tion request *prima facie* evidence to grant extradition.<sup>57</sup>

Historically, most nations have prohibited the extradition of their nationals.<sup>58</sup> The majority of civil law nations, including most nations in South America, will not extradite their nationals.<sup>59</sup> These nations fear that their citizens will receive excessive punishment in the foreign locale or will be at an unfair disadvantage due to unfamiliarity with the foreign process, language, and customs.<sup>60</sup> Thus, these nations view extradition as a violation of sovereignty.<sup>61</sup> As a general concession, however, governments that refuse to extradite their nationals will agree to prosecute the wanted individual domestically.<sup>62</sup>

## 2. Modern Extradition Law

In the last half-century, the rise of drug trafficking has led to an increased use of extralegal means<sup>63</sup> to obtain wanted individ-

57. Rebane, *supra* note 33, at 1651.

58. See Spector, *supra* note 41, at 1018 (explaining that Mexico traditionally refused to extradite nationals); ETHAN A. NADELMANN, COPS ACROSS BORDERS: THE INTERNATIONALIZATION OF U.S. CRIMINAL LAW ENFORCEMENT 426-27 (1993).

59. See Spector, *supra* note 41, at 1018 (explaining that civil law nations instead prefer to prosecute their citizens domestically for crimes committed abroad); NADELMANN, *supra* note 58, at 430-34; M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 588 (3d ed. 1996) [hereinafter INTERNATIONAL EXTRADITION]; see also Dea Abramschmitt, *Neighboring Countries; Un-Neighborly Acts: A Look at the Extradition Relationships Among the United States, Mexico, and Canada*, 4 TRANS-NAT'L L. & POL'Y 121, 128-29 (1995) (focusing upon extradition practices of North American nations).

60. See Spector, *supra* note 41, at 1018 (explaining that nationals prosecuted in foreign courts may consider themselves punished from moment of extradition because they are forcibly transported far from home and family); NADELMANN, *supra* note 58, at 427.

61. See Spector, *supra* note 41, at 1018 (explaining civil law rule that foreign nations do not have authority to impose their laws upon civil law nation's national); NADELMANN, *supra* note 58, at 427; INTERNATIONAL EXTRADITION, *supra* note 59, at 593.

62. Spector, *supra* note 41, at 1019; see G.A. Res. 116, U.N. GAOR, 45th Sess., Annex, Agenda Item 100, art. 4(a), U.N. Doc. A/RES/45/116 (1991) (resolving that refusals to extradite based on nationality are reasonable provided requested state undertakes appropriate domestic action against wanted individual). This U.N. resolution acknowledges that most nations will not extradite their own nationals and, thus, balances the use of executive discretion with assurances that the wanted individual will receive adequate penal sanctions. Spector, *supra*, at 1019.

63. See Abraham Abramovsky, *Extraterritorial Abductions: America's "Catch and Snatch" Policy Run Amok*, 31 VA. J. INT'L L. 151, 155-56 (1991) (explaining that extralegal methods of apprehending foreign suspect can be divided into irregular rendition techniques and extraterritorial abductions). "Irregular rendition" concerns apprehensions that are conducted with the approval of the rendering, or asylum, nation. *Id.* "Abduc-

uals.<sup>64</sup> Often, governing extradition treaties lacked provisions accounting for drug-related offenses.<sup>65</sup> Irregular means of rendition, including abduction,<sup>66</sup> formal surrender, and deportation<sup>67</sup> circumvented this deficiency.<sup>68</sup> Even where drug offenses were enumerated, however, irregular rendition in drug-related cases often replaced the normal extradition process to obtain wanted individuals.<sup>69</sup>

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tions," conversely, are committed without the asylum nation's consent or consultation. *Id.*

64. See Rebane, *supra* note 33, at 1668 (noting that exclusion of drug-related offenses in extradition treaties frustrated officials attempting to extradite drug traffickers); see also ETHAN A. NADELMANN, *The Evolution of United States Involvement in the International Rendition of Fugitive Criminals*, 25 N.Y.U. J. INT'L L. & POL'Y 813, 860-65 (1993) [hereinafter *International Rendition*] (noting that rise of drug trafficking spurred increase in irregular rendition techniques); Abramovsky, *supra* note 63, at 1019 (explaining that over last twenty years, extraterritorial abductions of drug traffickers increased because of growing accounts of terrorism, non-extradition policies in drug producing nations, fears that extradition targets would be tipped by corrupt officials in asylum governments, and perceptions that extradition processes were too tedious).

65. See *International Rendition*, *supra* note 64, at 847 (explaining that older extradition treaties did not contain drug-related offenses because narcotics were not regulated by international conventions at that time); see also Rebane, *supra* note 33, at 1667-68 (noting that negotiating new provisions often was unsuccessful, leaving officials with unattractive or legally questionable alternatives).

66. See Rebane, *supra* note 33, at 1671 (stating that United States often abducts individuals from Mexico because of long, common borders that both nations share). The United States operated a program of "informal surrender" throughout the 1970s in an effort to capture drug traffickers. *Id.* In the United States, courts do not inquire as to the method by which jurisdiction was obtained. See *Ker v. Illinois*, 119 U.S. 436, 444 (1886) (holding that power of court is not impaired when faced with criminal defendant seized by forcible abduction); *Frisbie v. Collins*, 342 U.S. 519, 523 (1952) (finding no constitutional prohibition against finding of guilt when criminal defendant forcibly abducted).

67. See Rebane, *supra* note 33, at 1671 (explaining that deportation is "quasi-legal" because it circumvents extradition, but is undertaken with cooperation of requested nation). A deportee does not have the same legal rights as an extraditee, such as the political offense exception and the doctrine of specialty. *Id.* The individual thus is susceptible to administrative expediency. *Id.*

68. See *id.* at 1666 (stating that outdated treaties restricted law enforcement and promoted irregular rendition). Formal surrender and deportation, although often suspicious, do not technically violate international law. *Id.* Abduction consists of an invasive campaign to kidnap an individual in order to gain jurisdiction and, therefore, violates international law. *Id.* See generally Abramovsky, *supra* note 63, at 151 (arguing that U.S. irregular rendition techniques violate basic human rights and are illegal); James R. Edmunds, *Nonconsensual United States Military Action Against the Colombian Drug Lords Under the U.N. Charter*, 68 WASH. U. L.Q. 129, 149 (1990) (arguing that U.S. irregular rendition operations occurring in absence of invaded nation's consent violates Article 2(4) of U.N. Charter).

69. See Rebane, *supra* note 33, at 1669 (describing weaknesses of extradition to

### 3. Colombia's Extradition Law

Colombia's modern extradition practice is exemplified by its treaty relationship with the United States.<sup>70</sup> The most recent applicable extradition treaty is the Extradition Treaty with the Republic of Colombia, dated September 14, 1979 ("Colombian Treaty").<sup>71</sup> The Colombian Treaty provides for the extradition of wanted individuals who are charged with or convicted of offenses listed in a schedule annexed to the treaty, including drug-related offenses.<sup>72</sup> Article I of the Colombian Treaty concerns jurisdiction, permitting extradition even when the offense occurs beyond the territory of the requesting nation.<sup>73</sup> Relevant portions of Article II define extraditable offenses<sup>74</sup> and provide a

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obtain drug traffickers). Extradition requests are too lengthy, and many nations simply refuse to extradite their nationals. *Id.*

70. See generally Igor I. Kavass, *Colombia: Supreme Court Decision on the Law Concerning the Extradition Treaty Between Colombia and the United States*, 27 I.L.M. 492 (1988) (arguing that failure of U.S.-Colombian extradition treaty in 1979 operated as example of Colombian extradition practices in 1980s).

71. Colombian Treaty, *supra* note 36. *But see* Kavass, *supra* note 70, at 497 (arguing that although U.S. government maintains that treaty is still in force, Colombian Supreme Court decisions rendered 1979 extradition treaty between Colombia and United States *de facto* invalid).

72. See Colombian Treaty, *supra* note 36, app. (listing extraditable offenses, such as murder, rape, kidnapping, "[r]eceiving or transporting any money, valuable securities or other property knowing the same to have been unlawfully obtained," "[a]ny offense against the laws relating to international trade and transfer of funds," and of particular concern, "[o]ffenses against the laws relating to the traffic in, possession, or production or manufacture of, narcotic drugs, cannabis, hallucinogenic drugs, cocaine and its derivatives, and other substances which produce physical or psychological dependence").

73. *Id.* art. 1. Article 1 states:

- (1) The Contracting Parties agree to extradite to each other, subject to the provisions described in this treaty, persons found in the territory of one of the Contracting Parties who have been charged with an offense, found guilty of committing an offense, or are wanted by the other Contracting Party for the enforcement of a judicially pronounced penalty involving a deprivation of liberty for an offense, committed within the Requesting State.
- (2) When the offense has been committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if:
  - (a) Its laws would provide for the punishment of such an offense in similar circumstances; or
  - (b) The person sought is a national of the Requesting State, and that State has jurisdiction to try that person.

*Id.*

74. *Id.* art. 2. Article 2 provides:

- (1) Extraditable offenses under this Treaty are:

dual criminality provision.<sup>75</sup>

Article IV of the Colombian Treaty concerns the political and military offense exceptions.<sup>76</sup> Article V guards against double jeopardy,<sup>77</sup> and Articles VI and VII cover the statute of limitations<sup>78</sup> and capital punishment,<sup>79</sup> respectively. Articles IX through XVIII delineate the procedures and required documents necessary to complete an extradition request.<sup>80</sup> Article VIII, concerning the extradition of nationals,<sup>81</sup> is particularly noteworthy because it obligates the requested nation to extradite all persons, including nationals, if the underlying offense has already resulted in a conviction in the requesting nation and if the

- (a) offenses described in the Appendix to this Treaty which are punishable under the laws of both Contracting Parties; or
- (b) offenses, whether listed in the Appendix to this Treaty or not, provided they are punishable under the Federal Laws of the United States and the laws of the Republic of Colombia.

*Id.*

75. *See id.* ("Extradition shall be granted in respect of an extraditable offense only if the offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a period exceeding one year.")

76. *Id.* art. 4. Article 4 states:

- (1) Extradition shall not be granted when the offense for which extradition is requested is of a political character or is connected with an offense of a political character, or when the person whose extradition is requested proves that the extradition is requested for the exclusive purpose of trying or punishing that person for an offense of the above-mentioned character.
- (2) Extradition shall not be granted when the offense for which extradition is requested is of a purely military nature.

*Id.*

77. *Id.* art. 5 ("Extradition shall not be granted when the person sought has been tried and convicted or acquitted by the Requested State for the offense for which extradition is requested.")

78. *See id.* art. 6 ("Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the Requesting State.")

79. *Id.* art. 7. Article 7 provides:

When the offense for which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offense, extradition may be refused, unless, before extradition is granted, the Requesting State furnishes such assurances as the Requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

*Id.*

80. *Id.* arts. 9-18.

81. *See id.* art. 8 ("Neither Contracting Party shall be bound to deliver up its own nationals, but the executive Authority of the Requested State shall have the power to deliver them up if, in its discretion, it be deemed proper to do so.")

offense was intended to be consummated in the requesting nation.<sup>82</sup> Article VIII additionally provides for domestic investigation and prosecution if extradition is not granted.<sup>83</sup>

At first, commentators considered the Colombian Treaty to be the answer to the corruption problems caused by drug cartels in Colombia.<sup>84</sup> Drug barons operated in Colombia with impunity; these drug traffickers feared extradition, however, because it virtually assured an U.S. prison sentence.<sup>85</sup> Yet, many Colombian lawmakers voiced opposition to the Colombian Treaty's extradition policies, claiming that the extradition of nationals violated Colombian sovereignty.<sup>86</sup> Meanwhile, the supporters of

82. *Id.*

[E]xtradition of nationals will be granted pursuant to the provision of this Treaty in the following instances:

- (a) Where the offense involves acts taking place in the territory of both States with the intent that the offense be consummated in the Requesting State; or
- (b) Where the person for whom extradition is sought has been convicted in the Requesting State of the offense for which extradition is sought.

*Id.*

83. *See id.* ("If extradition is not granted pursuant to paragraph (1) of this Article, the Requested State shall submit the case to its competent judicial authorities for the purpose of initiating the investigation or to further the related prosecution, provided that the Requested State has jurisdiction over the offense.")

84. *See Nagle, supra* note 27, at 865 (explaining that extradition treaty caused excitement among Colombian reformers because drug traffickers would be sent beyond their ability to manipulate and corrupt Colombian political system).

85. *See Hearings I, supra* note 17 (testimony of Mr. "Rodriguez," former Medellin drug trafficker) (stating that Colombian drug traffickers considered extradition "the greatest tool or weapon that [U.S.] law enforcement has against drug traffick[ing]" because of relative integrity of the U.S. legal system). A former Medellin trafficker explained that "[i]t's the law. The jails as well, of course, but it's the law that is much more strict and there is no way of fixing it up, as you can do in Colombia with the authorities that are being paid off." *Id.*; *see Otera, supra* note 18, at 968 (stating that "extradition plucks the trafficker from a familiar society which looks on him as a part of daily life and places him in the United States, a culture vehemently opposed to drug trafficking").

86. *See Nagle, supra* note 27, at 865 (explaining that Colombian President Betancur immediately challenged Colombian Treaty by refusing to extradite nationals). For instance, Colombian President Belisario Betancur denied the United States' extradition requests in the early 1980s for Lucas Gomez Van Grieken and Emiro de Jesus Mejia. *Id.* This executive decision occurred after the Colombian Supreme Court granted approval to extradite the two nationals. *Id.* President Betancur based his decision on Colombia's tradition of not extraditing its nationals. *Id.* Many commentators believed that President Betancur's motivations were political, intending to inspire nationalism and positioning himself as the guardian of Colombian sovereignty. *Id.* To many Colombians, the Colombian Treaty interpreted by President Betancur's predecessor symbolized Colombian subservience to U.S. policies and directives. *Id.* Denying



the Colombian Treaty who voiced their beliefs<sup>87</sup> soon became the victims<sup>88</sup> of narco-terrorism.<sup>89</sup>

In 1986, the Colombian Supreme Court nullified the law<sup>90</sup> that enabled the Colombian Treaty.<sup>91</sup> In 1987, the Court reiterated this position after Colombian President Virgilio Barco Vargas promulgated a new law<sup>92</sup> to replace the earlier defective one.<sup>93</sup> The Colombian legislature in 1991 ratified a new consti-

extradition requests could provide consolidation for the nation's divided political factions and solve its domestic narcotics issues. *Id.* In this latter vein, President Betancur rejected extradition and instead pursued a policy of increased internal enforcement of drug production and trafficking. *Id.*

87. *See id.* at 866-67 (explaining that those who voiced support for extradition were killed). For instance, Minister of Justice, Lara Bonilla, stated that:

if our country . . . will retract from its promises which it contracted in the international fight against delinquency, specifically against narco-trafficking, we couldn't have the least doubt that the consequences of similar attitudes will be disastrous in the order of economic cooperation. This will destroy the credibility of the nation not only in front of the U.S. but in front of all the countries of the world, and the country will also lose legal and moral authority to request extradition when the crime is committed in the foreign state. The country has negated reciprocity that was included in the treaty.

*Id.*

88. *See id.* at 867 (describing that assassination of Lara Bonilla was due to his public support for extradition). Bonilla's words cost him his life. *Id.* He was assassinated shortly thereafter. *Id.* Most notably, in 1985, a left-wing guerilla movement known as the M-19 seized the Palace of Justice, where the Colombian Supreme Court sits. *Id.* The M-19 is a revolutionary organization established in 1970, committed to "democracy" and "people's rights." *Id.* at 867 n.65. The guerillas killed more than one hundred people, including almost half of the Supreme Court Justices. *Id.* at 867.

89. *See* Bruce Zagaris, *Protecting the Rule of Law from Assault in the War Against Drugs and Narco-Terrorism*, 15 NOVA L. REV. 703, 707-08 (1991) (stating that narco-terrorism is role played by drug traffickers in international politics). Narco-terrorists manipulate sovereignty by compelling their host nations to pursue specific domestic and foreign policies under threat of violence. *Id.*

90. LEY 27 DE 1980 (Colom.).

91. *See* Judgment No. 41, 14 JURISPRUDENCIA Y DOCTRINA [Jur. Doc.] 1064 (1986) (holding that Colombian Constitution does not permit President to delegate authority to conduct international relations to Minister of Government); Kavass, *supra* note 70, at 496 (explaining that Colombian Supreme Court held Law 27 of 1980 unenforceable because it had not been approved pursuant to Article 188-7 of the Colombian Constitution); Stefan A. Riesenfeld, *International Decisions*, 85 A.J.I.L. 352, 355 (1991) (reporting that this decision marked shift in Colombian jurisprudence). Before this decision, the Court treated the approval laws of international agreements as beyond the scope of their purview. Riesenfeld, *supra*, at 352. The Court formerly reasoned that the treaty-making process was the constitutional concern solely of the President and Congress. *Id.* In this decision, the Court held that proposed treaties whose text is included in Colombian law are subject to judicial scrutiny as to both substance and form. *Id.*

92. LEY 68 DE 1986 (Colom.).

93. Kavass, *supra* note 70, at 496.

tution, which banned the extradition of nationals altogether.<sup>94</sup> Most commentators agree that these decisions were the result of fear, intimidation, and coercion stemming from the narco-terrorist response to the Colombian Treaty.<sup>95</sup>

#### 4. Dominican Republic's Extradition Law

The Dominican Republic also has an extradition treaty with the United States.<sup>96</sup> U.S. extradition requests to the Dominican Republic are subject to the Convention Between the United

94. See CONSTITUCIÓN POLÍTICA DE COLOMBIA tit. I, art. 35 (1991) ("Se prohíbe la extradición colombianos por nacimiento"). In the interim period between 1987 and 1991, Colombia extradited approximately two dozen nationals. See Riesenfeld, *supra* note 91, at 352 (noting that Betancur invoked his emergency powers pursuant to Article 121 of Colombian Constitution to declare "state of siege"). Upon constitutional challenge, the Colombian Supreme Court later upheld the presidential decree. *Id.*

In the absence of the treaty, Colombia extradited these individuals according to the concept of reciprocity. See Nagle, *supra* note 27, at 855-56 (describing Colombian domestic extradition procedure in absence of treaty). The power to grant or to refuse extradition requests lies in a ministerial department of the executive branch subject to Supreme Court review and approval. CÓDIGO DE PROCEDIMIENTO PENAL [CÓD. PROC. PEN.] arts. 647-48 (Colom.). This governmental discretion is governed by dual criminality and a resolution of the accusation pronounced in the requesting state. *Id.* art. 649. Additional limitations include the specialty doctrine and other stipulations or conditions considered appropriate. *Id.* After ministerial review, the extradition file is sent to the Supreme Court. Nagle, *supra* note 27, at 858. The Court permits all relevant documentation in the case to be viewed by the requested individual or the individual's lawyer. *Id.* After a discovery and allegation period, the Court issues its opinion. CÓD. PROC. PEN. art. 659. The Court analyzes the extradition procedures and documentation to ensure compliance with the Constitution and laws. Nagle, *supra* note 27, at 858. The Court also verifies the existence of dual criminality and ensures the completeness and validity of the writ issued by the requesting state. CÓDIGO PENAL CODE arts. 1, 3 (Colom.). The executive, invariably the president, has fifteen days to issue a resolution granting or denying the extradition request. Nagle, *supra* note 27, at 858.

95. See *Samper Says Final Extradition Vote a 'Victory' Despite Restrictions* (BBC Summary of World Broadcasts, Nov. 28, 1997) [hereinafter *Samper*] (reporting that fear of narco-terrorists influenced political atmosphere surrounding Colombian extradition policy in late 1980s and early 1990s). See generally Kavass, *supra* note 70, at 496 (describing background for Colombian Supreme Court decision). As Nagle explained,

[i]t is important to remember that throughout this period, anyone who publicly voiced a pro-extradition opinion was kidnapped or killed. Those whom the cartels could not buy, died. Those who survived were forced to leave the country. The drug cartels attempted to turn public opinion against extradition by terrorizing the nation with bombings of newspapers, public places, and businesses. The extraditables, as the cartel *capos* took to calling themselves, claimed responsibility for much of the terrorism, and promoted their macho slogan that they would rather have a grave in Colombia than a prison cell in the United States. They swore to fight extradition to the death.

Nagle, *supra* note 27, at 869.

96. Dominican Treaty, *supra* note 36.

States and the Dominican Republic for the Extradition of Criminals, proclaimed on August 26, 1910 ("Dominican Treaty").<sup>97</sup> Article I of the Dominican Treaty provides for extradition contingent upon a finding of dual criminality.<sup>98</sup> Article II enumerates extraditable offenses, including murder,<sup>99</sup> sex crimes,<sup>100</sup> kidnapping,<sup>101</sup> embezzlement,<sup>102</sup> and receipt of stolen money or goods.<sup>103</sup> Article II also inculcates accessories.<sup>104</sup> Significantly, Article II does not contain any drug-related offenses.<sup>105</sup>

97. *Id.*

98. *Id.* art. 1. Article 1 states:

It is agreed that the government of the United States and the Government of the Dominican Republic shall, upon mutual requisition duly made as herein provided, deliver up to justice any person who may be charged with, or may have been convicted of any of the crimes specified in article two of this Convention committed within the jurisdiction of one of the Contracting Parties while said person was actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other, provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed

*Id.*

99. *See id.* art. 2 (stating that "[p]ersons shall be delivered according to the provisions of this Convention, who shall have been charged with or convicted of any of the following crimes . . . [m]urder, comprehending the crimes designated by the terms of parricide, assassination, manslaughter, when voluntary, poisoning or infanticide").

100. *See id.* (stating that "[r]ape, abortion, [and] carnal knowledge of children under the age of twelve years" are extraditable offenses).

101. *See id.* (stating that "[k]idnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or their families, or for any other unlawful end" is extraditable offense).

102. *Id.* Article 2 provides the following definition of embezzlement:

Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars.

Embezzlement by any person or persons hired, salaried or employed. To the detriment of their employers or principals, when the crime or offence is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars.

*Id.*

103. *See id.* (stating that "[o]btaining money, valuable securities or other property by false pretenses or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or value of the property so obtained or received exceeds two hundred dollars" is extraditable offense).

104. *See id.* ("The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by imprisonment by the laws of both Contracting Parties.").

105. *See id.* (lacking any reference to "drugs" or "narcotics").

While Article III of the Dominican Treaty defines and provides a political offense exception,<sup>106</sup> Articles IV and V establish the specialty doctrine<sup>107</sup> and statute of limitations,<sup>108</sup> respectively. Article VI dictates that wanted individuals are not extraditable if they are currently being prosecuted or are incarcerated in the requested nation for crimes committed there.<sup>109</sup> Last, Article VIII, although presented in the negative, allows for the extradition of nationals subject to executive discretion.<sup>110</sup>

In 1969, the Dominican legislature nullified the discretionary authority granted to the executive in Article VIII of the Dominican Treaty when it passed Law 489 of the Domestic Penal Law ("Law 489").<sup>111</sup> Law 489 prohibited the extradition of Dominican nationals,<sup>112</sup> thus providing a safe refuge for Dominican criminals who committed crimes in the United States and fled

106. *Id.* art. 3. Article 3 provides:

The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences; and no persons surrendered by or to either of the Contracting Parties in virtue of this Convention shall be tried or punished for a political crime or offence. When the offence charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offence was committed or attempted against the life of the Sovereign or Head of a foreign State or against the life of any member of his family, shall not be deemed sufficient to sustain that such a crime or offence was of a political character, or was an act connected with crimes or offences of a political character.

*Id.*

107. *See id.* art. 4 ("No person shall be tried for any crime or offence other than that for which he was surrendered.")

108. *See id.* art. 5 ("A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time . . . the criminal is exempt from prosecution or punishment for the offence for which the surrender is asked.")

109. *Id.* art. 6. Article 6 states:

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offence committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and, until he shall have been set at liberty in due course of law.

*Id.*

110. *See id.* art. 8 ("Under the stipulations of this convention, neither of the Contracting Parties shall be bound to deliver up its own citizens or subjects.")

111. No. 489 LEY DE EXTRADICCIÓN DEL 22 DE OCTUBRE DE 1969 (Dom. Rep.).

112. *See id.* art. 4 ("La extradición de un dominicano no se concederá por ningún motivo").

back to their homeland.<sup>113</sup> U.S. interest in extraditing Dominicans<sup>114</sup> has increased recently because of the explosion of the narcotic trade in the Dominican Republic<sup>115</sup> and because of the role Dominicans play in the distribution of drugs in U.S. urban centers.<sup>116</sup> Efforts by the United States to revise the Dominican Treaty in order to effectuate extradition have been frustrated by various factors.<sup>117</sup>

### B. *The Roles of Colombia, the Dominican Republic, and the United States in Drug Trafficking*

Commentators have acknowledged that international drug trafficking and anti-drug enforcement policies impact extradition practice between the United States, Colombia, and the Dominican Republic, respectively.<sup>118</sup> Drug trafficking is a major illegal enterprise, constantly expanding in scope and profitability.<sup>119</sup> Colombia is the world's leading supplier of cocaine, posing enforcement difficulties for its own government as well as for other nations and the international community.<sup>120</sup> The Dominican Republic serves as a gateway for Colombian drug ship-

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113. See Fineman III, *supra* note 27, at A5 (reporting that Law 489 transformed Dominican Republic into one of world's major havens from U.S. law).

114. See Smith, *supra* note 14, at 38 (reporting that Dominican officials historically denied U.S. agencies seeking extradition of Dominicans).

115. See *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (noting that in 1990s, Dominican and Colombian traffickers collaborated on hundreds of smuggling operations through Dominican territory).

116. See *id.* (reporting that Dominican drug gangs control U.S. east coast cities, such as Boston, New York, Newark, Charlotte, and Miami, by directing sales involving hundreds of kilos of cocaine and heroin).

117. See Fineman II, *supra* note 27, at A4 (reporting that Dominican Republic denies U.S. extradition demands out of resentment for U.S. foreign policies in Caribbean); Fineman III, *supra* note 27, at A5 (stating that Dominicans deny U.S. extradition requests because they view extradition as violation of sovereignty).

118. See Otera, *supra* note 18, at 975 (noting that in 1980s and 1990s, Colombian drug traffickers' influence over judiciary impacted use of extradition).

119. See PAUL B. STARES, *THE GLOBAL DRUG PHENOMENON: IMPLICATIONS FOR POLICY* 4-6 (1995) (explaining that financial rewards for drug traffickers compel development of new strategies and expansion into new markets).

120. See Abeyratne, *supra* note 17, at 302-05 (describing Colombian cocaine production and trafficking to different regions of world and suggesting reforms in international airspace controls in order to curb such trafficking). In the 1990s, Colombia supplied cocaine to North America, Europe, Asia, and Australia, using Central America, the Caribbean, the Middle East, and Africa as transit points. *Id.* Colombian drug enforcement seized 32 metric tons of cocaine in 1996. *Id.* Colombian drug cartels produced an estimated 600 metric tons of cocaine the following year. *Id.*; see *Hearings I*, *supra* note 17 (statement of Rep. McCollum) (providing statistical data concerning Co-

ments,<sup>121</sup> and many Dominican nationals oversee or personally effect the distribution of cocaine in U.S. urban centers, such as New York City.<sup>122</sup> As a response to the roles that these two nations play in the drug trafficking business, the United States has developed numerous methods to enforce its own anti-drug policy.<sup>123</sup>

### 1. Historical Development of Illegal Drug Trafficking

The use of mind-altering substances to alleviate pain and provide an escape from reality has existed throughout history.<sup>124</sup> Drug abuse has expanded since the mid-1800s due to an increased availability of drugs, changing socioeconomic factors, rapid urbanization, and the growth of criminal elements in society.<sup>125</sup> By the early twentieth century, the proliferation of drug trafficking for non-medical purposes necessitated the creation of international drug control conventions.<sup>126</sup> By the mid-1990s, the

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Colombian cocaine production in order to contextualize role of Colombia in international drug trafficking).

121. See Fineman, *supra* note 24, at A10 (reporting that Dominican Republic's long coastline is difficult to police, enhancing its position as transit point for drug shipments).

122. See Wren, *supra* note 2, at A1 (reporting that Dominicans occupy specific roles in domestic drug trafficking). By 1997, Dominican gang members had come to dominate the middle echelon of drug dealing in New York, receiving cocaine and heroin from Colombian wholesalers and distributing the drugs to street dealers or selling the drugs on their own. *Id.*

123. See generally Sherman, *supra* note 23, at 698 (arguing that U.S. irregular rendition techniques such as deportation, exclusion, and abduction, which developed in response to international drug trafficking, are collusively performed with Colombian government agencies).

124. See Abeyratne, *supra* note 17, at 290 (explaining that early societal cultural institutions were largely based on the existence of mind-altering substances); DECLARATION OF THE INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING AND COMPREHENSIVE MULTIDISCIPLINARY OUTLINE OF FUTURE ACTIVITIES IN DRUG ABUSE CONTROL, U.N. Div. of Narc. Drugs at 5, U.N. Doc. ST/N/14, U.N. Sales No. E. 88 xl. 1 (1988) [hereinafter DECLARATION]. See generally Richard Bell, *The History of Drug Prohibition and Legislation*, INTERPOL INT'L CRIM. POLICE REV., Sept.-Oct. 1991, at 2 (recounting that different societies throughout history incorporated drug use into their respective cultures).

125. DECLARATION, *supra* note 124, at 6.

126. See R.K. Newman, *Opium Smoking in Late Imperial China: A Reconsideration*, 29 MOD. ASIAN STUD. 765 (1995) (noting that opium drug trade in nineteenth century China prompted international responses); see also Abeyratne, *supra* note 17, at 291-95 (explaining that Shanghai Commission was unprecedented achievement in field of multilateral drug enforcement cooperation). The Shanghai Commission in 1909 recognized China's right to eradicate opium production and use. Abeyratne, *supra*, at 291.

production of illegal narcotics and psychotropic substances were at record highs.<sup>127</sup>

## 2. Colombia's Role in Illegal Drug Trafficking

Colombia is the world's leading supplier of processed cocaine.<sup>128</sup> Most of the cocaine base comes from Peru and Bolivia and is processed into cocaine by Colombian drug traffickers.<sup>129</sup> Colombian efforts to curtail drug production have proven ineffective.<sup>130</sup> Furthermore, the massive exportation of cocaine and heroin<sup>131</sup> from Colombia poses almost insurmountable challenges to U.S. efforts to enforce its anti-drug policy.<sup>132</sup>

The United States remains the principal market for cocaine.<sup>133</sup> The cocaine travels via international air corridors over

127. Abeyratne, *supra* note 17, at 298.

128. *See id.* at 302 (explaining that Colombian drug cartels obtain most of cocaine from Peru or Bolivia and then process it into cocaine HCL); *see Otera, supra* note 18, at 957 ("Although Colombia grows relatively little coca, the plant from which cocaine is refined, it dominates cocaine processing and distribution.").

129. *See Abeyratne, supra* note 17, at 299 (explaining that Peru's estimated coca cultivation in 1992 ranged from 129,000 to 350,000 hectares); *see also Otera, supra* note 18, at 957 (explaining that throughout 1980s and 1990s, ten or twelve highly organized drug cartels controlled purchase of coca leaves from Peruvian and Bolivian farmers). For an intricately detailed description of how a typical Colombian drug cartel operates, *see Hearings I, supra* note 17 (testimony of Mr. "Rodriguez," former Medellin drug trafficker).

130. *See Hearings III, supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (explaining that corruption in Colombian police force challenges drug eradication and control); Abeyratne, *supra* note 17, at 299 (reporting that Colombian cocaine seizures dropped to 32 metric tons in 1997 from approximately 77 metric tons previous year). Colombian inability to curb cocaine trafficking could be explained as the result of shifting enforcement resources to the destruction of the nation's rapidly expanding opium poppy crop. Abeyratne, *supra*, at 299.

131. *See Abeyratne, supra* note 17, at 299 (reporting that during 1995, Near East, Southwest Asia, Southeast Asia, Mexico, and Colombia remained principal regions of illicit poppy cultivation). Despite eradication and crop substitution programs carried out in these regions, the total illegal production of opium was estimated to exceed 4000 tons. *Id.* Colombia's opium production alone in 1992 was an estimated 200 tons. *Id.*

132. *See Otera, supra* note 18, at 961-62 (arguing that U.S. eradication efforts to curtail drug production in 1980s and 1990s in Colombia failed). In the 1980s, the United States spent over US\$10 billion to limit drug trafficking in Colombia. *Id.* Over this same time period, the number of coca fields in the Andes Mountains increased by 250%, and the supply of cocaine in the United States increased tenfold. *Id.*

133. *See id.* at 957 (reporting that nearly all cocaine in United States originated in Colombia); *Hearings III, supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (describing Colombian impact on illegal U.S. drug consumption). One DEA administrator has remarked that Colombian traffickers "control the manufacture of the vast majority of cocaine in South America and their fingerprints are on virtually every kilogram of cocaine sold in U.S. cities and towns." *Hearings III, supra* (testimony

Cuba and land routes through Mexico.<sup>134</sup> Paradoxically, when U.S. anti-drug policy succeeds, cocaine use remains steady and cocaine prices increase.<sup>135</sup>

### 3. The Dominican Republic's Role in Illegal Drug Trafficking

In the early 1990s, Colombia's drug barons targeted the Dominicans as potential partners.<sup>136</sup> The Dominican Republic's proximity to Colombia and the United States, coupled with a corrupt and poorly outfitted military, made the Dominican Republic a drug dealer's paradise.<sup>137</sup> By Spring 1995, Colombian cartels had firmly established links in the Dominican Republic.<sup>138</sup>

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of Thomas A. Constantine, DEA Administrator); VINCENT T. BUGLIOSI, *THE PHOENIX SOLUTION* 34 (1996) (reporting that in 1996, U.S. drug users consumed approximately 75% of world's cocaine supply despite comprising only five percent of world's population); see Abeyratne, *supra* note 17, at 303 (noting that Colombian drug cartels have also targeted Europe). During 1994, European law enforcement seized over 19 tons of cocaine with record seizures in France, Portugal, Spain, and the United Kingdom. Abeyratne, *supra*, at 304:

134. See Abeyratne, *supra* note 17, at 303 (describing Mexican seizures of Colombian cocaine). During 1992, Mexican authorities seized almost 40 tons of South American cocaine destined for the United States. *Id.*

135. See *id.* (explaining that successful law enforcement operations against Cali cartel from 1992 to 1993, combined with capture or surrender of several cartel leaders, led to sharp price increase in United States for cocaine during second quarter of 1994).

136. See Larry Rohter & Clifford Krauss, *Dominicans Allow Drugs Easy Sailing*, N.Y. TIMES, May 10, 1998, at A1 (reporting that once Mexicans began rivaling Colombians in drug trafficking, Colombian drug lords began to look to Dominicans as more reliable partners). According to a former Colombian drug trafficker, the Dominican Republic was "excellent" because "you don't have any problems with your merchandise. Getting the money out is easy." *Id.* The Dominican authorities were so incapable and inexperienced, "you don't even have to pay for protection." *Id.*

137. *Id.*

138. See *id.* (describing that Colombian drug cartels' infiltration into Dominican society affected Dominican consumer and financial institutions, such as shopping centers and banks). A DEA administrator recently noted that

[t]rust, the essential ingredient in forging a successful business relationship in the drug underworld, has already been established between Dominican and Colombian traffickers through relationships formed during hundreds of smuggling ventures in the Caribbean and through their long established relationships in New York, Newark, and Boston. Dominican groups are now a major force in the major East Coast cities. From Boston, Massachusetts to Charlotte, North Carolina, well organized Dominican trafficking groups are, for the first time, controlling and directing the sale of multi-hundred kilo shipments of cocaine and multi-kilogram quantities of heroin. Their influence, moreover, has spread beyond the big city landscape into the smaller cities and towns along the East Coast.

*Hearings III, supra* (testimony of Thomas A. Constantine, DEA Administrator).



The Dominican Republic served as a transit point for Colombian drug shipments in the 1990s.<sup>139</sup> Colombian military officials aided Dominican traffickers by selling the coordinates of U.S. and Dominican vessels on patrol in the Caribbean.<sup>140</sup> Multi-ton drug cargoes of cocaine were dropped onto isolated stretches of Dominican beach.<sup>141</sup>

Dominican drug dealers also influenced street distribution.<sup>142</sup> In the 1990s, Dominicans became the primary sellers for Colombians seeking drug distribution in major cities, such as Miami or New York.<sup>143</sup> Colombian producers favored Dominican drug gangs because they were cheap<sup>144</sup> and determined to make the necessary concessions to advance their trade.<sup>145</sup> As a result, Dominican gangs quickly took over the middle echelon in the violent world of drug dealing on New York City streets.<sup>146</sup>

#### 4. The United States' Anti-Drug Policies in Colombia and the Dominican Republic

U.S. anti-drug policies respond to the different roles that Colombia and the Dominican Republic occupy in drug trafficking.<sup>147</sup> While Colombians upset law enforcement efforts

139. See *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (describing relationship of Colombia with distributor nations). Mexicans formerly were the main distributors of Colombian cocaine, and Mexico continues to be the main transfer point for 50% of the Colombian cocaine entering the United States as of 1998. *Id.* Colombian cocaine producers rely on Mexico's established distribution routes to reach points throughout the United States. *Id.*

140. See Rohter & Krauss, *supra* note 136, at A1 (quoting former trafficker saying "[y]ou can get eight days of information for \$5,000 . . . . Without that information, we wouldn't have been able to do what we did").

141. *Id.*

142. See *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (noting that Dominicans maintain strong influence over distribution of drugs within U.S. urban centers). Whereas Colombian drug traffickers dominate the wholesale distribution of cocaine, Dominican gangs have taken over the "retail" aspect, selling crack and cocaine on street corners or hiring others to do it for them. *Id.*

143. See *Hearings I*, *supra* note 17 (testimony of Mr. "Rodriguez," former Medellin drug trafficker) (describing role of Dominican drug dealers for Colombian drug cartels). A former Medellin cartel member noted that in the late 1990s, virtually every New York drug distributor working for the cartel was Dominican. *Id.*

144. See Rohter & Krauss, *supra* note 136, at A1 (stating that Dominican dealers only required 25% commissions or cash rather than merchandise).

145. *Id.*

146. Wren, *supra* note 2, at A1.

147. See Abeyratne, *supra* note 17, at 299, 302 (reporting that Colombia is world's leading supplier of processed cocaine and among leaders in heroin); Fineman, *supra*

through their enormous supplication of cocaine,<sup>148</sup> Dominicans caused different challenges by distributing the Colombian cocaine on U.S. street corners.<sup>149</sup>

#### a. U.S. Anti-Drug Policies in Colombia

While Colombian drug barons grew in international power and influence,<sup>150</sup> the United States maintained its interdiction and eradication policies.<sup>151</sup> Although the number of drug seizures rose and the federal drug budget grew from US\$1.5 billion in 1981 to US\$13.2 billion in 1995,<sup>152</sup> the price of a kilo of cocaine fell as a result of the widespread availability of drugs.<sup>153</sup> The challenges of tracking an entire seaboard, shifting air routes, and crafty smugglers have proven difficult to overcome.<sup>154</sup>

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note 24, at A10 (reporting that Dominican Republic's location and size make it effective transit point for Colombian drug shipments); Wren, *supra* note 2, at A1 (explaining that Dominican drug gangs control distribution of cocaine in cities such as New York).

148. Abeyratne, *supra* note 17, at 302-05.

149. Wren, *supra* note 2, at A1; *Hearings I*, *supra* note 17 (statement of Rep. McCollum).

150. See Sara Jankiewicz, *Glasnost and the Growth of Global Organized Crime*, 18 *Hous. J. INT'L L.* 215, 249 (1995) (reporting global influence of Colombian drug cartels). "Operation Green Ice" in September 1992 evidenced Colombia's growing influence. One of the biggest international anti-drug operations in history, Operation Green Ice involved eight countries and 45 undercover DEA and Italian agents. *Id.* The investigation revealed that the Sicilian Mafia had established links with the Mafia in the United States and the drug lords of Colombia. *Id.*

151. See Diana Jean Schemo, *Congress Steps Up Aid to Combat Drugs*, *N.Y. TIMES*, Dec. 1, 1998, at A14 (reporting that primary goal of 1999 U.S. Congressional aid, in form of upgraded and better-armed helicopters, was directed at aerial eradication of Colombian drug crops).

152. See generally BUGLIOSI, *supra* note 133, at 13 (arguing that U.S. Congressional efforts to fight international drug trafficking are fiscally mismanaged); see also Schemo, *supra* note 151, at A14 (reporting that U.S. Congressional aid to Colombia for 1999 totaled US\$289 million). The Congressional aid more than doubled the US\$124 million requested by the White House and three times the US\$88.6 million offered in 1998. Schemo, *supra*, at A14.

153. BUGLIOSI, *supra* note 133, at 13.

154. See *id.* (stating that United States stops only five to seven percent of smuggled cocaine from entering its borders). One DEA spokesman has commented that although "[w]e win battles . . . they win the war." *Id.*; see *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (describing challenges in implementing anti-drug law enforcement policy concerning Colombia). DEA officials have admitted that Colombian drug trafficking methods

are as varied as one can imagine and traffickers frequently vary their routes and *modus operandi* to thwart interdiction techniques. Colombian transportation groups have honed their skills and tactics to the point that law enforce-

Historically, commentators criticized U.S. funding for Colombian counter-drug measures as inadequate,<sup>155</sup> impractical<sup>156</sup> or irrelevant.<sup>157</sup> Furthermore, U.S. certification policies impacted the availability of economic aid by wedding the enforcement of anti-drug policy to favorable trade status.<sup>158</sup> Finally, commentators noted that U.S. anti-drug funding policies often upset the Colombian domestic anti-drug policing structure by providing aid only to certain Colombian institutions, to the det-

ment has little chance of interdicting shipments of cocaine, unless intelligence is developed pinpointing specific shipments or methods.

*Hearings III, supra* (testimony of Thomas A. Constantine, DEA Administrator).

155. See Williams & Williams, *supra* note 18, at 1122 (arguing that U.S. inadequately funded "War on Drugs" in late 1980s and early 1990s). In 1989, President Bush introduced a plan that sought to reduce the cocaine production in source countries. *Id.* Yet, many commentators questioned whether the US\$261.2 million requested to fund efforts in Colombia and other source countries were reasonable estimates. *Id.* Colombian officials voiced concern over the adequacy of their portion. *Id.* As one editor of a Bogota daily remarked, Colombia was "getting the very, very short end of the stick . . . . Out of nearly \$8 billion, Colombia gets \$80 million? That is a very short end. Too much blood is being spilled here for \$80 million." *Id.* at 1123 n.21 (citations omitted). Further, Colombia's national debt in 1990 was US\$16 billion, and it was estimated that 42% of all Colombian export earnings were earmarked for that expense. *Id.* at 1124. Thus, even if U.S. aid seemed substantial, it may have been small in comparison to the gaping need for financial assistance to fight drug trafficking. *Id.*

156. See *id.* at 1124 (explaining that Colombian criticism focused on United States' emphasis on long-term solutions without attending to immediate needs). For example, the United States shipped US\$65 million in emergency aid to Colombia in 1989. *Id.* The Colombians requested surveillance, tracking devices, bomb detectors, and equipment for tracing phone calls and scrambling police phone calls to prevent interception. *Id.* Instead, the U.S. sent eight A-37 subsonic jets. *Id.* The jets were useless, however, because there were no longer any airstrips in most of the drug trafficking transport areas. *Id.* Indeed, one U.S. official admitted that despite its reception as a symbolic gift, "the package did not have a whole lot of what the police would like to have." *Id.* (citation omitted).

157. See *id.* at 1123 (reporting that US\$80 million in U.S. aid offered in 1990-9191 was invalidated by U.S. involvement in dissolution of international coffee agreement worth US\$500 million per annum to Colombia). As a result, legitimate farmers had fewer non-drug crops left to sustain themselves economically. *Id.* Further, the cocaine trade yields more than three times the coffee trade. *Id.* Thus, even if law enforcement efforts were successful, a sudden halt in the drug trade could cause a deleterious effect on the Colombian economy. *Id.*

158. See *Hearings II, supra* note 18 (testimony of Rensselaer W. Lee, Global Advisor) (pointing out that U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") prohibited U.S. citizens from conducting business with approximately 110 legitimate Colombian companies because those companies qualified as susceptible to narcotics trafficking); Williams & Williams, *supra* note 18, at 1126 (arguing that U.S. government withholds foreign aid as "punishment" for those who fail to accede to U.S. anti-drug programs). In this sense, the U.S. "decertifying" tactic invalidates efforts to assist Colombia to fight drug trafficking. *Id.*

riment of others.<sup>159</sup>

#### b. U.S. Anti-Drug Policies in the Dominican Republic

The United States also employed interdiction and eradication techniques to combat Dominican inter-border drug smuggling.<sup>160</sup> Since the majority of wanted Dominicans drug dealers violated U.S. state laws, however, they were attacked at the municipal level.<sup>161</sup> When wanted Dominican drug dealers fled U.S. cities for their homeland, local law enforcement then relied upon diplomatic channels to produce results.<sup>162</sup> Until recently, however, U.S. diplomatic pressure on the Dominican Republic has proved to be an ineffective method to apprehend wanted criminals.<sup>163</sup>

Commentators observed that efforts to obtain Dominicans

159. See Williams & Williams, *supra* note 18, at 1122 (reporting that before 1990, local police agencies undertook almost all Colombian anti-drug law enforcement, while armed forces guarded against invasion). The United States consistently offered the armed forces a major share of the anti-drug money for the region, thus upsetting the roles of these different Colombian institutions. *Id.*

160. See Douglas Farah, *Drug Traffickers Claim Caribbean Routes*, INT'L HERALD TRIB., Sept. 25, 1996, at News Section (stating that DEA funding for interdiction operations in Caribbean dropped from US\$1.03 billion in 1992 to US\$569 million in 1995); *America in War on Drugs in Central America*, AGENCE FRANCE PRESSE, June 1, 1992, at News Section (reporting that DEA launched two-year operation in 1992, costing US\$30 million in which Dominican Republic, Guatemala, and Jamaica received dozen Black Hawk helicopters). The DEA uses these helicopters to intercept drug traffickers at sea or on hidden landing strips. *Id.*

161. See Rafael A. Olmeda, *Accused Killer Escapes Extradition*, N.Y. TIMES, Dec. 20, 1995, Suburban Section, at 1 (describing New York City Police Department investigation of Dominican murderer).

162. See *id.* (reporting that New York City detective seeking Dominican murderer who fled back to Dominican Republic contacted U.S. State and Justice Departments in order to apprehend fugitive).

163. See Mike McAlary, *Thanksgiving a Sad Marker Day Tainted While Mom's Slayer Is Free*, DAILY NEWS, Nov. 28, 1997, at 8 (explaining that Dana Ayala murder case serves as typical example of Dominican fleeing United States and escaping U.S. penal sanctions). In the 1993 Dana Ayala murder case, Angel Bienvenido Reinoso murdered Ayala, his estranged wife, during her family's Thanksgiving Day meal. *Id.* He had moved out months earlier, after living with Ayala for two years. *Id.* On Thanksgiving Day, 1993, Ayala allowed Reinoso to join the family meal. *Id.* Reinoso initially acted well-behaved and festive. *Id.* In the afternoon, however, Reinoso's mood changed. *Id.* He walked into the bedroom, turned the music up, and began to argue with his wife. *Id.* While Ayala's daughter watched from the doorway, Reinoso pulled out his gun and shot Ayala in the neck. *Id.* Ayala hung on for a few months before dying from the gunshot. *Id.* After a New York newspaper ran a picture of Reinoso, he fled to the Dominican Republic. *Id.* Eventually, Dominican authorities caught Reinoso, but U.S. extradition requests have so far been refused. *Id.*

failed because U.S. municipal law enforcement officials received insufficient support or direction from the U.S. Department of State.<sup>164</sup> Local criminals did not seem to stir much interest in the U.S. Justice or State Departments.<sup>165</sup> Since Dominican extradition requests were repeatedly rejected,<sup>166</sup> only cases involving high public demand received much official support.<sup>167</sup>

Commentators further noted that although U.S. diplomats appeared to respect Caribbean sovereignty, when Caribbean nations denied requests for the return of fugitives, law enforcement agencies circumvented the sovereignty issue.<sup>168</sup> The rise of irregular abduction reflected this trend.<sup>169</sup> Last, U.S. anti-narcotics efforts have even included targeting Dominican political parties<sup>170</sup> and performing covert operations during Dominican election campaigns.<sup>171</sup>

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164. *See id.* (reporting that one commentator noted, "Americans want to do a lot to help one mother with seven kids this Thanksgiving, but the American government has to be prodded to help five kids capture their mother's killer.").

165. *See id.* (reporting that Benny Tirado, detective assigned to Ayala case, explained that "[he] started by writing a letter to the President Clinton [sic], then got passed down to the Department of Justice and the State Department. No one cared.").

166. *See Olmeda, supra* note 161, at 1 (quoting U.S. Justice Department as stating that it is "unlikely" that Dominican Republic would extradite Reinoso). In a letter to Tirado, the State Department gave its condolences, adding that the Dominican Republic has the legal discretion not to extradite its own nationals. *Id.*

167. *See id.* (reporting that Ayala's brother remarked that if Reinoso had killed police officer, federal government "would have had him over here already. I guess a Puerto Rican mother with five kids is not that important to them.").

168. *Id.*; *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

169. Fineman II, *supra* note 27, at A4. *See generally* Abramovsky, *supra* note 63, at 151 (arguing that U.S. illegal rendition techniques are illegal).

170. *See* Rohter & Krauss, *supra* note 136, at A1 (reporting that Federal drug agents and local law enforcement officials have identified Dominican political party branches and leaders throughout Northeastern United States). For instance, the DEA has identified Worcester, Massachusetts as the Dominican Revolutionary Party ("P.R.D.") New England headquarters and as a major drug distribution center. *Id.* The DEA also claims that local party officials in New York, New Jersey, and Pennsylvania, some of who have previous drug convictions, are also involved in such activities. *Id.*

171. *See id.* (reporting U.S. undercover operations in 1996 Dominican presidential campaign). During a 1996 Dominican campaign stop in New York City, the U.S. government took the unusual step of organizing a sting operation to determine whether one of the candidates, Pena Gomez, and his party were involved in drug trafficking. *Id.* At a rally at the Washington Heights, New York headquarters of the P.R.D., undercover DEA agents posing as members of a Colombian drug cartel offered Gomez's staff US\$50,000. *Id.* US\$250,000 would follow each month if Gomez, once elected, would agree to allow five planeloads of drugs to land unobstructed in the Dominican Republic. *Id.* Although Gomez eventually rejected the overture, U.S. suspicions returned when the DEA detained several of his party members with a shipment of 778 pounds of

C. *Competing Considerations Affecting Colombian and Dominican Extradition Policies*

Historically, U.S. efforts to extradite Colombian or Dominican nationals who fled to their home country competed against various obstacles related to drug trafficking or anti-drug enforcement.<sup>172</sup> In Colombia, drug traffickers and narco-guerillas<sup>173</sup> supported a reign of violence and corruption to ensure that anti-drug efforts to create a pro-extradition policy failed.<sup>174</sup> Furthermore, Colombia viewed U.S. anti-drug efforts and certification policies as an attack on their sovereignty, thus harming the credibility of a U.S.-backed extradition movement.<sup>175</sup> In the Dominican Republic, governmental corruption fueled by increasing drug profits impeded the successful implementation of laws permitting the extradition of nationals.<sup>176</sup> Moreover, as in Colom-

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cocaine later that year. *Id.* In response, Gomez wrote a letter of protest to President Clinton. *Id.* In an interview, Gomez attributed this case to a political vendetta against his party. *Id.* “An accusation like this can destroy a person in this country,” he said, “and that’s what my enemies are trying to do to me. I was the victim of a campaign in which false denunciations were made to middle-level American officials in an effort to involve me in this.” *Id.*

172. See Smith, *supra* note 14, at 38 (“The Dominican Republic has for years rebuffed as intrusive U.S. efforts to extradite dozens of fugitives hiding in the Caribbean nation.”); Fineman, *supra* note 24, at A10 (reporting frustration of U.S. officials who seek extradition of Dominican nationals). See generally Krohne, *supra* note 32, at 159 (describing failure to extradite Colombian nationals as result of Colombian internal violence and degradation of rule of law); Matorin, *supra* note 32, at 907 (describing general ineffectiveness of extradition treaties with countries involved in narcotics trade); Sherman, *supra* note 23, at 698 (describing failure to extradite Colombian nationals due to lack of rule of law in Colombia).

173. See McCaffrey *Says All the Right Things; Drugs ‘Czar’ Says Washington Could Do More to Help*, LAT. AMER. WEEKLY REP., Oct. 28, 1997, at 508 [hereinafter *McCaffrey*] (explaining that “narco-guerillas” is term used to describe guerilla organizations that enter into relationships with drug cartels); see also David Adams, *Colombia: No Ordinary War*, ST. PETERSBURG TIMES, May 3, 1998, at A1 (reporting that one narco-guerilla organization in particular earns US\$22 million per month from drug trade).

174. See Sherman, *supra* note 23, at 669 (stating that in 1980s and 1990s, Colombian drug cartels bribed, threatened, or killed lawyers and judges in order to prevent extradition).

175. See Williams & Williams, *supra* note 18, at 1129 (noting that Colombians view extradition as violation of sovereignty); see also Mark S. Zaid, *Military Might Versus Sovereign Right: The Kidnapping of Dr. Humberto Alvarez-Machain and the Resulting Fallout*, 19 Hous. J. INT’L L. 829, 847 (1997) (stating that U.S. anti-drug abduction policies weakens its relations with Colombia); *Hearings II*, *supra* note 18 (testimony of Rensselaer W. Lee, Global Advisor) (arguing that decertification causes U.S. animosity in Colombia).

176. See Rohter & Krauss, *supra* note 136, at A1 (reporting that Dominican drug gangs in United States launder money into Colombian financial institutions as well as directly into politician’s pockets).

bia, the Dominican Republic perceived U.S. operations in the Caribbean as a violation of their sovereign authority.<sup>177</sup> Yet, despite these impediments, forces both within and beyond these nations' borders operated to promote extradition reform.<sup>178</sup>

### 1. Factors Affecting Colombian Extradition Reform

The creation of a pro-extradition policy in Colombia faced numerous challenges.<sup>179</sup> Various factors related to both drug trafficking and anti-drug policy operated to obstruct the creation of an extradition reform that provided for the extradition of nationals.<sup>180</sup> Simultaneously, however, shifting circumstances both within and outside of Colombia promoted a pro-extradition movement.<sup>181</sup>

#### a. Anti-Extradition Factors

For years, several factors impeded the formation of a Colombian extradition policy that allowed for the extradition of na-

177. See Fineman III, *supra* note 27, at A5 (reporting that U.S. efforts to extradite Dominicans were denied because of Dominican belief that extradition is violation of sovereignty).

178. See Samper, *supra* note 95 (reporting that in mid-1990s, lawmakers began to alter their opinions of extradition within anti-drug context); Williams & Williams, *supra* note 18, at 1125-26, 1132 (arguing that U.S. relationship with Colombia improved when United States focused upon multilateral mechanisms in order to effect anti-drug policy); see also Fineman II, *supra* note 27, at A4 (reporting that Dominican lawmakers in late 1990s recognized that extradition is necessary to combat drug trafficking); Rohter & Krauss, *supra* note 136, at A1 (stating that President Fernandez promoted extradition reform as part of political agenda).

179. See Sherman, *supra* note 23, at 698 (stating that lack of rule of law in Colombia during early 1990s obstructed extradition reform); Nagle, *supra* note 27, at 856 (arguing that Colombian drug cartels promoted violence in order to dissuade extradition reform).

180. See Sherman, *supra* note 23, at 698 (observing that narco-terrorism impeded extradition); *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (stating that narco-guerillas challenged Colombian anti-drug enforcement agencies); Williams & Williams, *supra* note 18, at 1129 (observing that nearly seventy percent of Colombian society in 1988 did not want extradition policy that applies to Colombian nationals); *Hearings II*, *supra* note 18 (testimony of Rensselaer W. Lee, Global Advisor) (reporting that U.S. certification policies in Colombia engendered resentment against U.S. government).

181. See Samper, *supra* note 95 (explaining that Colombian police agencies dismantled drug cartels in early-mid 1990s, allowing politicians to contemplate extradition measures); Williams & Williams, *supra* note 18, at 1125-26, 1132 (arguing that U.S. efforts to approach anti-drug enforcement through multilateral conventions in 1980s and 1990s showed respect for Colombian institutions and promoted better relations).

tionals.<sup>182</sup> Narco-terrorists, with the additional support of various guerilla movements, dissuaded extradition through bribery, violence, or harassment.<sup>183</sup> Furthermore, U.S. anti-drug policies, including decertification, exacerbated Colombia's traditional civil law preference to prohibit extradition.<sup>184</sup>

### i. Violence and Corruption

Colombia's efforts to extradite terrorists and drug traffickers were severely restricted by corruption in all branches of the government<sup>185</sup> and by fear of violent repercussions.<sup>186</sup> Narco-terrorists responded to extradition by murdering or bribing hundreds of law enforcement officers, judges, and political leaders.<sup>187</sup> By the early 1990s, drug barons decimated the rule of law and controlled both the political and economic facets of Colombian society.<sup>188</sup> In 1995, Colombia experienced seventy-six international terrorist incidents, the highest number in Latin America.<sup>189</sup> Indeed, a 1997 World Bank report ranked Colom-

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182. See Nagle, *supra* note 27, at 865 (explaining that narco-terrorism prevented implementation of extradition policy in Colombia); Williams & Williams, *supra* note 18, at 1129 (explaining that Colombians view extradition as violation of sovereignty); *Hearings II*, *supra* note 18 (testimony of Rensselaer W. Lee, Global Advisor) (explaining that U.S. certification policies are resented in drug producing nations, such as Colombia, because it places onus of blame on producers rather than consumers).

183. See Michael R. Pahl, *Wanted: Criminal Justice—Colombia's Adoption of a Prosecutorial System of Criminal Procedure*, 16 *FORDHAM INT'L L.J.* 608, 609 (1993) (stating that narco-terrorists assassinated dozens of law enforcement officials in 1992).

184. See Sherman, *supra* note 23, at 669 (explaining that U.S. international drug control policy erodes Colombian rule of law and fosters resentment among Colombian populace).

185. See *id.* (stating that Colombian government officials use drug trafficking for personal and political advantage); see also Reuters, *U.S. Criticizes Colombia Law on Drug Lords*, *N.Y. TIMES*, Nov. 27, 1997, at A14 [hereinafter *U.S. Criticism*] (describing Colombian President Ernesto Samper's affiliation with Cali drug cartel). For example, in the late 1990s, commentators and officials noted that the strength of President Ernesto Samper's influence over the Colombian Congress might have reflected his dealings with the Cali drug cartel. *U.S. Criticism*, *supra*, at A14. Samper had been associated with the Cali drug cartel since revelations surfaced shortly after his election that he received campaign contributions from the drug organization. *Id.*

186. Krohne, *supra* note 32, at 180.

187. *Id.* For a comprehensive record of the narco-terrorist response to Colombia's efforts to use extradition as a means of curing its domestic drug problem, see Schuler & McBride, *supra* note 18, at 910-11 n.70.

188. See Sherman, *supra* note 23, at 684-85 (explaining that Colombian narco-terrorism propelled state of seige, increased martial law, and eroded rule of law).

189. See Schuler & McBride, *supra* note 18, at nn.68-69 (explaining that attempted murders occurred beyond Colombia's borders). Included in these assassination at-



bia the most violent country in Latin America.<sup>190</sup> Commentators agree, therefore, that narco-terrorism created a life-threatening atmosphere for those seeking to bring drug traffickers to justice.<sup>191</sup>

As a result of narco-terrorism and corruption, Colombia suffered from one of the world's highest impunity rates.<sup>192</sup> Conviction rates were equally low,<sup>193</sup> while an estimated 1,300,000 cases awaited trial in Colombia's courts.<sup>194</sup> Human rights violations also went relatively unpunished.<sup>195</sup>

## ii. Narco-Guerillas

Narco-terrorists were not the only challenges facing Colombian anti-drug agencies. Various guerilla movements protected the farmers who grew coca and the traffickers who processed it into cocaine.<sup>196</sup> These leftist militant groups funded themselves through extortion of farmers and by providing transport of cocaine and heroin for drug traffickers.<sup>197</sup> They violently de-

tempts was Colombia's Ambassador to Hungary, Enrique Parejo Gonzalez. *Id.* After leaving his Budapest home on January 13, 1987, Parejo was shot three times in the head and twice in the arms, and survived. *Id.* In fact, there were reports that the Medellin cartel planned assassinations for U.S. targets, including four DEA agents, one agent's wife, a prosecutor in Miami, and Sterling Johnson, Jr., New York City's Special Narcotics Prosecutor in 1988 (presently a federal judge in the Eastern District of New York). *Id.*

190. See Yadira Ferrer, *Colombia-U.S. Extradition Creates Chilly Climate for Samper*, I.P. SERV., Sept. 23, 1997 (reporting that violence in Colombia affects U.S. certification analysis).

191. *Id.*; see Pahl, *supra* note 183, at 609 (stating that in 1992 alone, guerillas and drug traffickers assassinated approximately 217 police officers).

192. See Pahl, *supra* note 183, at 609 ("During the past thirty years it is estimated that only 1.2 to two percent of all crimes reported ended in sentence."). The problem of impunity stems from skepticism about the criminal justice system, fear of the authorities, or retribution from the accused. *Id.*

193. See *id.* (stating that only twenty percent of all crimes committed are reported, with only four percent resulting in conviction).

194. See *id.* (citing Gustavo Gallon Giraldo & Rodrigo Uprinny Yepes, *Constituyente, violencia, y derechos humanos*, 13 REVISTA FORO 37, 42 (Oct. 1990)).

195. See *id.* ("Human rights violations by the military forces—including torture, disappearances and assassination—often go unpunished as well.")

196. See *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (describing role of guerilla movements in Colombian anti-narcotics law enforcement). Two guerilla movements of notice are the Revolutionary Armed Forces of Colombia ("FARC") and the National Liberation Army ("ELN"). *Id.*; see Schemo, *supra* note 151, at A14 (stating that Colombian police estimated that 3155 of Colombia's 15,000 guerillas were active in drug trafficking).

197. *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator).

fended coca and poppy fields as well as the processing laboratories by providing ground fire against Colombian National Police ("CNP") air strikes.<sup>198</sup> Moreover, guerilla movements have been known to strike at civilian targets.<sup>199</sup>

### iii. Violation of Sovereignty

Besides the threat posed by narco-terrorism, any push for extradition reform competed against Colombia's civil law preference against extraditing nationals.<sup>200</sup> Colombians generally perceived extradition as a violation of their sovereign authority.<sup>201</sup> In Colombia, public referendums repeatedly raised the issue of extradition.<sup>202</sup> In 1988, opinion polls in Colombia showed that two-thirds of all Colombians opposed extradition, regarding it as a violation of national sovereignty and provocation for more drug violence.<sup>203</sup>

Colombian officials especially voiced concern, if not resentment, over U.S. abduction policies.<sup>204</sup> The *Alvarez-Machain*<sup>205</sup> decision caused official outcry.<sup>206</sup> Although Colombian commentators recognized that the decision concerned a specific United States-Mexico treaty,<sup>207</sup> they feared that the decision might implicate all international treaties.<sup>208</sup> Colombian officials

198. *Id.*

199. See Krohne, *supra* note 32, at 180 (explaining that included in 1995 death toll were two U.S. missionaries held hostage by FARC since 1994).

200. See Nagle, *supra* note 27, at 865 (explaining that Colombian politicians were ideologically opposed to extradition in 1980s.)

201. See Williams & Williams, *supra* note 18, at 1129 (describing 1988 Colombian public referendum reflecting two-thirds popular opposition to extradition).

202. *Id.*; Samper, *supra* note 95.

203. See Williams & Williams, *supra* note 18, at 1129 (quoting former Colombian attorney general as stating, "Nobody wants to see Colombians judged in another country without knowing the language and without their families. It's like saying our justice system is not strong enough. I've seen many judges do their job well, if they say there was not enough evidence we must believe them.").

204. See Zaid, *supra* note 175, at 847 (reporting Colombian outrage to *Alvarez-Machain*).

205. See *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (holding that forcible abduction of Mexican citizen into United States does not violate U.S.-Mexico Extradition Treaty).

206. See Zaid, *supra* note 175, at 847 (reporting that Colombian government declared on June 17, 1992, that it "emphatically rejects the United States Supreme Court decision in the case United States against Alvarez-Machain").

207. EXTRADITION TREATY, May 4, 1978, U.S.-Mex., T.I.A.S. No. 9656 (1980).

208. See Zaid, *supra* note 175, at 847 (reporting that Colombian officials stated that *Alvarez-Machain's* "substance threatens the legal stability of all public treaties").

criticized the decision as a violation of sovereignty.<sup>209</sup> Particular concern focused upon the possibility that U.S. law enforcement might attempt to abduct a Colombian citizen, causing detriment to the U.S.-Colombian relationship.<sup>210</sup>

#### iv. Decertification

Drug certification<sup>211</sup> also engendered animosity, thus weakening the chances for U.S.-backed extradition reform.<sup>212</sup> The certification program compels other governments to implement and enforce anti-drug policies.<sup>213</sup> It is also designed to promote cooperation between international law enforcement agencies.<sup>214</sup> Many South American nations, including Colombia, however, perceived decertification as an unfair attack on cocaine producers while overlooking the role of cocaine consumers.<sup>215</sup> Some commentators felt that the U.S. government misused decertification as a political weapon for other U.S. economic and foreign policy decisions.<sup>216</sup> Commentators also observed that decertification often entailed double standards for different countries in the Latin American region, thus harming the credibility of the policy.<sup>217</sup> Although by 1998 Colombian officials claimed indifference to decertification,<sup>218</sup> commentators noted the significant

209. *See id.* (reporting Justice Minister Fernando Carrillo stating that *Alvarez-Machain* was inconsistent with “years of struggle for consolidation” of international law in areas regarding “sovereignty, equality of nation-states, self-determination, and non-interference”).

210. *See id.* (stating that military officers warned that *Alvarez-Machain* decision could serve to justify potential abduction of rebels who have targeted U.S. companies for sabotage and who have kidnapped U.S. nationals). The Colombian government added that “if the kidnapping of a Colombian national, in order to proceed to judge him abroad, would ever take place, the excellent relations that traditionally have been held among the governments of Colombia and the United States could be seriously affected.” *Id.*

211. Foreign Assistance Act, 22 U.S.C. § 2291 (1994 & Supp. 1997).

212. *Hearings II, supra* note 18 (testimony of Rensselaer W. Lee, Global Advisor).

213. *Id.*

214. *Id.*

215. *Id.*

216. *See id.* (stating that United States consistently grants Mexico full certification despite common belief among U.S. officials that corruption is widespread at all levels of Mexican government). Conversely, Iran continually suffers decertification even though it maintains a vigorous anti-narcotics program. *Id.*

217. *Id.*

218. *See* Tim Golden, *In Drug War, America Barks but Fear of Bite Fades*, N.Y. TIMES, Mar. 1, 1998 at D16 (quoting Colombian Ambassador Juan Carlos Esquerro, who explained “when we didn’t know what it would mean to be certified, we were terribly

impact of the program upon Colombian domestic policies in the 1990s.<sup>219</sup>

#### b. Pro-Extradition Factors

Yet, despite a myriad of obstacles, developments both within and beyond Colombia's borders operated to create the possibility of extradition reform.<sup>220</sup> Significantly, Colombian lawmakers experienced political and ideological change in their view of extradition.<sup>221</sup> Moreover, U.S. anti-drug agencies and officials recognized that alternative methods to fighting drugs could enhance the possibility of extradition reform in Colombia.<sup>222</sup>

#### i. Shifting Ideologies

Major political change in Colombia during the 1990s led to the birth of a pro-extradition movement.<sup>223</sup> In the early part of the decade, narco-terrorism effectively stymied attempts to create extradition reform.<sup>224</sup> After a major crackdown on cartel

worried that it would have catastrophic effects . . . . Once you know the impact, [however,] you know you can handle it.”)

219. *Hearings II*, *supra* note 18 (testimony of Rensselaer W. Lee, Global Advisor).

[D]ecertification or the threat of it has yielded arrests of all the top leaders of the Cali cartel; has sustained a far-reaching investigation of corruption within the Colombian political system; has encouraged the passage of stronger asset-forfeiture and antimoney laundering laws; . . . has stimulated more effective U.S.-Colombian collaboration against maritime drug smuggling; and has reinforced Colombian determination to mount a massive aerial spraying campaign against the country's coca plantations

*Id.*

220. *See Samper*, *supra* note 95 (quoting President Samper as stating that “[t]he climate in Colombia has changed over the past decade. The climate back then was marked by terrorism, intimidation and harassment . . . . I feel that climate has now changed. The circumstances in Colombia are different now.”); *Hearings III*, *supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (stating that successful Colombian counter-narcotics efforts in early-mid 1990s commenced process of restoring rule of law); *see also* Williams & Williams, *supra* note 18, at 1125-26, 1132 (arguing that U.S. efforts over last decade to promote law enforcement and prosecutorial cooperation will yield better results in war on drugs).

221. *See Samper*, *supra* note 95 (quoting Samper's observations that effective Colombian legislative reforms against organized crime in early 1990s created atmosphere wherein political discussions concerning extradition became possible).

222. *See Williams & Williams*, *supra* note 18, at 1125-26, 1132 (arguing that U.S. participation in international criminal control conventions shows cooperative spirit, which leads to improved U.S. relations with producer nations).

223. *See Samper*, *supra* note 95 (reporting that Samper noted new extradition policy was result of shifting political climate occurring during course of 1990s).

224. *See id.* (quoting Samper as stating that terrorism, intimidation, and harass-

leaders in the mid-to-late 1990s, however, the Colombian political and judicial systems gained renewed strength.<sup>225</sup> New reform-minded politicians and jurists recognized that extradition might help solve Colombia's drug cartel problem.<sup>226</sup>

By the late 1990s, many Colombian lawmakers reinterpreted extradition to be a tool, not a renunciation, of national sovereignty.<sup>227</sup> In this light, their main concern involved Colombia's high impunity rates.<sup>228</sup> Impunity disserved and weakened Colombia by gutting the rule of law and dismantling the civil order.<sup>229</sup> These reformers understood that extradition was needed in tandem with tougher penal sanctions<sup>230</sup> not only to fight drug

ment compelled "the constituents in 1991 to ban outright the extradition of Colombian citizens").

225. *See id.* (reporting that success of this major law enforcement breakthrough was primarily result of efforts by Colombian National Police "CNP" in 1995 and 1996). All of the top drug-syndicate leadership in Cali, for example, were imprisoned or killed. *See Hearings III, supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (explaining that CNP successes resulted from international cooperation between law enforcement agencies). Such successes included (1) the April 1997 arrest of Julio Pastor Perafan in Venezuela by Venezuelan authorities, (2) the August 1997 arrest of Julio Caesar Nasser David, and (3) the September 1997 surrender of Jose Orlando Henao Montoya. *Id.* Overall, the CNP in 1997 seized millions of dollars in assets owned by major drug traffickers, as well as more than 34 metric tons of cocaine HCL, 10 metric tons of cocaine base, 1261 kilograms of heroin/morphine base, 120 kilograms of opium gum, and 136 metric tons of marijuana. *Id.*

226. *See McCaffrey, supra* note 173, at 508 (noting that both Colombian and U.S. officials have recognized need to approach drug-trafficking as international problem, necessitating close cooperation between both nations); *Samper, supra* note 95 (quoting Samper as stating, "Six years ago, no one could even utter the word extradition in this country; it was taboo. Today, we have overcome this taboo and are demonstrating that as of this moment, all Colombians who commit a crime abroad will not be able to use their country as a haven to hide their crimes.").

227. *See* Senator Claudia Blum, *¿Por Que Es Importante Revivir La Extradicion En Colombia?* (on file with the *Fordham International Law Journal*) [hereinafter Blum] (arguing that Colombia must enact pro-extradition laws in order to fight drug trafficking).

228. *Id.*; *Samper, supra* note 95.

People here talk to much about protecting the rights of criminals. However, they do not talk about protecting the honour of all the Colombian citizens who are hurt by the wrongdoing of a few Colombians who continue to commit crimes abroad and come here looking for protection in the Colombian judicial system to evade their responsibility.

*Samper, supra.*

229. *See* Blum, *supra* note 227 (quoting Colombian Senator Blum as stating, "A country which conditions the State's actions to the interests of lawbreakers, without being able to guarantee the enforcement of the law for fear of retaliation, is an incapable and weak state which is not sovereign, and does not fulfill one of its basic functions such as preserving order.").

230. *See* Ferrer, *supra* note 190 (noting that Colombian criminal reform included

trafficking, but also to dissuade its re-emergence among the next generation.<sup>231</sup>

Further, Colombian reformers rejected the notion that re-establishing extradition would be a concession to U.S. pressure.<sup>232</sup> Instead, they focused inward towards their own accountability.<sup>233</sup> These reformers, therefore, recognized the global trend towards multilateralism in enforcing anti-drug policies.<sup>234</sup> Accordingly, they sensed a duty to the greater international community to strengthen their anti-drug efforts.<sup>235</sup>

## ii. U.S. Shifting Ideologies and Multilateral Practices

U.S. officials have realized that it is nearly impossible to locate and arrest wanted individuals without the assistance of law enforcement in other countries.<sup>236</sup> Thus, the United States has slowly increased its dialogue with other nations in an effort to build harmony in capturing drug traffickers.<sup>237</sup> This movement

financing efforts to increase destruction of illegal crops, to strengthen prison system, to mandate tougher sentences for drug traffickers, and to approve asset-forfeiture laws).

231.

Blum, *supra* note 227.

232. *Id.*

233. *See id.* (quoting Senator Blum as stating, "It is before the entire international community, before which [Colombia] constitutes a potential and real refuge for law-breakers, when it decide[s] to prohibit the possibility of extraditing nationals.").

234. *See Samper, supra* note 95 (quoting President Samper as stating, "Regarding the international arena, I believe the world is much more aware of the need for a joint and multilateral solution to the drug problem and the realization that we all have a shared responsibility to fight drugs.").

235. *See* Blum, *supra* note 227 (quoting Senator Blum as stating that Colombia owes "the rest of the world a greater commitment in the struggle against organized crime"). President Samper observed that new extradition reform

responds as well to the international community, because if Colombia had not come up with the toughest laws or the most effective instruments to fight the international drug trade, we would not have the moral and political authority to ask the world to understand that the extradition or drug trafficking problems are not exclusively Colombian.

*Samper, supra* note 95.

236. *See Hearings III, supra* note 20 (testimony of Thomas A. Constantine, DEA Administrator) (reporting that U.S. law enforcement depends on Colombian agencies, which are constantly bribed and intimidated by drug cartels, to capture drug traffickers). One commentator remarked that drug cartels depend largely upon their ability to "intimidate, murder or corrupt public officials and law enforcement officers" to conduct their illegal businesses. *Id.* Accordingly, "[t]hese sophisticated criminal groups cannot thrive unless law enforcement officials have been paid bribes, and witnesses fear for their lives." *Id.*

237. *See McCaffrey, supra* note 173, at 508 (reporting that in October 1997, President Clinton's drug "czar," General Barry McCaffrey, made three-day visit to Colombia

towards bilateral cooperation established friendly ties and showed respect for other nations' sovereignty.<sup>238</sup> Thus, beginning in the late 1980s, as its interdiction techniques were failing, the United States began to look for alternative methods to fight its War on Drugs.<sup>239</sup>

For example, the Anti-Drug Abuse Act of 1988<sup>240</sup> ("Act") included provisions that indicated a change in the way that the United States approached international drug control.<sup>241</sup> The Act expressed a need to create multinational conventions in order to develop effective international anti-narcotic programs.<sup>242</sup> Specifically, the Act proposed that diplomatic, multinational

in which he praised Colombian anti-narcotics efforts). General McCaffrey seemed to take a step towards accepting the Colombian military's argument that there is no difference between "narco-guerillas" and drug traffickers. *Id.* This distinction is significant because Congress has stipulated that U.S. aid to Colombia to fight drug trafficking cannot be used for counter-insurgency operations. *Id.*; *British Drug Supremo Wants Extradition Law to Apply Retroactively* (BBC Summary of World Broadcasts, Nov. 17, 1997) [hereinafter *British Drug Supremo*]. Colombian dialogue has not been limited to the United States. *British Drug Supremo, supra*. In November 1997, British Foreign Office of International Drugs Coordinator Patrick Nixon visited Colombia to engage in dialogue concerning extradition policy and to review existing bilateral agreements in the context of anti-drug law enforcement. *Id.*

238. See Williams & Williams, *supra* note 18, at 1125-26, 1132 (arguing that U.S. involvement in Vienna treaty of 1988 established willingness to cooperate with Colombian law enforcement, rather than dictate anti-drug policy).

239. See Jimmy Gurulé, *The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances—A Ten Year Perspective: Is International Cooperation Merely Illusory?*, 22 *FORDHAM INT'L L.J.* 74, 75-76 (1998) (explaining that in order to apprehend and prosecute Colombian drug traffickers, U.S. officials have attempted "bold and innovative counter-narcotics strategies," specifically through multilateral, collaborative law enforcement procedures).

240. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 1001, 102 Stat. 4181 (1988). Title IV of the Act at Pub. L. No. 100-690, § 4001, 102 Stat. 4181, 4261 (1988) is entitled the International Narcotics Control Act of 1988.

241. *Id.*

242. International Narcotics Control Act of 1988, Pub. L. No. 100-690, § 4101, 102 Stat. 4181, 4263 (1988) provides:

It is the sense of Congress that—

...

(3) to preserve national sovereignty, protect the public health, and maintain domestic law and order within their borders, member nations of the Organization of American States should coordinate their efforts to fight the illegal drug trade; [and]

(4) recent events in drug source and transit countries in the Western Hemisphere make clear the requirement for international agreement on the formation of a multinational force to conduct operations against these illegal drug smuggling organizations.

*Id.* § 4101.

mechanisms enforce anti-drug policy.<sup>243</sup> Some commentators noted that with this step, the signatories recognized the international scope of both the drug problem as well as its solution.<sup>244</sup>

That same year, the United States joined forty-two other nations in signing the Vienna Treaty in the United Nations Convention Against Illicit Traffic in Narcotic Drug and Psychotropic Substances ("Convention").<sup>245</sup> The parties to the Convention recognized that international drug trafficking implicates organized crime as well as legitimate activities, thus threatening national economic interests.<sup>246</sup> The Convention sought to coordinate multilateral anti-drug efforts by mandating domestic legislative application of its provisions.<sup>247</sup> Simultaneously, the

243. *Id.* International Narcotics Control Act § 4101(a)(5) states "the United States should make every effort to initiate diplomatic discussion through the Organization of American States aimed at achieving agreement to establish and operate a Western Hemisphere anti-narcotics force." *Id.* § 4101(a)(5). International Narcotics Control Act § 4101(a)(5), (b) states:

(b) The President shall direct the United States Ambassador to the Organization of American States, under the direction of the Secretary of State, to initiate diplomatic discussions with member nations of the Organization of American States aimed at securing agreement to the formation of a multinational force to conduct operations against illegal drug smuggling organizations wherever they may be found in the Western Hemisphere.

*Id.* § 4101(a)(5).

244. See Williams & Williams, *supra* note 18, at 1125-26 (arguing that effectiveness of military operations against drug traffickers increases when executed pursuant to multinational agencies, such as Organization of American States).

245. United Nations Convention Against Illicit Traffic in Narcotic Drug and Psychotropic Substances, U.N. Doc. E/Conf. 82/16, reprinted in 28 I.L.M. 493 (1988) [hereinafter United Nations Convention]. See generally Gurulé, *supra* note 239 (providing ten-year critical analysis of Convention).

246. See United Nations Convention, *supra* note 245, at U.N. Doc. E/Conf. 82/16, at 1-2 (The preamble is not reprinted in I.L.M., but is available in U.N. Doc. E/Conf. 82/15). The preamble of the Convention states:

The Parties to this Convention, . . .  
Recogniz[e] the links between illicit traffic and other related organized criminal activity which undermines the legitimate economies and threatens the stability, security and sovereignty of States,  
Recogniz[e] also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,  
Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.

*Id.*

247. *Id.* art. 2(1), 28 I.L.M. at 500. Article 2(1) of the Convention provides: The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in



Convention ensured a mutual respect for the national sovereignty of each of its signatories.<sup>248</sup>

Other major features of the Convention included the creation of internationally recognized criminal offenses<sup>249</sup> and international principles governing domestic jurisdiction over drug trafficking and related offenses.<sup>250</sup> It provided for mutual assistance<sup>251</sup> among the parties in taking statements,<sup>252</sup> serving process,<sup>253</sup> conducting searches and seizures,<sup>254</sup> and engaging in other evidence-gathering activities.<sup>255</sup> Commentators noted that U.S. participation in the Convention, therefore, indicated a willingness to work with other countries and international bodies to establish legal standards for prosecuting and convicting drug traffickers.<sup>256</sup>

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narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

*Id.*

248. *Id.* art. 2(2), (3), 28 I.L.M. at 500. These provisions state that:

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

*Id.*

249. *See id.* art. 3, 28 I.L.M. at 500-03 (listing criminal offenses and sanctions concerning various drug production and distribution techniques).

250. *See id.* art. 4, 28 I.L.M. at 503-04 (concerning issues such as territoriality, jurisdiction, and nationality).

251. *See id.* art. 7, 28 I.L.M. at 508 ("The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to criminal offences.").

252. *See id.* art. 7(2)(a), 28 I.L.M. at 508 ("Mutual legal assistance to be afforded in accordance with this article may be requested for . . . [t]aking evidence or statements from persons . . .").

253. *See id.* art. 7(2)(b), 28 I.L.M. at 508 (providing for "service of judicial documents").

254. *See id.* art. 7(2)(c), 28 I.L.M. at 508 (providing mutual legal assistance in executing searches and seizures).

255. *See id.* art. 7(2)(e), 28 I.L.M. at 508 (providing mutual legal assistance in supplying information and evidentiary items).

256. *See Williams & Williams, supra* note 18, at 1132 (arguing that multilateral conventions are superior to unilateral or bilateral efforts in fighting drugs).

## 2. Factors Affecting Dominican Extradition Reform

As in Colombia, extradition reform in the Dominican Republic encountered several competing interests.<sup>257</sup> In the 1990s, multiple forces relating to drug trafficking and anti-drug enforcement operated to prevent the development of a pro-extradition policy.<sup>258</sup> Nevertheless, during this same period, other conditions developed that ultimately fostered an extradition movement.<sup>259</sup>

### a. Anti-Extradition Factors

Several factors existed in the Dominican Republic that challenged the formation of extradition reform.<sup>260</sup> For example, Dominican drug gangs in the United States maintained ties to their homeland, bribing and corrupting government officials in order to ensure political influence.<sup>261</sup> Furthermore, U.S. anti-drug policies, as well as other specific Caribbean-directed U.S. policies, caused resentment that impeded extradition reform.<sup>262</sup>

#### i. Corruption and Financial Influence

Dominican drug dealers in the United States affected extradition reform by bribing and corrupting Dominican officials.<sup>263</sup> Corruption was widespread among Dominican police, military

257. See Rohter & Krauss, *supra* note 136, at A1 (stating that various factors, including political corruption and bribery, discouraged extradition reform).

258. See *id.* (explaining that Dominican drug dealers in United States funneled money to Dominican politicians in order to buy votes on legislative matters); Fineman II, *supra* note 27, at A4 (explaining that Dominicans perceived many U.S. anti-drug and financial foreign policies as intrusive).

259. See Fineman III, *supra* note 27, at A5 (explaining that Dominican lawmakers recognized that removing drug dealers through extradition legitimizes Dominican government in global community).

260. See Wren, *supra* note 2, at A1 (reporting that Dominicans traditionally refused extradition requests because it violated their sovereign authority); Rohter & Krauss, *supra* note 136, at A1 (reporting that many Dominican legislators were cousins or brothers of Dominican drug dealers residing in United States); Fineman II, *supra* note 27, at A4 (describing Dominican government's anger concerning U.S. foreign policies in Caribbean that dismissed Dominican financial concerns).

261. See Rohter & Krauss, *supra* note 136, at A1 (reporting that when Dominican legislature raised issue of extradition, Dominican drug dealers in United States would bribe Dominican congressmen to vote against extradition).

262. See Fineman II, *supra* note 27, at A4 (describing U.S. immigration laws that inundated Dominican Republic with convicts).

263. See Rohter & Krauss, *supra* note 136, at A1 (reporting that Dominican drug dealers in United States bribed Dominican congressmen to vote against extradition).

security, and the army's J-2, the military intelligence division,<sup>264</sup> during President Joaquin Balaguer's long tenure.<sup>265</sup> Furthermore, judges and prosecutors delayed drug cases, while banks maintained liberal procedures in order to attract money launderers.<sup>266</sup>

As a result, drug traffickers provided a significant monetary infusion into Dominican society.<sup>267</sup> The amount of money laundered from the United States through Dominican financial institutions doubled during 1995-1998 to more than US\$1 billion per annum.<sup>268</sup> Buildings and shopping centers sprouted across the island nation, and Dominican banks opened branches as far away as Thailand.<sup>269</sup>

## ii. Violation of Sovereignty

Additionally, commentators have noted that United States' Caribbean policies throughout the 1990s provoked resistance.<sup>270</sup> Along with other island nations, the Dominican Republic responded indignantly to U.S. activity in the Caribbean.<sup>271</sup> Specifically, commentators found that the United States engendered resentment because it approached Caribbean issues unilaterally<sup>272</sup> and with minimal interest for the financial well-being of

264. *See id.* (reporting that 80% of luggage supervisors, technicians, and handlers were on drug trafficker payrolls).

265. *See id.* (reporting that Joaquin Balaguer, who originally took office after U.S. invasion in 1965, ruled Dominican Republic into late 1990s). Rampant voter fraud and other institutionalized forms of corruption characterized Balaguer's administration. *Id.*

266. *Id.*

267. *See id.* (reporting that by late 1990s, significant portion of drugs distributed in eastern United States passed through Dominican Republic).

268. *See id.* (reporting that much of laundered money is invested in Dominican real estate, banks, and business). New office buildings, hotels and shopping centers—often in the style known as “narco-deco”—are prevalent in the major cities. *Id.*

269. *See id.* (reporting that new fears grew about growing economic influence of traffickers). As Marino Vinicio Castillo, the presidential appointee directing the Dominican Republic anti-drug program, remarked, “There is a process of Colombianization going on. It is a very serious threat . . . . The Colombians may not have been able to detect it happening there, but here we can see the narcotics traffickers covertly infiltrating the banking system, political parties and the media.” *Id.*

270. *See generally* Fineman II, *supra* note 27, at A4.

271. *See id.* (reporting that Dominican Republic resisted apparent U.S. post-Soviet insensitivity).

272. *See id.* (reporting that Anibal de Castro, noted Dominican commentator, observed, “The agenda for the United States with the nations of the Caribbean appears to be more unilateral than bilateral. More often than not, it’s a one-way ticket.”).

the region's nations.<sup>273</sup> In response, the Dominican Republic refused to capitulate to U.S. extradition requests.<sup>274</sup>

Some commentators offered that this U.S. unilateralism was the result of a major shift in international power in the wake of the Cold War.<sup>275</sup> During the Cold War, U.S. concerns included the fear that a Moscow-backed Cuba or Nicaragua would export communism to the Caribbean.<sup>276</sup> The United States thus took extra measures to develop friendly ties with the nations of the region.<sup>277</sup> Accordingly, U.S. economic aid in the direct form of financial assistance and indirectly through the protection of favorable trade status in Europe and elsewhere ensured a strong hegemonic influence in the Caribbean.<sup>278</sup> With the collapse of the Soviet Union at the end of the 1980s, however, the United States shifted its policy.<sup>279</sup> The United States' neighbors to the south felt the impact.<sup>280</sup>

A well-known example concerned New York City Police Commissioner Howard Safir's 1996 visit to Dominican President

273. *See id.* (reporting that U.S. efforts to obtain World Trade Organization ruling hurt Caribbean banana industry).

274. *See id.* (reporting that Dominican government contested U.S. immigration laws that flooded Dominican Republic with criminals sent back after serving minimal sentences in U.S. prisons). In 1997, the Dominican Department of Foreign Relations reported that the United States deported 1925 Dominicans who had served incomplete sentences. *Id.* As Dominican Minister of Foreign Relations Eduardo Latorre remarked, "If one appeals to the universality of crime, then it cannot be alleged that Dominicans who have committed crimes in the United States should be sent to the Dominican Republic." *Id.*

275. *Id.*

276. *Id.*

277. *See id.* (reporting that former Barbadaon foreign minister and current Parliament member remarked, "When there was a Soviet alternative, the United States had to operate with a lot of finesse.").

278. *Id.*

279. *See id.* (describing U.S. World Trade Organization victory that impacted local Caribbean economies). An example of this shift occurred in 1997, when the United States won a World Trade Organization ruling that abolished the Caribbean's once preferred banana export dealings with Europe. *Id.* In the absence of Soviet competition, U.S. interests in its own banana industries superceded concerns for the Caribbean's economic vitality. *Id.* As a result, the United States' effort to obtain this ruling ripped deeply into the economies of many Caribbean nations. *Id.*

280. *See id.* (stating that "nowhere else is the David-and-Goliath image as sharply etched as in the Caribbean, where a handful of nations, among the world's tiniest, have to live intimately close to the giant in its shadow"). Even in Europe, the United States' oldest and closest allies viewed the United States as "unpredictable, detached and self-absorbed." *Id.*

Lionel Fernandez.<sup>281</sup> Safir sought to discuss the explosion of drug-related violent crime in the Washington Heights section of Manhattan,<sup>282</sup> where the vast majority of the city's 500,000 Dominican immigrants reside.<sup>283</sup> With the police presence in Washington Heights growing, increasing numbers of Dominican traffickers escaped New York and found refuge in the Dominican Republic.<sup>284</sup> Safir presented the Dominican authorities with a list of dozens of fugitive drug traffickers along with an appeal for assistance in their capture and return.<sup>285</sup> In addition, he also announced a plan to open a small, permanent New York City Police Department ("NYPD") office in Santo Domingo.<sup>286</sup> The office would assist Dominican law enforcement officials in capturing wanted individuals,<sup>287</sup> while Dominican authorities would send their own agents to New York to cooperate with the NYPD.<sup>288</sup>

The Dominican government did not respond warmly to Commissioner Safir.<sup>289</sup> President Fernandez described Safir's intention of opening a permanent police station in Santo Domingo as absurd and totally impossible.<sup>290</sup> Other top government officials even expressed reservations about the proposed change

281. Clifford Krauss, *Safir Taking Drug War on the Road, Seeks Help*, N.Y. TIMES, Nov. 5, 1996, at B3. Safir was not new to the diplomacy and extradition game. *Id.* As a senior official in the U.S. Marshal Service, he helped plan the 1982 capture of Edwin P. Wilson, a former CIA agent who turned against the agency and sought refuge in Beirut, Libya. *Id.* Wilson was lured from Beirut to the Dominican Republic and then was brought over to the United States. *Id.* In 1988, Safir persuaded the Dominican Republic to deport Juan Ramon Matta Ballestros, a Honduran drug trafficker, to Puerto Rico, where he was arrested. *Id.*

282. *See id.* (reporting that Washington Heights has also been dubbed "wholesale crack center for the Northeast").

283. *See* Patrice O'Shaughnessy, *Safir Plan Irks Dominicans*, DAILY NEWS, Dec. 15, 1996, at 13 (reporting that Safir sought extradition of approximately 150 Dominicans).

284. *Id.*

285. *See id.* (quoting Safir as stating that "Right now, murderers are allowed to go free. The purpose of this trip is to fix that.").

286. *Id.*

287. *Id.*

288. *See id.* (reporting that Safir cautioned that more negotiations were necessary between New York City Police Department, Dominican officials, and U.S. State Department to determine scope and function of office).

289. *See* Larry Rohter, *Dominican Leader Draws Line on Plan to Help New York in Drug War*, N.Y. TIMES, Nov. 23, 1996, at A2 (reporting that President Fernandez announced limits to how closely Dominican government would cooperate with New York City police in tracking down drug suspects).

290. *Id.*

to Dominican law to allow the extradition of Dominican nationals.<sup>291</sup> Most officials raised the issue of sovereignty, observing that the NYPD does not have the authority of a Dominican institution to arrest individuals within the Dominican Republic.<sup>292</sup>

#### b. Pro-Extradition Factors

Yet, in spite of the obstacles to extradition reform, other Dominican developments kept the possibility of change in extradition policy alive.<sup>293</sup> Importantly, Dominican lawmakers understood that modern anti-drug enforcement required a reconceptualization of sovereignty that would accommodate the extradition of nationals.<sup>294</sup> Meanwhile, for completely different purposes, President Fernandez utilized extradition as a platform for garnering political power.<sup>295</sup> Last, the United States recognized that cooperation, rather than competition, would be a more effective technique in order to produce extradition policies favorable to U.S. anti-drug enforcement.<sup>296</sup>

#### i. Shifting Ideologies

As in Colombia, Dominican officials began to recognize the importance of extradition in attacking the drug problem.<sup>297</sup> Significantly, Dominican lawmakers acknowledged that the threat

291. *Id.*

292. *See id.* (reporting that Dominican statesman noted that "the New York police are a local police . . . . They can't even go into New Jersey, so how are they going to go to another country, a foreign country? The whole thing is absurd."); *see* O'Shaughnessy, *supra* note 283, at 13 (reporting that another Dominican commentator noted, "To plant in another country a police unit is just not consistent with what an independent state should be.").

293. *See* Fineman III, *supra* note 27, at A5 (describing how Dominicans redefined their concept of sovereignty to include extradition of nationals); Rohter & Krauss, *supra* note 136, at A1 (explaining that President Fernandez lobbied for extradition reform); Fineman II, *supra* note 27, at A4 (reporting that U.S. officials recognized that cooperation is effective means of showing support for Dominican policies and, thus, of gaining Dominican favor).

294. *See* Fineman III, *supra* note 27, at A5 (reporting that Dominican congressmen acknowledged that extradition enforces rule of law and thus reinforces sovereign authority of Dominican government to regulate itself).

295. *See* Rohter & Krauss, *supra* note 136, at A1 (noting how President Fernandez supported extradition procedures that served to remove drug dealers that support his political opponents).

296. *See* Fineman II, *supra* note 27, at A4 (noting that President Clinton's presence at 1997 summit in Barbados exemplified U.S. shift in Caribbean from insensitive to friendly and cooperative).

297. *See* Rohter & Krauss, *supra* note 136, at A1 (quoting Dominican official as

posed by organized drug trafficking surpassed traditional notions of sovereignty.<sup>298</sup> Dominicans understood extradition to be a safeguard, not a dilution, of sovereign authority.<sup>299</sup> Furthermore, Dominicans also recognized that the victims in a significant number of pending cases are themselves Dominican members of a U.S. immigrant community.<sup>300</sup> Dominican officials thus realized that a favorable extradition policy is necessary to hold accountable the criminals responsible for victimizing Dominican citizens abroad.<sup>301</sup>

## ii. Political Agenda

Simultaneously, commentators observed that a shifting political landscape in the late 1990s propelled the issue of extradition into the Dominican political spotlight.<sup>302</sup> After a come-from-behind victory in a run-off vote, Lionel Fernandez succeeded Balaguer on August 16, 1996, promising change and less corruption.<sup>303</sup> Fernandez's party, however, was weakly represented in Congress, only controlling less than a tenth of the seats.<sup>304</sup>

Arguably, Fernandez's only option in order to remain politically viable was to do away with the system supporting his political adversaries.<sup>305</sup> His survival therefore hinged on removing the corruption supported by drug traffickers.<sup>306</sup> Fernandez thus expressed support for tougher money laundering legislation and, more importantly, supported the creation of extradition re-

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stating, "The only thing the cartels fear is extradition. That is the most powerful tool in the hands of both governments.").

298. Fineman II, *supra* note 27, at A4.

299. See Fineman III, *supra* note 27, at A5 (quoting member of Dominican Chamber of Deputies as stating, "The law reflects a new concept of nationalism within our Congress and our society, a realization that international organized crime, like the drug trade, is the gravest threat to all nations' sovereignty."). Another political analyst remarked that "this law represents a recognition by our society that drug trafficking is, in fact, a real problem for us and that extradition is one of the most effective methods of combatting it." *Id.*

300. See *id.* (finding that one Dominican lawmaker noted this discrepancy, remarking, "To have the authority to ask the American government to protect our citizens living there, we have to collaborate with them over here.").

301. *Id.*

302. Rohter & Krauss, *supra* note 136, at A1.

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

form along with streamlined extradition procedures.<sup>307</sup> Fernandez therefore effectively promoted extradition as a means to consolidate his own political power.<sup>308</sup>

### iii. U.S. Shifting Ideologies and Multilateral Practices

U.S. alternative foreign policies in the Caribbean also went far in healing Dominican wounds and promoted cooperative law enforcement mechanisms, such as extradition.<sup>309</sup> Most recently, President Clinton attended a summit in Barbados in 1997 to listen to Caribbean concerns.<sup>310</sup> As result of this summit, the United States claimed a new sensitivity to the needs of its island neighbors.<sup>311</sup> U.S. officials recognized the need to engage in dialogue directed at establishing bilateral and multilateral cooperation.<sup>312</sup> Significantly, awareness grew that dictating policy is simply an inefficient means of effecting extradition reform.<sup>313</sup>

## II. *THE LEGAL SHIFT IN EXTRADITION POLICY IN COLOMBIA AND THE DOMINICAN REPUBLIC*

Numerous factors have both challenged and promoted the creation of laws that provide for the extradition of nationals in Colombia and the Dominican Republic.<sup>314</sup> Significantly, in 1997

307. *See id.* (reporting that trafficking groups in Dominican Republic and United States responded by funneling money into campaigns of candidates that they believed would vote against Fernandez's reform proposals). Indeed, some commentators expressed concern that many of the candidates were relatives of suspected drug traffickers. *Id.*

308. *Id.*

309. *See* Fineman II, *supra* note 27, at A4 (noting U.S. official's belief that cooperation and dialogue promotes better relations in Caribbean).

310. *Id.*

311. *Id.*

312. *See id.* (quoting U.S. diplomat stating that "there has been a real change in United States attitude since the President's visit [to the Barbados summit]. One of the most important things that's emerging is we're engaging in a dialogue with these countries.").

313. *See id.* (noting that one U.S. official remarked, "There's a new awareness that we need to work in genuine cooperation and not dictat[e] our policy.").

314. *See* Smith, *supra* note 14, at 38 ("The Dominican Republic has for years rebuffed as intrusive U.S. efforts to extradite dozens of fugitives hiding in the Caribbean nation."); Fineman, *supra* note 24, at A10 (reporting frustration of U.S. officials who seek extradition of Dominican nationals). *See generally* Krohne, *supra* note 32, at 159 (describing failure to extradite Colombian nationals as result of Colombian internal violence and degradation of rule of law); Matorin, *supra* note 32, at 907 (describing general ineffectiveness of extradition treaties with countries involved in narcotics



and 1998, both nations changed their extradition policies.<sup>315</sup> Commentators have reacted variously to the new reforms.<sup>316</sup>

### A. Colombia's New Extradition Law and Reactions

In general, Colombia has not reciprocated U.S. efforts to combat drug trafficking.<sup>317</sup> This lack of cooperation has adversely impacted the extradition relationship between the two nations.<sup>318</sup> Nevertheless, Colombia did change its extradition law in 1997.<sup>319</sup> The passage of Acto Legislativo Numero 01 de 1997 (diciembre 16) ("Colombian Law") caused various reactions.<sup>320</sup>

#### 1. The New Colombian Extradition Law

U.S. officials hailed the Colombian Law, allowing for the extradition of nationals, as a breakthrough in fighting the War on Drugs.<sup>321</sup> The Colombian Law modifies<sup>322</sup> Article 35 of the 1991

trade); Sherman, *supra* note 23, at 698 (describing failure to extradite Colombian nationals due to lack of rule of law in Colombia).

315. See ACTO LEGISLATIVO NUMERO 01 DE 1997 (diciembre 16, 1997) (Colom.) ("Además, la extradición de los colombianos por nacimiento se concederá por delitos cometidos en el exterior, con siderados como tales en la legislación penal colombiana"); LEY 278-98 DEL 29 DE JULIO DE 1998, que modifica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (Dom. Rep.) ("El Poder Ejecutivo es competente para conceder la extradición de un dominicano en los casos en que exista Convenio de Extradición entre el Estado requeriente y el Estado Dominico").

316. See *U.S. Criticism*, *supra* note 185, at A14 (reporting that drug cartels influenced form of Colombian extradition reform through bribery); *U.S. Calls on Colombia to Broaden Extradition Measure*, AGENCE FRANCE PRESSE, Nov. 26, 1997 (noting U.S. official's regret that Colombian extradition reform included non-retroactivity provision). *But see Samper*, *supra* note 95 (describing passage of Colombian extradition reform as success).

317. See Sherman, *supra* note 23, at 665-70 (describing tension between U.S. anti-drug policies and Colombian responses).

318. *Id.*

319. ACTO LEGISLATIVO NUMERO 01 DE 1997 (diciembre 16, 1997) (Colom.).

320. See *Samper*, *supra* note 95 (arguing that passage of extradition reform legitimizes Colombia in global community); *Weekly Media Availability with Attorney General Janet Reno*, Justice Department, Washington, D.C., FEDERAL NEWS SERV., Oct. 8, 1998 [hereinafter *Reno*] (reporting that U.S. Attorney General Janet Reno considered Colombian extradition reform to be positive step despite non-retroactivity provision). *But see U.S. Criticism*, *supra* note 185, at A14 (reporting Colombian commentator's belief that new extradition law reflects drug cartels' influence over Colombian lawmakers).

321. *Reno*, *supra* note 320.

322. See ACTO LEGISLATIVO NUMERO 01 DE 1997 ("[P]or medio del cual se modifica el artículo 35 de la Constitución Política").

Colombian Constitution<sup>323</sup> by providing for the extradition of Colombian nationals,<sup>324</sup> although it retains the principle of discretion.<sup>325</sup> The Colombian Law also establishes a political offense exception.<sup>326</sup> In general, the Colombian Law includes procedural and substantive guarantees to ensure that Colombian nationals will not receive treatment in the foreign locale harsher than what they would receive in Colombia.<sup>327</sup>

Importantly, the new extradition law does not apply retroactively,<sup>328</sup> despite numerous U.S. lobbying attempts to effect the same.<sup>329</sup> Thus, the majority of Colombian drug traffickers wanted on charges in the United States are exempt from the new law.<sup>330</sup> These individuals therefore will be incarcerated for far shorter periods than they would in U.S. prisons due to the nature of Colombian sentencing guidelines.<sup>331</sup>

## 2. Reactions to Colombia's New Extradition Law

Commentators noted that the new extradition law's provisions reflect months of drug cartel lobbying, bribery, and death threats.<sup>332</sup> They observed that watered-down provisions weak-

323. See CONSTITUCIÓN POLÍTICA DE COLOMBIA tit. I, art. 35 (1991) ("Se prohíbe la extradición colombianos por nacimiento").

324. See ACTO LEGISLATIVO NUMERO 01 DE 1997 art. 1 ("Además, la extradición de los colombianos por nacimiento se concederá por delitos cometidos en el exterior").

325. See *id.* (stating that "considerados como tales en la legislación penal colombiana. La Ley reglamentará la materia"); *Samper, supra* note 95 (describing procedural aspects of Colombian extradition reform). The discretion provision allows the Colombian government the right to grant or deny the extradition of its nationals. *Samper, supra*.

326. See ACTO LEGISLATIVO NUMERO 01 DE 1997, art. 1 ("La extradición no procederá por delitos políticos").

327. See *Samper, supra* note 95 (explaining that procedure delineated in Colombian extradition law provides guarantees that Colombians will not be extradited to nations that have less due process than in Colombia).

328. See ACTO LEGISLATIVO NUMERO 01 DE 1997 art. 1 ("No procederá la extradición cuando se trate de hechos cometidos con anterioridad a la promulgación de la presente norma").

329. *McCaffrey, supra* note 173, at 508; *U.S. Criticism, supra* note 185, at A14; Reuters, *Colombia Senate Passes Bill on Drug Extradition*, N.Y. TIMES, May 23, 1997, at A5 [hereinafter *Colombia Senate*]; Steven Ambrus, *Colombia OKs Weak Extradition Law; Latin America: Critics Note that Jailed Cali Drug Cartel Leaders Will Remain Safe from Prosecution in U.S. Legitimate Businesses Fear Expensive Sanctions*, L.A. TIMES, Nov. 26, 1997, at A4.

330. Ambrus, *supra* note 329, at A4.

331. *Id.*

332. See *U.S. Criticism, supra* note 185, at A14 (reporting Colombian commentator's opinion that "[t]he law was passed in this form because of the government's lack of real will. It is now paying off its debt" to the Cali cartel for financing the campaign).

ened the 1997 law.<sup>333</sup> As mentioned earlier, the law only applies to future cases, effectively protecting the hordes of drug cartel kingpins responsible for drug trafficking throughout the 1990s.<sup>334</sup> Interestingly, individuals who surrender to Colombian authorities are not extraditable.<sup>335</sup>

U.S. officials expressed regret over the non-retroactivity of the new law.<sup>336</sup> They feared that the lack of such a provision would severely undermine the efforts of anti-drug agencies within Colombia.<sup>337</sup> U.S. officials thus called on President Samper and the Colombian Congress to alter the form of the law to include retroactivity.<sup>338</sup> Many commentators speculated on how the new law would impact the U.S. certification process.<sup>339</sup> Colombian lawmakers even questioned the constitutionality of the law,<sup>340</sup> and one official proposed holding a national referendum on the issue of extradition.<sup>341</sup>

For the most part, President Samper responded positively.<sup>342</sup> Although he admitted defeat concerning the non-retroactivity provision,<sup>343</sup> he praised the new law as a crucial step in

333. *Colombia Senate*, *supra* note 329, at A5; Ambrus, *supra* note 329, at A4; *U.S. Criticism*, *supra* note 185, at A14.

334. *U.S. Criticism*, *supra* note 185, at A14. Indeed, as of the date of this publication, no Colombians have been extradited since 1991, despite the existence of the new law for more than 16 months. Adam Thomson, *Reno Presses Case for Colombian Extraditions*, *FIN. TIMES*, Mar. 5, 1999, at 5. U.S. officials blame the non-retroactivity provision of the new law for the inability to extradite wanted drug traffickers. Thomson, *supra*, at 5.

335. *Colombia Senate*, *supra* note 329, at A5.

336. *See Calls on Colombia*, *supra* note 316 (reporting that U.S. official remarked that it was "regrettable that the Colombian Congress failed to pass an unrestricted bill").

337. *See id.* (quoting U.S. official as stating, "The Congress' decision to prohibit retroactivity is a setback for all of those in Colombia who are fighting at great personal risk against the drug trade and drug-related corruption.").

338. *See id.* (quoting U.S. official as stating that "[w]e call on President Samper and the Colombian Congress to reinstate a provision on retroactivity and not allow further undercutting of the bill.").

339. *Samper*, *supra* note 95.

340. *Id.*

341. *Id.*

342. *See id.* (quoting Samper's description of extradition reform as success because it prevents drug traffickers from manipulating Colombian justice system).

343. *See id.* (reporting that Samper admitted that his administration "would have wanted [the extradition bill] to be passed without any restrictions. Unfortunately, I must admit defeat in that regard."). Samper insisted, however, that "it was an honourable defeat." *Id.*

fighting drug cartels.<sup>344</sup> He dismissed the notion that the new extradition law represented victory for the Colombian drug cartels, emphasizing that most cartel members already were incarcerated and facing long prison terms.<sup>345</sup> He further asserted that these cartel members were immune from extradition until they completed serving their prison terms.<sup>346</sup> Last, he opposed efforts to create a national referendum on extradition, predicting that any such measure would expose the citizenry to violent narco-terrorist intimidation.<sup>347</sup>

### B. *The Dominican Republic's New Extradition Law and Reactions*

The Dominican Republic faced numerous impediments to creating an extradition-friendly law.<sup>348</sup> Yet, in 1998, the Domini-

344. *See id.* (reporting that Samper claimed that passage of bill proved his administration's commitment to fighting organized crime). Samper proclaimed that the extradition vote was a victory "not only for the government, but for Colombia." *Id.* Speaking at a news conference at Narino Palace on November 26, 1997, Samper announced that

Colombia can now press the international community into committing itself more seriously to the drug fight. All Colombian citizens who commit crimes in another country are forewarned that, starting today, they will not be allowed . . . to tarnish the image of Colombia, much less use the Colombian justice system as a shield of impunity to protect themselves from paying for their crimes. In conclusion, my administration is committed to continuing the fight against organized crime. Yesterday's reinstatement of extradition is yet another instrument to be used in that fight.

*Id.*

345. *Id.* At the news conference at Narino Place, President Samper also stated, "That interpretation like many others we have heard is a disparaging one since everyone knows that many of the members of the Cali Cartel have already been tried and given sentences of over 20 years . . . . In other words, no one can say that this decision will benefit a specific group because if they refer to the members of the Cali cartel, there is no way they can be extradited before they complete their sentences. As far as I understand, not only do these sentences exceed 20 years, but there are also other proceedings against them under way."

*Id.*

346. *Id.*

347. *Id.* President Samper noted,

I do not support [a national referendum] because it would expose the nation to another year of bloody incidents. Some groups interested in causing public disturbances would not hesitate for a moment to use such a delicate issue to coerce Colombians into voting as they deem fit. Considering the current atmosphere of violence in the country, we could not freely summon Colombians to decide on such a complex issue without subjecting them to terrorist threats, which I repeat would turn the referendum into a bloodshed.

*Id.*

348. *See Wren, supra* note 2, at A1 (noting Dominican refusal to extradite nationals

can Republic reversed its policy and created Ley 28 278-98 del 29 de julio de 1998 ("Dominican Law"), which allows for the extradition of nationals.<sup>349</sup> The new law led to various reactions.<sup>350</sup>

### 1. The New Dominican Extradition Law

The Dominican Law authorizes the extradition of nationals for a host of charges,<sup>351</sup> including murder,<sup>352</sup> kidnapping,<sup>353</sup> sexual abuse of minors,<sup>354</sup> as well as other offenses. Importantly, the law specifies that trafficking drugs or controlled substances is an extraditable offense, whether or not a treaty exists between the Dominican Republic and the requesting nation.<sup>355</sup> Additionally, persons extradited can only be sentenced up to thirty years in the requesting nation,<sup>356</sup> the maximum sentence in the Dominican Republic.<sup>357</sup>

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based on concept of sovereignty); Rohter & Krauss, *supra* note 136, at A1 (discussing Dominican refusal to extradite nationals due to drug dealers' corruptive influence); Fineman II, *supra* note 27, at A4 (noting Dominican refusal to extradite nationals as rebuke against U.S. insensitivity).

349. See LEY 278-98 DEL 29 DE JULIO DE 1998, que modifica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (Dom. Rep.) ("El Poder Ejecutivo es competente para conceder la extradición de un dominicano").

350. See *Extradition Bill* (visited Apr. 6, 1999) <<http://www.dr1.com>> (on file with the *Fordham International Law Journal*) [hereinafter *Extradition Bill*] (reporting that Dominican commentators were pleased with Dominican extradition reform); Rohter & Krauss, *supra* note 136, at A1 (noting that extradition reform reflects President Fernandez's efforts to consolidate political power).

351. See LEY 278-98 DEL 29 DE JULIO DE 1998, que modifica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36, art. 4. This statute states:

El Poder Ejecutivo es competente para conceder la extradición de un dominicano en los casos en que exista Convenio de Extradición entre el Estado requeriente y el Estado Dominicano donde quede consignado el principio de reciprocidad y cuando la solicitud del Estado requeriente se refiere a:

<<Tráfico ilícito de drogas y sustancias controladas y el lavado de bienes provenientes de esta actividad, asesinato, secuestro, estrupo, sustracción o seducción de menores de quince (15) años, comercio carnal o proxenestimo, robo con violencia, falsificación de monedas, estafas, delitos relativos al tráfico de objetos históricos y arqueológico y la piratería aérea.>>

*Id.*

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. See *id.* ("En los convenios de extradición suscritos por el Estado Dominicano con otros estados, cuando se conceda la extradición de un nacional, no se le aplicará una pena mayor a la máxima establecida en el país, que al momento de la aplicación de esta Ley, es de treinta (30) años.").

357. *Extradition Bill*, *supra* note 350.

The law establishes a political offense exception<sup>358</sup> and defines and enumerates other non-extraditable exceptions.<sup>359</sup> Further, the law incorporates dual criminality,<sup>360</sup> a resolution of the accused in the requesting nation,<sup>361</sup> and the specialty doctrine.<sup>362</sup> Finally, provisions dictate the procedural requirements for both sending<sup>363</sup> and receiving<sup>364</sup> extradition requests.

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358. *See* LEY 278-98 DEL 29 DE JULIO DE 1998, que modifica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36, art. 5 ("La extradición de un extranjero no podrá concederse, en los siguientes casos: a) Por delitos políticos conforme lo define la Ley 5007, del 1911, que modifica el Código Penal Dominicano").

359. *Id.* Non-extraditable exceptions include:

Por hechos que no estén calificados como infracciones sancionadas por la ley penal dominicana;

Por infracciones exclusivamente militares;

Por acogerse al derecho de asilo político;

Cuando la infracción fuera contra la religión o constituyera crimen o delito de opinión;

Cuando la acción pública está prescrita de acuerdo con la ley del país requeriente o en la legislación dominicana.

Cuando la infracción está sancionada en la legislación del país requeriente o en la legislación dominicana, con pena menor de un año de prisión.

Cuando el Estado requeriente no tiene competencia para juzgar el hecho que se le imputa.

Cuando la persona cuya extradición se solicita, está cumpliendo condena por un hecho de la misma naturaleza o mayor gravedad al que sirve de fundamento al requerimiento.

*Id.*

360. *Id.* art. 17. Article 17 provides:

Que el hecho a que se refiere la demanda está comprendido dentro de la enumeración del artículo 4 de esta ley, y que está sancionado, tanto en la legislación del país requeriente como en la legislación dominicana, así como no caer dentro de las excepciones que establece la presente ley.

Que el hecho esté sancionado con más de un año de prisión tanto en la legislación del país requeriente como en la legislación dominicana.

*Id.*

361. *See id.* ("Que la acción no haya prescrito o caducado, ni al amparo de la legislación del país requeriente, ni conforme a la legislación dominicana").

362. *See id.* art. 27 ("El Poder Ejecutivo al conceder la extradición deberá consignar en el Decreto una disposición expresa que sujete los efectos de la extradición a la condición de que el Estado requeriente se compromete de no hacer juzgar al extraditado por una infracción diferente a la que motivó la extradición.").

363. *Id.* arts. 9-13.

364. *Id.* arts. 14-16.

## 2. Reactions to the Dominican Republic's New Extradition Law

United States officials expressed reserved hope over the new Dominican Law.<sup>365</sup> Some commentators considered the law restrictive because it did not apply retroactively.<sup>366</sup> The law's provision that persons extradited can only be sentenced up to thirty years has important implications as long as capital punishment remains within the federal sentencing guidelines.<sup>367</sup> Thus, Dominican officials will comply with U.S. extradition requests on the condition that the death penalty remains inapplicable.<sup>368</sup>

### III. THE COLOMBIAN EXTRADITION LAW REFLECTS THE COLOMBIAN GOVERNMENT'S INTEREST IN CONTROLLING ITS OWN ANTI-DRUG POLICY, WHILE THE DOMINICAN EXTRADITION LAW ENABLES PRESIDENT FERNANDEZ TO ENHANCE HIS POLITICAL POWER

Although both extradition laws contain provisions that manifest various internal, and to some extent, external pressures, the substance of the reforms reveal deeper, more purposeful agendas. In Colombia, the structure of the reform—especially the non-retroactivity provision—reveals the Colombian government's intention to restrict U.S. anti-drug agencies, while simultaneously appearing to promote bilateral cooperation. The Dominican extradition law was the result of President Fernandez's efforts to consolidate his own political power base. As a result, the ulterior motives predicating these new laws may severely hinder their ability to aid U.S. anti-drug law enforcement agencies.

#### A. *The Colombian Extradition Reform Reflects the Colombian Government's Desire to Restrict the United States' Ability to Apprehend Colombian Citizens*

The structure of the new Colombian extradition law reflects a conflicted political atmosphere. A progressive Colombian gov-

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365. See Greg B. Smith, *Dominicans Eye Change in Extradition Targeting Drug Dealers*, DAILY NEWS, July 20, 1998, at 16 (noting that U.S. officials held reservations concerning effectiveness of Dominican extradition reform).

366. See *id.* (stating that four hundred Dominicans will evade arrest because of Dominican laws' non-retroactivity).

367. *Extradition Bill*, *supra* note 350.

368. Smith, *supra* note 14, at 38.

ernment sought to consolidate power through the removal of corruption, violence, and drug money from its political system.<sup>369</sup> It seized upon extradition as the vehicle for achieving this goal. At the same time, however, the Colombian government did not wish to dilute the potency of its sovereignty, especially with the United States nearby, ready to pounce on Colombian drug dealers. Thus, the extradition law included a non-retroactivity provision in order to ensure that U.S. anti-drug law enforcement and policies remained at arm's length.<sup>370</sup>

The form of the new law reflects these motivations. The Colombian Law allows for the extradition of nationals for crimes committed abroad.<sup>371</sup> This provision necessarily includes drug trafficking offenses because of the international scope<sup>372</sup> of Colombia's drug cartel operations. Therefore, by passing the law in this form, the Colombian government put to rest the idea that sovereignty limits participation in transnational law enforcement.<sup>373</sup>

Nonetheless, although the Colombian extradition law appears to exemplify the new attitude adopted by many Colombian legislators, the truth is that the Colombian Law's non-retroactivity provision<sup>374</sup> restricts U.S. anti-drug efforts by limiting the power of U.S. agencies to apprehend Colombian citizens.<sup>375</sup> The non-retroactivity provision smacks of anti-U.S. sentiment<sup>376</sup> and plays on the strong nationalism inherent in Colombian soci-

369. *See supra* notes 219-31 and accompanying text (describing growing consensus among Colombian politicians that extradition is necessary to defend rule of law from corruptive influence of drug lords).

370. *See* ACTO LEGISLATIVO NUMERO 01 DE 1997 (diciembre 16, 1997), art. 1 ("No procederá la extradición cuando se trate de hechos cometidos con anterioridad a la promulgación de la presente norma").

371. *See* ACTO LEGISLATIVO NUMERO 01 DE 1997 ("Además, la extradición de los colombianos por nacimiento se concederá por delitos cometidos en el exterior").

372. *See supra* notes 125-29 and accompanying text (explaining that scope of Colombian drug cartel operations extends nearly across globe).

373. *See supra* note 230 and accompanying text (noting Colombian senator's belief that international extradition is modern expression of sovereign authority in increasingly transnational global community).

374. *See* ACTO LEGISLATIVO NUMERO 01 DE 1997, art. 1 ("No procederá la extradición cuando se trate de hechos cometidos con anterioridad a la promulgación de la presente norma").

375. *See supra* note 332 and accompanying text (describing that Colombians have yet to be extradited under new law).

376. *See supra* notes 200-15 and accompanying text (explaining that U.S. abduction and decertification policies caused animosity among Colombian populace).



ety.<sup>377</sup> More significantly, this provision bolsters the Colombian government's ability to assume authority over the execution of its internal anti-drug policy because U.S. prosecutors will not be able to dictate who in Colombia should be removed from the nation.

*B. The Dominican Extradition Reform Was Enacted in Order for President Fernandez to Enhance His Political Power*

In the Dominican Republic, the structure of the reform also reveals mixed motives. The substantive provisions of the law reflect awareness among Dominican legislators that drug control is a serious matter, necessitating more evolved definitions of sovereignty.<sup>378</sup> Thus, the law specifically targets drug trafficking and drug-related offenses.<sup>379</sup> More importantly, however, the language of the statute reflects President Fernandez's attempt to garner political power and to assert control over the Dominican political system.<sup>380</sup> Accordingly, the text of the new extradition law affords wide discretion to the President to decide whether to extradite Dominican drug dealers.<sup>381</sup>

By 1998, the Dominican extradition treaty with the United States was over eighty-five years old and devoid of language concerning drug offenses.<sup>382</sup> The Dominican Congress also enacted the 1969 law prohibiting the extradition of nationals without transnational drug trafficking in mind.<sup>383</sup> Meanwhile, Dominican lawmakers in the 1990s witnessed an explosion of drug related activity concerning their nation or involving Dominican na-

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377. See *supra* notes 197-99 and accompanying text (noting that Colombian society is historically predisposed against extradition).

378. See *supra* notes 295-99 and accompanying text (explaining that Dominican legislators viewed extradition as powerful expression of sovereignty).

379. See LEY 278-98 DEL 29 DE JULIO DE 1998, que modica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36, art. 4 (Dom. Rep) ("El Poder Ejecutivo es competente para conceder la extradición de un dominicano . . . [para] [t]ráfico ilícito de drogas y sustancias controladas").

380. See *supra* notes 300-06 and accompanying text (noting that extradition reform was motivated by President Lionel Fernandez's need to consolidate domestic political power).

381. See generally LEY 278-98 DEL 29 DE JULIO DE 1998, que modica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (stipulating that all decisions concerning extradition are subject to discretion of President).

382. Dominican Treaty, *supra* note 36.

383. NO. 489 LEY DE EXTRADICCIÓN DEL 22 DE OCTUBRE DE 1969 (Dom. Rep.).

tionals.<sup>384</sup> These legislators needed modernized vehicles through which to attack these alarming new criminal trends.<sup>385</sup> Dominican lawmakers concomitantly understood that in order to renovate their anti-crime mechanisms, they needed to redefine their concept of sovereignty.<sup>386</sup> The Dominican extradition reform thus served these purposes by overhauling outdated and outmoded criminal law mechanisms.

The content of the new law, however, also reflects more practical and political motivations.<sup>387</sup> When Fernandez assumed the presidency in 1996, his political base was weak. Drug traffickers and drug profits supported Fernandez's political opponents and influenced legislative policy.<sup>388</sup> Fernandez therefore used extradition as a tool to attack the drug dealers who supported his political rivals, thus enhancing his own political viability.<sup>389</sup> Not surprisingly, therefore, the new law provides enormous discretion to the President over extradition decisions.<sup>390</sup>

### C. *The New Extradition Laws in Colombia and the Dominican Republic Will Hinder Anti-Drug Law Enforcement*

The motivations that predicated the new extradition laws in Colombia and the Dominican Republic will ultimately inhibit these laws' ability to produce greater anti-drug enforcement results. In Colombia, the law is toothless; to date, no Colombians have been extradited under it.<sup>391</sup> In the Dominican Republic, the law potentially could produce enormous results because of

384. *See supra* notes 133-43 and accompanying text (stating that Dominican drug dealers aid Colombian traffickers through transport of cocaine in Caribbean and in distribution in U.S. cities).

385. *See supra* notes 295-99 and accompanying text (stating that Dominican lawmakers recognized that extradition is necessary to combat drug trafficking).

386. *See id.* (stating that Dominican lawmakers understood that extradition is not violation of sovereignty).

387. *See supra* notes 302-08 and accompanying text (stating that creation of extradition reform in Dominican Republic had political motivations).

388. *See id.* (explaining that Fernandez used extradition as means to remove power base of his political opponents).

389. *Id.*

390. *See generally* LEY 278-98 DEL 29 DE JULIO DE 1998, que modica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (Dom. Rep.) (stipulating that all decisions concerning extradition are subject to discretion of President).

391. *See supra* note 331 and accompanying text (reporting that no Colombians have been extradited pursuant to the Colombian extradition law because of non-retroactivity provision).

Fernandez's wide discretion to permit extradition.<sup>392</sup> Conversely, however, this discretion provides too much dependence upon one man. Thus, Dominican extradition reform will always remain subservient to Fernandez's political agenda. As a result, the extradition reforms in both Colombia and the Dominican Republic are not likely to be effective agents in the War on Drugs.

### CONCLUSION

Both Colombia and the Dominican Republic enacted extradition laws for their own reasons, including—but not necessarily focused upon—accommodating the U.S. anti-drug philosophy. In Colombia, the form in which the legislature enacted the law reflected, to some degree, the efforts of a motivated, modern government seeking international legitimacy. To a much larger extent, however, this law reveals the Colombian government's attempt to execute its own anti-drug policies as it sees fit.

In the Dominican Republic, the structure of the extradition reform demonstrates that Dominican political thought has accepted more modern definitions of sovereignty. The law also reflects President Fernandez's interest in removing drug money from the political system, thus carrying out his election promises and fostering internal party strength. Moreover, this reform symbolizes Fernandez's endeavor to consolidate personal power and authority over the Dominican polity.

Both nations realize the international scope and significance of their domestic drug problems. Thus, for a variety of overlapping considerations, both Colombia and the Dominican Republic have focused upon extradition as the primary tool for realizing their goals. In the end, however, the central considerations motivating the new extradition policies will ultimately serve to reduce the laws' significance in international drug enforcement.

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392. See generally LEY 278-98 DEL 29 DE JULIO DE 1998, que modica los Artículos 4, 5, 8 y 17 y agrega los Artículos 35 y 36 (providing President with unlimited authority to grant or deny extradition requests).



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