U.S. Mutual Assistance to Colombia: Vague Promises and Diminishing Returns

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Abstract

This Article addresses mutual assistance between the United States and Colombia and the issues surrounding the drug war. Part I examines past and present cooperative agreements, the goals of the agreements in the context of national and regional security, and the reasons the agreements have or have not succeeded. Part II discusses current U.S. aid policy toward Colombia and the problems the United States will face if assistance proceeds as planned. Part III presents a critical view of Colombia as a nation unable to deal successfully with its many political, social, and moral crises, and incapable of living up to its cooperative responsibilities. This Article concludes with a summary of the issues and what, if anything, can be done to save Colombia from itself.
INTRODUCTION

The issue of mutual assistance between the United States and Colombia to prosecute drug traffickers in the long-standing drug war raises significant controversy and concern over U.S. involvement in another country's internal matters. Despite waging a bloody and costly campaign during the last decade to bring a handful of major drug cartels operating in Colombia to justice, there are now hundreds of “mini-cartels” and guerrilla and paramilitary forces involved in the narcotics business. Colombia is awash in lawlessness and corruption, and the government's attempts to maintain control have proved about as successful as a blind person trying to hit a piñata.

This Article addresses mutual assistance between the United States and Colombia and the issues surrounding the drug war. Part I examines past and present cooperative agreements, the goals of the agreements in the context of national and regional security, and the reasons the agreements have or have not succeeded. Part II discusses current U.S. aid policy toward Colombia and the problems the United States will face if assistance proceeds as planned. Part III presents a critical view of Colombia as
a nation unable to deal successfully with its many political, social, and moral crises, and incapable of living up to its cooperative responsibilities. This Article concludes with a summary of the issues and what, if anything, can be done to save Colombia from itself.

I. MUTUAL ASSISTANCE

The justification for U.S. involvement in Colombia springs from the simple truth that narcotics trafficking into the United States from supplier nations in Latin America represents a national security threat as serious as any the United States has faced in its history. While the so-called war on drugs began during the administration of U.S. President Ronald Reagan, placing counternarcotics on the national security agenda was plainly articulated by President George Bush, who declared in his inaugural address:

There are few clear areas in which we as a society must rise up united and express our intolerance. And the most obvious now is drugs. And when that first cocaine was smuggled in on a ship, it may as well have been a deadly bacteria, so much has it hurt the body, the soul of our country. And there is much to be done and to be said, but take my word for it: This scourge will stop.

President Bush’s resolve to end the scourge, however, did little to stop the flow of illegal drugs into the United States, and Colombia declined to extradite drug lords to face trial in the United States. Presently eighty percent of the world’s cocaine, and a rapidly escalating amount of high-grade heroin, continue

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flooding into the United States.\textsuperscript{6} Coupled with fifty years of guerrilla insurgency and plagued by the usual problems afflicting developing nations, Colombia has arrived at a point of near disintegration into anarchy and chaos.\textsuperscript{7}

President Bill Clinton’s administration’s international counternarcotics efforts in Colombia have fared little better, and Republican lawmakers have criticized the White House for mostly talk and little action. At one point in 1998, following a plea for help by White House drug czar General Barry McCaffrey, the U.S. Congress released US$290 million in emergency funding for Colombia. Yet nearly two years later, according to one Republican insider, “[n]ot one piece of equipment from that funding has arrived in Colombia yet. The general is not credible with this strategy; it is pie in the sky. Why should we trust him or the administration now after having screamed at them for three years to mind the store?”\textsuperscript{8} Clearly, something has gone terribly wrong in coordinating interdiction, eradication, and criminal justice efforts. Political corruption and ignorance at the highest levels of government in both the United States and Colombia, unprecedented narco-terrorism weakening the political resolve, and lack of consistency between successive U.S. and Colombian administrations in fighting the drug war have all conspired against a successful counternarcotics policy.

But now a sea change is underfoot on both sides of the Gulf of Mexico. Colombia is on the precipice of total collapse and the United States is planning a massive assistance package to prevent Colombia’s disintegration. In exchange, U.S. aid is predicated on Colombia’s demonstrated commitment and cooperation with U.S. goals in the region, including peace and stability. Many analysts, however, question Colombia’s capability and re-

\begin{itemize}
\item[7.] See generally \textit{Jenny Pearce, Colombia: Inside the Labyrinth} (1990) (containing detailed analysis of Colombia’s modern history).
\item[8.] Jaime Dettmer, \textit{Colombia Implodes}, \textit{Insight Mag.}, Sept. 13, 1999, at 9. In response, a White House insider stated that the Republicans “fail to appreciate what McCaffrey is trying to do and that he isn’t a water-carrier for the White House. He stakes out a position and then he defends it—and that is what he’s doing now. He is an apolitical appointment by law and electioneering doesn’t enter into his thinking.” \textit{Id.} \end{itemize}
solve to meet the expectations of its northern neighbor.\(^9\)

The growth of narcotics trafficking from Colombia to the United States and the development of different schemes to launder drug money are evidence of the international dimension of criminal activity. These activities are difficult to detect and even more difficult to prove. International organized crime is facilitated by the expansion of international trade, the increase of international travel, and the advance in communications. The traffickers and producers of illegal drugs move with great facility across borders. More practical, however, is the capability to direct the movements of their enterprise from home.\(^10\) Traffickers "make decisions quickly, are highly flexible in making necessary changes, emphasize reduction of business risks and have good instincts for selecting associates, subordinates, and experts."\(^11\)

Further complicating this complex enterprise, narcotrafficking is supported by legitimate industries such as telecommunications, computers, and chemical producers. Other firms emerge to meet the narcotrafficker's needs such as financial services firms ready and willing "to assist in money movements and container builders to construct exclusively for traffickers."\(^12\) In order to market their product, the Colombian groups operate through cells or branches in the United States and other countries. These organizations contract and subcontract with many people who specialize in various tasks. The various tasks include obtaining base from source countries, processing base, transporting the product to market, laundering money from the sales, providing the connections with the local officials and police, and offering security to protect the drug lords.\(^13\) Extensive cooperation is necessary for the United States and Colombia to bring these individuals to justice. Often evidence, accounting

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10. See 3 Sidney Jay Zabludoff, *Transnational Organized Crime* 2, 20-49 (1997) (examining Colombian narcotics organization as business enterprise and explaining how Colombian criminal groups apply their organizational skills to expand fast and efficiently). According to Zabludoff, these organizations have a "strong entrepreneurial bent." *Id.* These criminals developed distribution techniques and sophisticated global enterprises by organizing numerous players from different industries. *Id.*

11. *Id.* at 28.

12. *Id.* at 25.

13. *Id.*
records, currency, guns, drugs, and testimonies of key witnesses may only be found in one country. Unfortunately, politics, policies, and different legal systems offer barriers in curtailing safe heavens for criminals.

As the leading narcotics supplier, Colombia has been in the eye of the hurricane for more than thirty years. The hunger of the U.S. population for narcotics and the willingness of the drug cartels to succor that appetite resulted in an expansion of criminal activity affecting both countries. By the end of the 1970s, the two countries began building on bilateral and international mutual assistance agreements already in place to coordinate the coming fight against international drug trafficking. While many of the agreements have failed to be enforced or ratified, Colombia and the United States have reached a number of important agreements for mutual assistance in criminal matters.

Mutual assistance assumes that two or more countries can overcome constraints of international law for conducting extraterritorial law enforcement activities through various quid pro quo mechanisms. Cooperation and mutual assistance mechanisms are intended to compensate for the problems that can accompany the repression of an offense with foreign elements. In criminal matters for example, a state wishing to exercise its jurisdiction will want, depending on the case, to obtain pieces of evidence located in another state or to ensure the presence of the accused on its territory.

Among the terms of the International Narcotics Control Act of

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14. In the department of Norte de Santander, territory hotly contested by guerrillas of the Ejército Liberación Nacional ("ELN") and paramilitary groups, more than 100,000 acres of high quality coca is under cultivation. See La Guerra Blanca, Revista Semana, Aug. 30, 1999. Net coca cultivation has increased by 50% since 1996 and production is expected to increase by 50%. La Guerra, supra. Colombia has also become the primary supplier of heroin in the Eastern United States. See Drug Control, supra note 1, at 4.

15. See Warmund, supra note 5, at 2375 (citing 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. L.J. 1, 6 (1996)). By fall of 1996, there were almost 12 million illicit drug users in the United States. Id.


1989, 18 (or "Control Act") for instance, the targeted countries were urged to coordinate with INTERPOL in creating an international database on the flow of those types of weapons that are being acquired illegally by international narcotics traffickers. 19

A. Early Agreements in Criminal Matters Between the United States and Colombia

The United States has relied on various mutual assistance treaties and agreements with Latin America going back nearly sixty years. The Inter-American Treaty of Reciprocal Assistance20 (or "Inter-American Treaty") signed in 1947 declared in part, "[t]hat the obligation of mutual assistance and common defense of the American Republics is essentially related to their democratic ideals and to their will to cooperate . . . ."21 This treaty further stated:

"[t]hat the American regional community affirms as a manifest truth that juridical organization is a necessary prerequisite of security and peace, and that peace is found on justice and moral order and, consequently, on the international recognition and protection of human rights and freedoms, on the indispensable well-being of the people, and on the effectiveness of democracy for the international realization of justice and security."22

While the intent of the treaty was to pledge mutual assistance in the event of "an armed attack by any State against an American State,"23 and to resolve differences between North, South, and Central American States amicably and under the terms of Articles 51 and 54 of the Charter of the United Nations, the treaty opened the door to possible intervention by one American State in the affairs of another American State if the peace and the security of the region were threatened.

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State

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19. Id. § 12(c).
21. Id.
22. Id.
23. Id. art. 3.
should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent.\textsuperscript{24}

If the treaty required consultation among signatories, then the reasonable response would be the mobilization of some type of multinational force to resolve the conflict. The notion of multilateral regional enforcement has remained a debatable component of subsequent mutual cooperation agreements and treaties. It has taken the form of calls to create a multilateral strike force or peacekeeping force under the authority of the Organization of American States.

The spirit of the Inter-American Treaty continued throughout the early days of the Cold War. In 1960, the U.S. Congress passed the Foreign Assistance Act of 1961\textsuperscript{25} ("Act"), intended as

\begin{quote}
[a]n Act to promote the foreign policy, security, and general welfare of the United States by assisting people of the world in their efforts toward economic development and internal and external security, and for other purposes.\textsuperscript{26}
\end{quote}

The Act extended various types of assistance to friendly countries, including military assistance\textsuperscript{27} and, more significantly, it laid out the ground rules for U.S. personnel working on foreign assistance-related programs in the region.\textsuperscript{28} The Act became an early road map for technical advisers and consultants—the point-persons for fighting the Cold War in Latin America. The

\textsuperscript{24} Id. art. 6.


\textsuperscript{27} Id. Part II, chap. 2, § 503 et seq. It is notable that as early as 1961, in § 502, Congress called for the creation of an international military force under the Organization of American States.

\textsuperscript{28} Id. chap. 2, § 621 et seq.
Act would form the foundation upon which subsequent legislation for mutual assistance and mutual legal assistance in criminal matters would be added.\(^\text{29}\) For instance,

Section 490 of the Act, as amended by 22 U.S.C. 2291(j) requires the President to certify by March 1 of each year which drug producing and shipping countries have fully cooperated with the United States or took adequate steps to achieve full compliance during the previous year with the goals established by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.\(^\text{30}\)

Upon failure to meet the statutory objectives, the U.S. President can decertify or grant a vital national interest certification.

### B. Mutual Legal Assistance in Criminal Matters

International evidence gathering is one of the most crucial challenges in criminal prosecution. While borders do not present an obstacle to criminals, they are a hindrance to prosecutors. Because sovereignty precludes an official from a specific country from acting on behalf of a foreign state, obtaining evidence in a foreign jurisdiction presents a number of problems. Different legal systems contain distinct formalities and procedures. Moreover, interpreting rules and translations often result in misunderstandings and confusion. To overcome such challenges and be able to investigate and prosecute transnational organized crime, the United States has entered into Mutual Legal Assistance Treaties in Criminal Matters ("MLAT") with different countries.\(^\text{31}\)

MLATs allow countries to cooperate in the fight against int-

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29. Under the Foreign Assistance Act, each year the U.S. Department of State must prepare an International Narcotics Control Strategy Report ("INCSR"). This report supplies the factual source for the presidential narcotics certification determinations for major drug producing and drug-transit countries. Certification depends partly on whether a country, during the prior year, fully cooperated with the United States, or took adequate measures on its own, to achieve full compliance with the goals and objectives established by the 1988 U.N. Drug Convention. Under the law, the report must state the extent to which the country that has received international narcotics assistance in the past two fiscal years, has "met the goals and objectives of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances." For more information, see Bruce Zagaris, *U.S. International Cooperation Against Transnational Organized Crime*, 44 WAYNE L. REV. 1401 (1998).

30. See Drug Control, supra note 1, at 4 n.3.

ternational crime. With an MLAT in place, judges overseeing investigations abroad may ask the judicial authorities of the requested country to handle the case on his or her government’s behalf. The requested state will then give mutual assistance by executing the official acts requested on its territory and forwarding the results to the requestor state in a specific criminal case. Mutual legal assistance encompasses service of summons, the production and certification of judgments and other court documents, searches and seizure of property, hearing witnesses, and securing and handing over evidence, documents, objects, and assets. MLATs supplement international law enforcement assistance to enforcement officials.

In particular, their purpose is to serve as a more effective and efficient substitute for letters rogatory when compulsory process is required to obtain evidence, or when specific procedures must be complied with for the evidence to be admissible at a criminal trial in the requesting country. Whenever possible, it is most efficient for countries to deal directly at the police level. In most instances, MLATs specifically provide that the treaty countries can provide law enforcement assistance to each other through other channels.

Regarding mutual assistance in criminal investigations, the United States and Colombia have signed various agreements. The only legal assistance treaty currently in force in the administration of justice, however, is the 1976 agreement to cooperate in the investigation of the activities in Colombia of the Lockheed


Aircraft Corporation ("Lockheed Agreement"). Otherwise, the exchange of evidence and in general the judicial mutual assistance with the United States is accomplished under Article 7 of the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances ("Vienna Convention").

As part of the Lockheed Agreement, the United States and Colombia agreed to share any relevant information or materials available to them. The parties were to keep all correspondence and information confidential, and the information could not be disclosed "to third parties or to government agencies having no law enforcement responsibilities." Cooperation was to be discontinued if breach of confidentiality took place. Section 5 of the Lockheed Agreement requires that the parties "use their best efforts" to supply evidence "in such form as to render it admissible pursuant to the rules of evidence in existence in the requesting state." This section indicates ignorance of two different legal systems.

Sharing evidence usable in foreign jurisdictions remains problematic. When the extradition treaty with the United States was suspended in the early 1990s, attempts were undertaken "to bring narcotraffickers to justice in Colombia by sharing evidence with Colombian prosecutors."

The experiment was a dismal failure. Some U.S. crimes are not considered so in Colombia, sentencing guidelines are different and sentence reductions for various kinds of good behavior resulted in acquittals or sentences found shockingly short by U.S. officials and public opinion. In addition, Colombia's then Prosecutor General publicly favored legalization. Evidence sharing was discontinued in March 1994, and


38. Id.

39. Id.

40. Ambassador Myles Frechette, Address at the Center for Strategic and International Studies (Oct. 21, 1999).
has not been resumed.\textsuperscript{41}

Poor drafting of legal assistance agreements has generated frustration, confusion, and enormous misunderstanding. The common law system of the United States differs greatly from the inquisitorial civil law system of Colombia.\textsuperscript{42} Colombian courts are unfamiliar with the evidentiary rules of the United States, and the rules used in Colombia seem unusual and at times irregular to U.S. courts. For this and other reasons, numerous mutual assistance agreements have broken down or never been implemented.

C. The Mutual Legal Assistance Treaty of 1980

In 1980, the United States and Colombia signed the Treaty on Mutual Legal Assistance\textsuperscript{43} ("Treaty"). Although the agreement was signed and there was an exchange of notes, the Treaty was not ratified. This agreement does, however, merit some discussion. The purpose of the Treaty was to provide for "a broad range of cooperation in criminal matters," including:

1. executing requests relating to criminal matters;
2. taking testimony or statements of persons;
3. effecting the production, preservation, and authentication of documents, records, or articles of evidence;
4. returning to the requesting Party any objects, articles, or other property or assets belonging to it or obtained by an accused through offenses;
5. serving judicial documents, writs, summonses, records of judicial verdicts, and court judgments or decisions;
6. effecting the appearance of a witness or expert before a court of the requesting Party;
7. locating persons; and
8. providing judicial records, evidence, and information.\textsuperscript{44}

The Treaty contained a number of important features worth

\textsuperscript{41} Id.
\textsuperscript{42} For more discussion on the differences, see Luz E. Nagle, Colombia's Faceless Justice: A Necessary Evil, Blind Impartiality or Modern Inquisition?, 61 U. Pitt. L. Rev. (forthcoming 2000).
\textsuperscript{44} Message from the President of the United States Transmitting the Treaty on Mutual Legal Assistance Between the United States of America and the Republic of Colombia, signed at Washington, DC, on Aug. 20, 1980.
mentioning because the language set the tone for subsequent conflicts in mutual cooperation between Colombia and the United States. Article 4 included a significant caveat that allowed either the United States or Colombia to refuse requests under the Treaty. Article 5(1)(a) permits refusal where assistance would adversely affect the security of the requested State. This includes cases where assistance would involve the disclosure of information that is classified for national security reasons. One commentator perceived this article as a lack of willingness by the United States to reciprocate upon requests from Colombia. 45

Article 14 was a call for further tensions between the countries since it would cause practical problems in mutual assistance. 46 Article 14 obliges each contracting Party to furnish records or other forms of evidence to the other on the same condition and to the same extent as it would be available to its own authorities in similar investigations, proceedings, or trial. This obligation is consistent with the Treaty’s basic requirement that the requested State follow the same practices and procedures in executing a request for assistance as it normally follows in domestic investigations or proceedings of similar gravity.

Again, evidence gathering differs in both countries. Colombia lacks rules of evidence or the methodology employed by the lawyers and courts in the United States. Unlike in the United States, in Colombia the judge decides what evidence is admissible. Some evidence is obtained under duress or torture. At times, corrupt judicial and law enforcement officials manufacture evidence and there are no avenues for the defendant to make it inadmissible. 47

One commentator perceived Article 12 to be a form of extradition circumventing an extradition treaty. “Requiring the transfer of a person in custody for the purpose of confrontation is nothing more than obtaining a defendant avoiding the proceedings of an extradition treaty.” 48 There were several obstacles to this agreement. Mistrust and the differences in the sys-

45. Interview with a noted Colombian lawyer who did not want to be identified for fear of losing his U.S. visa.
46. Id.
47. For an expanded analysis on the judiciary in Colombia, see Nagle, supra note 42.
48. See supra note 45.
tems that apply various procedures and methods were some of the biggest problems. Another problem was the perception that the United States would not reciprocate. One of the more bothersome sections of the Treaty were Article 1 and Article 10 involving the taking of testimony or statements of persons before a judge. In Colombia, there are no rules of evidence as there are in the United States; the judge performs the cross-examination. The examination done by a prosecutor or the defense lawyer is very limited and fails to attack the credibility of a witness or the admissibility of the evidence. Often the defense lawyer is limited in his or her intervention. Moreover, the seizure and the return to the requesting state of objects was also considered an imposition on Colombia that by then did not have any forfeiture laws.

There is a huge need for cooperation, understanding, and accommodation of different legal cultures and systems. Diplomacy can lead to successful mutual cooperation or create a fiasco. Perhaps the Treaty's downfall stems from it having been negotiated during a time of tremendous resentment toward the United States, when the Reagan administration was seen as an aggressor in Latin America against leftist, unionist, and socialist movements throughout the region. Additionally, the administration of Julio Cesar Turbay Ayala in Colombia was perceived as attempting to internationalize Colombia's internal problems. More importantly, Turbay sought to internationalize the mechanisms to confront the internal conflicts. The last two years of the Turbay's administration were considered years of subordinated collaboration with Washington D.C. regarding bilateral and multilateral issues. The political climate bred antagonism and contempt toward the United States.

Recognizing that crime continued to flourish, Colombia and the Untied States tried various avenues to develop a frame-

49. Interview with a highly placed Colombian criminal defense lawyer who did not wish to be named.
50. Id.
51. For a detailed background on the era, see PEARCE, supra note 7, at 152, 153-54, 195. This was when the so-called "Dirty War" emerged in Colombia between the drug lords, the army, businessmen, landowners, and political bosses tasked with killing guerrillas and left-wing civilian activists. Id.
53. Id.
54. Id.
work for cooperation to combat the borderless crimes that narcotraffickers commit. In 1989, the United States, under the terms of the International Narcotics Control Act of 1989, continued with the war on drugs, pledging more than US$240 million in military and economic aid to Bolivia, Colombia, and Peru. Congress agreed to fund and provide training and material support for various Colombian military operations including interdiction and eradication, economic support such as "crop substitution programs and alternative employment opportunities," and multilateral support for developing an "international antinarcotics force for the Western Hemisphere." In exchange for U.S. support, the countries identified under the Control Act were obligated to strengthen respect for and adhere to human rights standards generally accepted under international law. Countries in compliance with human rights standards would be granted debt relief on principal and interest owed to the U.S. government under the Foreign Assistance Act of 1961. Furthermore, if the targeted countries performed according to the terms of the Control Act, Congress would direct the President to review "whether the International Coffee Agreement negotiations should be resumed and whether the trade benefits provided in the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 and following) should be extended to the major coca producing countries of Latin America." The Control Act was a good example of "carrot and stick diplomacy."

Approximately one year later, the Declaration of Carta...
MUTUAL ASSISTANCE TO COLOMBIA

The Declaration of Cartagena ("Declaration") signed by Bolivia, Colombia, Peru, and the United States in February 1990, set forth the agenda for the 1990s for mutual cooperation in the war against drugs. While economic assistance, alternative development and crop substitution, and trade initiatives were at the forefront of the Declaration, the goal was to promote the idea that suppression of coca production and trade would result in significant, immediate, and long-term economic costs that would affect each of the Andean countries in various ways. The Declaration hoped to set an agenda for the signatories to "cooperate to identify the type of assistance required," and implement new cooperation programs primarily for the years 1991 through 1994. Significantly, the Declaration stressed the importance of trade and private investment in the region as being "essential to facilitate sustained economic growth and to offset the economic dislocations result-


The Parties consider that a strategy which commits the Parties to implement or strengthen a comprehensive, intensified anti-narcotics program must address the issues of demand reduction, consumption and supply. Such a strategy also must include understandings regarding economic cooperation, alternative development, encouragement of trade and investment, as well as understandings on attacking the traffic in illicit drugs, and on diplomatic and public diplomacy initiatives.

The Parties recognize that these areas are interconnected and self-reinforcing. Progress in one area will help achieve progress in others. Failure in any of them will jeopardize progress in the others. The order in which they are addressed in the document is not meant to assign to them any particular priority.

Economic cooperation and international initiatives cannot be effective unless there are concomitant, dynamic programs attaching the production of, trafficking in and demand for illicit drugs. It is clear that to be fully effective, supply reduction efforts must be accompanied by significant reduction in demand.

The Parties recognize that the exchange of information on demand control programs will benefit their countries.

The Parties recognize that the nature and impact of the traffic in and interdiction of illicit drugs varies in each of the three Andean countries and cannot be addressed fully in this document. The Parties will negotiate bilateral and multilateral agreements, consistent with their anti-narcotics efforts, specifying their responsibilities and commitments with regard to economic cooperation and intensified enforcement actions.

63. Id. § 2.
64. Id. § 1(A).
ing from any effective program against illicit drugs."\(^65\) Now, some ten years later, forty percent of the Colombian territory is under guerrilla control, one third of the countryside is under coca cultivation,\(^66\) and foreign investment is under attack by guerrilla and paramilitary combatants. Much of the guerrilla conflict concerns the presence of foreign investment in Colombia, particularly investments involving exploitation of Colombia’s natural resources. It seems somewhat obvious that during the decade following the Declaration, little was accomplished with regard to the Declaration’s goals.

D. Mutual Assistance Agreement of 1991

Other mutual assistance agreements perfected between the United States and Colombia include a 1991 agreement to prevent the illegal flow of precursor chemicals to Colombia for the manufacture of cocaine,\(^67\) and an important long-arm cooperative agreement regarding the seizure of assets acquired from narcotrafficking.\(^68\) Under the latter agreement, Colombia acknowledges its policy of cooperation with the United States, and obliges itself to provide assistance to the “United States in investigations and proceedings involving or related to the seizure and forfeiture of the property and proceeds of illicit trafficking in narcotic drugs or psychotropic substances or any criminal activity connected therewith.”\(^69\) Colombia is to assist the United States by “providing information and evidence to be used in proceedings relating to the identification, tracing, freezing, seizure or forfeiture of property or proceeds.”\(^70\)

There are several problems with Colombia’s rhetorical commitments. In order to seek certification by the United States and to comply with its commitment related to asset forfeiture, Co-

65. Id. § 3.
66. See General Barry McCaffrey, Debates over New Aid Package for Colombia: All Things Considered, N.P.R., Feb. 15, 2000 (containing McCaffrey’s briefing to Congress).
69. Id.
70. Id.
Colombia enacted a law providing for asset-forfeiture when the assets were acquired dishonestly.\textsuperscript{71} Colombia's corrupt Congress,\textsuperscript{72} however, passed a law with several problems. The law fails to prevent foreclosures, cancellation of bank accounts, transfer of title deeds to front men, or fabrication of mortgages. Also, lack of intelligence prompts the failure to implement effectively this law. Traffickers change their names to avoid authorities locating their properties. They set up front companies or non-profit companies, relinquish their rights to foundations with non-profit purposes, or present false balance sheets. Colombia does not have the intelligence or trained personnel capable to deal with such issues.\textsuperscript{73} The Colombian asset forfeiture provision is far from satisfying the Vienna Convention standards. Perhaps there is fear that amending the law would threaten the lives of those lobbying for its improvement.

Colombia has shown patchy resolve to conform to the U.S. wishes to see drug traffickers brought to justice or their money taken away. Mutual assistance depends on the ability of the representative contact officers, in this case the U.S. and Colombian Attorney Generals, to bring the agreements into effect. "Mutual legal assistance problems include instances arising from questionable members that have ratified the relevant international conventions or do not have the necessary domestic legislation in effect."\textsuperscript{74}

Given the level of corruption and incompetence within Colombian justice, political class, and law enforcement, one must acknowledge that mutual assistance has yielded some successes. It is difficult to determine the amount of failures that occurred in relation to each success—or if some of the successes have been staged sacrifices that were done in order to throw the dogs off the scent.\textsuperscript{75}

\begin{itemize}
  \item \textsuperscript{71} Law 333 of December 1996 (Colom.).
  \item \textsuperscript{72} Many members of Congress were involved in "El Caso 8,000" and received money from the Cali Cartel. For an excellent discussion on the Caso 8,000 and the corruption of the political class in Colombia, see Edgar Torres, Rehenes de la Mafia 290-320, 509-38 (1998).
  \item \textsuperscript{73} See supra note 45.
  \item \textsuperscript{74} Bruce Zagaris, A Brave New World: Recent Developments in Anti-Money Laundering and Related Litigation Traps for the Unwary in International Trust Matters, 52 Vand. J. Transnat'l L. 1023, 1033 (1999).
  \item \textsuperscript{75} Cases in point include allegations that the Cali Cartel played a significant role in the demise of the Medellin Cartel in order to neutralize the competition for markets
\end{itemize}
In addition to drug interdiction and eradication assistance, Colombia is receiving economic assistance and rule of law assistance in an attempt to stabilize its economy and improve the justice system. The endeavors are spearheaded by the U.S. Agency for International Development (or "USAID"). With regard to narcotics control and eradication, the goals are more specific.

in the United States and Europe, and that the Medellin Cartel delivered drug kingpin Carlos Lehder into the hands of the government when he became a liability due to his own drug addiction and drug-induced schizophrenia. See Fabio Castill, Los Jinetes de la Cocaina, Documentos Periodisticos, Bogota, 1988. See also Torres, supra note 72.


1. reduction of production and trafficking of illicit drugs;
2. promotion of participative [sic] local governance in preparation for a negotiated end to the internal conflict;
3. increased observance of human rights; and,
4. continued Colombian support to U.S. Hemispheric objectives, including Summit of the Americas goals and the advancement of free trade.

Id. The report further notes that USAID was slated to withdraw at the start of fiscal year 2000, but the election of President Andres Pastrana in 1998 and his initiatives in the arena of judicial reform, human rights, and particularly alternative development, precipitated a change in policy. Id. USAID's efforts are concentrated in these three areas. Id. USAID's current plans include activities in several areas. Id. The first area is Justice Assistance. Id. USAID apparently wants to introduce a U.S. style court system. They will do this by training the Superior Judicial Council, the Prosecutor General's staff, and the Public Defender's office. Id. They will also work with the local bar associations, academics, and the media to "foster the development of a judicial culture supportive of the oral process." Id. The second area is Access to the Justice System by the Poor. Id. USAID intends to increase the numbers of public defenders. Id. They also want to intervene in the Colombian justice system by establishing more "casas de justicia" in the community, and refer legal conflicts to these officials. Id. They also plan to introduce techniques such as Alternative Dispute Resolution, and to assist the public defenders in managing caseloads. Id. The third area of USAID's current plans is Human Rights. Id. USAID plans to facilitate prosecution of human rights violations by paramilitaries, FARC guerrillas, and the Colombian military. Id. They plan to do this by strengthening the Vice President and Attorney General, the Prosecutor General's human rights unit, and the Human Rights Ombudsman. The fourth area is Civil Society. Id. USAID will help build a coalition of Colombian organizations engaged in civic education, conflict resolution and reconciliation, and will help establish a "Challenge Fund" to encourage Colombian and international financing of innovation and support activities for conflict resolution and reconciliation. Id. USAID is concerned that the most egregious human rights violators are virtually immune from prosecution. Id. USAID's next current activity is the National Legislature. Id. At Colombia's request, USAID plans to modernize administrative/committee functions in the Colombian legislature, and try to increase popular access through mechanisms such as public hearings. Id. They wish to get the ability to oversee judicial discipline to the Legislature. Id. The final area is the war with FARC. Id. FARC guerrillas control 40% of the rural area in the south and east. Id. They rely on the drug trade for assistance and prey on local populations. Id. USAID
They are to "[e]liminate the cultivation of opium poppy, coca leaf, and marijuana; [s]trengthen host nation capabilities to disrupt and dismantle major drug trafficking organizations and prevent their resurgence; and [d]estroy the cocaine and heroin processing industries and stop the diversion of licit chemicals into illicit channels."77

Joint cooperation has continued at a steady pace since 1989, even though problems with Ernesto Samper's administration's ties to drug trafficking led to temporary setbacks between the two countries. Efforts got back on track with Colombian President Andres Pastrana coming into office and with the penning of an agreement during his October 28, 1998 state visit in which he and President Clinton signed a Counternarcotics Alliance ("Alliance"). Pursuant to the Alliance, both nations will work jointly in a number of areas, from aerial eradication to money laundering, and the ultimate goal is to stem the flow of narcotics from Colombia to the United States.

E. 1997 Agreement to Suppress Illicit Traffic by Sea

Since the mid-1990s, the maritime transportation of illicit drugs off Colombia's Pacific and Atlantic coasts have increased dramatically. This period corresponded with decertification. Perhaps due in part to decertification, the Colombian government was pressured into signing the Agreement to Suppress Illicit Traffic by Sea78 ("Sea Agreement") in 1997. The Sea Agreement signaled an end to six years of Colombia refusing to allow the U.S. Coast Guard to board Colombian vessels outside Colombian waters.79 In one of the largest single Colombian cocaine seizures, a U.S. naval vessel recently intercepted a fishing boat in the Pacific laden with six tons of cocaine.80 Usually traffickers go

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78. The Agreement to Suppress Illicit Traffic by Sea was signed between the United States and Colombia on February 20, 1997 [hereinafter Sea Agreement].


from the north coast of Colombia to the remote Bahamian islands. There, drugs are loaded onto high-speed boats for a final run to the United States. Another corridor transits the eastern Caribbean. There the drugs are "repackaged as domestic freight and transported north by cargo or courier via busy airports with perfunctory customs checks."81

Traffickers decided to shift from air transportation to sea passage because of successful U.S. Southern Command's interdiction efforts against the Peru-Colombia air-bridge.82 This change to maritime transportation, however, brought different challenges for law enforcement. Targets became "more numerous, harder to sort, tougher to monitor undetected, and especially hard to detect when hidden in bulk commercial cargo."83 Moreover, the Colombian navy lacked the tools, equipment, and training required to detect, follow, and seize high-speed boats crossing the Caribbean. This gap in interdiction needed to be filled. Finally, in 1997, Colombia was compelled to cooperate more adequately in the interdiction of narcotrafficking by the sea.

The Sea Agreement improves cooperation between maritime forces. In scope, the U.S.-Colombian agreement is similar to the "Ship Rider" agreements between the United States and most of the Caribbean nations.84 Under Ship Rider agreements, the United States can operate within the waters of signatory countries and board vessels under foreign flags suspected of smuggling.85 The goal of Ship Rider agreements, according to

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83. Id.
85. Id. Corrine Barnes stated:

In 1996, Caribbean governments signed a "Ship Rider" agreement which gave U.S. officials permission to board vessels in Caribbean countries' waters to check for drugs.

That agreement was aimed at making it easier for countries to work together and intercept a greater number of high-speed boats [going] their way from South America and up the Caribbean islands.

"The Ship Rider agreement has had some effect, although the speed
U.S. Secretary of State Madeleine Albright, is "to construct a web of legal arrangements and law enforcement actions that will discourage international criminals from acting, and leaving no place to hide if they do." The transshipment of drugs across the Caribbean has continued to flourish, if for no other reason than that the high-speed boats used by traffickers can evade almost all naval vessels from the United States and cooperating countries. It is now estimated that up to forty percent of the drugs that reach the United States pass through the Caribbean. According to General McCaffrey, the Ship Rider agreements and the Colombia Sea Agreement (or "Sea Agreement") should prove successful in curtailing or slowing down the maritime shipment of drugs.

It is interesting to note that almost immediately following the signing of the Sea Agreement, U.S. Ambassador to Colombia Myles Frechette sent a letter to Colombia's Minister of National

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boats that these traffickers use—no U.S. or Jamaican Coast Guard can match the speed of those boats. We would need aircraft to follow them," said [Berris Spence, senior superintendent of police in charge of the narcotics division in Jamaica].

Id.

60. Id.

61. See id. (noting that it was estimated that by beginning of 1999, "more than 40 percent of the drugs that reach the United States pass through the Caribbean").

62. Id.

63. General Barry McCaffrey, Director of White House Office of Drug Control Policy Foreign Press Center Briefing on His Trip to Haiti and Jamaica and the Upcoming Regional Caribbean Drug Control Conference in Miami, National Press Club, Fed. News Serv., Oct. 8, 1998. When asked by a reporter about the success of the ship rider agreements, General McCaffrey responded:

I think probably the most impressive thing that has come out of the Barbados Summit, has been some steady success in building, not a series of bilateral cooperations, but a multinational sense about all this. So, Joint Interagency Task Force East in Key West, Florida, has become the focal point for a series of multinational conferences. Part of that were . ship rider agreements with various nations. And one of them that is worth commenting on, is the Jamaica-U.S. cooperation, in which there have been some extremely significant seizures, and increasingly professional cooperation between Jamaica and the United States. But I might add, this is also going on in Haiti.

The Coast Guard has gone from nothing to 96 people and seven operational vessels, in the space of 18 months. And there were actually seven significant seizures of cocaine by the Haitian Coast Guard in the last year, a very professional organization. And they put ship riders aboard U.S. Coast Guard vessels operating both in the bay and off the south shore. So I think the ship rider agreements are going to make a huge difference.

Id.
Defense notifying him that in accordance with Clause 10 of the Sea Agreement, the United States had authorized U.S. Coast Guard enforcement detachments “to embark on warships and other vessels on government service to the United Kingdom in order to engage in operations to suppress illicit traffic by sea.”

Within five days, the Colombian government acknowledged the authorization of warships and vessels of the Kingdom of the Netherlands also to carry U.S. Coast Guard enforcement detachments.

Under the Sea Agreement, if there is reasonable ground to suspect involvement in illicit traffic, then a party can board and search private or commercial vessels of the nationality or registry of either party “when found seaward of the territorial sea of any State.” Each party also consents to detect and monitor suspect vessels and aircraft located in its territorial waters and airspace. To do so,

[t]he Parties undertake to develop procedures and identify and employ technical equipment needed to improve timely communication between their operations centers and employ other assets, so that detection and tracking of suspect vessels and aircraft, located in the territorial waters and airspace of each Party, is conduct and maintained by their own authorities and that suspect vessels and aircraft can be brought by them under their control.

The Sea Agreement also sets forth the implementation procedures for requesting stopping and boarding suspect vessels. The most interesting aspect of the request/reply process is that, “[i]f the requested Party has not responded to the request for authorization to board and search within three (3) hours of receipt of the request, it shall be understood that the authorization has been granted.” Prior to the agreement, the United States could take no action until permission was granted by the Colom-

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92. See Sea Agreement, supra note 78, item 6. Each party exercises sovereignty in its territorial waters. See id. item 4.
93. Id. item 5.
94. Id. item 8.
bian embassy, a process that could take all day.\textsuperscript{95} The authoriza-
tion refers only to the conduct of boarding of vessels of a flag or
the requested State. If the vessel was not of the flag of the re-
quested party, then the requesting party would proceed in ac-
cordance with international law.\textsuperscript{96}

The Sea Agreement delineates the conduct of law enforce-
ment officials during boarding and search operations. The offi-
cials should not use firearms unless needed in self-defense or in
the following cases:

(a) To compel the suspect vessel to stop when the vessel has
    ignored the respective Party’s standard warning to stop;
(b) To maintain order on board the suspect vessel during
    the boarding and search or while the vessel is preven-
tively held, when the crew or persons on board resist, im-
    pede the boarding and search or try to destroy evidence
    of illicit traffic on the vessel, or when the vessel attempts
    to flee during the boarding and search or while the vessel
    is preventively held.\textsuperscript{97}

According to the Sea Agreement, the use of firearms or
force “shall be the minimum reasonably necessary and propor-
tional under the circumstances.”\textsuperscript{98} This standard, however, is
hard to determine and provisions (a) and (b) are open to rather
broad interpretation. The use of force to compel a vessel to stop
under section (a) has come to include any number of measures.
Most recently, Coast Guard MH90 Enforcer helicopters have car-
rried snipers using laser sighted .50 caliber Robar rifles to disable
the engines of the high speed “go-fast” smuggling boats.\textsuperscript{99} The
Coast Guard is also now using high-speed chase boats armed
with machine guns used to fire warning shots across the bows of
the smuggling vessels. “They also use a ‘spinball’ that showers
rubber pellets and a net to snare boat propellers.”\textsuperscript{100}

During 1999, the United States maintained military assets in the
region, including “seven P-3 counterdrug upgrade aircraft,

\textsuperscript{95} Interview with former U.S. Coast Guard boarding officer at Steson University
School of Law, St. Petersburg, FLA (Apr. 15, 2000).
\textsuperscript{96} Sea Agreement, \textit{supra} note 78, item 8.
\textsuperscript{97} \textit{Id.} item 12.
\textsuperscript{98} \textit{Id.}
\textsuperscript{99} Robin Mitchell, \textit{Officials Drawing Bead on Drug Runs, St. Petersburg Times},
Sept. 14, 1999, at 1B (“The Coast Guard says go-fasts carry more than 85 percent of all
maritime drug shipments.”).
\textsuperscript{100} \textit{Id.}
two Relocatable Over-the-Horizon radars, one E-3 AWACs and four E-2 surveillance planes, four F-16 fighters, three TAGOS radar picket boats, and other Navy and Coast Guard warships."\textsuperscript{101} The traffickers, however, continue to prove resourceful adversaries:

Traffickers have displayed a remarkable resilience and ingenuity in keeping one step ahead of detection. Sophisticated satellite-positioning systems and the latest communication technology are often used to coordinate drops in the least policed waters. To elude U.S. radar, they now use 'stealth boats' made entirely from wood and fiberglass, as well as semi-submersible vessels.\textsuperscript{102}

Furthermore, pursuant to the Sea Agreement, the boarding party must submit a timely report on the events of the operation to the other party. Moreover, if evidence of drugs is found, a party can request information "on the status of all investigations, prosecutions and judicial proceedings resulting from boardings and searches conducted."\textsuperscript{103} This assistance is provided under Article 7 of the Vienna Convention.\textsuperscript{104} Mutual legal assistance under Article 7, for the purposes of the boarding agreement, would include taking evidence or statements of persons, effecting services or judicial documents, executing searches and seizures, examining objects and sites, and providing information and evidentiary items.\textsuperscript{105}

F. Customs Service Mutual Assistance Agreement of 1999\textsuperscript{106}

Money laundering is not only connected with drug trafficking,\textsuperscript{107} but also "is the companion of brutality, deceit and corrup-

\textsuperscript{101} Tony Capaccio, Kosovo Campaign Weakens Drug War, General Says, 20 DEFENSE WEEK 18 (1999).
\textsuperscript{102} McElroy, supra note 81, at 9.
\textsuperscript{103} Sea Agreement, supra note 78, item 13.
\textsuperscript{104} Vienna Convention, supra note 36. Under the Vienna Convention, the parties must take legal measures to prohibit, criminalize, and punish all forms of illicit drug production, trafficking, and drug money laundering, to control chemicals that can be used to process illicit drugs, and to cooperate in international efforts of these goals.
\textsuperscript{105} Id. art. 7(2)(a)-(c).
\textsuperscript{106} Customs Service Mutual Assistance Agreement, Sept. 21, 1999, U.S.-Col., U.S. Customs Service—Office of International Affairs, Washington, D.C.
tion." The assault on money laundering is a necessary strategy in the war on drugs and the fight against organized crime worldwide. Taking away the money from the traffickers and organized crime constitutes half the battle. Today, many nations recognize that they must implement strategies to follow the money and cooperate with other countries in this endeavor. Money laundering takes place when an individual conducts a financial transaction with knowledge that the funds or property involved are the proceeds of a crime, and he intends either to further the purpose of that crime, or to disguise or conceal the proceeds.

During the 1994 Summit of the Americas, the leaders of the participating nations signed a Declaration of Principles that included the commitment to fight drug trafficking and money laundering. A ministerial conference followed to study and agree on a cooperative hemispheric response to fight money laundering.

Law Journal] [hereinafter NATIONAL MONEY LAUNDERING STRATEGY] (representing comprehensive strategic implementation of various techniques to be employed to combat damaging effects of money laundering around world). The National Money Laundering Strategy of 1999 ("National Money Laundering Strategy") is the first report in a series of five annual reports that are required by the Money Laundering and Financial Crimes Strategy Act of 1998. There must be an underlying predicate offense or crime, such as drug trafficking, that assisted in generating the money that is being laundered. Id. at 5-6. "The money laundering statute now extends to the proceeds of more than 170 separate offenses." Id. at 16.


110. See Money Laundering and Financial Crimes Strategy Act, 31 U.S.C. 5340(2)(A) (1998); see also NATIONAL MONEY LAUNDERING STRATEGY, supra note 107, at 14 (describing that law enforcement experts have divided process of money laundering into three stages). The first stage is placement, and involves putting the illicit funds into the financial system. Id. The second stage is layering, whereby the illegal funds are moved and transferred between various nations and financial institutions in order to conceal the origin of the funds and to suggest a legitimate source for the funds. Id. The third stage is integration, and occurs when the funds are transferred again, however at this point the launderer moves the funds back into working capital in order to refinance the continuing illegal activities. Id.

111. The governments acknowledged that illegal drug and related criminal activities were grave threats not only to the societies, but also to free market economies and democratic institutions of the hemisphere. See Summit of the Americas Plan of Action (visited Apr. 5, 2000) <http://www.summit-americas.org/miamiplan.htm> (on file with the Fordham International Law Journal). They committed themselves to:

Radify the 1988 United Nations Convention against the Illicit Traffic of
laundering. The conference created awareness that money laundering was not just a law enforcement issue, but a financial and economic issue, which required the coordination of inter-agencies. At the 1998 Summit of the Americas, the leaders agreed to “[e]ncourage financial institutions to redouble their efforts to prevent money laundering and the appropriate business sectors to strengthen its controls to prevent the diversion of chemical precursors.” The leaders also agreed to give full support to the June 1998 Special Session of the U.N. General Assem-

Narcotics and Psychotropic Substances and make it a criminal offense to launder the proceeds of all serious crimes.

Enact legislation to permit the freezing and forfeiture of the proceeds of money laundering and consider the sharing of forfeited assets among governments.

As agreed by ministers and representatives of Caribbean and Latin American governments in the Kingston Declaration, November 5-6, 1992, implement the recommendations of the Caribbean Financial Action Task Force on Money Laundering and work to adopt the Model Regulations of the Inter-American Commission on Drug Abuse Control (“CICAD”).

Encourage financial institutions to report large and suspicious transactions to appropriate authorities and develop effective procedures that would allow the collection of relevant information from financial institutions.

Work individually and collectively to identify the region’s narcotics trafficking and money laundering networks, prosecute their leaders, and seize assets derived from these criminal activities.

Adopt programs to prevent and reduce the demand for and the consumption of illicit drugs.

Adopt effective and environmentally-sound national strategies to prevent or reduce substantially the cultivation and processing of crops used for the illegal drug trade, paying particular attention to national and international support for development programs that create viable economic alternatives to drug production.

Pay particular attention to the control of precursor chemicals and support comprehensive drug interdiction strategies.

Strengthen efforts to control firearms, ammunition, and explosives to avoid their diversion to drug traffickers and criminal organizations.

Hold a working-level conference, to be followed by a ministerial conference, to study and agree on a coordinated hemispheric response, including consideration of an inter-American convention, to combat money laundering.

Convene a hemispheric-wide conference of donors, including multilateral development banks and UN agencies, to seek resources for alternative development programs aimed at curbing the production, trafficking, and use of illicit drugs, and the rehabilitation of addicts.

Support the discussion the OAS has initiated with the European Union on measures to control precursor chemicals.

Support the convening of a global counter-narcotics conference.

Id. 112. Id. The ministerial conference was held in December 1995 in Argentina. 113. Second Summit of the Americas Plan of Action (visited Apr. 5, 2000) <http://
bly to promote international cooperation with respect to illicit drugs and related crimes. The states were to ensure effective implementation of international narcotics agreements to which they subscribed, at regional and sub-regional levels.

On September 21, 1999, after considering that "[o]ffenses against customs laws are prejudicial to the economic, fiscal and commercial interests of their respective countries," and after recognizing "[t]he need for international cooperation in matters related to the application and enforcement of the customs laws of their respective countries," the United States and Colombia entered into a bilateral agreement to facilitate joint efforts in combating international money laundering activities. The Customs Service negotiated a mutual assistance agreement to coordinate joint investigations with the Colombian law enforcement agencies of the National Tax and Customs Directorate. This customs-oriented agreement encourages information exchange on criminal matters, including money laundering.

The information is provided upon request or on an agency's own initiative.

Article 2 of the Customs Service Mutual Assistance Agreement of 1999 ("Customs Service Agreement") sets forth its scope, and provides that the Customs Administrations shall cooperatively assist each other in the prevention, investigation, and repression of any offense. The Customs Administrations may provide assistance to each other in the form of information relating to successful techniques that have been employed to prevent and combat offenses, special enforcement actions that may be beneficial in preventing and combating offenses, and new methods that are commonly being used in the commission of

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114. Vienna Convention, supra note 36, art. 7, para. 1-2 (stating that parties can obtain evidence from other countries party to it without need to use cumbersome, time consuming letters rogatory process).


116. The Customs agency is one of several agencies with responsibility to investigate crimes involving money laundering. Other agencies include the IRS, the Secret Service, the DEA, and the FBI.

117. Customs Service Mutual Assistance Agreement, supra note 106, art. 3-4.

118. Id. art. 3(2).

119. Id. art. 2(1).

120. Id. art. 3(2)(b).

121. Id. art. 3(2)(c).
offenses. The Customs Service Agreement also requires that the Customs Administrations cooperate with each other in "[e]stablishing and maintaining channels of communication to facilitate the secure and rapid exchange of information . . . ."  

The Customs Service Agreement further provides for the surveillance and exchange of information regarding persons known or suspecting of having committed an offense, the illicit traffic of goods towards the territory of the other Customs Administration, the suspected means of transport being used in the commission of offenses within the borders of the other Customs Administration, and the sources and methods of payments that are presumed to have been involved in the commission of an offense. This last provision can necessarily be used in efforts relating to asset forfeiture because information pertaining to the sources and methods of payments can lead to the detection of other money and property that may have been directly or indirectly related to another offense, and thus can be forfeited. The Customs Service Agreement addresses asset forfeiture as well, and grants the transfer of forfeited property and funds to the respective Customs Administrations. Additionally, all information that is shared between the Customs Administrations must be kept confidential, and may only be used or disclosed for the purposes specified in the Customs Service Agreement, including use of the information in investigative, judicial, and administrative proceedings.

Under Article 6 of the Customs Service Agreement, a country can request employees or experts of Customs Administrations to appear in judicial or administrative procedures and produce documents considered essential for "corresponding procedures." The employees and experts will have all necessary protection and support offered by the requesting Customs Administration who will also pay all expenses.

122. Id. art. 3(2)(d).
123. Id. art. 3(3)(a).
124. Id. art. 4(2)(a).
125. Id. art. 4(2)(b).
126. Id. art. 4(2)(c).
127. Id. art. 4(2)(d).
128. Id. art. 4(5)(b).
129. Id. art. 9(1) and art. 9(2).
130. Id. art. 6(1).
131. Id. art. 6(2).
G. The Black Market Peso Exchange

The Colombian Black Market Peso Exchange (or “Black Peso”) is the largest most prevalent and sophisticated form of money laundering in the Western Hemisphere, with as much as US$5 billion in drug proceeds being moved through major U.S. cities every year.132 The Black Peso has a dramatic impact on the economies of the countries affected.

The Black Peso is not a result of the drug industry. It grew in the 1950s in response to restrictions the government placed on Colombians’ access to U.S. dollars.133 The Colombian government restricted the supply of U.S. dollars in order to enforce compliance with trade policies, tariffs, and taxes of goods sold in Colombia. A “parallel currency exchange system”134 was created when Colombians turned to “the black market and dollar/peso brokers grew up to meet the demand.”135

To attack both black market and narcotics enterprises, the United States and Colombia needed to join forces136 to protect the financial system, stop the free flow of narco-dollars into legitimate business, and put the Black Market exchanger out of business. The Black Peso is a very sophisticated form of money laundering by which no money crosses any borders. To curtail the Black Peso required a special agreement involving different agencies to attack effectively money laundering.

To understand why the Customs Administrations are involved in this, it is important to know the laundering cycle. To control trade and charge high tariffs on goods imported to Colombia, the Colombian government required importers to

132. See NATIONAL MONEY LAUNDERING STRATEGY, supra note 107, at 25.
134. Id.
135. Id.
136. Internal Revenue Service (or “IRS”) criminal investigations have attacked the narcotics-related money laundering enterprises. In one major investigation that lasted from September 1986 to March 1995, the IRS Criminal Investigation unit and other law enforcement agencies identified and attacked both the Colombian narcotics and Black Market components of the process. The IRS agents “seized more than $217.0 million in U.S. and foreign currencies. Over 9,701 kilograms of cocaine were seized with a street value of more than $146.0 million. More than 450 persons were arrested and prosecuted on narcotics and related money laundering charges.” The Colombian Black Market Peso Exchange (last modified Oct. 22, 1997) <http://www.ustreas.gov/irs/ci/congress/blkmart.htm> (on file with the Fordham International Law Journal).
purchase merchandise only in dollars that could only be obtained at the Colombian central bank. The dollar/peso broker allowed the purchase of dollars without the government’s knowledge so that the importer could avoid the Colombian tariffs and taxes by “smuggling” the goods without government scrutiny. The broker purchased dollars from Colombian exporters who then sold goods in the United States and deposited them into U.S. accounts. The brokers then paid the exporter in pesos in Colombia. Even though the customers paid a small premium for the dollars that were passed to them by the broker, it was cheaper than paying the tariffs and taxes on the goods obtained in Colombia. At that point, the narco-dollars, the product of drug trafficking, came into the picture. In the 1970s, massive amounts of dollars were deposited on a large scale. In reaction, the U.S. Congress adopted various anti-money laundering laws to eliminate such transactions and trace the traffickers. These laws forced Colombian traffickers to seek the help of brokers.

Traffickers have dollars in the United States but need pesos in Colombia, and brokers have pesos in Colombia and need dollars to sell. The traffickers sell the dollars to the brokers at a substantial discount.¹³⁷ This system allows drug traffickers from Colombia to transform exorbitant amounts of U.S. dollars from the drug trade into Colombian pesos in the traffickers’ respective Colombian bank accounts.¹³⁸ The Colombian drug traffickers have forged ingenious uses of this “system” to reach their illegal proceeds. The maneuvering of funds into and through the broker’s network then allows the money to flow into legitimate businesses. Essentially, the dollars that began as illegal drug proceeds are laundered and returned to the U.S. economy as legitimate business receipts by businesses that sell merchandise to the Colombian importers.

This money laundering system is summarized as follows. First, the Colombian traffickers export cocaine to the United States. Next, the cocaine is sold for money. Then the trafficker enters into a “contract” and sells the money to the Colombian Black Market Peso Exchanger. The Colombian Black Market

¹³⁷ Id.; see also NATIONAL MONEY LAUNDERING STRATEGY, supra note 107, at 26 (noting that discount that broker receives as result of this transaction reflects fact that broker, not drug trafficker, assumes risk of getting U.S. dollars into financial system).

¹³⁸ See NATIONAL MONEY LAUNDERING STRATEGY, supra note 107, at 26.
Peso Exchanger, or his representative, then introduces the bulk currency into the U.S. banking system. Then the U.S. dollars are sold to Colombian importers. The importers next purchase goods, either from the United States or from collateral markets. Finally, the goods are transported to Colombia. The wholesale value of the cocaine exported to the United States is returned to Colombia in the form of trade goods.

At the conclusion of this transaction, the peso broker becomes the money launderer, and the drug trafficker has money in his or her country's own currency. The broker then sells the dollars at a profit to Colombian citizens seeking U.S. dollars to purchase goods for resale in Colombia.

Four ways have been identified by which the money is placed into the system: by having employees of the broker place the money in bank accounts opened in nominee names but controlled by the broker; by adding the purchased narcotics currency to the regular deposit of a business that normally deposits large amounts of money; by smuggling the money into foreign banks operating in Mexico; and by delivering the money to the U.S. supplier of trade goods. The goods enter Colombia as "contraband" via "smuggling." The supplier ships the goods, usually electronics, clothing, shoes, liquor, cigarettes, and perfume, to the Colombian distributor. The distributor works in what is known as the "San Andresitos," or areas where foreign merchandise is sold without duties or tariffs. The prices charged for the merchandise are significantly reduced and legitimate retailers cannot compete with them.

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139. See The Colombian Black Market Peso Exchange, supra note 136.
140. This money laundering procedure, which includes smuggling cocaine into the United States and returning the proceeds to Colombia, has been described as la vuelta or simply "the round" by traffickers and money launderers identified in an undercover operation known as "Operation Polar Cap." Id.
141. Id.
142. Id.
143. Black Market, supra note 133.
144. Id.
145. Id.
146. Many suppliers are wholesale distributors or multinational manufacturers from various countries, many of whom are based in the United States. It is important to know that the supplier receives wire transfers, checks, or bank drafts that are not drawn on the account of the Colombian importer. Id.
147. I often frequented the San Andresitos to find cameras, perfume, computers, and sunglasses at prices lower than those offered in sales in the United States.
The motive behind the Colombian importers who purchase the U.S. dollars from the peso brokers is to evade the import taxes and duties that are necessary to facilitate lawful importing and exporting between the United States and Colombia.\textsuperscript{148} The end result of these illegal transactions is that the Colombian government's attempt to enhance the economic stability of the country is harmed, while a market of contraband and other smuggled goods is increased.\textsuperscript{149}

The Black Peso has detrimental effects on the fiscal stability of both the United States and Colombia. The response by the United States has been to put various mechanisms and strategic programs in place, such as asset forfeiture, limits on bank secrecy, criminalizing of money laundering for serious crimes, supervising of financial institutions, and cooperating internationally with respect to counter-money laundering standards and regulatory and enforcement matters.\textsuperscript{150}

The effectiveness of U.S. Customs undercover money laundering operations aimed at Black Peso brokers has revealed that the U.S. Customs Service is "35 times more effective (seizure values vs. expenditures), than that of all U.S. government counternarcotics programs."\textsuperscript{151} In the last eight years, the U.S. Customs Service has seized more than US$763 million in cash and monetary instruments. The operations caused the arrest of 2000 people and the seizure of 94,534 pounds of cocaine.\textsuperscript{152} The two largest single seizures of cash in the history of federal law enforcement were made as a result of U.S. Customs Service undercover operations targeting Colombian Black Pesos. One took place in Miami where US$22 million was seized\textsuperscript{153} and the another occurred in Los Angeles where US$19 million was seized.\textsuperscript{154} Also in Miami in 1996, the U.S. Customs Service made the largest cash seizure of US$15 million on its way to Colombia. Moreover, it was U.S. Customs Service undercover operations that first exposed the criminal money laundering activities of

\textsuperscript{148} See National Money Laundering Strategy, supra note 107, at 27.
\textsuperscript{149} Id.
\textsuperscript{150} Id. at 51.
\textsuperscript{151} See The Colombian Black Market Peso Exchange, supra note 136.
\textsuperscript{152} See id.
\textsuperscript{153} See id. (noting that this seizure of cocaine was made under operation Casa-cam).
\textsuperscript{154} See id. (stating that this seizure of cocaine was made under operation Omega).
both the Bank of Credit and Commerce International and American Express Bank International.\textsuperscript{155}

\section*{II. THE SLIPPERY SLOPE}

Mutual assistance agreements have resulted in a number of other successes, most recently Operation Juno, which dismantled a large international money-laundering ring in late 1999. According to Donnie Marshall, acting U.S. Drug Enforcement Administration ("DEA") Administrator, “Operation Juno represents a new level of U.S./Colombian cooperation. This is the first time Colombian authorities have seized this volume of trafficker accounts based on information derived from a joint investigation by U.S. law enforcement agencies.”\textsuperscript{156} An even more sensational result of mutual assistance has been Operation Millennium, sprung in October 1999, which Colombian authorities hailed as “the biggest blow to drug traffickers in four years.”\textsuperscript{157} Operation Millennium, which U.S. Attorney General Janet Reno described as an “unprecedented collaborative effort between the United States and Colombia,”\textsuperscript{158} netted thirty traffickers and evidence in Colombia and Mexico as well as significant evidence in the United States.

Clearly, when pressure is applied to the Colombian government, positive results can be achieved. Mutual cooperation by both countries, however, has not always been forthcoming, and the blame cannot be laid wholly on Colombia’s doorstep. According to Florida’s Republican Congressman John Mica:

Time and again, the Clinton administration has ignored the emerging situation in Colombia, despite congressional oversight hearings that have tried repeatedly to call attention to the impending crisis. In short, despite years of congressional pleas for assistance to Colombia, countless hearings and intense congressional efforts, resources approved by Congress have failed even after all of that to be provided to Colombia.

\textsuperscript{155} \textit{Id.}


To borrow a phrase, the record is a "flipping disaster."\textsuperscript{159}

The United States is now dealing with a situation where Co-

\begin{footnote}{159. Subcommittee on Criminal Justice, Drug Policy and Human Resources Committee on Government Reform (Feb. 15, 2000) \textlangle}http://www.house.gov/reform/cj/hearings/00.02.15/opening.htm\textrangle\textgreater\ (testimony of John L. Mica, Chairman) (on file with the Fordham International Law Journal) \hfill \textit{hereinafter Government Reform Hearing}. Congressman Mica's remarks merit reprinting here:

First, information sharing was denied in 1994, turning the situation into "chaos" as my colleague from California Steve Horn so aptly described.

As you'll recall, as of May 1, 1994, the Department of Defense decided unilaterally to stop sharing real-time intelligence regarding aerial traffic and drugs with both Colombia and Peru. Now, as I understand it, that description, which hasn't been completely resolved, has thrown diplomatic relations with host countries into chaos. That was a comment in a hearing by Congressman Steve Horn, August 2, 1994. And I've put that up for the subcommittee to review.

In 1996 and 1997, when this administration decertified Colombia without a national interest waiver, it severely undermined the legitimate drug-fighting efforts of General Serrano and the Colombian National Police, cutting off International Military Education Training ("IMET") and critical equipment to that country. Even worse today, the absence of U.S. intelligence sharing, due in part to the reduced air coverage after the forced closure of Howard Air Force Base in Panama, our drug counter-efforts in the region have been further crippled.

We held a hearing on this GAO report, and I think it was quite enlightening to see that even pleas by the United States ambassador from Peru asking that, in fact, the surveillance flights be kept up, and also warning that if we didn't participate, that in fact we would see a more—I'm sorry, more cocaine coming out of Peru and also out of Colombia. In fact, that prediction in '98 has come true because in fact we have not paid attention to the requests even of officials of this administration who are on the front line.

While very publicly calling for $1.6 billion in emergency aid last month at the White House, this administration requested only $85 million in State Department (INL) funding for Colombia in the fiscal year 2000. The Congress passed a supplemental aid package to increase the funding for counternarcotics work in Colombia. Sadly, less than half of the equipment Congress funded in that bill has been delivered in an operational fashion.

In fact, we found, up till just a few weeks ago, that the three helicopters, which account for the bulk of aid dollars, when finally delivered, sat idle for lack of proper armoring or ammunition.

The headline that's put up there is interesting, because that's not the headline from a few weeks ago. This is a headline from 1998, Washington Times, "Delay of helicopters hobbles Colombia in stopping drugs," and as I said, we've been trying for years to get this equipment on line in a real war on drugs. We find ourself in the same situation when we can't get three helicopters to Colombia with proper armoring and ammunition even in the last few months.

Another story that appeared in the paper and, again, I haven't confirmed this but I'm told that it's certain, that the ammunition we asked to get to Colombia was delivered during the holidays to the loading docks of the State Department. It appears that, unfortunately, we have a gang that can shoot
Colombia's existence is in grave peril, and future agreements between the countries will have grave consequences for the United States. The situation threatens to take the United States careening down a slippery slope into direct involvement in a foreign country's civil war and political turmoil in order to achieve U.S. foreign policy and domestic agenda goals. If the United States wants to end narcotrafficking in the country, then it must deal with Colombia's political and economic crises, specifically the fifty year old guerrilla insurgency. The prospect of another Vietnam looms large over U.S. policymakers in the new millennium.

Early in 1999, Colombian President Pastrana, in an attempt to rectify his country's problems, formulated a policy of reforms and measures dubbed Plan Colombia\textsuperscript{160} (or "Plan") with the assistance of the U.S. Department of State.\textsuperscript{161} Among other goals, the US$7.5 billion plan promotes "a comprehensive strategy to counter drug trafficking, improve the performance of the armed forces, and win the confidence of civilians."\textsuperscript{162} The Colombian government supposedly will put up US$4 billion from its own resources,\textsuperscript{163} although where that money will come from cannot be determined. The balance of the funding for the Plan

straight or get the ammunition to shoot straight to Colombia where it's needed.

This administration, unfortunately, has resisted congressional efforts to ensure that needed drug-fighting equipment makes it to Colombia in a timely manner. This administration has fought the Congress for years on Black Hawk utility helicopters for the Colombian National Police, and unfortunately, has a pathetic track record of delivering the assistance. And I've shown, again, that we're back here looking at—trying to get these resources to where we know they're needed.

Unfortunately, nearly half of the $954 million that is provided in the supplemental aid package for Colombia is for 30 Black Hawk helicopters for the Colombian military, again, which we requested years and years ago to be on line in Colombia to fight this battle. Given the high cost of these assets and the poor delivery track record of the State Department, I'm concerned about committing this amount of money to a program that has not worked well in the past. As chairman of this subcommittee, I want to ensure that the final aid package contains funds for programs that have a proven track record of success, and also we figure out some way to get this equipment there in a timely fashion.

\textit{Id.}


\textsuperscript{161} \textit{Id.}


\textsuperscript{163} Office of the Press Secretary, The White House, \textit{Colombia Assistance Package}
would come from international assistance: US$2.7 billion from the International Monetary Fund (already approved), possibly US$3 billion forthcoming from the World Bank and the Inter-American Development Bank, and at least US$3.5 billion in foreign aid from other countries.

With the Plan in hand, President Pastrana came to the United States last summer to ask President Clinton and Congress to be the vanguard for international assistance. The Plan is largely dependent on significant funding and logistical support from the United States. In response, the White House and Republican lawmakers in the U.S. Senate have each proposed new aid packages of approximately US$1.6 billion, each over two to three years. Georgia’s Republican Senator Paul Coverdell introduced a congressional bill, the Alliance with Colombia and the Andean Region Act of 1999 (“ALIANZA”). Both aid packages would supplement significant funds already dedicated to Colombia over the last couple years:

In FY98, the U.S. Government, through INL, provided Colombia with $43 million in support of counternarcotics operations, an additional $14 million for helicopter upgrades, and approximately $21 million in aviation support and $41 million in equipment and services drawn from U.S. stockpiles.

In FY99, U.S. support will grow to approximately $203 million (including $96 million for six Black Hawk helicopters) making Colombia the largest recipient of U.S. assistance in the hemisphere and the third, after Israel and Egypt, globally.


165. Alliance with Colombia and the Andean Region Act of 1999, S. 1758, 106th Cong. (1999) [hereinafter ALIANZA]. The bill was introduced to authorize urgent support for Colombia and front line states to secure peace and the rule of law, to enhance the effectiveness of anti-drug efforts that are essential to impeding the flow of deadly cocaine and heroin from Colombia to the United States, and for other purposes. Id. § 2.

A. The White House Proposal

According to information issued by the U.S. Agency for International Development, an organization long involved in rule of law and administration of justice programs in Colombia,\(^\text{167}\) assistance to Colombia is to proceed in four prongs.\(^\text{168}\) The first prong is reducing production and trafficking of illicit drugs. The second prong is to promote participatory local governance in preparation for a negotiated end to the internal conflict. Third, Colombia must increase its observance of human rights. The final prong is continuing Colombian support to U.S. hemispheric objectives, including Summit of the Americas goals and the advancement of free trade.

General McCaffrey stated that approximately seventy percent of the total package is earmarked for the military and police as follows: US$600 million to train, equip, transport (thirty Black Hawk and fifteen UH-1N helicopters), and support three army anti-narcotics battalions. One battalion is ready for action, based at Tres Esquinas in Caqueta.\(^\text{169}\) U.S. support for these units will come in the form of improved radar coverage inside Colombia, and better intelligence flows from the new U.S. air base at Manta, on Ecuador’s Pacific coast.\(^\text{170}\) About US$341 million will be used for navy and air force anti-narcotics operations interdiction and US$96 million will be used for police anti-narcotics operations (eradication).\(^\text{171}\)

Pentagon officials have expressed disappointment that the


\(^{169}\) See Jared Kotler, U.S. Army Secretary Predicts Drug War Progress, AP World-Stream, Jan. 20, 2000 (“The battalion is undergoing ‘confidence-building’ operations before being thrust into combat.”).

\(^{170}\) The US$600 million will also include other types of aircraft, radar equipment, and intelligence gathering gear. Also, the U.S. Army is about to deploy a sophisticated satellite imaging system (ERIM International Eagle Vision II (“EVI”)) in the area of operations in and around Colombia. Use of the system will greatly aid operations of the 63 combat helicopters to be sent to Colombia under the White House proposal. See Army To Deploy Eagle Vision II to Caribbean, CAI News 15:3, Feb. 3, 2000.

\(^{171}\) See How To Sell Military Aid Package; Tell U.S. Congress That It Is Not for Counter-
majority of money that makes Colombia "the largest recipient of U.S. counternarcotics assistance"\textsuperscript{172} is going to counternarcotics operations when the real problem is the guerrillas.\textsuperscript{173} This is despite the fact that in 1998, following a disastrous defeat by Colombian military forces at the hands of the largest insurgent group, the Revolutionary Armed Forces of Colombia ("FARC"), observers began questioning the Clinton administration's move to increase the number of military advisers in Colombia from 100 to 223, ostensibly to assist Colombia in its fight against drugs.\textsuperscript{174} At least one Congressman voiced his strong opinion that the military's primary mission should be to help Colombia crush the rebels once and for all as was accomplished in Peru against their narco-guerrillas.\textsuperscript{175}

Contrary to what the White House would wish U.S. citizens to believe,\textsuperscript{176} President Pastrana does not share the will of the people of Colombia.\textsuperscript{177} Colombians want peace, but they are against ceding half of the country to the unpredictability of guerrillas and paramilitaries in order to end the half-century of undeclared civil war.\textsuperscript{178} U.S. Department of State officials put a

\textit{Insurgency, in Latin American Regional Reports: Andean Group, Peace & Diplomacy, RA-00-01; 6 (Jan. 25, 2000).}

\textsuperscript{172} INL Country Programs—Columbia, supra note 166.

\textsuperscript{173} Dettmer, supra note 8, at 9. However, "Colombia inaugurated its first U.S.-funded 1,000-member rapid deployment force last year." Dudley, supra note 166, at A13.

\textsuperscript{174} Editorial, Colombia; U.S. Strategy: Anti-Narcotics or Counter-Insurgency?, \textit{Dallas Morning News}, Mar. 21, 1998, at 28A. The editorial stated in part that "The administration insists that it is fighting drug traffickers and their allies rather than insurgents. But that may be sophistry. Let's cut to the chase: Is the United States backing into the Colombia civil conflict under the pretext of fighting drugs?" Id.


\textsuperscript{176} 2000 Foreign Policy Overview, supra note 164 (testimony of Madeline K. Albright, Secretary of State).

\textsuperscript{177} Dudley, supra note 166, at A13. Steven Dudley reports: "Since taking office, Pastrana has enjoyed clear support from the Clinton administration even while his domestic approval ratings have tumbled. "U.S. aid in and of itself cannot help Pastrana," said Alfredo Rangel, an adviser to former president Ernesto Samper. "The president needs to change the country's expectations with regards to the economy and the peace talks."

\textit{Id.}

\textsuperscript{178} Colombia To Make Safe Haven for Second Rebel Group, \textit{Reuters}, Feb. 17, 2000. The Pastrana administration is now entering into negotiations to cede a large territory to the ELN after an extensive campaign of "hijacking, mass kidnaping and sabotage"
more positive spin on this, however, saying that the Colombian
president cannot be expected to garner tremendous support
during such a sensitive period in Colombia's history.\footnote{179}

The Clinton administration's proposed US$1.6 billion pack-
age in military and humanitarian aid faltered in Congress last
October. A well-orchestrated media campaign and a blitz by
White House officials testifying before both chambers of Con-
gress, however, have brought the bill to the top of the current
legislative session's agenda. This funding would supplement the
support allocated for Colombia in the President's Fiscal Year
2000 budget.\footnote{180} The plan "involves approximately $300
million in regular appropriations in the 2000 and 2001 budget,
a $954 million emergency supplemental in fiscal year 2000,
and $318 million of additional funds in fiscal year 2001,"\footnote{181}
and contains five major components.

The first component is helping the Colombian Government
push into the coca-growing regions of southern Colombia, which
are now dominated by insurgent guerillas. Funds will help train
special counter-narcotics battalions, purchase thirty Blackhawk
and thirty-three Huey helicopters, and provide other support.
The second component is to upgrade Colombian capability to
interdict aggressively cocaine and cocaine traffickers. Funds will
be used for radar, aircraft and airfield upgrades, and improved
anti-narcotics intelligence gathering. The third component is
increasing coca crop eradication. The U.S. Administration will
propose US$96 million to purchase equipment that will enable
the Colombian National Police to eradicate more coca and
poppy fields. The fourth component will promote alternative
crops and jobs. The U.S. Administration will propose US$145
million over the next two years to provide economic alternatives

\footnote{179} Dudley, \textit{supra} note 166, at A13. "U.S. aid in and of itself cannot help Pas-
trana." "The president needs to change the country's expectations with regards to the
economy and the peace talks." \textit{Id.}

\footnote{180} The current budget proposal calls for US$150 million each year, US$954 mil-
lion in emergency aid for FY 2000, and an increase in FY 2001 of US$318 million. \textit{Id.}

\footnote{181} \textit{State Department Foreign Press Center Briefing Subject: Aid Package for Colombia,
FED. NEWS SERVICE, Jan. 11, 2000.}
for Colombian farmers who now grow coca and poppy plants. The final component is increasing protection of human rights, expanding the rule of law, and promoting the peace process. The U.S. Administration will propose US$93 million for new programs that will help the judicial system, and crack down on money laundering.\textsuperscript{182}

Both parties in Congress criticized the Clinton plan for being late to arrive when Congress was requesting the White House to take action at least five years ago.\textsuperscript{183} Furthermore, there appears to be little faith among Republican lawmakers that the White House will improve its record of bungling the job of getting material and training to the Colombians. The media has not been hoodwinked either by the administration media campaign, as the shadow of Vietnam still looms over the U.S. psyche. One newspaper editorial pointed out the dangers of mixing military aid with anti-narcotics assistance and accused the Clinton administration of backing into a civil war without a clearly defined agenda.\textsuperscript{184}

To make matters worse, the rebels in the field are pointing out that U.S. military advisers are accompanying Colombia army battalions everywhere they go. The parallel between such developments and the presence of U.S. trainers during the civil war in El Salvador—or the one in Vietnam, for that matter—may not be perfect, but it’s true enough to give pause. Before embarking

\textsuperscript{182} The White House Fact Sheet-Colombia Assistance Package, M2 Presswire, Jan. 12, 2000; see also State Department Foreign Press Center, supra note 181.

\textsuperscript{183} U.S. Representative John Mica (R-FL) held hearings on U.S. Policy for Colombia. FDCH Political Transcripts, Aug. 6, 1999. According to the statement by Rep. Mica:

despite five years of congressional pleas for assistance to Colombia, countless hearings and intense congressional effort, resources approved by Congress have failed to be provided to Colombia . . . . Even since February the threat has grown substantially. Events in country appear to be spiraling out of control. Colombia is now what military officials call situation critical . . . . Many of us on the Hill saw this situation coming years ago as this administration repeatedly ignored the problem.

On the other side of the aisle, Edolphus Towns (D-NY), voiced some concerns by the Democrats over the Clinton administration plan, noting “It is my understanding that recently there have been calls for an additional $1 billion in assistance for Colombia. However, given the dismal results we have seen for the money we have spent thus far, I am not sure that more money is the answer to this question.” Rep. Towns went on to state, “It seems to me that additional military spending will only exacerbate the chaos in Colombia.”

\textsuperscript{184} White House Fact Sheet, supra note 182.
on an adventure with uncertain prospects, Mr. Clinton should consider doing the following:

- Assume that his policy will be held accountable.
- Define the problem and clearly explain the U.S. national interest in Colombia.
- State the role he envisions for the United States, along with its cost and duration.
- Define his exit strategy.
- The president should remember that stability in Colombia need not be a question for the United States alone. If regional security interests are at stake, then other countries in the hemisphere must be invited to cooperate with the United States in addressing the stability of northeastern South America.185

There is also concern over White House assurances that human rights will be a top priority. Observers in both countries have long assumed that the war on drugs serves as a justification for human rights abuses against citizens settling scores, or innocently caught between combatants in both the drug war and the fifty year old guerrilla campaign in which the insurgents and paramilitary forces, more than ever, are closely linked to drug production and trafficking. In a conflict that has now spanned half a century and claimed nearly 40,000 lives, "[h]uman rights organizations and some Democratic U.S. lawmakers contend that the aid package will fuel human rights abuses."186

B. The Coverdell Proposal

Following high-level talks with President Pastrana in the summer and fall of 1999, Senator Coverdell introduced sweeping Republican legislation to the Senate in a preemptive move to wrest control of response to plan Colombia away from the White House.187 The ALIANZA Act of 1999 would authorize US$1.6 billion over three years to achieve the following:

185. Id.
186. Kotler, supra note 169. "The small percentage of U.S. aid for humanitarian programs has triggered criticism from national and international human rights groups that the United States is doing little to care for a refugee problem that its military aid helps create." Sibylla Brodzinsky, One of the Worst Human Rights Crises in the World, USA TODAY, Feb. 3, 2000, at 10A.
187. A Muddle in the jungle, ECONOMIST, Mar. 4, 2000, at 17. "Aiding the Colombian police has been adopted as a political cause by a group of congressional Republicans
(1) to prescribe proactive measures to confront the threat to U.S. interests of continued instability in Colombia;

(2) to defend constitutional order, the rule of law, and human rights, which will benefit all persons;

(3) to support the democratically elected Government of the Republic of Colombia to secure a firm and lasting end to the armed conflict and lawlessness within its territory, which now costs countless lives, threatens regional security, and undermines effective anti-drug efforts;

(4) to require the President to design and implement an urgent, comprehensive, and adequately funded plan of support for Colombia and its neighbors;

(5) to authorize adequate funds to implement an urgent and comprehensive plan of economic development and anti-drug support for Colombia and the front line states;

(6) to authorize indispensable material, technical, and logistical support to enhance the effectiveness of anti-drug efforts that are essential to impeding the flow of deadly cocaine and heroin from Colombia to the United States; and

(7) to bolster the capacity of the front line states to confront the current destabilizing effects of the Colombia conflict and to resist illicit narcotics trafficking activities that may seek to elude enhanced law enforcement efforts in Colombia.

There are a number of notable provisions in the proposed bill. One mandates that the President periodically submit a comprehensive “report on the current United States policy and strategy regarding United States counternarcotics assistance for Colombia and the front line states” to the appropriate congressional committees and the Caucus on International Narcotics Control of the Senate. Another provision contains a schedule for implementing actions in order to meet such priorities. The report also explains the U.S. role in the efforts of the Colombian Government to deal with illegal drug production, domestic insurgency, and irregular forces in Colombia. Furthermore, it discusses how the strategy with respect to Colombia relates to the

who believe that one of the cheaper and more effective ways to deal with the United States' addiction to drugs is to stop their production at source.” Id.

188. See ALIANZA, supra note 165, § 2.
189. Id. § 102(a). The front line states are Bolivia, Brazil, Ecuador, Panama, Peru, and Venezuela. Id. § 4(2).
U.S. strategy for the front line states, and how the strategy with respect to Colombia relates to the U.S. strategy for fulfilling global counternarcotics goals. The report also provides a strategy and schedule for providing urgent material, technical, and logistical support to Colombia and the front line states in order to defend the rule of law and to impede more effectively the cultivation, production, transit, and sale of illicit narcotics. This last requirement would certainly address past criticisms that the White House has been negligent in responding quickly to logistical issues in getting materials to Colombia for deployment.\textsuperscript{190}

ALIANZA places the issue of guerrilla insurgency and paramilitary lawlessness squarely on the table, and acknowledges that dealing with the drug trade is tantamount to dealing with the guerrillas and paramilitaries.\textsuperscript{191} This provision raises a number of questions regarding the degree to which the United States may be willing to involve itself in the guerrilla conflict. In ALIANZA’s findings, it is noted that

The FARC and the ELN engage in systematic extortion through the abduction of United States citizens, have murdered United States citizens, profit from the illegal drug trade, and engage in systematic and indiscriminate crimes, including kidnapping, torture, and murder, against Colombian civilian and security forces.\textsuperscript{192}

ALIANZA also noted that “[t]he FARC and the ELN have targeted United States Government personnel, private United States citizens, and United States business interests.”\textsuperscript{193} Furthermore, “[i]n March 1999, the FARC murdered three kidnapped United States human rights workers near the international border between Colombia and Venezuela.”\textsuperscript{194}

ALIANZA also acknowledges the complex interrelationship between the irregular forces (guerrillas and paramilitaries) and

\textsuperscript{190} Representative Mica Holds Hearings on U.S. Policy for Colombia, FDCH POLITICAL TRANSCRIPTS, Aug. 6, 1999. Rep. Mica reported that, “We’re still, this administration has resisted congressional effort to ensure that needed drug fighting equipment makes it—makes its way to Colombia in a timely manner.” Id.

\textsuperscript{191} ALIANZA, supra note 165, § 3(1). The armed conflict and resulting lawlessness in Colombia present a clear and present danger to the security of the front line states, to law enforcement efforts intended to impede the flow of cocaine and heroin, and, therefore, to the well-being of the people of the United States.

\textsuperscript{192} Id. § 3(7).

\textsuperscript{193} Id. § 3(8).

\textsuperscript{194} Id. § 3(9).
the drug trade, noting that "the FARC has plotted to use $3,000,000 in funds earned from drug trafficking to buy 30,000 AK-47s."\textsuperscript{195} Given that irregular forces control nearly forty percent of Colombian territory, ALIANZA states,

\textit{It is the sense of Congress that the effectiveness of United States anti-drug assistance to Colombia depends on the ability of law enforcement officials of that country having unimpeded access to all areas of the national territory of Colombia for the purposes of carrying out the interdiction of illegal narcotics and the eradication of illicit crops.}\textsuperscript{196}

Does this imply that the aid package will be used to conduct military operations against the guerrillas to gain access to guerrilla held territory where the majority of coca and heroin production is taking place?\textsuperscript{197} Furthermore, ALIANZA urges that members of irregular forces involved in drug trafficking should be brought to justice. One might wonder how such individuals are going to be brought to justice without military operations being conducted in order to facilitate apprehension. The insurgency and paramilitary conflict has resulted in untold human rights abuses by all combatants.\textsuperscript{198} ALIANZA addresses human

\textsuperscript{195} Id. § 3(11).

\textsuperscript{196} Id. § 105.

\textsuperscript{197} The department of Putumayo, located in the southern part of Colombia, is perhaps the most strategically important area to guerrilla insurgents and drug traffickers. Putumayo is largely under FARC control, and the majority of Colombia's coca and heroine production occurs in Putumayo. If Plan Colombia and U.S. assistance targets drug production in Putumayo, then it will be impossible to carry out drug interdictions programs without conducting military operations against the guerrillas in the region. For a detailed explanation see Putumayo—The Strategic South, Special Report, Acuatlidad Colombiana, (visited May 5, 2000) <http://www.actcol.f2s.com/engdoc/putumayo99.html> (on file with the Fordham International Law Journal).

\textsuperscript{198} Human Rights Watch and other human rights groups have long documented human rights violations in Colombia. The department of Putumayo is just one example of nationwide human rights abuses. Many of these violent deaths have been attributed to paramilitary groups that operate freely throughout the department, although the FARC are also responsible for some of them. In March 1998, the FARC killed seven people in the municipality of Valle Del Guams (La Hormiga) accusing them of collaborating with the paramilitaries. In mid May of the same year a group of 400 peasant farmers peacefully occupied the headquarters of the Defensoría del Pueblo (Human Rights Ombudsman's Office) demanding a judicial investigation against these groups. No captures, however, were reported of any of them. Four months earlier the mayor of Puerto Asís at that time made declarations regarding the transport of paramilitaries in military helicopters, death threats and murders carried out by these groups, but he later retracted these declarations.

After working groups were held in the context of a "Common Front Against the
rights concerns and provides that aid be linked with the Colombian government’s efforts to confront its human rights record, and authorizes the President to support efforts by the Attorney General of Colombia “to investigate and prosecute members of Colombian irregular forces involved in gross violations of internationally recognized human rights,” and “to investigate and prosecute members of Colombian security forces involved in gross violations of internationally recognized human rights.”

Perhaps the most transparent aspect of the U.S. aid becomes evident in ALIANZA, for while drug trafficking represents “a clear and present danger” to the United States, the instability of Colombia also hinders economic development and foreign investment. Under Section 101 of ALIANZA regarding support for democracy, peace, the rule of law, and human rights in Colombia, the U.S. policy will be “to insist that the Government of Colombia complete urgent reform measures intended to open its economy fully to foreign investment and commerce, particularly in the petroleum industry, as a path toward economic recovery and self-sufficiency.”

Considering the rich oil and coal deposits located in regions under guerrilla control (or hotly contested between the government and irregular forces), it stands to reason that if Colombia cannot rid itself of guerrillas and paramilitaries, then it cannot get rid of drug trafficking. Therefore, oil corporations and other foreign investors cannot enter Colombia and exploit the nation’s natural resources.

Violence” in Puerto Asís, the government promised to investigate the crimes. On June 8, a group of peasant farmers “Putumayenses por la Vida” (People of Putumaya for Life) reached an agreement with the Samper Government on the investigation of human rights violations. These agreements, however, have not been kept by the new government of Andrés Pastrana. In September, the FARC assassinated the parish priest of Puerto Caicedo. His attempt to seek neutrality in the conflict was not forgiven by the alleged militia that cut short his life and 18 years of work in the community.

On January 9, 1999, a group of approximately 50 paramilitaries of the AUG killed about 40 people in the village of El Tigre (municipality of Valle del Guamá-La Hormiga), although the authorities only reported 23 cases; all the dead were accused of being members of the FARC. Official complaints were made in November of this year (Actualidad Colombiana 276) when around 13 people were killed in various municipalities for being alleged paramilitaries. See Human Rights Violations, Putumayo—The Strategic South, Special Report, Actualidad Colombiana, (visited May 5, 2000) <http://www.actcol.f2s.com/engdoc/putumayo99.html> (on Fordham International Law Journal).

199. ALIANZA, supra note 165, § 203(a)(3)-(4).
200. Id. § 101.
201. For a detailed explanation on how the oil and mineral industry has been impacted by the guerrilla war and drug trafficking, see The Petroleum Business, Putu-
In addition to supplying training and material for law enforcement and the military to conduct counternarcotics operations, the ALIANZA would fund programs to strengthen the judiciary. Under Section 201, the President would be authorized to enhance the rule of law through training of judges, prosecutors, and other judicial officials and through a witness protection program; to improve police investigative training and facilities and related civilian police activities; and to strengthen a credible military justice system, including technical support by the United States Judge Advocate General, and strengthen existing human rights monitors within the ranks of the military.

Both plans share similar goals: to wrestle control of drug trafficking from narco-guerrillas, install law and order, provide economic programs to ease Colombian peasants away from reliance on coca as a subsistence crop, assist those displaced by the drug war and the guerrilla war, and stabilize Colombian territory for foreign investment. But the two approaches are really in conflict. The White House proposal insists that counternarcotics operations can be accomplished without interfering in the guerrilla conflict and that aid will not go to fighting guerrillas. The Republican position seems more realistic and acknowledges the link between narcotics and the irregular forces. The differences between the two aid proposals demonstrate the United States' lack of clarity over the issues at work in Colombia. Accordingly, a brief examination of the potential downside to U.S. involvement is warranted.

C. Drawbacks for the United States

With the FARC in control of nearly forty percent of Colombia, guerrillas and drug trafficking cannot be separated by mere policy musings in Washington. Like it or not, the United States is threading an increasingly narrowing path between fighting the drug war and directly involving itself in another country's civil war. Inevitably, concerns over human rights cannot be ad-

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202. ALIANZA, supra note 165, § 201.
203. Id. § 201(a)(4)-(6).
dressed no matter what provisions or conditions accompany the aid packages to Colombia. For instance, the provision in the Foreign Assistance Operations Act of FY2000 that states that only individuals who have been "vetted"204 (cleared of committing human rights abuses) can serve in counternarcotics units are problematic. There is simply no reliable way to monitor the situation on the ground, and while there may be officials in the military who have clear records and can be enlisted to help monitor human rights compliance, one can be fairly certain that someone above or below the chain of command in which those "cleared" individuals fall is linked to human rights abuses. The situation basically constitutes a political shell game in which billions of dollars are at stake.

For all of President Clinton's statesmanship and Secretary Albright's claims205 that the Colombian government promises to be vigilant against human rights abuses, history proves that human rights abuses have occurred in the past under U.S. programs and will in all likelihood continue.206 The realities of Colombia, whether they be the continuing forced displacement of refugees from zones of military and counternarcotics operations, or vendettas to be settled between combatants, dictate that human rights abuses are an ingrained component of the political, societal, legal, and economic elements of Colombia.

III. THE REAL COLOMBIA

Centuries of institutionalized corruption, five decades of guerrilla insurrection, a quarter century of uncontrollable drug trafficking and narcoterrorism, and horrific political and societal violence have brought Colombia to the precipice of anarchy and disintegration. The Pastrana administration is all but paralyzed by domestic crisis after crisis and can do little but react to events

205. 2000 Foreign Policy Overview, supra note 164 (testimony of Madeleine K. Albright, Secretary of State). Albright stated: As I made clear to President Pastrana when I visited Cartagena last month, our support for Plan Colombia rests on the Colombian government's commitment to continue to take appropriate action against human rights violators whether those violators are military, paramilitary, guerrilla or just plain criminals. Under President Pastrana's leadership, there has already been solid progress on this issue, but more remains to be done.
206. See Nagle, supra note 42.
as they unfold, making any goals of formulating and initiating long term domestic policies and programs overly optimistic. The legitimate government for all intents and purposes is not in control and is largely out of touch with the will of the Colombian people. One contact within the Pastrana administration pointed out that the day is spent putting out one fire after another, and that officials feel fortunate it they can correctly anticipate what will happen two or three hours into the future. Given this political climate of reacting to events rather than maintaining a proactive and pre-emptive control, it seems inconceivable that Plan Colombia can succeed under the present circumstances.

Secretary Albright stated, "[t]he struggle in Colombia is not between left and right, rich and poor, or between one ethnic group and another. It's between those who want to pursue prosperity and social development democratically and those addicted to criminality, violence and corruption."\textsuperscript{207} Unfortunately, Secretary Albright is mistaken. In Colombia, the lines are too blurred. Nothing in Colombia is as it seems and nothing can be viewed in black and white; only in shadows of gray. Those individuals committed to democratic development are also involved in corruption.\textsuperscript{208} Those depicted as criminals are seen as heroes to some sectors of the society. Those who were once Marxist revolutionaries are now confirmed narco-capitalists.\textsuperscript{209} Military


\textsuperscript{208} Most of the great reformers and honest public servants have fallen to assassins' bullets. The few remaining pass through each day as marked individuals, living under virtual house arrest with prices on their heads and constant threats of extortion and kidnapping.

\textsuperscript{209} Ana Carrigan, \textit{Long-Awaited Breakthrough in Colombian Talks Rebel Leaders Are Working with a Government Delegation on an Economic Blueprint}, \textit{Irish Times}, Feb. 8, 2000, at 11. According to Carrigan, FARC has stepped away from orthodox Marxist ideology in pursuit of something that can only be called "socialism a la Colombiana" and the two sides in the talks have set themselves a six-month deadline for coming up with an acceptable new economic model to "create jobs, distribute income, permit economic growth and social development.

\textsuperscript{See also} John Otis, \textit{Colombia Rebel Leaders on Tour of Scandinavia}, \textit{Hous. Chron.}, Feb. 3, 2000, at A15. Otis notes that the FARC, "which has 17,000 fighters, is heavily involved in the narcotics trade and has been blacklisted by the State Department as a 'terrorist' group."

During senate hearings last year, it was acknowledged that the FARC is inextricably involved in drug trafficking. Assistant Secretary of State Beers, testified that "our authorization and our strategy is counternarcotics. It will also effectively reduce the capabilities of the insurgents. It is their life blood." Senator Sheridan affirmed that, "In the
and police officers by day are paramilitary terrorists by night. Former army conscripts unable to find jobs have become guerrillas fighting their old comrades. Serving military and national police personnel supplement their meager pay by selling their weapons and supplies to the irregular forces. Many Colombians driven toward prosperity at any cost are perhaps the most to blame for the Colombian crisis, and the old oligarchy continue to go through life with their heads in the sand—their biggest concerns being the dinner menu at the country club and meeting their next extortion payout.210

Into this landscape of abnormality, the United States is trying to apply a rational, thoughtful, and balanced solution to a country that is everything but rational and balanced. For this reason if for no other, the US$1.6 billion proposal by the Clinton administration, the US$1.6 billion ALIANZA bill, and Plan Colombia are all fatally flawed by historical precedent. Implementation of any of these plans will accomplish little other than to throw good money after bad. At the very least, the proposals to fund Plan Colombia demonstrate the U.S. government’s serious lack of clarity in understanding the real Colombian crisis.

Colombians point their fingers at the United States as the reason for Colombia’s problems with narcotrafficking and narcoterrorism. According to one historian, Colombians believe the cocaine business will continue “just as long as the United States remained addicted; so why should they meanwhile be getting killed in trying to stop it?”211 Yet, the truth is that the United States and other consumer nations are not wholly responsible for Colombia’s drug and insurgency problems. Colombia’s problems are of its own doing, the result of the elite ignoring the needs of less fortunate fellow countrymen for too long, and quietly condoning the illegal drug trade because narcodollars pour into the formal economy and enrich the elite far beyond the economic models that represent a developing

course of them doing counternarcotics work, they will end up denying the FARC the revenue that the FARC need to engage in their insurgency.” Colombia: Counterinsurgency vs. Counternarcotics, Senate Caucus, Washington, D.C., FDCH Political Transcripts, Sept. 21, 1999.


country’s progress. The elite became intoxicated with the outrageous extravagance and largess of the drug lords. The money was too much, too quick, and too easy. Meanwhile, the guerrillas were conveniently shunted aside as leftist rabble, easily controlled and subdued by private armies fighting the clandestine, ugly turf wars of the landed elite. It was reasoned that if they were ignored they would go away. But fifty years later they are still rampaging across the countryside, living successfully on the ingredients of guerrilla economics—kidnapping, extortion, robbery, displacement, terror, and now drug running—a narco-militaristic society preying on a frayed civilian society. Given such a situation, how can the U.S. Administration seriously think a few billion more dollars and a few thousand more weapons will make a positive difference?

Plan Colombia requires US$7 billion, with nearly half of it coming from foreign governments. Why should foreign governments bail Colombia out for its own incompetence and tolerance for institutional corruption? Did the United States not learn its lesson with Salinas de Gotari and the Mexican bailout? Like Mexico, the Pastrana government wants the world community to help Colombia out of its crisis. But what about all the Colombians who have bled their country dry for years through corruption and white-collar criminality? Before President Pastrana can legitimately solicit the world community for help in combating Colombia’s many political and social disasters, his administration should go after the Colombian ex-patriots who have defrauded, bilked, bankrupted, and absconded with billions of dollars from Colombian businesses and government-connected institutions—Colombians are currently living like royalty in Florida, Mexico, Spain, and elsewhere in the Western Hemisphere. They have contributed as much as any drug lord or guerrilla to bringing their country to the point of its destruction because for decades their sole purpose was to rape the country of national resources and deny other fellow citizens their birthrights. They should be the ones made to pay for fixing the problem. They should be the ones paying for a Plan Colombia. Holding its own citizens accountable would be a

form of mutual assistance by which the Colombian government would be demonstrating a strong commitment to its partnerships with other nations coming to Colombia’s rescue.

There is compelling evidence, however, that mutual assistance is not necessarily mutual, \(^{213}\) and some Congressional lawmakers are skeptical about the Clinton administration’s ability to put together a successful assistance package.

Sen. Charles Grassley, R-Iowa, said any such aid should not be just “another long list of goodies without thought as to purpose and result.” Grassley said he would introduce legislation to require the administration to develop a detailed strategy on Colombia within the next six months. “It is embarrassing that we have so little before the Congress or the American public by way of serious policy or honest discussion on what we are to do.” \(^{214}\)

The notion of mutual assistance challenges one’s imagination as to how the United States or other foreign benefactors can ever see an exceptional return on its assistance—unless of course one considers the link between mutual assistance and the interests of foreign investors in Colombia such as oil and mining corporations and high tech manufacturers. Granted, the assets seized under the Customs Service Agreement have been substantial, but represent merely the tip of the iceberg.

The Clinton administration and many members of Congress believe the Colombian government is earnest and ready to tow the line on mutual assistance in exchange for massive military

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\(^{213}\) 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, Hearing File (testimony of Thomas A. Constantine, DEA Administrator). In his prepared statement before the Senate Foreign Relations Committee, Constantine stated:

The corruption, the political environment in Colombia continues to hinder United States counter-drug efforts. There are divergent anti-drug agendas within the government, a frail and very weak judicial system, widespread official corruption and a weak national resolve to confront this problem to limit Colombia’s ability cooperation in the anti-drug arena.

and economic support. Yet, incidents continue to occur that prompt reasonable observers to wonder if Colombia is capable of satisfying such lofty expectations when it appears more as if the government is merely reshuffling the same old cards and gambling on being able to continue milking the cash cow like it always has. Some of the incidents border on absurd, such as the escape over the Christmas holidays of a jailed leading commander of the FARC who was released on a weekend furlough for Christmas and didn’t return to prison when he was supposed to report back.215 How can the Colombian government be taken seriously about prosecuting both the drug war and the guerrilla war if such errors in judgment occur? What kind of message does an incident like this send to the world about Colombia’s resolve to fight the drug war or end the insurgency? What will become of those captured in counternarcotics operations paid for by the United States? How many of them will return to jail after their weekend furloughs?

In February, prisoners staged a nationwide prison takeover simultaneously around the country. The event was carefully orchestrated and synchronized via the cellular telephones prisoners are allowed to keep. They went so far as to call their wives and girlfriends on the phones to instruct them to come to the prisons with their children. The women in turn used their children as human shields to gain access to the their husbands and lovers in jail.216 How can the United States ignore such incidents and still be willing to commit law enforcement and military re-

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[L]ocal prison officials reported that the commander of a FARC column failed to return to his prison cell in Neiva (Huila) after he was awarded a leave permit for good conduct in prison in order to spend the holidays with his family. The rebel fugitive, whose name is Cenon Martinez Sanchez, was serving a prison sentence of four years. At the time of his arrest, he was the financial manager of a FARC faction. Martinez was confined to a prison in Neiva after he was convicted for rebellion and illegal possession of weapons. He was awarded a leave permit for good conduct so that he could spend the Christmas holidays with his family. He never returned to prison and has been declared a fugitive, the officials added. Martinez was the head of finance for a FARC column known as the “Otelo Losada”, which operates in southern Colombia. The army arrested him in September 1998.

Id.; see also Police Say They Have Arrested Second in Command of FARC Front, BBC SUMMARY OF WORLD BROADCASTS, Jan. 10, 2000, Part 5.

216. Jared Kotler, In Colombia’s Jails, Escapes Frequent as Prisoners Hold Sway, ASSOCI-
sources to Colombia when Colombia’s law enforcement infrastructure is incapable of living up to reasonable expectations regarding crime and punishment? U.S. policymakers need to wake up and smell the Colombian coffee.

More troubling still are reports, acknowledged by my contacts at the highest levels of government, that President Pastrana negotiated with the FARC to gain the presidency. Heading into the election, the Liberal candidate Horatio Serpa Uribe, was favored to win the Presidency. According to my sources, who asked to be anonymous, the FARC threatened to kill any citizens in the areas under FARC control if they went to the polls. In exchange for the FARC suppressing the vote, candidate Pastrana purportedly agreed to leave the FARC alone while going after other guerrilla groups like the ELN (essentially assisting the FARC in getting rid of the competition). If this is true, and given that the FARC controls most of southern Colombia where the majority of coca is grown, then one must wonder if the counternarcotics push into the region under Plan Colombia will actually occur as intended. One must also wonder if mutual assistance will be implemented as intended. More likely, a dog and pony show will ensue, coca will be seized, and crops eradicated. But it will be interesting to see if and how many major players will be arrested and convicted in the process.

Ated Press, May 2, 1999. According to Jared Kotler, the prisoners are in control in Colombia’s jails:

Recent disgraces at the prisons have bolstered those concerns:

- Last May, more than 300 prisoners, many of them guerrillas, escaped from a western Colombian jail when comrades on the outside attacked the prison.
- In November, a hit man posing as a lawyer walked into a maximum security prison and fatally shot Helmer “Pacho” Herrera, former No. 3 leader of the Cali drug cartel, while Herrera watched a jailyard soccer game.
- On New Year’s Eve, the leader of a fringe leftist rebel group who ordered the 1996 kidnapping of a brother of former President Cesar Gaviria escaped from a maximum security prison in Bogota. Police said he was smuggled out in garbage bags, and 17 officers were fired for negligence.
- In March, 29 convicted or accused murderers tunneled their way out of the Villahermosa federal prison in Cali, fleeing through sewers. The prison wasn’t aware of the escape until local residents called to report a group of grimy men swarming out of a sewer grate.
- Fueling an explosive human cocktail are corrupt, unionized prison guards, who earn the equivalent of about $250 a month while some inmates are millionaires. For a price, many guards look the other way as drugs, liquor, prostitutes, guns and cellular telephones flow freely into the most “high-security” jails.

Id.
One of the most inexplicable moves by the Colombian government occurred in February 2000 when it issued passports to FARC guerrillas for them to embark on a diplomatic tour of Europe, despite the fact that their comrades, in arms, continue to butcher civilians and soldiers indiscriminately. The tour, comprised of both Colombian government negotiators and their FARC counterparts, traveled to the European governments that the Pastrana administration has approached for financial and economic assistance in implementing Plan Colombia. According to Colombian foreign minister Guillermo Fernandez, "the objective of the 10-day joint government-FARC mission in Europe is 'to gather experiences related to economic and social development issues that can be applied in Colombia.'" Considering there are no guerrillas, uncontrolled narco-economies, or vast drug production and trafficking in Norway and France, one wonders what these countries have in common with Colombia that FARC guerrillas would relate. What is more, ELN leaders are allowed to travel outside Colombia as well, begging the question of how such individuals can travel with impunity in the first place.

Pablo Beltran, a senior ELN commander, told reporters on a visit to Nicaragua [that] government security forces would also be removed from the zone the ELN is to be granted control over in Bolivar. "The only military force that will be left

217. Yadira Ferrer, Politics-Colombia: Peace Negotiators Seek Ideas in Europe, INTER PRESS SERV., Feb. 3, 2000. Both sides also affirmed in a joint declaration that they would discuss, beginning Feb. 20, an economic model that takes into account "the globalized world," leaving aside radical positions of "savage capitalism" and socialist extremism. Id.

218. Hearing of the Senate International Relations Committee: Fiscal Year 2001 State Department Foreign Affairs Budget, Feb. 16, 2000, available in LEXIS, Legis Library, Hearing File (testimony of Madeleine K. Albright, Secretary of State). On this tour, Secretary Albright stated during a hearing before the House International Relations Committee on February 16, 2000:

I have also found quite remarkable the FARC trip around Europe, and very encouraging, because this is kind of a sign, first of all, that there is a way people can be brought together to talk about this, but for another reason: because there had been a sense—at least this is what I learned earlier—is that the FARC did not want any kind of international involvement in all of this, and I think this shows that the international community can, in fact, help. Id. It is astounding that Secretary Albright can sound so magnanimous toward the FARC, which is guilty of the abduction and murder of three U.S. citizens, and controls a huge percentage of drug production and trafficking. Id.

there is that of the guerrillas,” Beltran said.\textsuperscript{220}

In the mean time, however, the Colombian police and military forces continue to hunt down guerrillas, and the guerrillas continue military and criminal operations without respite.\textsuperscript{221}

To borrow an expression from President Bush, the guerrillas have portrayed themselves as “kinder and gentler” participants in Colombia’s domestic affairs. As a means of getting the word out, guerrillas have their own web page\textsuperscript{222} and a team of publicists. Skilled handlers shepherd a steady stream of foreign journalists through a carefully orchestrated day in the life of the FARC, feeding a steady diet of propaganda and misinformation to the world community.

The press was even on hand when the ELN guerrillas closed and held the main highway between Santa Fe de Bogotá and Medellín for four days.\textsuperscript{223} Four days holding the most important transportation artery in the country! Where was the military all that time and why was it unable to react quickly to retake the highway? This is despite the fact that U.S. military advisers have been in the country training Colombian special forces for precisely such occasions. Meanwhile, atrocities continue by guerrillas against resistant civilians and by paramilitaries against civilians thought to be sympathetic to guerrillas, as well as civilians innocently caught in the middle.

The issue of human rights remains one of the most difficult challenges facing cooperation between the United States and Colombia and would comprise the topic for its own paper. The issues of displaced persons, however, does not seem to be addressed satisfactorily in either U.S. assistance plan.

The flood of internal refugees out of contested areas is not adequately addressed in the foreign aid package. In what the U.S. Committee for Refugees has called “one of the worst

\textsuperscript{220} Colombia Political Violence Leaves 27 Dead, REUTERS, Feb. 18, 2000.

\textsuperscript{221} Around January 7 of this year, police arrested Orlando Torres, second in command of the FARC. One can only wonder how this can be reconciled with the government’s peace efforts.


\textsuperscript{223} The ELN carried out similar disruptions of important highways throughout the country. See ELN Rebels Continue “forced strike” “combat operations,” BBC Summary of World Broadcasts, Apr. 13, 2000, Part 5.
human rights crises in the world," a daily average of 680 Colombians are fleeing their homes and heading into the shantytowns of Colombia's beleaguered cities.224 Likewise, Plan Colombia is vague in details as to how the flood of unskilled refugees into the urban areas where infrastructure is already stretched beyond the limits can be reversed. Furthermore, capital flight and brain drain out of Colombia by the skilled and wealthy classes are problems. How will Colombia turn around its economy if the citizens most necessary for facing its challenges ahead are nowhere to be found?

CONCLUSION

For more than a century the United States has been the good neighbor (euphemistically speaking) to Latin America,225 involved and often interfering in the internal affairs of governments in the region in order to promote its own interests in the hemisphere.226 The U.S. policy has always been patriarchal in intent, heavily laden with the notion of knowing what was best for its southern neighbors and what it would take to lead Latin America down the primrose path to true democracy and prosperity. Unfortunately, the matter of drugs and the insatiable appetite of U.S. citizens for them caused successive U.S. administrations to develop and implement largely unsuccessful—and at times catastrophic—antinarcotics policies. Instead of being the sometimes benevolent patriarch or sometimes malevolent des-

224. Kotler, supra note 169.
pot, the United States found itself reeling from the unstoppable onslaught of drugs across its porous borders.

Colombia, the United States' oldest ally in the region, is desperate and in disarray. The government remains crippled by corruption and ineffectiveness, and there is little evidence that much has changed under Pastrana’s watch. Colombians distrust their government as much as they despise the guerrillas. The country is morally bankrupt. The guerrillas are in control of nearly half the country and their operations are moving across borders into neighboring countries, threatening to further destabilize the entire region. There is also little reason to believe mutual assistance has succeeded as advertised in fighting the drug war, for dealing with drug traffickers is similar to pouring water on a grease fire. As soon as one cartel is stopped, dozens spring up to take its place.

The United States wants to help Colombia, but has neither a clear understanding of the problem nor the cohesive political will to become involved in another Vietnam. The guerrillas have reinvented themselves in recent years through a media blitz of good old-fashioned salesmanship. Yet, their true colors have been shown for what they are—thieving bandits greedy for power and money. This is evident in their well-documented illicit activities that have placed guerrilla leaders among the wealthiest of Colombians: extortion, kidnapping, robbery, arms smuggling, security services for drug trafficking, and carrying on their own drug production and trafficking operations.

The fact is, foreign mutual assistance comes down to money, how much can be gotten of it, who can supply the most of it, and who gets to keep it. For the guerrillas, foreign assistance has come in the form of profits from drug trafficking and now is moving toward economic and socialization support from European nations. The lines between legitimacy and criminality are growing more blurred. For the Colombian government, military and economic aid is a matter of survival. If getting that aid requires throwing some bones to the United States in the spirit of mutual cooperation, then so be it. But Colombia’s power brokers and an army of corrupt officials are simply too good at what they do, and there is little possibility that the United States can actually hold Colombia accountable for events within its borders.

Colombia’s human rights record is a case in point. In spite
of restrictions written into mutual assistance agreements past and present, most members of the armed forces evade prosecution and conviction because the military courts maintain jurisdiction over the military's own affairs.\textsuperscript{227} Non-military combatants accused of human rights atrocities have been able to escape justice by intimidating the courts through harassment, bribery, and murder.\textsuperscript{228} There is simply no way the United States can control the manner in which Colombia upholds its side of the cooperation equation. Furthermore, the ineptitude displayed by the Clinton administration in dealing with the Colombian crisis also raises questions as to the administration's commitment and ability to hold up its side of mutual assistance agreements and aid packages.

Why then are the foreign governments signing on to Plan Colombia without asking the hard questions? Possibly, the risks are worth the rewards. For every dollar invested in Plan Colombia, foreign corporations stand to gain many dollars in return for access to Colombia's precious natural resources and market prospects. Again, it all comes down to money. If the guerrillas do eventually end up in permanent control of large tracts of Colombian territory, then their pseudo-Marxist mantras will no longer work for them. Their only hope for remaining in control will be to deal with foreign corporations that want to do business in their regions. Between drug trafficking and foreign investment, the guerrillas stand to gain billions of dollars with little or no responsibility to the central democratic government. On the other hand, if the legitimate government wants to stay in power, concessions must be made to foreign investment, regardless of what Colombia's citizens might want.

There are no easy answers to Colombia’s crisis, and mutual assistance is not the magic bullet. This has been proven over and over again over the course of many years. The things that the Colombian government is asking now are the same things

\textsuperscript{227} See Nagle, \textit{supra} note 42, § V.

\textsuperscript{228} \textit{Representative Mica Holds Hearings on U.S. Policy for Colombia}, FDCH POLITICAL TRANSCRIPTS, Aug. 6, 1999. Rep. Towns stated, "The State Department and numerous human rights groups have reported that para military groups aligned with the army of Colombia murder and kill civilians because of their political beliefs." For an exceptional analysis of non-military combatants in Colombia, see \textsc{Carlos Medina Gallego}, \textsc{Autodefensas, Paramilitares y Narcotráfico en Colombia: el caso Puerto Boyaca} 338 (1990); \textit{see also} Pearce, \textit{supra} note 7.
the Colombians asked for ten years ago and twenty years ago. Colombia cannot be dealt with in a rational manner under internationally recognized conducts of behavior because there is nothing rational about Colombia. The society and its institutions are just too dysfunctional.

Mutual assistance serves many purposes, not the least of which are in the interests of the military industrial complex, an army of human rights and economic development consultants and groups, and multinational corporations anxious to exploit Colombia's vast resources and highly skilled labor force. There is little if any altruism or new-world-order sincerity involved here. Mutual assistance means money and power for whoever can grab it, and if along the way the lives of combatants are lost and thousands of innocent people are displaced and caught in crossfires, so it goes. As long as fortunes are made for stockholders or corrupt actors in the drama, the same vicious cycle of horror and irrationality will continue over and over until there is nothing left but rotting carcasses and vast uninhabitable wastelands.

Furthermore, Colombia does not need more weapons flowing into the country. Colombia is already armed to the teeth. Adding more sophisticated means of killing each other and reeking environmental disaster on one of the world's most precious ecosystems is wrong and no matter what the U.S. national security concerns are, arming and provisioning the Colombian military and propping up an uncertain civilian administration is not the answer. This is true especially when the law enforcement authorities are incapable of "providing the average Colombian with security against crime, kidnapping or assassination." For as long as corruption reigns supreme in Colombia, nothing the United States does will truly make a difference.

What is the answer? Unfortunately, I have no sure solution to offer. I do know, however, that Colombia needs to change its

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229. Residents in areas where aerial spraying has been undertaken complain of indiscriminate spraying of buildings, schools, and people. Reporting on 70 children who were sprayed last June in rural southwestern Colombia while at school, the school's principal said, "We had no way to give them first aid, so I sent them home. But they had to cross fields and streams that had also been contaminated, so some of them got sick." Furthermore, it is noted that the aerial spraying "also damaged legitimate crops, undermining government efforts to support residents who have abandoned poppy growing." Larry Rohter, To Colombians, Drug War Is Toxic Enemy, N.Y. Times, May 1, 2000, at A1.

soul. Perhaps the rise of a strong, benevolent dictator is a solution to the problem—someone that can place before the Colombian people a moral compass by which to steer a new course. Perhaps the horrific prospect of allowing Colombia to settle its fifty-year-old civil war on the battlefield is the solution. Perhaps the long hoped for multinational forces under OAS direction could successfully intervene in Colombia’s affairs. If ever a situation existed in which such a force could make a positive impact on a regional crisis, then Colombia is it. Without such a multinational effort, neighboring countries are powerless to prevent the Colombian crisis from spilling across its borders and reeking havoc elsewhere.

I am not against mutual assistance and aid packages from the United States. I am, however, opposed to the constant “nickel and diming” of U.S. foreign policy, to the lack of clarity and vision for the U.S. goals in the region, and to the executive branch’s continual dancing around the issues for the sake of political expediency. If the Colombia crisis is the national security threat we recognize it to be, then a concerted, 100% commitment is required to bring about change, even if that means radically redefining Colombia’s political infrastructure. But no changes can succeed as long as Colombia remains a sick and morally corrupt society.