



## Colombia Alert: U.S. Counternarcotics Policy Toward Colombia

by Myles Frechette

### Introduction

More than 80 percent of the cocaine in the United States comes from Colombia. Substantial amounts of the heroin seized in the United States are also from Colombia. For the United States the impact of illegal drugs is devastating, not only in terms of human misery and lives lost, but also the billions it costs to combat this illegal trade; house the prison population of drug offenders; to provide health care to drug users; and sustain the loss of productivity in the economy. One estimate puts the dollar cost at \$100 billion a year. This is a staggering amount, even in an \$8 trillion economy. The cost to Colombia, however, is disproportionately higher. Consider the corruption and economic distortion \$5 billion of illicit profits causes in Colombia, whose GDP is about \$90 billion.

Former President Ernesto Samper received \$6 million in narcotrafficker contributions for his 1994 presidential campaign. Mistrust and tension therefore marked U.S. policy during the period when the author was U.S. Ambassador to Colombia, July 1994 to November 1997. The United States concentrated overwhelmingly on reducing the production of cocaine and heroin and countering efforts to smuggle those illicit drugs into this country. However, it also worked on judicial reform, human rights, trade and investment, energy and the environment. Nevertheless, the United States was well aware that Colombia had a host of additional problems such as corruption and violence caused by guerrillas, paramilitary bands, narcotraffickers and common criminals. This violence gave Colombia the world's highest rates of murder and kidnapping and caused the internal displacement of 750,000 people between 1995 and 1998.

### Overview

- **The impact of illegal drugs is costly to both Colombia and the United States.**
- **President Pastrana's strategy requires military, economic, and judicial reforms**
- **Judicial reform is essential not only for fighting narcotrafficking and corruption, but also for strengthening democracy..**
- **Identifying, seizing and ensuring forfeiture of the assets of narcotraffickers is key to ending the profitability of narcotrafficking that feeds violence by guerrillas and paramilitary bands and fuels corruption.**
- **A comprehensive attack on narcotrafficking with greater emphasis on asset forfeiture, money laundering, and reform of the judicial system is needed.**

## Multiple Problems Will Take Years to Solve

President Andres Pastrana's long standing opposition to narcotrafficking and his election in 1998 by the largest number of votes in Colombian history has given the United States the opportunity to have a very different policy toward his government than toward that of his predecessor.

President Pastrana's administration inherited Colombia's worst economic recession in 60 years, along with Colombia's many other problems. Except for this recession, however, Colombia's other very grave problems took decades to develop. They will take years to solve. Successive Colombian governments did not acknowledge, let alone deal, effectively with them. President Pastrana, in a historic break with the past, courageously wants to take them on. In a key campaign promise, he vowed to end decades of guerrilla warfare and bring peace to Colombia. When he became President in August 1998, the United States widened its policy concerns to include supporting a peace process as well as strengthening Colombia's economy and democracy.

*A fundamental challenge to Colombian democracy is the weakness of its judicial system. There is a high level of impunity in both the civilian and military justice systems. Less than 3 percent of all crimes committed there are successfully prosecuted, whereas the United States' federal system has an 89 percent success rate even with its most complex cases. This level of impunity makes it impossible to reduce either corruption or narcotrafficking. A weak judicial system undermines the rule of law that is essential to a democracy. It also increases uncertainty for legal economic activity and discourages foreign investment. In short, without an effective judicial system, it will not be possible to put the criminals away or break up the criminal organizations whose corrupting power and illegal profits are destroying Colombia and its democracy.*

President Bush recognized that U.S. counternarcotics efforts in Colombia had to increase and that the Colombian judicial system had to be strengthened. He signed the Andean Trade Preference Act (ATPA) to give duty free entry to the United States for a vast array of goods from Andean countries that were fighting narcotrafficking. This strengthened Colombia's economy and its ability to fight drugs. President Bush also provided 26 million dollars in assistance to reform the judicial system.

- The ATPA expires in 2001. It should be extended until we have a Free Trade Area of the Americas.

## New Strategy-Plan Colombia

Under Secretary of State Thomas Pickering visited Colombia last August. He returned "sobered but...not panicked." Colombia, he said, is not in danger of being taken over by the guerrillas. He told President Pastrana it is up to the Colombians to determine a strategy for dealing with their problems, but the United States is willing to help.

President Pastrana presented such an overall strategy for dealing with Colombia's multiple and interconnected problems early last fall in Washington. He asked the international community for \$3.5 billion over the next three years. His approach will require military, economic, and judicial reform, a reduction in corruption and violence, and help for thousands of displaced people. The peace negotiations, which were stalled for several months, have formally resumed, albeit at a glacial pace. Both the Clinton administration and the U.S. Congress are discussing levels of assistance for Colombia that are much higher than during President Samper's term, and are also higher than the \$290 million approved for Colombia during President Pastrana's first year in office. **This aid is a step in the right direction.**



Violence by guerrillas and paramilitary bands is increasing. It would seem that these crises, added to Colombia's recession, would elicit support for Pastrana, especially among the economic elites who, presumably have a lot to gain from peace and economic recovery. This does not seem to be the case. Money is leaving, along with a brain drain in the middle and upper middle classes. The economic elites are divided and hesitate to support Pastrana. The media is critical of his peace strategy and his governing style. Politicians behave as though it were politics as usual. This is sobering.

- Only the Colombians can provide the political will to reform their country, no matter how much help they get from abroad.

### **Comprehensive Approach to Narcotrafficking**

Narcotics trafficking is at the core of U.S. concerns. American society pays a heavy price for illicit drug use. So does Colombian society. Colombia's many problems, including violence, economic recession, corruption, and eroded democratic institutions, are exacerbated by the profits of producing illicit drugs and smuggling them into the United States, Europe, and elsewhere. If the United States is serious, it must be prepared to increase the funding for fighting narcotrafficking, not only for Colombia, but also for any other government in the region that wants to cooperate. Squeeze the narcos hard in Colombia and they will slip away to operate elsewhere. *Yet, it is not enough to reduce the drug supply or to interdict it in transit. The United States also must reduce consumption further.*

We have tried to stop narcotrafficking from Colombia since the mid-1970s. It began with marihuana, but during the 1980s cocaine became king. Then, with help of Asian experts, the narcotraffickers also got into the heroin business. The high prices Americans are willing to pay for these illicit substances generate sufficient profits for Colombian narcotraffickers to pay for constant innovation in producing and smuggling these substances into the United States. Each new strategy adopted by U.S. law enforcement agencies and their Colombian counterparts has resulted in new criminal counterstrategies.

Colombia can produce three crops of opium poppy a year and, despite ever improving crop eradication efforts, new acreage planted with coca continues to increase. In the early 1990s the

Colombians, with U.S. help, won big victories against the Medellín cartel only to see the Cali cartel pump even more drugs into the United States. In 1995 the Colombians put all of the Cali cartel kingpins in jail. But low-level remnants of both organizations continued to move drugs into the United States. Last fall, in Operation Millennium, one Mexican and thirty Colombian narco-traffickers were arrested at the request of the United States. Although a few Colombians and Mexicans are still at large, this operation was another important victory for the United States and its partners. But we also know that less well-known criminals will take the places of those arrested, drawn by the profits to be made in this country.

- The United States must strengthen Colombia's ability to seize and ensure the forfeiture of the illegal profits of narco-traffickers. It is these illegal profits that cause such damage to Colombians and their institutions, help to finance guerrillas and paramilitary bands, and erode democracy in that country. Seizing and ensuring forfeiture of illegal assets should become as important as making busts.

### **Strategies Used and Lessons Learned in Colombia**

The term "narcodemocracy" has often been used to describe Colombia. It was coined in the early 1980s by a U.S. ambassador to describe a Colombia he could foresee in which narco-traffickers controlled the country through corruption while hiding behind a facade of democracy. Colombians reject the "narcodemocracy" label, but the scandals of the Samper years jolted them by demonstrating how widespread and powerful narco-trafficker influence had become. **Today concerns about Colombian democracy encompass not just the erosion of institutions, but also guerrilla and paramilitary control of portions of the national territory.**

In the 1980s the narco-traffickers developed counter-strategies against increased U.S. pressure for their extradition. One such strategy was to negotiate their surrender in order to be tried in Colombia and thus avoid being extradited to stand trial in the United States for the same crimes. In this way-relying on bribery and intimidation, lenient sentencing guidelines and time off for good behavior-many traffickers spent a ridiculously few years in prison, compared to the long sentences they would have served had they been extradited, tried, and convicted in the United States. The thirty Colombians arrested in Operation Millennium have not been charged in Colombia, and thus cannot negotiate trials there.

Killing and intimidation of judges and prosecutors became so common in Colombia that it adopted the "faceless" justice system from Italy to protect their identities. This system worked well for several years but has been greatly curtailed because of arguments that, under "faceless" justice, legal safeguards for the accused are weak.

Narco-traffickers next attacked the population using terrorism, bombings, and assassination to intimidate the government so that it would not extradite them to the United States. Their slogan, boldly proclaimed in the press, was: "better a grave in Colombia than prison in the United States." As a new constitution was being debated in 1990, the narco-traffickers, used highly paid lawyers, bribery, intimidation, and nationalism to sell the idea that Colombians should be tried and serve their time at home rather than abroad. The 1991 Constitution further weakened the ability of the Colombian state to deal with narco-trafficking. Conviction was harder to obtain for narco-trafficking and related crimes, penalties were softened, and extradition of Colombians was forbidden.

The United States then tried to bring narco-traffickers to justice in Colombia by sharing U.S. evidence with Colombian prosecutors. The experiment was a dismal failure. Some U.S. crimes are not considered so in Colombia; compelling evidence lawfully collected in the United States (e.g., through court authorized wire taps) was discounted; cases were dismissed, or, even if conviction was obtained, 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 some form of drug legalization. Evidence sharing was discontinued in March 1994, and has not been resumed.

The decertification of Colombia in 1996 for not cooperating adequately with the U.S. on counternarcotics signalled Colombians that they had to take effective action against narcotrafficking. At the same time, investigations by the new prosecutor general of narcocorruption by President Samper, and convictions for narcocorruption of members of Congress and government officials, such as the attorney general and the comptroller general, demonstrated dramatically to Colombians and the international community that narcotrafficking had corroded Colombian democracy.

International pressure resulted in important changes in law and policy in Colombia. At U.S. urging, and with media and public support, the Colombian Congress, in 1996 and 1997, passed laws on money laundering and asset forfeiture and sought to strengthen penalties for narco-offenses.

The Samper government negotiated a maritime ship boarding agreement with the United States, which Colombia had rejected for six years. This agreement made it possible for the U.S. Coast Guard to board Colombian vessels outside that country's territorial waters. The United States also provided advice to Colombia on prison security to make it harder for criminals to escape and for drug kingpins to continue to do business from prison.

After three years of U.S. urging, the Colombian Congress on December 17, 1997, amended their constitution to once again allow the extradition of Colombians, but only for crimes committed after that date. Although this was a welcome improvement, it gave sanctuary to all Colombian criminals like the Cali cartel kingpins who, prior to that date, had committed world class crimes against American society.

Because Colombia does not have laws permitting the naming of narcotrafficker front businesses, the United States put in place the International Emergency Economic Powers Act (IEEPA) which identifies front organizations, freezes their assets in the U.S., and bars U.S. persons from doing business with them. This has forced a number of once successful front companies into bankruptcy.

The experience of the decade of the 1990s has shown how much the United States can do using its own laws to help Colombia fight crime. But this is not enough.

- The United States must do more to help Colombians use their own laws and institutions to reform their country. Only they can do it, with effective help from us, and only if they have the will.

### **Where Are We Now?**

Today the United States is doing more for and with the Colombians than ever before. In fact, police and judicial cooperation have never been greater. But even considering some of the advances mentioned earlier, much remains to be done.

- **Asset forfeiture:** This is one of the most effective ways to destroy criminal organizations. In the last two years some 22,000 properties in Colombia have been seized with a value of \$1 billion. However, the landmark law passed in 1996 is very complicated. Only five forfeitures have been completed and many properties have been returned to the criminals following court challenges. President Pastrana issued decrees a few months ago to simplify the forfeiture procedure but they were struck down by the Constitutional Court. *The Pastrana administration must introduce, propose, and persuade Congress to pass a*

*new, simpler law so that this extremely effective tool can be put into use.*

- **Money laundering:** Very few cases have been prosecuted. The Colombians have set up their own version of our FinCEN but the Colombian Banking Association guidelines have been the most effective tools Colombian banks use to avoid money laundering. The banking sector understands that it could lose access to U.S. banks if it doesn't police itself. However, money continues to be laundered using American products brought in either as contraband or through black market peso exchanges from the United States or the Colon Free Zone in Panama. *The United States can do more to help Colombia in this regard, including the denial of off-shore banking facilities to illicit profits.*
- **Extradition:** An extradition request takes anywhere from one to two years to process in the Constitutional and Supreme courts of Colombia. Eleven requests have been pending before the Colombian courts for a year. As a result of Operation Millennium, the United States recently made 30 more. In November 1999, Colombia extradited a Colombian citizen to the United States, the first such case since 1990. *Further extradition of Colombians will signal that Colombia understands the importance of international law enforcement cooperation.*
- **Sentence Strengthening:** The 1996 law was intended to make Colombian sentences for narcotrafficking commensurate with the crime. It has proven most difficult to apply. The sentence increases were illusory and either unavailable for narcotrafficking crimes or, when available, can be reduced so greatly that actual sentences served are minimal at best. *The United States must do more to encourage the Colombian government to find a way to make this work.*
- **Maritime ship boarding agreement:** 94 cases have been brought to trial, but there have been no convictions. The Department of Justice and the U.S. Coast Guard have worked with Colombian prosecutors and the Colombian Navy to develop acceptable evidence collection procedures and to train specialists for such cases. *Both governments must continue to work closely together to ensure results in maritime counternarcotics cooperation.*
- **Prison reform:** In 1997, because of national and international concern about the effectiveness of the Colombian organization responsible for prisons, the police took over most maximum-security prisons. Today they have been withdrawn from all but one. The United States has made various suggestions for changes in prison design and security procedures. Nevertheless, security procedures within the prisons are basically unchanged leaving the wealthy, powerful prisoners very much in control. *The Colombian government should implement the U.S. suggestions and make the necessary structural and procedural changes.*

It is clear that some key laws need revision and we must look to the Pastrana administration for moving these through Colombia's Congress. The Colombian National Police are the best anti-narcotics force in Latin America and the Caribbean. To make them more effective at destroying criminal organizations, the Colombian police and prosecutors need training and help to strengthen their investigative capacity in everything from forensics to tracking sophisticated financial transactions. Colombian judges need help in better understanding how to utilize their judicial system.

The United States has been successful with such training in the past and is working now to strengthen other needed skills. Special purpose police units trained by the U.S. were instrumental in the demise of the Medellín and Cali cartels and in the recent Operation Millennium. The United States is now helping to create special units of vetted police and prosecutor personnel to work on money laundering, anti-corruption, human rights, complex anti-narcotics cases, and asset forfeiture. A group of prosecutors dedicated to maritime seizures is being trained with a new guideline manual, and dedicated personnel are to be stationed in every major port, as well as in Bogota. Lastly, a group of customs police will be trained to deal with contraband and black market peso exchange transactions.

The United States has trained a 950-man counternarcotics battalion which became operational in December 1999. Two more such battalions are planned. The performance of this first battalion will demonstrate the commitment of the Colombian Army to observing human rights and supporting the counternarcotics mission.

### **Strengthening U.S. Policy**

For twenty-five years we have been trying to stop drug smuggling into the United States from Colombia. In the meantime, Colombia's many interconnected problems have worsened. Violence and corruption have risen, affecting not just Colombia, but neighboring countries as well. Democratic institutions are eroding, and the weak judicial system cannot cope with corruption, narcotrafficking, or the influx of illegal drug profits. We have tried to work around the shortcomings of Colombia's weakened institutions and judicial system. But that is no longer enough.

President Pastrana's assumption of power led to several important changes in our bilateral relations. The Colombians publicly acknowledged their many serious problems. They prepared a strategy to address those problems and asked for international assistance. The United States decided to assist Colombia with issues beyond counternarcotics and is prepared to vastly increase the amount of our bilateral assistance.

Over the years we have tried various strategies and different combinations of tactics to implement our counternarcotics policy in Colombia. But, because of funding constraints, we have never been able to make comprehensive and full use of the best tactics for destroying narcotrafficking organizations and denying them their illicit profits. *For the first time both the administration and the Congress are prepared to support levels of funding that would allow such a comprehensive attack.*

The proposal announced last October by Senators Coverdell, DeWine, and Grassley would provide \$1.6 billion over three years. The Clinton administration on January 11, announced a proposal to provide Colombia \$1.6 billion over two years. The President reiterated the importance of this request in his State of the Union Address January 27. *However, neither proposal includes adequate funding for judicial reform.* The struggle in Colombia against narcotrafficking, violence, and corruption will take many years. Reforming the judicial system on an intense and expanded basis beginning now will provide bedrock support to all these efforts over the coming years and is an indispensable ingredient in strengthening democracy.

- U.S. assistance to Colombia should include more funding to reform and strengthen Colombia's judicial system and must recognize the central role played by a judicial system that works and has public support.

### **About the Author**

**Myles Frechette** joined the Washington-based firm of Hills & Company after a distinguished and varied diplomatic career. Ambassador Frechette served as Ambassador to Colombia between 1994 and 1997, and previously served as assistant U.S. Trade Representative for Latin America, the Caribbean and Africa and Ambassador to Cameroon from 1983-1987. His other posts include Director for Policy Planning, Coordination and Press in the U.S. Department of State's Bureau of Inter-American Affairs, and has also been associated with Cuban affairs. From 1983 to 1987 he served as ambassador to Cameroon. His extensive diplomatic career has been supplemented by several years in the private sector, including the financial services and aerospace sectors. Ambassador Frechette received his B.A. from the University of British Columbia, and his M.A. from the University of California at Los Angeles.

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