

**DEMOCRATIC GOVERNANCE AND THE RULE  
OF LAW:  
LESSONS FROM COLOMBIA**

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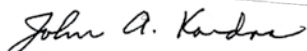
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## FOREWORD

The 2009 Failed States Index, a collaborative venture between *Foreign Policy* and *The Fund for Peace*, identifies many nations as being in danger of becoming failed states – in fact, two-thirds of the world’s states are critical, borderline, or in danger of becoming just that. Failed states do not possess the necessary conditions to have truly sovereign governments that meet the needs of their populations.

Colombia garnered a rating of 89 on the 2009 Failed States Index, just below that of Kyrgyzstan. It has experienced conflict for decades and as Dr. Gabriel Marcella observed, was a “paradigm for a failing state” in that it was replete with terrorism, kidnapping, murder, corruption, and general lawlessness. But today it is much safer through the imposition of the *Rule of Law*.

Dr. Marcella addresses the rule of law and its impact on Colombia. The Peacekeeping and Stability Operations Institute and the Strategic Studies Institute are pleased to offer this monograph as part of an international conversation regarding the prevention of failed states and the maintenance and improvement of states that have not yet degenerated to that level.

  
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Colonel, U.S. Army Director  
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GABRIEL MARCELLA retired in 2008 as Professor of Third World Studies and Director of the Americas Studies in the Department of National Security and Strategy at the U.S. Army War College. During his government career he served as International Affairs Advisor to the Commander in Chief, United States Southern Command. Dr. Marcella has written extensively on Latin American security issues and U.S. policy. Recent publications include the monograph *American Grand Strategy for Latin America in the Age of Resentment, Security Cooperation in the Western Hemisphere: Resolving the Ecuador-Peru Conflict* (coauthor/editor); and the coauthored *Affairs of State: The Interagency and National Security*. He has written a number of works on Colombia and Ecuador, including "The U.S. Engagement with Colombia: Legitimate State Authority and Human Rights" and "Wars Without Borders: The Colombia-Ecuador Crisis of 2008." Dr. Marcella's current research focuses on the Colombian crisis and U.S. strategy, national security decisionmaking, and the teaching of strategy. He is the co-founder of the Teaching Strategy Group, an interuniversity association dedicated to improving the teaching of strategy. Dr. Marcella is a commentator on Latin American security and U.S. policy in the printed and electronic media in the United States and Latin America. Currently, he is an adjunct professor at the Army War College and consultant to the Project on National Security System Reform. Dr. Marcella holds a Ph.D. in Latin American History from the University of Notre Dame, a diploma from the Inter-American Defense College, and was a Fulbright Fellow in Ecuador.

## SUMMARY

Colombia has experienced conflict for decades. In the 1990s it was a paradigm of the failing state, beset with all manner of troubles: terrorism, kidnapping, murder, drug trafficking, corruption, an economic downturn of major scope, general lawlessness, and brain drain. Today the country is much safer, and the agents of violence are clearly on the defensive. Nonetheless, much work lies ahead to secure the democratic system. Security and the rule of law are fundamental to the task. As the monopoly over the legitimate use of force is established, democratic governance also needs the architecture of law: ministry of justice, courts, legislative scrutiny, law enforcement agencies, regulatory bodies, public defenders, police, correctional system, legal statutes, contracts, university level academic education to train lawyers, judges, and investigators, along with engagement with civil society to promote a culture of lawfulness. Security without the rule of law puts a society at risk of falling into a Hobbesian hell.

This paper explores the impact of revolutionary changes in the administration of law on governance in Colombia. While fighting a long and difficult war against terrorists and narcotics traffickers, Colombia began converting its judicial system from the Roman law based inquisitorial system to an accusatory system. The United States has assisted with money and advice as part of its overall support program under Plan Colombia. The changes are already showing remarkable results in expediting criminal cases through the courts and in making the legal process more accessible to the people, thereby restoring confidence in the badly

battered judicial system. The lessons to be drawn are important for statesmen throughout the world because Colombia may very well be the best ongoing laboratory for democratic state building. For example, rule of law programs cannot be sustained without adequate security, which must also be established within legal norms. The host country must design, implement, and make the sacrifices for its own program of reform and institution building in order for the effort to take deep roots in the political culture. Moreover, the primacy of legitimacy and the rule of law must be a central component of instruction, doctrine, and education and planning for post-conflict reconstruction governance activities. Therefore, Colombia is a paradigm that needs to be extensively studied by strategists looking for wisdom in the nexus between security, the rule of law, and democratic governance.

# DEMOCRATIC GOVERNANCE AND THE RULE OF LAW: LESSONS FROM COLOMBIA

The presence of the rule of law is a major factor in assuring voluntary acceptance of a government's authority and therefore its legitimacy. A government's respect for preexisting and impersonal legal rules can provide the key to gaining it widespread, enduring social support. Such government respect for rules—ideally ones recorded in a constitution and in laws adopted through a credible, democratic process—is the essence of the rule of law. As such, it is a powerful potential tool for counterinsurgents.

The U.S. Army-Marine Corps  
Counterinsurgency Field Manual<sup>1</sup>

## **Introduction.**

Colombia has experienced conflict for decades. In the 1990s it was a paradigm of the failing state, beset with all manner of troubles: terrorism, kidnapping, murder, drug trafficking, corruption, an economic downturn of major scope, general lawlessness, and brain drain. To top it off, the government was losing territory to an assortment of criminals that made war against the state and society. Today, Colombia is a much safer place, though the job is far from finished. This paper explores the impact of advances in the rule of law on governance. It then draws lessons learned that go beyond Colombia. The thesis is that Colombia is a paradigm that needs to be extensively studied by statesmen looking for wisdom in the nexus between security, the rule of law, and democratic governance.



## **The Imperative of the Rule of Law in the Democratic State.**

Any discussion of democratic governance in conflicted societies must begin with security and the rule of law. Although security, state presence, and social and economic progress are all important mutually reinforcing elements in establishing a government's authority and legitimacy, it is the rule of law and its acceptance by the people that binds them all together.

Democracy is not possible without security, and security without the rule of law is a Hobbesian hell. Achieving security and the rule of law requires political will, resources, and time to repair and build institutions and develop the rules of democratic community that are generally accepted by the populace. That is why the Constitution of the United States and the Declaration of Independence are such singular documents. They codified a long process of institutional and political development that began before the *Magna Carta* in 1215 and ultimately transformed 13 colonies into a democratic state that survived a great civil war and is still evolving in the 21st century. Indeed, the *Magna Carta* was itself the result of the security and enforcement of the King's Law, established by English monarchs as early as Henry II (1154-89). Within the security provided by the *Magna Carta*, the barons took the first steps towards what eventually became widespread parliamentary democracy.

The rule of law makes democracy work because law is the collective will of society, making possible the monopoly on the legitimate use of force, equal rights, and social order. Six elements comprise the rule of law: order and security, legitimacy, checks and

balances, fairness, effective application, and efficiency and integrity.<sup>2</sup> As the monopoly over the legitimate use of force is established, democratic governance also needs the architecture of law: ministry of justice, courts, legislative scrutiny, law enforcement agencies, regulatory bodies, public defenders, police, correctional system, legal statutes, contracts, university level academic education to train lawyers, judges, and investigators, along with engagement with civil society to promote a “culture of lawfulness.”<sup>3</sup>

International law privileges the state, while the just war doctrine (*jus ad bellum* and *jus in bello*) makes the state the competent authority in the resort to the use of violence for legitimate purpose, such as defense and public security. *Ipso facto*, the state has internal and external legitimacy and a monopoly on the use of force that no other entity, such as terrorists and guerrillas, can have. Since the rule of law represents a society’s collective will on values and norms, justice becomes essential for healing wounds between groups that have been killing each other. Post-conflict situations demand restorative justice, which requires the search for truth, assigning blame, finding the appropriate balance between forgiveness and punishment for the guilty, providing reparations and satisfaction to victims, establishing confidence in the peace process and in state institutions, and enforcing the law as essential for sustainable peace.

All of the above presupposes the existence of an effective state, endowed with the capacity and resources to perform these functions: exercise legitimate monopoly on the means of violence, administrative control, management of public finances, investment in human capital, delineation of citizenship rights and duties, provision of infrastructure services,

formation of the market, management of the state's assets (environment, natural resources, and cultural assets), international relations, and rule of law.<sup>4</sup> The functions are mutually dependent. Accordingly:

When these functions are performed in an integrated fashion, a virtuous circle in which state decisions in different domains bolster enfranchisement and opportunity for the citizenry. This process reinforces the legitimacy of the decision makers and their decisions, engendering trust in the system as a whole. By contrast failure to perform one or many of these functions leads to the creation and acceleration of a vicious cycle. This results in the creation of contending centers of power, the multiplication of increasingly contradictory and ineffective decision-making processes, the loss of trust between citizens and the state, the delegitimization of institutions, the disenfranchisement of the citizenry, and, ultimately, the resort to violence.<sup>5</sup>

The ineffective state is a recurring challenge in much of the world. Criminal violence, terrorism, human rights atrocities, humanitarian disasters, destruction of the environment, contraband, displaced populations, gun-running, illegal immigrants, and narco-trafficking across undefended borders are the price the global community pays for weak and failed states. An effective democratic state should have strategic and operational capacity among its ministries to provide security, justice, and other services to the people.

However, a democratic state is not cheap. The effective democratic state needs resources, including but not limited to the hiring and professionalizing of human talent and assembling budgets to perform essential functions. Therefore, to govern is to tax. In this regard, meager tax revenues are another reason that historically weak states, such as Colombia, have been

unable to deal with substate threats. Unfortunately, democratic states do not emerge from campaign plans and budget cycles. They emerge from a long historical process of push and pull between contending powers in a society, who, to avert chaos and killing, agree to empower and constrain central authority through some form of checks and balances. This is far from an orderly process. The dilemma is that authority must be established before it can be constrained.<sup>6</sup> The challenge to the modern state and nation builders is determining how to establish authority as well as how to constrain it.

No post-conflict society has achieved complete justice, with all the perpetrators appropriately punished and adequate reparations made to all the victims. Yet, lack of complete success in past endeavors does not exempt governments from making the greatest efforts at justice.<sup>7</sup> The ambiguous nature of conflict in the 21st century makes the rule of law even more salient. An assortment of criminals and terrorists will avoid conventional tactics by targeting civilians and controlling territory by fear, hate, corruption, and population displacement.

Because the complexities of conflict in the 21st century pit the state against criminals, the state must be the authoritative defender of standards of human decency and law. This, of course, is the core reason why states and their military forces must obey and be held to a higher standard, whether they like it or not. Since the state and its officials are themselves bound by laws, they cannot act arbitrarily or abusively. In Colombia, as in the Central America of the 1980s, some military officers have railed against U.S.-imposed human rights conditions. Yet a strong argument can be made,

and is so recognized by modern elements within the armed forces, that these conditions have contributed to establishing and strengthening the authority and legitimacy of the state.

### **Stability, Reconstruction, and Legitimacy.**

The planning and execution of stability and reconstruction operations must balance the need for security with the imperative of justice. The task is to achieve both without putting the state's legitimacy at risk by achieving security at the expense of justice. Legitimacy is the conditional right that the people confer on the government to govern. It has a procedural (elections, rules, ability to organize and compete for political power) and a substantive connotation, the latter requiring effective governance.<sup>8</sup> Legitimacy affects all aspects of democratic governance. For example, policemen can perform their duties if the people regard the government and its uniformed representatives as legitimate, honest, and professional officers of the law. Simply put, legitimacy is power, at home and abroad. Legitimacy itself demands a system of vertical and horizontal accountability, which must be structured and empowered to function.<sup>9</sup> In vertical accountability, office holders are answerable to the citizen-electors; in horizontal accountability, office holders are answerable to other institutional actors in the government, such as courts, the opposition in parliament, audit agencies, ombudsmen, commissions, and central bank.

Accountability reinforces legitimacy and combines with the rule of law to constrain the abuse of power. The dilemma is that "illegitimacy is an irrelevant concept when there is no alternative to the current order."<sup>10</sup>

This unfortunately describes the geographic spaces that are not controlled by governments but instead by an assortment of criminals, terrorists, and liberation movements such as those found notably in such places as Colombia and Afghanistan.

The United States has a mixed record in post-conflict reconstruction activities, ranging from being the occupying power in Germany and Japan after World War II to Panama after Operation JUST CAUSE in 1989-90, and to such frustrations as contemporary Iraq and Afghanistan.<sup>11</sup> The luxury of internationally recognized military occupation, with unlimited legitimacy, time, and resources to accomplish state-building and nation-building, is rare now and will be in the future, as will the total war and total strategy of World War II. Nonetheless, the United States and the democratic community of nations are likely to be engaged in providing a range of economic, technical, and military assistance and advice to friendly states to improve their security, their capacity for social and economic development, and the rule of law. While the United States remains the anchor of global security and the leader for democratic change, the relative decline of the state on a global basis is likely to produce more security challenges and humanitarian crises in the future.<sup>12</sup>

U.S. foreign policy and military strategy are firmly rooted in the belief that the United States is an agent for moral good, possessing the means, if not always the will, to use force to assist in situations. U.S. citizens expect their diplomats and armed forces to leave in place a better peace of which they can be proud. Perhaps due to significant U.S. energy, influence, and involvement, both Germany and Japan emerged from the post-World War II context as thriving democracies

and economic powerhouses. Even Panama today is much better in many measures than it was in the days of the 1980s thugs. Whether that holds true for truly failed states like Haiti, which has practically lost the ecological basis for human survival, or Somalia, remains to be seen.

### **Colombia in Strategic Context.**

Given this backdrop, the Colombian case holds important lessons for American statesmanship in post-conflict societies. U.S. support to Colombia is of a very different category than that in classic post-conflict stability operations. Colombia is one of a number of countries which is neither failed nor failing. Although it faces serious problems of internal conflict, it also has enormous human capacity in a highly educated professional class and the resources and political commitment by the government to strengthen governance. Therefore, Colombia faces a long period of building and rebuilding the institutional capacity to prevent further conflict, establish effective democratic governance and support for civil society, expand social services such as education and health, expand infrastructure and market mechanisms, and address the needs of displaced people.<sup>13</sup>

Moreover, Colombia does not present a classic scenario which moves from conflict to a peace agreement and post-conflict phase. As noted by Colombian scholars: "The decentralized nature of the illegal armed groups, supported by strong illegal economies, drug trafficking, extortion, and other illicit activities, makes it unlikely that a single universal agreement will secure the complete disarticulation and end of the violence which those groups generate."<sup>14</sup> Colombia is likely to face continued low level violence into the future,

requiring a long-term effort at establishing security and the capillary system of governance, to include the rule of law throughout the national territory.

Thus, Colombia is not a classic post-conflict society that is trying to build or rebuild its institutions from scratch. In fact, Colombia has one of the most solid procedural (as opposed to substantive) democracies in Latin America, though not necessarily an inclusive or a just one.<sup>15</sup> One student of Colombia's judicial system notes that the political system remains exclusive, clientelistic, and alienated from large sectors of society. Moreover, the state lost the legitimate monopoly of coercion, while narco-trafficking aggravated the weakness of the state.<sup>16</sup>

Democratic governance functions best when the executive, legislative, and judicial branches are independent. In Colombia the checks and balances face a powerful and energetic executive, President Alvaro Uribe. He is immensely popular and has provided effective leadership since 2002, though with a tendency to often micro-manage. In mid-2009, there was a robust national debate on the pros and cons of Uribe running for a third term. The cons appeared to win, given the disappointing record of third-term presidents in Latin America. The stakes in Colombia for the international community are high. Unless state institutions become effective and the government gains control of all the national territory, the ailments that afflict Colombia, such as narco-trafficking, corruption, and violence, will fester and continue to be exported to Latin America, the United States, Canada, and Europe. Indeed, the conflict paradigm and the policy/strategy responses which Colombia exemplifies have immense implications across the globe.

Colombia is a highly stratified society of 45 million people, with a vast gap between rich and



poor. Nearly half of the population lives in poverty, a condition aggravated by the estimated 3.8 million persons internally displaced by the continual conflict. If one is born poor in Colombia, one is likely to die poor.<sup>17</sup> Poverty explains, in part, the ease with which some Colombians look to criminal activity to escape the hopelessness of their existence, in a land where wealth and land are so inequitably distributed, and where the reach of the state has been so meager. A critical commentary on the rule of law comes from the celebrated Colombian novelist, Gabriel García Márquez, in his famous 1996 essay, "For the Sake of a Country Within Reach of the Children."

Justice and impunity co-inhabit inside of each in the most arbitrary way; we are fanatical legalists but carry in our souls a sharp-witted lawyer skilled at sidestepping laws without breaking them, or breaking them without getting caught...Perhaps we are perverted by a system that encourages us to live as if we were rich while forty percent of the population exists in abject poverty...we always want a little more of what we already have, more and more of what once seemed impossible, much more than the law allows, and we obtain it however we can, even if that means breaking the law.<sup>18</sup>

More recently, Colombian scholar Francisco Thoumi, speaking of the societal impact of corruption and criminality, warns against the dishonesty trap:

. . . when criminal behavior is tolerated and accepted, the socialization process ends, producing a generation of individuals with weak internalized constraints. In these cases, it may be argued that a society falls into a 'dishonesty trap' from which it is very difficult to escape. The problem is simply that where most people are dishonest, it is very costly for anyone to be honest.<sup>19</sup>

In the case of Colombia over the last 25 years, the judicial system became even more dysfunctional because of the violence and corruption generated by drugs, as discussed later in this paper.

Colombia's experience yields significant lessons for statesmen pondering countries in crisis that may be candidates for support in the area of governance. While U.S. support and advice made a crucial difference, Colombians themselves bore the burden of sacrifice in bringing their country back from the brink.<sup>20</sup> What sets Colombia even more apart is that despite its travails of the last 15 years, foreign military forces are not conducting peacekeeping, security, or the complex and expensive missions of post-conflict reconstruction on its soil. Such forces were never needed or desired by Colombians. It is a *sui generis* Colombian effort, with a strong dose of American economic and military assistance to the multi-year Plan Colombia effort. For example, the U.S. military footprint, measured in manpower on the ground, is limited and none are assigned for combat duties.<sup>21</sup> In fact, during 2005-08, the number of U.S. military personnel varied from 136 to 563, and the civilian contractors from 173 to 454. However, during 2008 the numbers for both categories ranged from 250 to 350 personnel total. Such limited U.S. involvement provides a strong element of legitimacy to the Colombian effort. It also forced Colombians to sacrifice and to be creative in developing effective institutions of governance and security, thereby sinking deeper roots within the country's political culture.

Colombia telescoped into a small time window the complicated process for building an effective state that should have been accomplished generationally since it became independent in the 1820s. Founded

intentionally as a weak state in the 1820s by political leaders who feared strong central authority and a strong military, it subsequently divided into a number of independent states in the 19th century, and therefore remained short of sufficient military power and resources. Consequently, central authority stayed weak well into the modern era. Strong regionalisms, war, and violence have characterized Colombia's political life, in what historian Marco Palacios calls the struggle between "legitimacy and violence."<sup>22</sup> The Thousand Days War of 1899-1902 between Conservatives and Liberals was particularly destructive and presaged the *La Violencia* that would begin in 1948.<sup>23</sup>

Adding to its internal weakness was the reality that the Colombian state was short of the tax revenues required to pay for security and effective governance amid one of the world's most difficult geographies. Daniel Pécaut, a French sociologist and a leading authority on Colombia's conflict, argues:

. . . the multiplicity and intensity of the conflicts are caused above all by the fact that national unity has never been fully consolidated and the central State has only had precarious authority and . . . has not had the monopoly of violence. The geographic fragmentation of the territory, crossed by three mountain chains of the Andes, the multiplicity of urban poles, the constant movement to occupy new frontier zones, have contributed to this situation. Consequently, the phenomena of violence almost always bear a social connotation, in which the State unquestionably is implicated, whether the political factions in power favor them, or because of the absence of state control favor, their growth."<sup>24</sup>

Another scholar supports this thesis: ". . . state infrastructural weakness is the primary cause of political violence in Colombia. Indeed, in conjunction

with the drug trade, state weakness has shaped the type of political violence that Colombia is experiencing, namely, multiple sovereignty.”<sup>25</sup> The reality of weak state capacity was keenly felt by the private sector, which was feeling the pain of war in the form of kidnappings, assassinations, extortion, and the decline of property values. Consequently, and partly at the urging of the private sector, in 2002 President Uribe imposed a special war tax on the wealthiest citizens, which included some 62,000 people. His administration used the revenues generated to fund military and security operations and institution-building activities in conflict and post-conflict areas, essentially expanding the reach of the state. Reports that the tax was oversubscribed indicate that taxes will be paid if the results are both directly applied and visible, thereby further contributing to state legitimacy.

### **The Challenge to the Rule of Law: Ungoverned Space, Noninstitutionalized Colombia, and Violence.**

A large part of Colombia’s national territory had not been under government authority, and its borders have not been controlled by either Bogotá or the neighboring states of Ecuador, Peru, Venezuela, Brazil, and Panama.<sup>26</sup> Moreover, a high percentage of Colombians in the underclass do not receive the benefits of governance because the ministries of the state do not reach them, whether in remote rural areas or the cities. As much as 40 percent of national territory is inhospitable and lightly populated—such as the eastern plains (*llanos*), the Chocó, and the Amazon (Putumayo, Vaupés, Vichada, Caquetá, Guainía, Guaviare, and Meta), in addition to shanty towns in

large cities (e.g., Comuna 13 in Medellín)—and lacks sufficient government services and control. A 2003 report done by a distinguished cast of Colombian scholars enumerated 209 municipalities that were considered the most vulnerable to violence because of the lack of governance by the state. Governance was defined in terms of the presence of police, jails, communications, education, public offices, municipal purchases, health services, quality of life, in spite of the threats of homicide, terrorism, massacre, forced displacement posed by the Revolutionary Armed Forces of Colombia (FARC), the *Ejercito de Liberacion Nacional* (ELN), and paramilitaries.<sup>27</sup>

Narco-traffickers and terrorists alike conduct their illegal activities by exploiting Colombia's difficult geography, multiple international airports, an expanding highway system (Colombia has one of the lowest road densities in the world), ports on the Atlantic and Pacific coasts, extensive rivers, and poorly controlled international borders. In the 21st century, Colombia still has zones of active internal colonization with expanding frontiers where state presence, such as access roads, schools, medical facilities, communications, and even the police, are scarce to nonexistent. This pattern is discussed in greater detail in the section on the La Macarena region.

The great uprising of 1948 launched the modern period of conflict, *La Violencia*, and spread into the rural areas, lasting until the 1960s. From this conflict also emerged the two largest insurgencies, the FARC and the ELN. Each of these groups was nearly eliminated by the 1980s. However, the eruption of the cocaine economy in the 1980s resuscitated the FARC and ELN. Their organizational use of kidnappings and extortions allowed them to fill their war chests, while simultaneously corrupting their claim to be

legitimate revolutionary groups. They developed their own addiction to drug money, becoming partners in an international crime syndicate that spanned all continents. The growing insecurity gave rise to the paramilitary self-defense forces, which competed with the FARC and ELN for brutality, territory, money, and population control.

### **How Bad Can It Get?**

Narco-trafficking totally transformed the conflict in the 1980s and 1990s. The Colombian state and society both came under the assault of a powerful combination of the criminal substate actors, a deep economic downturn, and endemic corruption, as well as marked social and economic inequality. Narco-traffickers assassinated Justice Minister Rodrigo Lara Bonilla in April 1984. The attack on the Palace of Justice on November 6, 1985, by the M-19 guerrilla group with the financial aid of narco-trafficker Pablo Escobar is akin to America's September 11, 2001 (9/11).<sup>28</sup> Eleven Supreme Court justices were killed in the operation that included a badly conducted effort by the Colombian army to retake the building. These events and the growing barbarity of the traffickers plunged the country into a vicious campaign of terrorism against the state. Some 100 judges resigned after the Lara Bonilla assassination. Later, the assassination of three presidential candidates by Escobar (killed by authorities) of the Medellín cartel manifested the power of the drug cartels. The assassination of *juez sin rostro* (faceless judge) Judge Miryam Rocío Veléz in 1992 showed that the cartels had penetrated the highest security and had become a mortal threat to the institutions of government.<sup>29</sup>

At this time, some 90 percent of the cocaine entering the United States was coming from Colombia, creating havoc in the streets and adding to the addicted population, and forcing Washington to declare a war on drugs in 1989. However, when President Ernesto Samper (1994-98) received six million dollars for his campaign from the Cali cartel, it was difficult for Washington to deal with the Colombian president and his offices, although working relations with the rest of the government continued. For example, President William Clinton authorized Ambassador Myles Frechette to cancel Samper's U.S. tourist visa, making him the first sitting head of state to have his tourist visa cancelled by the United States. The cancellation signaled Washington's objection to Samper's acceptance of narco-financed campaign contributions, thereby sending a message that Colombians, and indeed, all Latin Americans, would understand.

To further complicate matters for the Colombian state, in 1997, the FARC defeated the Colombian Army in several battalion-sized battles. This was the first time that a modern Latin American army was successfully beaten by such irregular formations in the field. In contrast, Batista's army in Cuba collapsed from moral corruption rather than battlefield defeats. Concurrently, the military's human rights record made U.S. military aid problematic, thus diminishing the potential benefits of U.S. assistance and influence among the armed forces.

The challenge of ungoverned space and non-institutionalized Colombia was intensified by groups outside the law (the FARC, ELN, and United Self-Defense Groups of Colombia [AUC] were declared terrorist groups by the U.S. Department of State well before 9/11) that operated with near impunity—the narco-traffickers, the terrorist guerrillas, and the

paramilitaries. They took advantage of the weak institutions of central authority and the operational facility provided by globalization and the proliferation of sophisticated military and nonmilitary technology. In Washington, there were ominous warnings about the entry of the FARC into Bogotá and the possibility of a narco-state, *Farclandia*, emerging in south-eastern Colombia. General Fernando Tapias, commander of the Colombian armed forces, asserted at this time that the state had to recover legitimate authority over its national territory.

In the throes of battlefield reverses, the Colombian government began a long process of reorganizing and expanding what had been a small and defensive-minded military in order to reestablish the monopoly of the legitimate use of force. In 1998, the Colombian Army could deploy a mere 35,000 troops for combat, with precious little mobility, logistical support, and intelligence apparatus for a country the size of Texas and California combined (see map of Colombia on page 18). The task to transform and reorganize the military was seriously undertaken by the successive administrations of Presidents Andrés Pastrana (1998-2002) and Alvaro Uribe. However, despite the significant growth of the public security forces (military and police) over the last 10 years, the task in 2009 is still far from complete.

In 2002 some 15 percent of the nation's 1,098 municipalities (equivalent to U.S. county seats) did not have a police presence. However, under the Uribe administration, all 1,099 municipalities (including the addition of one new municipality) now have established police units for the first time in Colombian history. In addition, newly established 120-man mobile police units (called *Escuadrones Mviles Rurales de Carabineros*)





**Map of Colombia.**

actively patrol rural Colombia, providing presence in areas of conflict and assisting in the counternarcotics campaign.

Rural Colombia is also part of a vast physical and human geography, called the noninstitutionalized part of Colombia by the United States Agency for International Development (USAID). Here, the minimal conditions for the existence of the modern state are not available, with notable lacks in state services, especially security and the rule of law. However, the Uribe Administration (2002-10) recently began an ambitious interagency program of integrated action (referred to as *Acción Integral*) to reach out to build the sinews

and capillary system of the state in these ungoverned, noninstitutionalized, violence-prone spaces.

### **La Macarena.**

La Macarena is a microcosm of the governance challenges posed by noninstitutionalized Colombia. It is located on a mountain outcropping, the *Serranía de La Macarena*, in the Meta department, 4 hours travel by land, and located some 200 kilometers southeast of Bogotá. About 100,000 people live there, with many arriving as colonists as recently as the 1970s. It is one of the most biologically rich regions of the world, so much so that the Colombian government established three national parks to safeguard the flora and fauna.<sup>30</sup> Nonetheless, the decades-long absence of state authority allowed the FARC to consolidate control and use this land to grow 6.5 crops per year of coca (as opposed to 2 crops expected in other parts of the country), thereby producing over 200 metric tons of cocaine per year, or nearly 40 percent of Colombia's total production. During this period, La Macarena was literally the bank of the FARC.

The population in the area is characterized by high levels of poverty, violence, and criminality; lack of property titles; and high levels of illiteracy, malnutrition, and disease. At the same time, "The access of local citizens to Colombia's judicial system is very poor."<sup>31</sup> However, beginning in 2007, under the program called "The Plan of Integral Consolidation for La Macarena," the Colombian government undertook an ambitious interagency effort to achieve security and institutional control; strengthening of local government and participation by civil society; eradication of illegal crops and the development of a legal economy;

reestablishing territorial control; and the application of justice and the protection of human rights.<sup>32</sup> First, after establishing security, the government is now inserting technicians, engineers, police, prosecutors, social workers, and policy managers to “transform a lawless backwater into something resembling a functioning part of Colombia.” [Even so, more work needs to be done to build infrastructure such as roads, an electrification and communications grid, schools, medical facilities, and legitimate agricultural pursuits and markets. *The Washington Post* reports that progress is very encouraging:] We had to find a way to solve the security problem and the coca problem at the same time because they feed off each other, said Sergio Jaramillo, Vice Minister of Defense and an architect of the project, It’s all one problem, and it needs a joint solution.”<sup>33</sup> Susan Reichle, USAID Director in Colombia, stated that bringing the military and various government agencies together to bring services is “not something that’s rocket science, but it’s a very, very difficult thing to actually do.”<sup>34</sup> Finally, a USAID report of June 2009 noted: “Increasingly, La Macarena is viewed as a model to launch consolidated state presence, spur economic and social development, and restore long-term peace in other parts of Colombia that are suffering from violence and narco-trafficking.”<sup>35</sup>

### **A Work in Progress or End Game?**

The Colombian culture of illegality did not start with the emergence of the cocaine economy in the 1980s. Colombia’s problems of governance, security, and the rule of law are deeply rooted, beginning as early as the colonial period and the very founding of the state in the 1820s. This is not a culture or an

environment that is easily transformed or changed. Therefore, the best judgment of many observers is that in 2009 Colombia is a work in progress regarding governance and the rule of law. It is coming back from the brink of a feared implosion and moving in the right direction. Greater public security is now established and violence is significantly reduced; over 30,000 paramilitaries have been demobilized, disarmed, and are being reintegrated; and the FARC is on the defensive, sustaining serious battlefield reverses in recent years. Additionally, numerous FARC and ELN members have surrendered. Compared to statistics from 2002, homicides are down 40 percent; kidnappings were reduced by 83 percent, and terrorist attacks decreased by 76 percent. In a demonstration of international law enforcement, a total of some 800 Colombian traffickers were extradited to the United States by 2009. However, even though cocaine production was reduced, much was still getting through to foreign markets.

### **Net Assessment 2009.**

However, as of 2009, the agents of violence have not been decisively defeated and the corrupting influence of narcotics still has very deep roots. A disturbing new trend is the recycling of ex-paramilitaries and terrorists into criminal gangs, a problem that ensued from an imperfect demobilization of the paramilitaries and FARC and ELN members, predominantly due to insufficient economic opportunities for the demobilized.

The net assessment in mid-2009 is that the Colombian state had mobilized enough effort and resources to put the illegal armed groups in an irreversible state of decline. Accordingly, if the strengthening of the state continued along at the same pace of enhanced

political, economic, military effort, and legitimacy, it was estimated that the conflict could be in its terminal phase, with the end game perhaps in sight.<sup>36</sup> Yet this may still be overly optimistic for the reason indicated earlier: the Colombian state has not extended the rule of law to the entire national territory.

While the illegal armed groups might be in irreversible decline, the cocaine economy persists. In 2007, the U.S. Government estimated that coca cultivation encompassed 167,000 hectares, an increase from 157,000 hectares in 2006. Because of manual and aerial eradication (an effective technique because replacement plantings are less productive), estimated coca production decreased from a high point of 700 metric tons in 2001 to 535 tons in 2007. Despite the decline, sustained robust production and supply continues to undermine the entire supply-side strategy of eradication. The task ahead is consolidating the progress made in the last 10 years and not to lose ground in the process. For example, in 2009, the government was conducting expanded efforts at “clear, hold, and develop” in conflict areas, such as the Integrated Consolidation Plan for La Macarena described earlier.

Nevertheless, the Department of State’s 2009 *International Narcotics Control Strategy Report* admonishes: “The GOC (Government of Colombia) still must make efforts to gain control of the vast Pacific coastal zones and border areas, demobilize and integrate ex-combatants, and advance the reconciliation and victim reparations processes.”<sup>37</sup> Finally, society’s main antagonist, the FARC, has not been strategically defeated and can adapt and survive, as it has repeatedly demonstrated.<sup>38</sup>

## **Administration of Justice Program: From Investigative to Accusatory, Colombia's Revolutionary Change.**

Colombia's recent performance and the restrained American response to its internal security crisis yield powerful lessons about the centrality of the effect of the rule of law in post-conflict societies.<sup>39</sup> The United States has been supporting rule of law reforms in Latin America and elsewhere for a number of years. These efforts have been prominent in El Salvador, Panama, Guatemala, Honduras, and the Dominican Republic, while Mexico is converting to an accusatory system. In Colombia, the American rule of law program goes back to 1986, and is the oldest and most extensive of all country programs.<sup>40</sup> The Colombian constitution of 1991 was amended in 2002 to mandate conversion to an accusatory system, with a congressionally-issued accusatory code in 2004, and subsequent implementation began in 2005. The transformation was completed in 2008.

The Colombian judicial system was implanted by imperial Spain fitfully in the difficult geographic environs of New Granada. Like Spanish law, it originates from Roman law and draws also from King Alfonso the Wise's *Las Siete Partidas* of 1265 and later Spanish imperial legislation during the colonial period. The Crown and the Council of the Indies tried to create the perfect society in the colonies by legislating profusely for Spain's global empire with an immense outpouring of some 350,000 laws and decrees (*cédulas*) by 1650.<sup>41</sup> The Laws of the Indies were idealistic to the point of being utopian, at times casuistic and often at variance with the realities in the New World. Moreover, long distances and difficult communications made

enforcement problematic. Instead of the ideal society intended by the Crown, the reality often took two forms: corruption and the device called *obedezco pero no cumpro* (I obey but do not comply) among officials.

The pattern of profuse legislation continued into the independence period, irrespective of the state's meager capacity to enforce compliance. Indeed, the Constitution of 1991 illustrates the distance between the good intentions of the text and the reality of the state: ". . . the Constitution of 1991 has not produced the results we all hoped it would because there does not exist in Colombia a State (sic) capable of supporting and enforcing constitutional norms."<sup>42</sup> Another commentator calls the constitution ". . . a document of rigid micromanagement (e.g., it mandates indexation of pensions and sets specific targets for inflation and the allocation of regional public expenditures) rather than one that establishes basic institutions for democratic decision-making in a dynamic world . . . the Constitution promises too much to too many citizens, as if Colombia could create the welfare state of an advanced industrial country."<sup>43</sup> Thus, disrespect for the rule of law took root early in Colombia's existence and still persists, compounded by weak state capacity.

By the late 1990s, the Colombian legal system reached new levels of dysfunction, as impunity for crime soared to 95-98 percent of crimes committed. Convictions occurred in less than 7 percent of homicides, investigations were made in only 38 percent, and only 11 percent led to trials. In contrast, during this same time period in the United States an arrest was made and the defendant brought to trial in 65 percent of discovered murders, and conviction occurred in more than half.<sup>44</sup> The Colombian legal system was ponderously slow, with judges, police, and witnesses

intimidated by bribery, threats, and assassinations. In addition, there was an enormous backlog of cases going back years. The system required writing down everything, which frustrated those seeking justice, some of whom sought their own justice, since justice delayed is justice denied. The backlog of cases kept soaring.

These conditions existed in the Colombian state despite the second highest budget allocated to the judiciary in Latin America, and a high per capita number of judges, 17.1 per 100,000 people, versus 2 and 3 in the United States and Spain. A large budget does not mean that the judicial system is effective. Other factors, such as security, fairness, and access, must play a role. No less important is the nature of the system, inquisitorial versus accusatory.

Among its many defects, the Colombian criminal justice system had a “Notable gap between the constitutional principles related to the public due process without unjustified delays and the reality of the daily written, ritualistic, and formalistic practices” and a “Lack of procedures or administrative regulations to guarantee the tracking and preservation of evidence. . . .” There was a “general lack of understanding by the public on how to fully exercise fundamental rights to public trials, including the right to information and evidence supporting judicial decisions.”<sup>45</sup>

Incremental change in legal procedures was not going to fix the problems alone; structural reform was required. One legal scholar, intimately familiar with the judicial system, defines the change from investigative to accusatory as: “a revolutionary movement in Colombia [that] has drastically altered the adjudication of criminal acts from a centuries-old inquisitorial process based on continental law traditions to an



oral accusatory system modeled on Anglo-American practice and procedures."<sup>46</sup>

The U.S. Department of Justice (DOJ) and USAID have supported the change to the accusatory system within a comprehensive assistance package by which "United States policy responds to Colombia's social, economic, governmental, narcotics and terrorism challenges in a balanced and comprehensive manner."<sup>47</sup> Overall, American support has gone to counter-terrorism capabilities, counternarcotics, support to development of alternative crops and marketing, drug demand reduction, interdiction, human rights, anti-financial crimes and money laundering, good governance, political competition and consensus building, protection of vulnerable populations (such as internally displaced persons) and economic services, trade and investment, anti-corruption, food security, civil society, stabilization operations, security sector reform, disarmament, demobilization and reintegration of ex-combatants, and demining. Such policy breadth and integration enhanced the legitimacy of not only the U.S. support but the Colombian effort as well.

One of the advantages for the program is that bipartisanship in Washington for Colombia generally has been strong, built on the convergence of national interests between the two countries in the common fight against illegal narcotics, and, more recently, in the fight with terrorism. President Clinton issued Presidential Decision Directive (PDD) 14 to confront the narcotics challenge in the Andean region, and followed with PDD 73 addressing policy towards Colombia and support for Plan Colombia; while President George W. Bush issued National Security Presidential Directive 18 (NSPD-18) specifically for Colombia, updating the earlier PDD 73.<sup>48</sup>

An important milestone for engaging sustained American support was the adoption of Plan Colombia in 1999, which was crafted by Colombian officials with American consultation. Plan Colombia envisioned \$7.5 billion for the struggle against narcotics with the major portion, \$4.5 billion, coming from Colombia itself; \$1.6 billion from the United States; and the rest from Western Europe, Japan, and Canada. In 2005, the end of Plan Colombia's first 5 years, Colombia had spent \$7 billion and the United States \$4 billion. The impact of 9/11 helped expand American support, though the counternarcotics rubric remained in the supporting legislation. From 1999 to 2008, the United States provided over \$6 billion of support, from economic to military, along with advice on a range of needs. The support has been instrumental in turning the situation around. Some Colombians say that the United States saved the country.

President Uribe's *Política de Defensa y Seguridad Democrática* (Democratic Defense and Security Policy) of 2003 became the principal strategy document for Colombia's own interagency effort. Some observers believe it provided the most important element to make Plan Colombia work. With respect to the rule of law, the document states: "The government will support the rationalization of the administration of justice and the professionalization of its officials . . . as well as . . . installing an accusatory system which strengthens the investigative character of the institution."<sup>49</sup>

What helped the effort was a continuity of national level support in both the United States and Colombia, institutional memory and policy familiarity over a number of years, cultural sensitivity, and institutionalization of the policy effort by the American side. The U.S. interagency effort, which included the

Departments of State, Justice, Defense, and Treasury, the Office of National Drug Control Policy, United States Southern Command, and USAID, as well as the Drug Enforcement Agency and the U.S. Coast Guard, sustained and deepened the U.S. *whole of government* personal and institutional working relationships with Colombian counterparts, horizontally as well as vertically within the agencies of both governments. With respect to the administration of justice program, the corresponding ministries in Colombia have been the Presidency, Ministry of Justice, Defense, Interior, and the Fiscalía General (Attorney General). The confidence and depth of the U.S.-Colombian strategic relationship over the last 10 years is a standard of excellence that should serve as a paradigm for the future.

## **Results and Lessons Learned.**

To fully appreciate the revolutionary change in the legal system, it is best to contrast the accusatorial and the inquisitorial. The Office of Democracy and Governance at USAID defines the two:

*The legal systems of the United States and England are based on the common law tradition, while the civil law system is followed elsewhere in Europe and throughout most of the LAC (Latin American and Caribbean) region . . . .**The civil law system is inquisitorial:** investigation is controlled and directed by a judge instead of a prosecutor; testimony and other evidence are normally presented in written form with little opportunity for cross-examination; a prosecutor's role is minimal; proceedings and trial are based primarily on documentary submissions; and juries are uncommon. **The common law system is known as accusatorial or adversarial:** investigation is controlled by the parties*

*in opposition (in criminal cases, a prosecutor and defense attorney); a judge sits as a neutral decision-maker; testimony and other evidence are normally presented orally in open court with opportunity for complete cross-examination; public trials are customary; and juries are often impaneled to hear the evidence and decide the facts.<sup>50</sup> (Emphasis added)*

The transformation from inquisitorial to accusatory was accomplished by 14 Latin American countries in the last 17 years, with differing levels of success. These reforms have been called “the deepest transformation that Latin American criminal procedures have undergone in nearly two centuries.”<sup>51</sup> The reform movements emanated from a number of sources, including the work of legal entrepreneurs<sup>52</sup> in Latin America who adapted ideas from Europe and the United States and from among their own nations to improve the effectiveness of judicial systems. Another impetus came from the demands for judicial effectiveness in the context of the wave of Latin American democratization (after the period of military governments in the 1960s and 1970s) as well as the high crime rate that has assailed Latin American countries in the last 25 years. USAID played a crucial role in supporting the work of the entrepreneurs beginning in the 1980s.

Between 2000 and 2008, the United States spent \$238.9 million to promote the rule of law, judicial reform, and complementary capacity building in Colombia. The work was supervised by USAID and the DOJ. The results have been remarkable in the areas of institutional strengthening, training, access to justice, public education, and awareness. Criminal cases are now resolved in 75 percent less time (weeks and months instead of years), and over 60 percent of cases formally charged are resulting in convictions, compared with 3 percent under the old system.<sup>53</sup>

There is a significant reduction in the backlog of criminal cases through reduction in case processing times (e.g., 87 percent reduction in case processing times for robbery cases and 77 percent for homicide cases), with an increase in convictions from 34 percent to 60 percent; publishing of manuals for the accusatory process; improvements in the physical and technological infrastructure (including virtual courtrooms in small municipalities linked to courtrooms in larger cities), more than 2,000 conciliators certified for alternative dispute resolution; and support to law schools, to include training 145 professors and change in the content of the curriculum in 38 universities. By 2006, DOJ and USAID had trained more than 40,000 prosecutors, criminal investigators, judges, public defenders, and technical experts, including over 20,000 in the accusatory system. Moreover, DOJ developed specialized prosecutor/police task force units to combat human rights abuses, money laundering, narcotics, and corruption, and has provided forensic equipment for DNA, fingerprint, and ballistic analysis.<sup>54</sup> The pace of training was impressive. DOJ estimates that in 2009 it will train 200 prosecutors, 400 judges, 300 forensic experts, 5000 police, and 400 protection personnel.

One key aspect of a well functioning judicial system is for the police to be expert at recognizing and collecting evidence. In Colombia, unless the culprit was caught in *flagrante delicto*, it was almost impossible to get a conviction. With American assistance, the Colombian police trained a group of forensic specialists who have done superb work in identifying buried bodies (extrajudicial killings). These forensic specialists are much in demand throughout South America.

According to Checchi and Company Consulting, Inc., the contractors charged with carrying out the

USAID/Colombia Justice Reform program from 2001 to 2006, the greatest challenge in implementing the accusatorial system was the “cultural transformation required to implement changes in judicial customs and paradigms. Several centuries of inquisitorial tradition . . . were the challenges . . . in this regard.”<sup>55</sup> Currently, the program is focusing on increasing people’s access to justice in noninstitutionalized Colombia, so that the more vulnerable gain confidence in and use the justice system to defend their rights.

Moreover, 49 justice houses (*casas de justicia*) are now established, and five new Regional Justice Houses are to be built in 2009 with approximately 16 satellite houses in rural areas with high levels of Afro-Colombian and indigenous people. Justice houses are designed to “facilitate access to justice for poor people and to promote efficient, comprehensive, and peaceful resolution of everyday legal issues,” often through alternative dispute resolution.<sup>56</sup> From the inception of the program until the end of 2008, the *casas de justicia* handled over 7.8 million cases, with 1,347,463 in 2008 alone. USAID cites this successful example of alternative dispute resolution:

In Popayán, a mid-sized Colombian provincial capital, nine-year-old Jorge Eduardo visited the Prosecutor’s Office in the city’s USAID-supported Justice and Peace House because he had heard that people could go there to resolve their problems. His problem, he said, was that his mother had to work a great distance from home as a maid in order to support her family. She didn’t make enough money, he told us, and the family was short of food and clothing, among other necessities. His father was long separated from his family and provided no support, either financial or emotional. Jorge Eduardo asked the Prosecutor at the Justice and Peace House for help. He said that his mother was afraid to come to

the House and in any case did not want to make a legal claim against his dad.

The Prosecutor called Jorge Eduardo's mother. After conversing with him, she agreed that Jorge Eduardo's father should be summoned to the House for a meeting. The father attended the appointment, recognized Jorge Eduardo as his son, and listened carefully as the Prosecutor explained to him Jorge's legal rights, as well as his own obligations as a parent. The parents then agreed to a monthly child support amount, which averted having to send the case to court. In the several months since this successful mediation, Jorge Eduardo's father visits his son regularly and makes monthly child-support payments directly to his mother. He is now part of his son's daily life, accompanying him to important church and school events.<sup>57</sup>

In addition to the administration of justice program, the American Embassy Bogotá started a Culture of Lawfulness program in 2002, focusing on schools and police. The school program collaborates with the Ministry of Education, the Vice President's Office, the Presidential Program for the Fight Against Corruption, and municipal mayors and secretaries of education.

Under the Culture of Lawfulness program, targeted for eighth and ninth grade audiences, 60 hours of instruction is incorporated into the mandatory education program. The program is intended to affect teacher and student knowledge, attitudes, and behavior about the rule of law, and reach relatives, parents, and friends. The police program began in 2005 with the goal of "creating a police culture in which crime and corruption are discouraged, and police are rewarded for upholding and promoting the law and human rights. Armed with these skills, officers should become positive role models and leaders in their

communities.”<sup>58</sup> There is also an aggressive plan to educate military attorneys, judges, and commanders in international human rights law, rules of engagement that are sensitive to civilian casualties, prohibition of extrajudicial killings, training about effective judicial procedures and government ethics.

Despite these achievements, the General Accounting Office states that the justice system still has “limited capacity to address the magnitude of criminal activity in Colombia.”<sup>59</sup> The International Crisis Group cautions in its May 2009 report that “the sluggish justice system is an ineffective deterrent” to prevent human rights abuses.<sup>60</sup> Similarly, the United Nations Human Rights Commissioner expressed concern about death threats to human rights workers and community leaders.<sup>61</sup> These assessments verify the author’s earlier description of Colombia as a work in progress.<sup>62</sup> For example, the number of backlogged cases is still staggering despite the fact that trials are held more quickly under the accusatorial system. Prison sentences are often ridiculously short, and there is absurdly generous time off for good behavior. Moreover, a culture of illegality still influences politics. There are unquestionably many years of work still ahead for Colombia in strengthening the justice system, and the United States should continue to support it. Nonetheless, there are some important lessons learned:

1. U.S. supported reform programs are more likely to succeed if there is a strong convergence of national interests between the United States and the host country, and if the host country's political leadership is fully committed, and if there is national citizen-level commitment.

2. U.S. supported structural change is more likely to occur if given a long-term process of familiarization



and institutionalization of the program, involving people and agencies, as well as continuity of programs. For example, the U.S. assistance program to Colombia has roots going back over 40 years to the 1960s.

3. Rule of law programs cannot be sustained without adequate security, which must also be established within legal norms.

4. Rule of law programs must be part of an integrated whole of governance strategy, to include economic and social development.

5. The host country must design, implement, and make the sacrifices for its own program of reform and institution building for the effort to take deep roots in the political culture.

6. Big reforms are expensive, requiring money not only from the United States but budgetary commitment from the host country. Some reforms, such as rule of law, are relatively inexpensive and have a high payoff that will legitimate and strengthen the effectiveness of other reforms and reconstruction efforts.

7. The primacy of legitimacy and rule of law must be central components of instruction, doctrine, and education for post-conflict reconstruction governance activities.

Colombia is a paradigm for the future in many respects that are worth studying, especially the rule of law, governance, and security. It is the best ongoing laboratory for democratic state building. For example, its apparent success in establishing territorial control and protecting the population may provide lessons for establishing security in Afghanistan, recognizing the vast differences between the two countries and their societies and the distinct role that the United States plays in each.<sup>63</sup>

Without minimizing the importance of all important mutually reinforcing elements in addressing the challenges of democratic governance, alternative development, security, and state presence, it is the rule of law that brings them together and draws strength from those elements.

## ENDNOTES

1. *The U.S. Army/Marine Corps Counterinsurgency Field Manual* 3-24, Washington, DC: Headquarters Department of the Army, Headquarters Department of the Navy, and Headquarters, Department of the United States Marine Corps, December 15, 2006, p. 1-22.

2. *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework, A Guide for USAID and Governance Officers*, Washington, DC: United States Agency for International Development (USAID), August 2008, pp. 6-12. This superb document belongs in the tool bag of all governance scholars and professionals.

3. The emphasis on the rule of law in post-conflict reconstruction can be found in the excellent work of James Dobbins, Seth G. Jones, Keith Crane, and Beth Cole De Grasse, *The Beginner's Guide to Nation-Building*, Santa Monica, CA: RAND Corporation, 2007, especially pp. 73-108. See also Francis Fukuyama, *State-Building: Governance and World Order*, Ithaca, NY: Cornell University Press, 2004. Lamentably, the Army's new *Field Manual* 3-07, *Stability Operations*, October 2008, makes scant reference to legitimacy and the rule of law.

4. See Ashraf Ghani, Clare Lockhart, and Michael Carnahan, "An Agenda for State-Building in the Twenty-First Century," *Fletcher Forum of World Affairs*, Vol. 30, No. 1, Winter 2006, pp. 111-115. See also Ashraf Afghani and Clare Lockhart, *Fixing Failed States: An Agenda for a Fractured World*, New York: Oxford University Press, 2008.

5. Ghani, Lockhart, and Carnahan, pp.115-116.

6. This concept permeates Samuel Huntington's prolific writings, for example, *Political Order and Changing Societies*, New Haven, CT: Yale University Press, 1967.

7. These reflections apply directly to Colombia. See Pablo De Greiff, Christian Tomuschat, Rhodri Williams, Douglas Cassell, Cornelius Prittwitz, Paul Seils, and Javier Barnes, *Justicia, Verdad y Reparación en Medio del Conflicto (Justice, Truth, and Reparation in the Midst of Conflict)*, Bogotá, Colombia: Fundación Ideas Para la Paz, April 2005. See also Kimberly Theidon, "Transitional Subjects: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia," *The International Journal of Transitional Justice*, Vol. 1, 2007, pp. 66-90.

8. David Beetham states that legitimacy has three aspects: a. power is acquired and exercised in terms of the existing laws, b. the rules can be justified by reference to beliefs and values, and c. there is evidence of consent by the subordinate to the particular power relationship. See Beetham's *The Legitimation of Power: Issues in Political Theory*, London, UK: Palgrave Macmillan, 1992, p. 35.

9. For an extended discussion of the rule of law and accountability, see Larry Diamond and Leonardo Morlino, *Assessing the Quality of Democracy*, Baltimore, MD: Johns Hopkins University Press, 2005, pp. ix-xliii; and Guillermo O'Donnell, "Why the Rule of Law Matters," *Journal of Democracy*, Vol. 15, Issue 4, October 2004, pp. 3-17.

10. Adam Przeworki, "Some Problems in the Study of Transitions to Democracy," Guillermo O'Donnell and Lawrence Whitehead, eds., *Transitions to Authoritarian Rule*, Baltimore, MD: Johns Hopkins Press, 1986. Cited in Alex McDougall, "State Power and Implications for Civil War Colombia," *Studies in Conflict & Terrorism*, April 2009, p. 338.

11. The headline of "Shall the Nation Again Find Itself Unprepared?" for post-war reconstruction still resonates from the report of activities in Germany in 1918-19. "Report of the American Military Government of Occupied Germany," cited in Harry L. Coles and Albert K. Weinberg: *Civil Affairs: Soldiers Become Governors*, United States Army in World War II, Special Studies, Washington, DC: Center of Military History, 1992, p. 6. Apparently, the nation was unprepared again for Operation JUST

CAUSE in 1989-90. See also John Fishel, *The Fog of Peace: Planning and Executing the Restoration of Panama*, Carlisle, PA: Strategic Studies Institute, United States Army War College, 1992.

12. Phil Williams, *From the New Middle Ages to the New Dark Age: The Decline of the State and U.S. Strategy*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, June 2008.

13. According to USAID, these activities place Colombia in the category of a rebuilding country for foreign assistance.

14. María Victoria Llorente, Román Ortiz, Nicolás Urrutia, *Policía Nacional: una fuerza para la consolidación (National Police: A Force for Consolidation)*, Bogotá, Colombia: Fundación Ideas Para la Paz, May 2008, p. 4.

15. Procedural democracy refers to process and playing by the rules of the game, while substantive refers to delivering the goods.

16. Elvira María Restrepo, *Colombian Criminal Justice in Crisis: Fear and Distrust*, New York: Palgrave Macmillan, 2003, pp. 4-5.

17. The United Nations Human Rights Commission puts the IDP figures at 1.8 to 3.8 million.

18. Gabriel García Márquez, "For The Sake of a Country within the Reach of the Children," Bogotá, Colombia: Villegas Editores, 1996, pp.11-12.

19. See Francisco E. Thoumi, "Why a Country Produces Drugs and How That Determines Policy Effectiveness: A General Model and Some Applications to Colombia," Miami: Florida International University, Latin American and Caribbean Center, January 2002, p. 21. An example of weak internalized constraints is the appearance of juvenile thugs that kill for money. See "'Niños sicarios' han cometido 542 homicidios en dos años; así funciona su tenebroso mundo" ("Killer Children Have Committed 542 Homicides in Two Years: This Is How Their Dark World Works"), *El Tiempo*, June 6, 2009, available from [www.eltiempo.com/colombia/justicia/ARTICULO-PRINTER-PLANTI...6/7/2009](http://www.eltiempo.com/colombia/justicia/ARTICULO-PRINTER-PLANTI...6/7/2009).

20. Peter DeShazo, Tanya Primiani, Philip McLean, *Back from the Brink: Evaluating Progress in Colombia, 1999-2007*, Washington, DC: Center for Strategic and International Studies, November 2007.

21. For an excellent analysis of Colombian state weakness in terms of sovereignty, see Ann C. Mason, "Constructing Authority Alternatives on the Periphery: Vignettes from Colombia," *International Political Science Review*, Vol. 26, No. 1, 2005, pp. 37-54. The challenge of weak states and ungoverned space pervades the Andes. See also Paul W. Drake and Eric Hershberg, *State and Society in Conflict: Comparative Perspectives on Andean Crises*, Pittsburgh, PA: University of Pittsburgh Press, 2006. The weak state syndrome is the subject of new academic research. See, for example, the splendid work by Miguel Angel Centeno, *Blood and Debt: War and the Nation-State in Latin America*, State College: Pennsylvania State University Press, 2002. Also see Gabriel Marcella, *American Grand Strategy for Latin America in the Age of Resentment*, Carlisle, PA, Strategic Studies Institute, U.S. Army War College, 2007.

22. Marco Palacios, *Between Legitimacy and Violence: A History of Colombia, 1875-2002*, Durham, NC: Duke University Press, 2006.

23. The war inspired the world famous magic realism novel of Gabriel García Márquez, *One Hundred Years of Solitude*, Gregory Rabassa, trans., New York: Harper and Row, June 1970.

24. Daniel Pécaut, "Las Farc: Fuentes de Su Longevidad y de la Conservación de Su Cohesión" ("The FARC: Sources of Their Longevity and Cohesion"), *Análisis Político*, Vol. 21, No. 63, May-August 2008, p.5, available from [www.scielo.org.co/scielo.php?script=sci\\_arttext&pid=S0121-4705200800020000&...5/30/2009](http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0121-4705200800020000&...5/30/2009). Lamentably, Pécaut does not develop the thesis.

25. McDougall, p. 323.

26. For an example of the effects of ungoverned space and poorly controlled borders, see Gabriel Marcella, *Wars Without Borders: The Colombia-Ecuador Crisis of 2008*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, December 2008. For a

perceptive analysis of nonsovereign authority alternatives within Colombia, see the insightful work by Ann C. Mason, "Constructing Authority Alternatives in Colombia: Globalisation and the Transformation of Governance," London, UK: Development Research Centre, Crisis States Programme, January 2004.

27. Hernando Gómez Buendía, *El Conflicto: Callejón Con Salida, Informe Nacional De Desarrollo Humano (The Conflict: Dead End with an Exit)*, Bogotá, Colombia: Programa de las Naciones Unidas, 2003, pp.486-491, available from [www.pnud.org.co/indh2003](http://www.pnud.org.co/indh2003).

28. Ana Carrigan, *The Palace of Justice: A Colombian Tragedy*, New York: Four Walls Eight Windows, 1993. The veracity of Carrigan's book has been challenged by Rex A. Hudson, "Colombia's Palace of Justice Tragedy Revisited: A Critique of the Conspiracy Theory," *Terrorism and Violence*, Vol. 7, No. 2, Summer 1995, pp. 93-142. The narco-traffickers intended to have the legal records on their illicit activities destroyed in the attack. Much like the 9/11 attack in New York, Colombians are considering erecting a monument to record the tragedy. See the "Preliminary Report of the Commission of Truth for the Holocaust in the Palace of Justice of Bogotá of 6 and 7 November 1985," November 15, 2006, available from [www.verdadpalacio.org.co?Assets?DOCs?informe-preliminar.pdf](http://www.verdadpalacio.org.co?Assets?DOCs?informe-preliminar.pdf).

29. For an analysis of the impact of violence on state institutions and the search for a solution, see Rafael Pardo Rueda, *De Primera Mano, Colombia 1986-1994: Entre Conflictos y Esperanzas (First Hand: Colombia 1986-1994: Between Conflicts and Hopes)*, Bogotá, Colombia: Norma, 1996. For the thesis of a war against society, see Daniel Pécaut, *Guerra Contra La Sociedad (War Against Society)*, Bogotá, Colombia: Planeta, 2002. See also Pardo's *La Historia de las Guerras*, Bogotá, Colombia: Vergara, 2004, especially pp. 390-652. In addition, see Eduardo Pizarro Leómgomez, *Una Democracia Asediada (A Democracy Under Siege)*, Bogotá, Colombia: Norma, 2004 attempts to define the nature of the Colombian conflict.

30. Colombia has the most variety of animal species per square meter of any country in the world, for example, 300,000 plants (29 percent indigenous), 2,000 fresh water fish (10 percent of the world species), 506 reptiles (6 percent of world species), 650

amphibians (13 percent of world species)-367 native, and 1,800 birds (19 percent of world)-32 native.

31. Peter DeShazo, Philip McLean, and Johanna Mendelson Forman, "Colombia's Plan de Consolidación Integral de La Macarena" ("Colombia's Integrated Consolidation Plan for La Macarena"), Washington, DC: Center for Strategic and International Studies, June 2009, p. 11. This is an excellent report that details the various components of the program.

32. Presidencia de la República de Colombia, Centro de Coordinación de Acción Integral, "Plan de Consolidación Integral de La Macarena" ("Colombia's Integrated Consolidation Plan for La Macarena"), Bogotá, Colombia, August 2008. The United States Military Assistance Advisory Group provided support for engineering projects.

33. Juan Forero, "Colombian Farmers Get Broad Incentives to Forgo Coca Crops," *The Washington Post*, May 22, 2009, p. 2, available from [www.washingtonpost.com/wp-dyn/content/article/2009/05/21/AR2009052104318\\_2.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/05/21/AR2009052104318_2.html).

34. *Ibid.*, p. 2. See also the reports by Adam Isaacson of the Center for International Policy's Colombia Program, especially "Initial observations about 'Integrated Action' in Colombia," June 10, 2009, available from [www.cipcol.org/](http://www.cipcol.org/).

35. USAID Frontlines, "Colombia Increases Security, Services in La Macarena to Overturn Coca and Conflict," available from [www.usaid.gov/press/frontlines/fl\\_jun09/p3\\_colombia060907.html](http://www.usaid.gov/press/frontlines/fl_jun09/p3_colombia060907.html).

36. Fundación Seguridad y Democracia, "El Debilitamiento de los Grupos Irregulares en Colombia, 2002-2008" ("The Weakening of the Irregular Groups in Colombia, 2002-2008"), *Coyuntura de Seguridad*, No. 23, Bogotá, Colombia: October-December 2008, available from [www.seguridadydemocracia.org/docs/pdf/boletin/boletin23Completo.pdf?product\\_id=436](http://www.seguridadydemocracia.org/docs/pdf/boletin/boletin23Completo.pdf?product_id=436).

37. 2009 *International Narcotics Control Strategy Report*, Washington, DC: U.S. Department of State, February 27, 2009, available from [www.state.gov/p/inl/rls/nrcrpt/2009/vol1/116520.htm](http://www.state.gov/p/inl/rls/nrcrpt/2009/vol1/116520.htm).

38. FARC resilience is the judgment of the International Crisis Group. See "Ending Colombia's FARC Conflict: Dealing the Right Card," Latin America Report No. 30, March 26 2009, p. 24.

39. "Can the United States Take the Lessons Learned from Colombia? Colombia Watcher Scott Wilson Says Yes: Which Way in Afghanistan? Ask Colombia for Directions," *Washington Post*, April 5, 2009; available from [www.washingtonpost.com/wp-dyn/content/article/2009/04/03/AR2009040302135](http://www.washingtonpost.com/wp-dyn/content/article/2009/04/03/AR2009040302135).

40. *Foreign Assistance: Promising Approach to Judicial Reform in Colombia*, Washington, DC: General Accounting Office, 1992. America's deep engagement with Colombia goes back to the 1960s, when the country became a showcase for the hemispheric wide Alliance for Progress: an admixture of economic and military assistance that was intended to stem the rise of communist insurgencies. Earlier, Colombia was the only Latin American country to provide forces (army battalions and naval craft) for operations in the Korean War under U.S. command.

41. The heritage of Spanish imperial administration can be appreciated in the magisterial compilation of Antonio de León Pinelo and Juan de Solórzano Pereira, *Recopilación de las Leyes de los Reynos de las Indias (Codification of the Laws of Kingdoms of the Indies)*, Madrid, Spain, 1680; available from [www.congreso.gob.pe/ntley/LeyIndiaP.htm](http://www.congreso.gob.pe/ntley/LeyIndiaP.htm).

42. Ana María Bejarano, "The Constitution of 1991: An Institutional Evaluation Seven Years Later," in Charles Bergquist, Ricardo Peñaranda, and Gonzalo Sánchez, eds., *Violence in Colombia, 1990-2000: Waging War and Negotiating Peace*, Wilmington, DE: Scholarly Resources, 2001, p. 70.

43. Alberto Alesina, ed., *Institutional Reforms: The Case of Colombia*, Cambridge, MA: MIT Press, 2005, p. 5.

44. *Ibid.*, p.11.

45. All quotes in this paragraph are from Checchi and Company Consulting, Inc., *Colombia Administration of Justice Program (2001-2006)*, Final Report, Submitted to USAID/Colombia, Washington, DC: AID, September 15, 2006.



46. Luz Estella Nagle, "Process Issues of Colombia's *New Accusatory System*," *Southwestern Journal of Law and Trade in the Americas*, 2008 Symposium "Abandoning the Inquisitor: Latin America's Criminal Procedure Revolution," p. 3. Once a judge in Colombia, Nagle is Professor of Law at Stetson University College of Law. See also Nagle's "The Search for Accountability and Transparency in Plan Colombia: Reforming Judicial Institutions—Again," Carlisle, PA: Strategic Studies Institute, U.S. Army War College, May 2001. Excellent detail on the impact of insecurity on the criminal justice system is in the previously cited Restrepo, *Colombian Criminal Justice in Crisis: Fear and Distrust*.

47. National Security Presidential Directive 18 was presented in different form to Congress as the above "A Report to Congress on United States Policy Towards Colombia and Other Related Issues."

48. Formal title of *Plan Colombia*: "Plan for Peace, Prosperity, and the Strengthening of the State." For an analysis, see Gabriel Marcella, *Plan Colombia: The Strategic and Operational Imperatives*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2001. For further background, see Gabriel Marcella and Donald Schulz, *Colombia's Three Wars: U.S. Strategy at the Crossroads*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 1999. The centrality of the legal instrument of property title is analyzed in Geoffrey Demarest, *Mapping Colombia: The Correlation Between Land Data and Strategy*, Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2003.

49. Presidencia de la República, *Política de Defensa y Seguridad Democrática (Policy of Democratic Defense and Security)*, Bogotá, Colombia: Ministerio de Defensa Nacional, 2006, p. 37. See the excellent analysis by the International Crisis Group, "Colombia: President Uribe's Democratic Security Policy," *Latin America Report*, No. 6, November 13, 2003.

50. *Achievements in Building and Maintaining the Rule of Law*, Washington, DC: USAID, Office of Democracy and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, November 2002. For more on Latin American judicial systems, see

William C. Prillaman, *The Judiciary and Democratic Decay in Latin America*, Westport, CT: Praeger, 2000.

51. Máximo Langer, "Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery," *American Journal of Comparative Law*, Fall 2007, p. 1.

52. Langer calls these Latin American legal entrepreneurs (from Argentina, Brazil, Chile, Colombia, and Costa Rica) "the Southern activist expert network."

53. "Colombia: Report on Reform Activities," Washington, DC: U.S. Department of State, May 2009, p. 13.

54. "Report to Congress: U.S. Assistance Programs in Colombia and Plans to Transfer Responsibilities to Colombia," Washington, DC: U.S. Department of State, March 2006, p. 6.

55. *Colombia Administration of Justice Program*, p. 3.

56. *Achievements in Building and Maintaining the Rule of Law*, p. 49.

57. *Rule of Law: Success Stories*, Washington, DC: USAID, available from [www.usaid.gov/our\\_work/democracy\\_and\\_governance/technical\\_areas/rule\\_of\\_law/ss4.html](http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/ss4.html).

58. Embassy of the United States, Colombia, "Narcotics Affairs Section: Other Programs," March 19, 2009, available from [bogota.usembassy.gov/nas-more-info.html](http://bogota.usembassy.gov/nas-more-info.html).

59. *Plan Colombia: Drug Reduction Goals Were Not Fully Met, but Security Has Improved: U.S. Agencies Need More Detailed Plans for Reducing Assistance*, General Accounting Office, Report to the Honorable Joseph R. Biden, Jr., Chairman on Foreign Relations, U.S. Senate, October 2008, p. 47.

60. "The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia," International Crisis Group Policy Briefing, May 25, 2009.

61. "Death Threats against UNHCR Partners in Colombia," United Nations Refugee Agency, May 22, 2009, available from [www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=4a16959c2](http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=4a16959c2).

62. Note the equally cautious tone in the report of the International Crisis Group, "Ending Colombia's FARC Conflict: Dealing the Right Card." The report advocates boosting "efforts to expand rule of law across the country, strongly improve protection of human rights and increase citizen security through effective consolidation of accountable state presence in Colombia's regions." Executive Summary, p. 1, available from [www.crisisgroup.org/home/index.cfm?id=6016&l=1](http://www.crisisgroup.org/home/index.cfm?id=6016&l=1).

63. Alfredo Rangel, "Colombia en Afganistán," ("Colombia in Afghanistan"), *Semana.com*, May 22, 2009, available from [www.semana.com/wf\\_ImprimirArticulo.aspx?IdArt=122731](http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=122731).