

2-1-2014

U.S. Southern Command's Role in Combatting Illicit Trafficking

Colonel Daniel Lecce

Lieutenant Commander Brendan Gavin

Captain Laura Corbin

Follow this and additional works at: <http://repository.law.miami.edu/umnsac>



Part of the [Military, War and Peace Commons](#), and the [National Security Commons](#)

Recommended Citation

Colonel Daniel Lecce, Lieutenant Commander Brendan Gavin, and Captain Laura Corbin, *U.S. Southern Command's Role in Combatting Illicit Trafficking*, 4 U. Miami Nat'l Security & Armed Conflict L. Rev. 12 (2014)

Available at: <http://repository.law.miami.edu/umnsac/vol4/iss2/4>

This Contribution is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami National Security & Armed Conflict Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

ARTICLE

U.S. Southern Command's Role in Combatting Illicit Trafficking*

Lieutenant Commander Brendan Gavin, U. S. Coast Guard

Captain Laura Corbin, U.S. Army

*Colonel Daniel Lecce, U.S. Marine Corps**

ABSTRACT

Illicit trafficking represents a significant threat to U.S. national security and the nation's strategic interests. It is a problem that has no single solution or source, yet has numerous disparate effects on the United States and our partner nations. For purposes of this article, we will focus attention on narco-trafficking and its attendant affects. The flow of narcotics is the primary trafficking threat into the United States and also serves as a platform for all other illicit trafficking. Traditionally, illicit trafficking is divided into three zones for ease of understanding the lifecycle of illicit trafficking from source to end user. These zones are: the source zone (where the narcotics and other illicit goods are grown, manufactured, and produced), the transit zone (the paths upon which illicit goods move to the end user), and the arrival zone (where the illicit goods are distributed and consumed by the end user).

U. S. Southern Command (SOUTHCOM), as the Geographic Combatant Command assigned the area of responsibility (AOR) which includes the Caribbean, Central America and South America, plays a critical role in the fight against illicit trafficking in the source and transit zones. SOUTHCOM is assigned three essential missions in this fight: 1) Aerial and maritime detection and monitoring of narco-trafficking and other illicit trafficking into the U.S. southern approaches (transit zone); 2) Support to U.S. and foreign law enforcement in the interdiction of traffickers and their contraband within the AOR (source and transit zones); and 3) Building capacity of partner nations in the AOR to enhance their security, stability, and anti-trafficking efforts (source and transit zones).

· The views presented in this paper are those of the authors and do not necessarily represent the views of DOD or its Components.

· LCDR Gavin currently serves as an Operational Law and Maritime Law attorney, U.S. SOUTHCOM. CPT Corbin serves as the Assistant Administrative Law and Detention Operations Law attorney, U.S. SOUTHCOM. Col Lecce is the Staff Judge Advocate, U.S. SOUTHCOM.

SOUTHCOM and the nation at large face many ongoing challenges, which impede counter narcotics operations. Traffickers possess many advantages to include agility, vast financial resources, complex networks, ruthless methods and tactics, and strong end user demand. These advantages, combined with the decreasing availability of U.S. resources to combat them, create an environment, which requires greater coordination and commitment within the U.S. and our partner nations.

Table of Contents

I. PROBLEM STATEMENT.....	13
II. SOURCE AND TRANSIT ZONES.....	15
III. VULNERABILITIES AND EXPLOITED TOC ENTERPRISES.....	18
IV. UNITED STATES LEGAL RESPONSES TO TRANSNATIONAL ORGANIZED CRIME.....	21
V. RESPONSIBILITIES AND CHALLENGES FOR SOUTHCOM.....	23
VI. LOOKING AHEAD.....	28

I. PROBLEM STATEMENT

There continues to be a large demand for illicit goods, particularly narcotics, in the United States. An estimated 40 million Americans consume illicit drugs for non-medical purposes or misuse prescription medications, with roughly half of them using marijuana only.¹ The Latin American drug trade also extends to Europe and Africa.² Europe is the second largest cocaine consumer after North America.³ This amounts to massive proceeds for transnational organized criminal (TOC) enterprises, with some estimates reaching as much as \$84 billion a year from cocaine alone⁴, and between \$750 billion and \$1 trillion

¹ CLARE RIBANDO SEELKE, JUNE S. BEITTEL, LIANA SUN WYLER AND MARK P. SULLIVAN, CONG. RESEARCH SERV., R41215, LATIN AMERICA AND THE CARIBBEAN: ILLICIT DRUG TRAFFICKING AND U.S. COUNTERDRUG PROGRAMS 1 (2011) available at <http://www.fas.org/sgp/crs/row/R41215.pdf>.

² See LIANA SUN WYLER AND NICOLAS COOK, CONG. RESEARCH SERV., R40838, ILLEGAL DRUG TRADE IN AFRICA: TRENDS AND U.S. POLICY (2009), available at <http://www.fas.org/sgp/crs/row/R40838.pdf>, Seelke, *supra* note 1, at 1.

³ See United Nations Office of Drugs and Crime (UNODC), *World Drug Report 2010*, UNITED NATIONS, 2010, Seelke *supra* note 1.

⁴ UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crime*, UNITED NATIONS, 2011.

a year from all revenue sources.⁵ The majority of the illicit drug flow originates and moves through Central and South America to North America, Europe, and Africa.⁶

There are several reasons why Central and South America serve as the primary source and transit zones for the global cocaine market. First, the region is fertile ground for cultivating source plants. Virtually all cocaine that enters the global market originates in South America, specifically Colombia, Peru and Bolivia.⁷ The coca bush, which is found in the Andean region of South America, is the raw material used to make cocaine. Opium poppy, which is used to produce opiates, is also found Colombia, as well as Mexico and Guatemala. Marijuana is cultivated in virtually all nations in the region. Second, Central and South America's close geographic proximity to the U.S. facilitates the relatively easy transportation of illicit goods. Third, economic and social conditions in these regions create vulnerabilities and opportunities for TOC enterprises to exploit, while creating difficulties for partner nation government intervention.

The adversary in this fight is a formidable one. TOC enterprises achieve success based on a variety of factors. Foremost is the massive profit they reap from their illicit enterprises. With this cash flow, they are able to achieve influence through political corruption, bribery, recruitment, information collection, advanced technology, equipment, training and access to resources.⁸

⁵ "Estimated Annual Costs and Resources Generated by TOC." Information released by the White House in support of the *National Strategy to Combat Transnational Organized Crime*.

⁶ "More recently there has been increased awareness of the flow of South American cocaine through Venezuela to West Africa, particularly through Mali, Guinea Bissau, and other fragile states, possibly benefitting not only the traditional regional TOC structures and their Colombian and Mexican allies, but several terrorist entities including al-Qaeda in the Islamic Maghreb (AQIM), Hezbollah,⁶ and the Revolutionary Armed Forces of Columbia (*Fuerzas Armadas Revolucionarias de Colombia* [FARC])." Douglas Farah, *Transnational Organized Crime, Terrorism, and Criminalized States in Latin America: An Emerging Tier-One National Security Priority*, U.S. Army War College, Strategic Studies Institute, 7 (2012), available at <http://www.strategicstudiesinstitute.army.mil/pdf/PUB1117.pdf>.

⁷ Seelke *supra* note 1 at 1; and UNODC, *The Transatlantic Cocaine Market*, United Nations, April 2011.

⁸ The White House estimates in its 2011 *Transnational Organized Crime Strategy* that money laundering accounts for \$1.3 trillion to \$3.3 trillion—or between 2 percent and 5 percent of the world's gross domestic product (GDP). Bribery from TOCs adds close to \$1 trillion to that amount, while drug trafficking generates an estimated \$750 billion to \$1 trillion, counterfeited and pirated goods adds another \$500 billion, and illicit firearms sales generate from \$170 billion to \$320 billion. Farah, *supra* note 6 at 2-3.

II. SOURCE AND TRANSIT ZONES

As outlined above, Central and South America are the primary source and transit zones for illicit trafficking, and particularly drug trafficking, into the United States. Given that the entire world's cocaine supply comes from three countries along the Andean Ridge, (Colombia, Bolivia, and Peru) identifying that area as a cocaine "source" zone is certainly apt. With an estimated \$84 billion in annual global sales,⁹ cocaine remains the most profitable activity for criminal networks operating in the region. However, as we will discuss later, TOC enterprises rarely traffic in only one commodity. The networks established to move narcotics also move other illicit goods such as guns, precursor chemicals, counterfeit pharmaceuticals, and persons. Transnational criminal networks have a ripple effect on society at large, making an area susceptible to other illicit activity. Based on this vulnerability, TOC networks create and identify ways to exploit efficiencies and maximize profits.

⁹ UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crime*, UNITED NATIONS, 2011.



Source: United Nations Office on Drugs and Crime, World Drug Report, 2010;

National Drug Intelligence Center, 2010 National Drug Threat Assessment, February 2010;

Barack Obama, Presidential Determination No. 2009-30, "Memorandum to the Secretary of State: Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2011," September 16, 2010, adapted by CRS graphic in CRS R41215.

For example, approximately 95% of cocaine entering the U.S. travels through Central America.¹⁰ TOC networks also use these same pathways to transport large amounts of opiates, marijuana and methamphetamine.

TOC organizations use this primary transit path in all physical domains: air, sea, and land. A brief review of the previous graphic reveals the geographic diversity and opportunities available to a TOC enterprise. From a maritime perspective, an area of ocean larger than the continental U.S. is available for traffickers to utilize. Outside of hurricane season, the Caribbean Basin, Gulf of Mexico and Straits of Florida are generally calm bodies of water upon which a small vessel can safely transit significant distances. Additionally, there are various waypoints along any given path that can serve as re-fueling points, safe havens and logistical hubs for a transit. Nearly all of these waypoints are located within the sovereign territory of other nations, which have varying degrees of resources and capabilities. From an aerial perspective, much of the same is true. Almost 80% of drug flights from South America land in Honduras.¹¹

¹⁰ OFFICE OF NAT'L DRUG CONTROL POLICY, ONDCP-01-11, COCAINE SMUGGLING IN 2010 2 (2012), available at http://www.whitehouse.gov/sites/default/files/ondcp/international-partnerships-content/20_january_cocaine_smuggling_in_2010_for_posting_on_ondcp_webpage_2.pdf.

¹¹ U.S. Dep't of State, *Internat'l Narcotics Control Strategy Report: Drug and Chemical Control*, VOL. 1 BUREAU OF INTERNAT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, 251 (2012), available at

As cooperation with the government of Venezuela has diminished since the mid-2000s, that nation has become a major transit point for drug flights ultimately destined for the U.S. and Europe.¹² In the Caribbean, both Jamaica and the Bahamas are major transit countries for the flow of illicit goods, particularly cocaine. Once ashore in Central America, there is almost no stopping the majority of this cocaine before it enters the United States and lands on street corners across America. Cocaine places a significant strain on our nation's health care and criminal justice systems and costs American taxpayers an estimated \$193 billion per year.^{13,14} The most critical point of this geographic analysis is that the full southern flank of the United States presents a very broad area of access, and is in close proximity to the global cocaine source zone with a multitude of potential waypoints.

Beyond geography, TOC networks benefit from the socio-economic conditions often found in areas of Latin America and the Caribbean. Poverty and lack of economic opportunity are critical issues that underlie the permissive conditions that facilitate illicit trafficking. These issues, coupled with a lack of governmental resources available to bolster social and economic institutions or to combat criminal activity combine to form critical enabling factors for these networks. Underfunded security forces and insufficient institutional reform efforts expose law enforcement and judicial sectors to corruption. At the same time, those law enforcement and judicial entities are vulnerable to threats of violence or even death. In addition, a lack of funding and resources in these sectors leads to insufficient manpower and political will to combat these problems. The confluence of these factors is incredibly entrenched, allowing criminal networks to operate with relative impunity.¹⁵ For example, in 2012, The United Nations Office on Drugs and Crime reported that convictions for serious criminal offenses in Central America and the

<http://www.state.gov/documents/organization/184314.pdf>.

¹² Seelke, *supra* note 1, at 2.

¹³ Note: Upon landfall in Central America, bulk cocaine is broken down into multiple smaller shipments for transit into Mexico and the United States, making large interdictions extremely difficult.

¹⁴ U.S. Dep't of Justice, *The Economic Impact of Illicit Drug Use on American Society*, U.S. DEP'T OF JUSTICE NAT'L DRUG INTELLIGENCE CENTER, PRODUCT NO. 2011-Q0317-002, at ix (2011).

¹⁵ "Though the presence of a state government (as opposed to its absence) is ordinarily considered to be a positive situation, the presence of the state is beneficial or positive only if it meets the needs of its people. If the state, as it is in many parts of Latin America and many other parts of the world, is present but is viewed, with good reason, as corrupt, incompetent, and/or predatory, then its presence is not beneficial in terms of creating state strength or state capacity. In fact, where the state is strongest but least accountable for abuses, people often prefer nonstate actors to exercise authority." Farah at 18 *citing* ROBERT H. JACKSON, *QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS AND THE THIRD WORLD* (1990).

Caribbean have ranged from as low as 2% to 42%.¹⁶

III. VULNERABILITIES CREATED AND EXPLOITED BY TOC ENTERPRISES

Transnational criminal organizations threaten citizen security, undermine basic human rights, “erode good governance, cripple rule of law through corruption, [and] hinder economic competitiveness.”¹⁷ Generally traffickers and TOC enterprises do not seek to directly harm the U.S. or our allies. On this point they are indifferent. They simply seek profit and control of the criminal enterprise. Their actions are intended to ensure continuous operation free from government interference to minimize time and expenses and maximize profit. These enterprises create sophisticated networks, which sustain their business interests and evolve using technology and innovation to evade governmental interference.

As stated earlier, the methods used by TOC enterprises to traffic cocaine and other drugs are simply demonstrative of the greater problem of illicit trafficking. To achieve continued success in their business, TOC enterprises establish complex supply chains with broad capabilities. They create sophisticated and highly capable organizational structures. Much like any large commercial enterprise, TOC networks have logistical demands, communication needs, financial distribution requirements, and equipment procurement and maintenance concerns. They are continually evolving and refining their techniques to ensure success. Unlike legitimate business enterprises, however, TOC networks are not encumbered by governmental regulations or rules, taxes, or even social demands and expectations.

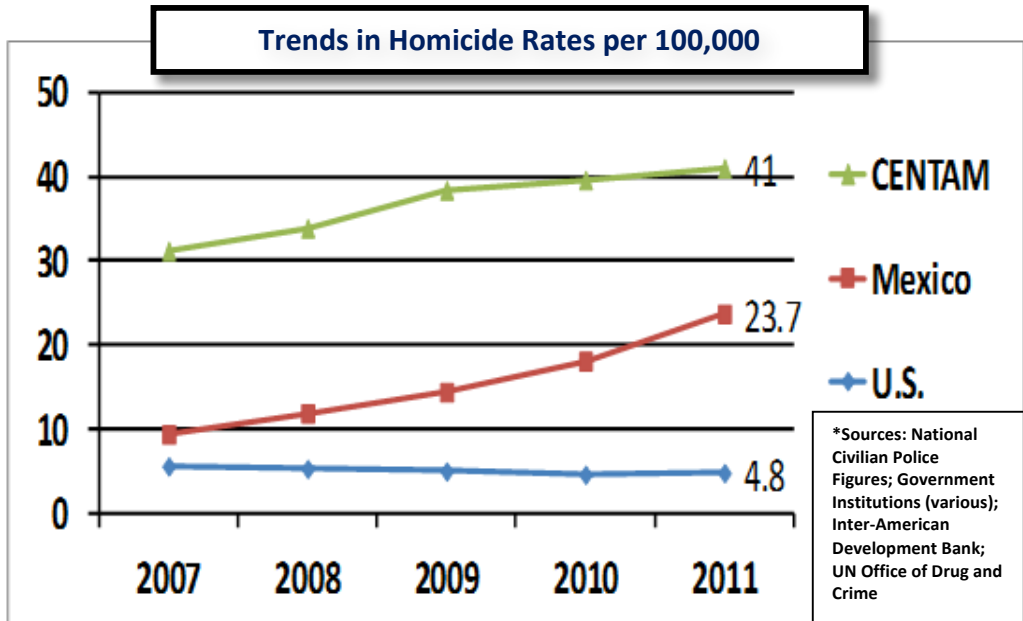
The application of widespread and often indiscriminate violence is one method by which these organizations impose their will. The rates of homicide in Latin America and the Caribbean are sharply on the rise, adding to the already extremely high rates prevalent in this part of the world. Compared to other regions, Latin America and the Caribbean have the greatest percentage of homicides both with firearms and attributed to organized crime and gangs.¹⁸ Multiple studies suggest that trafficking continues to be a major factor in this

¹⁶ See United Nations Office on Drugs and Crime (UNODC), *Transnational Organized Crime in Central Am. and the Caribbean, A Threat Assessment*, UNITED NATIONS, Sept. 2012, at 76, Mark Ungar, *Democracy, Law, and Order*, LATIN AM. RESEARCH REVIEW, VOL. 44, No. 3 (2009), available at https://muse.jhu.edu/login?auth=0&type=summary&url=/journals/latin_american_research_review/v044/44.3.ungar.pdf.

¹⁷ James R. Clapper, Dir. of Nat'l Intelligence, Statement for the Record: Worldwide Threat Assessment of the US Intelligence Community before the Senate Select Comm. on Intelligence, at 5 (March 12, 2013).

¹⁸ UNODC, *Homicide Statistics*, UNITED NATIONS, Feb. 2010, at 20, 39-40.

imbalance.¹⁹



Influence and corruption are other techniques successfully leveraged by these networks. TOC organizations use violence or the threat of violence as well as bribery to coerce, corrupt and control law enforcement and judicial sectors. These techniques create a permissive environment for trafficking. In police forces for example, as corruption and coercion increases, security, arrests and overall law enforcement decreases. This in turn creates vulnerabilities and opportunities that are often exploited by traffickers. If police are unwilling to investigate, arrest and testify against a drug trafficker because they have been co-opted, then the conditions are set for illicit trafficking and violence to thrive. The same is true when a judge is unwilling to hear a case or adjudge a conviction because of a bribe or a threat against her or a family-member. When law enforcement mechanisms fail, it becomes increasingly difficult to prevent further crime and violence.

While the United States uses tools such as the witness protection program to enhance judicial system security, these measures are very costly and rely on the large geographic area of our nation to be effective. These considerations present challenges to many Latin American and Caribbean nations.

Ineffective border security is another factor that facilitates illicit networks. Due largely to economic limitations, there is an inability to properly monitor and control borders. Other aggravating factors such as long borders,

¹⁹ *Id.* at 11.

extended coastlines, numerous littoral islands and the tropical topography only serve to further complicate the struggle. Some countries, such as Nicaragua, have passed laws that limit who may legally own property within a certain distance from their national border. This serves to limit the control a private actor may have over critical geographic areas in the fight against trafficking. To maximize available resources, many nations combine border security responsibilities among different governmental entities. This often includes enhancing police and military border protection authorities. However, without adequate resources in terms of manpower, technology, and equipment, a nation can only exert limited effective control over its borders.

Acting across loosely controlled borders and within multiple jurisdictions is a significant advantage for TOC networks. It is well documented that TOC operations seek to operate in ungoverned or under-governed space.²⁰ Countering this advantage requires sovereigns to rapidly share information and coordinate activity. Further, it requires consideration of regulation and enforcement capabilities outside of one's own sovereign territory. Criminal networks exploit these gaps in enforcement and regulation. For example, traffickers who use Central America (CENTAM) as a waypoint for the air transport of their illicit goods, as mentioned above, are taking advantage of CENTAM's inability to consistently prevent or hamper this type of activity.

The TOC-established network can also be utilized to facilitate other and potentially more dangerous threats such as terrorists and Weapons of Mass Destruction (WMD). Terrorists already exploit weaknesses created by the drug trade. In Peru, the Sendero Luminoso (Shining Path) has been involved in terrorist activities since the 1960s. Previously believed dormant, it has recently renewed small-scale attacks on the Peruvian police and military. Shining Path funds its agenda through taxing the coca growers in its area of operation in exchange for providing protection from other drug trafficking organizations.²¹ The Fuerzas Armadas Revolucionarias de Colombia (FARC), in English, the

²⁰ "Control of broad swaths of land by these nonstate groups in Latin America not only facilitates the movement of illegal products, both northward and southward, through transcontinental pipelines, but also undermines the stability of an entire region of great strategic interest to the United States. The traditional threat is broadly understood to be posed by the illicit movement of contraband (drugs, money, weapons, and stolen cars), people (human traffic, gang members, and drug cartel enforcers), and the billions of dollars these illicit activities generate in an area where states have few resources and little legal or law enforcement capacity." Farah at 19.

²¹ See Kathryn Gregory, *Background: Shining Path, Tupac Amaru*, COUNCIL ON FOREIGN RELATIONS, August 27, 2009, available at <http://www.cfr.org/peru/shining-path-tupac-amaru-peru-leftists/p9276>, *Wiretaps Reveal Peru Coca Growers' Ties to Rebels*, LATIN AM. HERALD TRIBUNE, Dec. 1, 2010, available at <http://www.laht.com/article.asp>.

Revolutionary Armed Forces of Colombia, finance their indigenous terrorist activities in a similar manner.²² Other international terrorist groups are also believed to fund their terrorist activities through connections with TOC enterprises in Latin America, particularly in the border areas between Brazil, Argentina and Paraguay.²³ Evidence identified by the U.S. Department of Treasury in February of 2011 suggests that Lebanese Hezbollah was involved in moving narcotics from South America into Europe and the Middle East.²⁴ As retired Navy Admiral James G. Stavridis cautioned, the threat of enemy convergence--the combining of the network, financial resources and infrastructure of a TOC enterprise with the ideals and objectives of a terrorist group--represents the greatest current potential threat to U.S. National Security.²⁵

IV. UNITED STATES LEGAL RESPONSES TO TRANSNATIONAL ORGANIZED CRIME

Given this difficult situation, issues of jurisdiction, law, and enforcement capability must be asked at every stage of the illicit trafficking cycle. For example, if a drug is grown in Colombia, travels through Panamanian territorial seas to land off the coast of Nicaragua where it is then transported into Honduras, ultimately to make its way through Mexico into the U.S. – where does the crime occur? Where is the best place to intervene? Who has the jurisdiction to prosecute? Who is most affected? In the end, any delays, miscommunications, or misinterpretations when answering these questions serve to benefit the TOC network.

As a general rule, nations have criminal jurisdiction over acts committed

²² "The FARC needs to move cocaine to U.S. and European markets in order to obtain the money necessary to maintain its army of some 9,000 troops. In order to do that, the FARC, with the help of traditional drug trafficking organizations, must move its product through Central America and Mexico to the United States—the same route used by those who want to move illegal aliens to the United States, and those who want to move bulk cash shipments, stolen cars, and weapons from the United States southward. All of this contraband traverses the same territory, passes through the same gatekeepers, and is often interchangeable along the way. A kilo of cocaine can be traded for roughly one ton of AK-47 assault rifles before either of the contraband items reaches what would normally be its final destination." Farah at 17.

²³ Anthony P. Placido, Assistant Adm'r for Intelligence, U.S. Drug Enforcement Admin., Report to House Oversight and Gov't Reform Sub-comm. on Nat'l Sec. and Foreign Affairs hearing on Transnational Drug Enterprises (March 3, 2010).

²⁴ U.S. Dep't of the Treasury, "Treasury Identifies Lebanese Canadian Bank Sal as a Primary Money Laundering Concern," Press Release, February 10, 2011.

²⁵ See Thom Shanker, *Globalization Creates a New Worry: Enemy Convergence*, N.Y. TIMES, (May 30, 2013, 10:26 AM), <http://atwar.blogs.nytimes.com/2013/05/30/globalization-creates-a-new-worry-enemy-convergence>.

within their own sovereign territory, airspace, and seas. Extradition agreements may be made with other nations to facilitate prosecution of cases. The majority of Latin American countries have extradition agreements with the United States.²⁶ Beyond reliance on partner nation prosecution or extradition of an individual in foreign custody, the Maritime Drug Law Enforcement Act (MDLEA)²⁷ provides a vehicle for federal criminal prosecution against crimes in the maritime domain. This Act prohibits the manufacture, distribution, and possession with the intent to distribute controlled substances onboard any vessel subject to the jurisdiction of the United States, or any vessel if the individual is a citizen or resident alien of the United States.²⁸ Further, this act explicitly applies outside the territorial jurisdiction of the United States.²⁹ The broad scope of this act, specifically in the jurisdictional context, allows the United States to prosecute crimes that occur in international waters, to include crimes aboard vessels bearing the flag and registry of another nation, assuming that coastal state consents to waive their own jurisdiction in favor of U.S. jurisdiction.

However, there are cases that test the reach of criminal statutes such as the MDLEA. In the case of *U.S. v. Bellaizac-Hurtado*,³⁰ the issue before the court was whether a U.S. law could be enforced over a vessel conducting activity in Panamanian territorial seas.³¹ Despite the acquiescence of Panama, the 11th U.S. Circuit held that the U.S. could not impose jurisdiction for a violation of the Maritime Drug Law Enforcement Act over a vessel acting in another nation's territorial seas.³² The practical challenge is that the U.S. legal system often offers the greatest chance of prosecutorial success compared to the Central and South American nations who act as our partners in combatting illicit trafficking. Moreover, the effectiveness of the U.S. judicial system often enables U.S. law enforcement to leverage traffickers for information about TOC actors, procedures, and future crimes. Cases similar to *Hurtado* will likely be tested in other judicial circuits seeking a more favorable result, which could ultimately lead to the issue making its way to the U.S. Supreme Court.

²⁶ See Extradition, 18 U.S.C. Ch. 209 (2012). The list of Latin American and Caribbean countries includes Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Colombia, Chile, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay, Venezuela.

²⁷ See Mfg., Distrib., or Possession of Controlled Substances on Vessels, 46 U.S.C. Ch. 705 (2012).

²⁸ *Id.*

²⁹ 46 U.S.C. § 70503(b) (2012).

³⁰ *United States v. Bellaizac-Hurtado*, 2012 WL 5395281 (11th Cir. Nov. 6, 2012).

³¹ *Id.*

³² *Id.*

V. RESPONSIBILITIES AND CHALLENGES FOR SOUTHCOM

SOUTHCOM's geographic area of responsibility (AOR) begins at the southern Mexico border and extends south to include all of Central and South America, as well as the Caribbean. Mexico, Puerto Rico and the Bahamas fall into U.S. Northern Command's (NORTHCOM) AOR. As the Geographic Combatant Command responsible for all U.S. military personnel and activity in the Caribbean and Central & South America, SOUTHCOM holds the primary role within the Department of Defense (DoD) in the fight against illicit trafficking.

First, SOUTHCOM executes DoD's responsibility as the lead United States Government agency in the detection and monitoring of aerial and maritime drug trafficking into the United States.³³ Considering most drug traffic comes into the U.S. through Latin America and the Caribbean, SOUTHCOM orchestrates a tremendous amount of resources and assets from across multiple government agencies in a "whole of government" approach toward combating this problem. Aircraft and vessels from the U.S. Coast Guard (USCG), U.S. Navy (USN) and Customs and Border Protection (CBP) all provide on scene awareness and presence in this mission. In addition, DoD-contracted aircraft and Partner Nation vessels and aircraft are regularly relied upon to support this mission. Finally, multiple radar arrays capable of providing over-the-horizon pictures are employed to round out SOUTHCOM detection and monitoring assets.

With different U.S. agencies come different authorities. While DoD has authority under U.S. Code Title 10 to conduct detection and monitoring, it has no authority to enforce U.S. law. The U.S. Coast Guard is primarily responsible for law enforcement within the maritime domain based on their statutory authority under Title 14 of the U.S. Code. To succeed, SOUTHCOM's detection and monitoring mission must feed law enforcement action and vice versa. For example, DoD-controlled assets provide actionable intelligence to law enforcement or partner-nation assets capable of affecting an interdiction. Once the interdiction takes place, additional intelligence is collected by the Drug Enforcement Agency (DEA) or other U.S. law enforcement agencies and is fed back into the detection and monitoring cycle, informing the complex coordination and placement of assets discussed earlier.

Further along in the process, the Department of Justice represents the U.S. government in prosecuting traffickers. Successful prosecution leads to

³³ See Nat'l Def. Auth. Act for the Years 1990 and 1991 § 1202, Pub. L. 101-189, Stat. 1352 (1989), Detection and Monitoring of Aerial and Maritime Transit of Illegal Drugs: Dep't of Def. to be Lead Agency, 10 U.S.C. §124 (2012).

fewer TOC assets and increases the deterrence effect. Ultimately, the patchwork of statutory authority granted to the various U.S. agencies involved covering the source³⁴, transit³⁵ and arrival³⁶ zones requires a whole of government approach dependent on communication and teamwork. Without these, effective enforcement and ultimate prosecution is not possible.

SOUTHCOM supports U.S. and foreign law enforcement in the interdiction of traffickers and their contraband within the AOR. United States military forces (with the exception of the U.S. Coast Guard which operates under the Department of Homeland Security) are largely prohibited from enforcing state and federal law under the Posse Comitatus Act.³⁷ Unlike the U.S., many Caribbean, Central and South American nations' national militaries have counter-drug enforcement responsibilities. This is true for a variety of reasons, but the two primary reasons are 1) lack of resources to maintain an adequately staffed, trained and funded law enforcement body(s); and 2) widespread police corruption and influence from TOC networks.

Given the complexity of TOC networks and its vast resources and capabilities, the support SOUTHCOM can provide to law enforcement is critical. Both Section 1004 of the 1991 National Defense Authorization Act (NDAA), and Chapter 18 of Title 10 of the U.S. Code establish the baseline from which DoD can support both U.S. and partner nation law enforcement.³⁸ This support can come from a variety of means, ranging from providing air transportation to counter-drug training. While the DoD may not have the legal authority to take direct action against TOC networks, the military has a myriad of resources it may provide to assist. These resources come in a variety of forms, to include: tools and equipment, technology and software, manpower, training and expertise, subject matter experts and planners, and intelligence lawfully gained from the conduct of normal military operations.³⁹ Beyond physical and

³⁴ See Military Support for Civilian Law Enforcement Agencies, 10 U.S.C. Ch. 18, § 371-82 (2012), Nat'l Def. Auth. Act §§ 1004, 1021, 1033 (DoD as the lead federal agency) (1991).

³⁵ See 10 U.S.C. §124 (2012) – DoD as the lead federal agency; 46 U.S. Code Chapter 705 and 14 USC §89 – USCG as the lead federal agency.

³⁶ See Controlled Substances Act, 21 U.S.C. §801 (2012). The Drug Enforcement Administration (DEA) as the lead federal agency; Title 19 of U.S. Code, Customs Duties – CBP as the lead federal agency.

³⁷ See Use of Army and Air Force as Posse Comitatus, 18 U.S.C. §1385 (2013), Military Support for Civilian Law Enforcement Agencies, U.S.C. §375 (2013).

³⁸ See Pub. L. 101-510, § 1004, Stat. 1485 (1990), 10 U.S.C. Ch. 18 (2013).

³⁹ One specific example of this is support of certain partner nation air bridge denial programs. Through multiple international conventions on civil aviation, international law prohibits destruction of a civil aircraft in service. This is codified within U.S. law through the Aircraft Sabotage Act at 18 U.S.C. 32 (1984). However, 22 U.S.C. §§ 2291(a)(2) (2012) allows the U.S. President to determine that the U.S. can provide aircraft interdiction assistance where the use of force may be an option. Through this law, the President has made determination that air

technological resources, U.S. military personnel may provide training and limited support. Because TOC networks are diversifying not only in commodities, but also geographically, the DoD offers unique capabilities such as subject matter experts on culture, language and geography, which can greatly improve the planning and execution of a transnational law enforcement mission.

Joint Interagency Task Force (JIATF)–South, a component of SOUTHCOM, is the central entity responsible for coordination and direction of U.S. counter-narcotics operations through the Caribbean, Central and South America. Located in Key West, Florida, JIATF-South is an interagency task force that serves as the catalyst for integrated and synchronized interagency counter-drug operations and is responsible for the detection and monitoring of suspect air and maritime drug activity in the Caribbean Sea, Gulf of Mexico, and the eastern Pacific. JIATF-South also collects, processes, and disseminates counter-drug information for interagency operations.⁴⁰ Comprised of partners across the Federal agencies to include DoD, FBI, CBP, DEA, and Immigration and Customs Enforcement (ICE), JIATF-S is currently exercising its primary mission through Operation Martillo (which translates to ‘Hammer’ in English). In 2011, Operation Martillo yielded seizures of approximately \$2.35 billion worth of cocaine, and an additional \$37 million in currency and black market contraband.⁴¹ Finally, and arguably most importantly, DoD and SOUTHCOM combat TOC through building the capacity of partner nations in the AOR to enhance their security, stability, and anti-trafficking efforts. From a broad perspective, DoD and SOUTHCOM are implementers of several U.S. governmental programs to assist countries in the AOR. Within the last decade, the United States has dramatically increased the amount of money obligated to the counter-drug fight in the Caribbean, Central and South America. These efforts began with Plan Colombia, which provided broad counter-narcotics assistance authorities to support a variety of activities ranging from crop eradication, to interdiction, to institutional capacity building and support.

Also specific to Colombia is NDAA Section 1021,⁴² which enables the U.S.

track information can be supplied to Colombia, as guided by a 2007 bilateral agreement with strict protocol and limitations, to enable Colombia to interdict illicit drug traffickers and use force if necessary.

⁴⁰ U.S. Southern Command, <http://www.southcom.mil/aboutus/Pages/Our-Team.aspx>, (last visited March 13, 2014).

⁴¹ U.S. Southern Command Pub. Affairs Office, *Multinational Operation Targets Transnational Organized Crime*, USSOUTHCOM, Feb. 8, 2012, available at <http://www.southcom.mil/newsroom/Pages/Multinational-Operation-Targets-Transnational-Organized-Crime.aspx>.

⁴² See Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. 108-375, § 1021, Stat. 1812 (2005). Outlines the use of Funds for Unified Counterdrug and

to support Colombian forces in the fight against narco-terrorist groups such as the FARC. This narco-terrorist group is a prototype of an organization that funds its ideological and terrorist activities through the sale of narcotics. Statistics show this U.S. support has been effective in reducing Colombia's coca cultivation from about 74% of the world's supply in 2000, down to 43% in 2009.⁴³ The Central American Regional Security Initiative (CARSI), which has received almost \$600 million since 2008,⁴⁴ and the Caribbean Basin Security Initiative (CBSI), which has received over \$250 million since 2010,⁴⁵ are two Department of State (DoS)⁴⁶ run programs which rely on significant support from SOUTHCOM. These programs provide equipment, training, and technical assistance to build capacity of our Caribbean and Central American partners. Support for CARSI and CBSI comes in the form of police professionalization and anti-corruption training, equipment and training to maintain vessels used to patrol their waters, and technical support on techniques to intercept smuggled contraband.

Congress also provided specific legal authorities empowering DoD to provide capacity-building support to partner nations. As discussed above, NDAA section 1004 empowers DoD military members to provide counter-drug related training.⁴⁷ Section 1033 of the NDAA allows for the provision of non-lethal equipment for certain pre-approved partner nations.⁴⁸ As discussed above, section 1021 of the NDAA allows for DoD assistance to Colombia in a unified campaign against narcotics trafficking and terrorist organizations.⁴⁹ Traditional Combatant Commander activities, considered to be a fundamental part of executing the mission of a geographic combatant command like SOUTHCOM, also account for some partner nation engagement and benefit.

While DoD implements much of the capacity-building mission, the Foreign Assistance Act of 1961 vests responsibility for these activities with the Secretary of State.⁵⁰ Human rights vetting of partner-nation government units

Counterterrorism Campaign in Colombia.

⁴³ UNODC, *World Drug Report 2011*, UNITED NATIONS, 2011, at 99, available at http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf.

⁴⁴ Seelke, *supra* note 1.

⁴⁵ *Id.*

⁴⁶ 22 U.S.C. Ch. 32 (2013).

⁴⁷ Pub. L. 101-510, § 1004, Stat. 1485 (1990).

⁴⁸ Pub. L. 105-85, § 1033, Stat. 1629 (1998).

⁴⁹ Pub. L. 108-375, §1021, Stat. 1811 (2004).

⁵⁰ See Foreign Assistance Act of 1961, Pub. L. 87-195 as amended through Pub. L. 113-76 (2014), Pub. L. 112-74, §620J of the re-designated as §620M and amended. This aid condition originated in a provision first introduced by Senator Patrick Leahy as an amendment to the 1997 Foreign Operations Appropriations Act (Pub .L. 104-208) restricting International

and individuals is conducted prior to the receipt of any type of training, financial assistance, or capacity building. U.S. forces will not cooperate with or support any person or group about which the DoS has received 'credible evidence' of a 'gross violation of human rights.'⁵¹ Additionally, general and country-specific performance criteria must be met before a nation can receive counter narcotics assistance. Performance criteria may include whether the partner-nation has engaged in or tolerated particularly severe violations of religious freedom; or whether it has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom.

Making use of these legal authorities, SOUTHCOM recently sent a team of military lawyers to meet with partner nation representatives and discuss the legal considerations associated with criminalizing, interdicting, and successfully prosecuting narco-trafficking activities. The resulting discussion illuminates the systemic challenges SOUTHCOM and our partner nations face as we look for ways to improve our counter-drug efforts within each nation's justice system.

Partner-nation representatives expressed multiple areas of concern during the discussions including, 1) violence against participants in the judicial system, 2) corruption within the judicial system, and 3) the above concerns, as they relate to partner nation transition from the inquisitorial to the accusatorial justice system. To prevent violence from influencing the system, some nations, such as Nicaragua, have adopted various protections and flexibilities within their domestic law, which allow for shielding the identity of witnesses, judges and prosecutors throughout the entire trial process. Other nations are still exploring legal options and were interested in the identity concealment measures allowed under U.S. law and the possibility of sharing model legislation. U.S. representatives explained the limited identity concealment measures available in our justice system, such as the Federal Witness protection program, due to U.S. Constitutional requirements of accusatorial confrontation. This type of exchange of concerns and ideas has built mutual understanding of the complex environment SOUTHCOM and its partner nations work within to combat illicit trafficking and helps to seal the gaps that TOC networks seek to exploit.

Narcotics Control assistance to foreign security forces found to have committed gross violations. Encoded in Human Rights and Security Assistance, 22 U.S.C. § 2304 (2012) .

⁵¹ *Id.*

VI. LOOKING AHEAD

As the federal budget begins to constrict, so will the resources available for this fight. The demand for more assets to combat illicit trafficking must also be balanced against the demand to combat illegal migration, counter international terrorism, provide humanitarian assistance, and support basic infrastructure building and maintenance. If a U.S. Coast Guard cutter is tasked with ensuring safety of life at sea and is therefore required to patrol an area known to be a historic route for illegal migrant entry, that asset is not then available to patrol the Northern Coast of Colombia searching for illicit drug traffic. With the decrease in available ships, planes and manpower, comes a corresponding decrease in detection and monitoring of the area of responsibility and subsequent interdiction of illicit goods. "In 2013, Joint Interagency Task Force South was unable to take action on 74% of actionable illicit trafficking events due to lack of assets."⁵² As General John Kelly, Commander of U.S. Southern Command explained after recent congressional testimony, "It's almost a scientific equation: more assets, more [illicit drug] tonnage."⁵³

This paradigm brings forth two increasingly important concepts for the DoD and SOUTHCOM. First, it requires enhanced interagency coordination and support to find synergies and efficiencies within our own system. Second, it highlights the value of building partner capacity. Through this effort, we enable our partner nations to better contribute to the fight in the future, and better address illicit trafficking at its source. While those of us working in support of SOUTHCOM recognize this is only one aspect of a whole of government approach against the scourge of illicit trafficking, we take this responsibility very seriously. The complex problem of illicit trafficking demands continued commitment, and SOUTHCOM will remain resolute in this fight as long as it is tasked with this important mission.



⁵² General John F. Kelly, United States Marine Corps, Commander United States Southern Command, Posture Statement Remarks Before the 113th Cong. House Armed Serv. Comm. (Feb. 26, 2014).

⁵³ Claudette Roulo, *More Ships Equal More Drugs Seized, SOUTHCOM Commander Says*, AM. FORCES PRESS SERV., Mar. 13, 2014, available at <http://content.govdelivery.com/accounts/USDOD/bulletins/aacf0c?reqfrom=share>.