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# *The Mara Salvatrucha and Regional Insecurity*

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*How MS-13 perpetuates a cycle of Migration and Violence between the United  
States and Central America*

**Joseph Sanchez  
National Security Studies Institute  
University of Texas at El Paso  
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The Mara Salvatrucha (MS-13) is a transnational gang that has spread from the United States to El Salvador and other Central American countries. The gang is unique, as it possesses characteristics of both a street and a transnational criminal organization. Due to its brutality and expansion, MS-13 has created an environment of public insecurity within Central America. This in turn has spurred several initiatives with the United States and its partners in an attempt to control a cycle of violence and migration between the countries.

## ***Introduction***

Within the last decade, the United States has seen a recent influx of immigrants from Central America due to an increase of violence in El Salvador and neighboring Central American countries. Consequently, immigration has once again become a much discussed political issue in the 2016 elections and remains at the forefront of political agendas.<sup>1</sup> The latest wave of migration has been attributed to the Mara Salvatrucha, one of the largest street gangs in the United States and Central America. Due to the extreme brutality, the Mara Salvatrucha numbers have grown considerably, making it a transnational and regional threat.<sup>2</sup> However, this is not the first time Central American immigrants have fled their country due to violence. This has happened before, during the 1980's with a violent and bloody civil war in El Salvador. What makes this an especially provocative situation, is the Mara Salvatrucha(MS-13) originally has its roots within the United States and are the byproduct of the initial wave of immigrants. These gang members were subsequently deported to El Salvador and other Central American countries, bringing along their vicious propensities.<sup>3</sup> As the gang spread throughout the Central American region, they have created an environment of public insecurity that has sent a new wave of immigrants to the United States. Through this migration of people and gang violence, there has been a perpetual cycle that threatens public security and state stability for multiple nations.

This paper will act as a case study that will focus on MS-13 and the anti-gang policy within the United States and Central America. It will be necessary to cover multiple arenas such as homeland security, criminal law, foreign policy, immigration and social sciences. This is on account of the extent that MS-13 operates in, its transnational nature and infamous brutality against the citizenry. This paper will seek to better understand the cycle of transnational violence perpetrated by MS-13 in the different areas of American policy. This cycle has played out in different arenas, mostly with law enforcement and immigration policy. However, within each country, there has been different initiatives to find the right balance. After exploring the topics, the goal will be to give a final strategic analysis of MS-13 and the potential threats and effects if allowed to operate within the same capacity.

Explaining the origins and history of how the Mara Salvatrucha became established will be the first step in understanding how the cycle of violence has begun. This paper will describe some of the unique characteristics that Mara Salvatrucha exhibits as an organization. MS-13 is one of the largest gangs in the United States yet

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<sup>1</sup> Kaplan, Rebecca. Trump: Illegal immigrants killing "Thousands of People". *CBS News*. Dec. 2, 2015. <http://www.cbsnews.com/news/trump-illegal-immigrants-killing-thousands-of-people/>.

<sup>2</sup> Siskind, Melissa. "Guilt By Association: Transnational Gangs And The Merits Of A New Mano Dura." *Geo. Wash. Int'l L. Rev.* 289, 40 (2008-2009)

<sup>3</sup> Garsd, Jasmine. "How El Salvador Fell into a Web of Gang Violence." *NPR*. Oct. 5, 2015 <http://www.npr.org/sections/goatsandsoda/2015/10/05/445382231/how-el-salvador-fell-into-a-web-of-gang-violence>.

its operational capabilities are very different in Central America. This research will detail and analyze how the Mara Salvatrucha network functions like a street gang and transnational criminal organization.

There is no specific event that can be accounted for the creation of MS-13, instead it would be the culmination of multiple events. The Mara Salvatrucha is the byproduct of violence as well as the amalgamation of multiple states' anti-gang policies. In the United States and Central America, the governments have continued to seek the right approach, but this would be at the risk of creating more unintended consequences. For example, the immediate need to reduce gang activity in the 1990's led to an increase in deportations of gang members back to their home countries in Central America.<sup>4</sup> While there is no clear consensus, some authors point out that these initial anti-gang policies would end up expanding the gang's territory beyond the United States.<sup>5</sup> This research will detail and analyze some of these better known policies that were enacted to combat gang violence within El Salvador and the United States. Most notable is the *Mano Dura*, or "firm hand" which was a hardline anti-gang policy enacted by El Salvador.<sup>6</sup> By examining the *Mano Dura* and other policies, this paper seeks to understand how the initial reactions to the MS-13 violence can have unintended consequences, perpetuating the cycle of violence and migration.

Most of the countries that deal with MS-13 have broadened their focus past a pure law enforcement focus. The United States and other countries had to evolve and adapt, similar to the Mara Salvatrucha. The research will detail some of the newer American anti-gang initiatives that are being put in place by multiple agencies throughout the United States and their partners in Central America. This will necessary as MS-13 continues to expand its capabilities as a transnational gang. While not seen as an existential threat to the United States, MS-13 had become notorious for its violent actions and the rate of its expansion.<sup>7</sup> While the gang violence had been slowly declining in the United States, Central America has continued to grapple with extreme gang violence. This is in part due to the U.S. cities incorporating community policing practices that focus on prevention along with the law enforcement.<sup>8</sup> However, one must not forget that the United States also has access to an abundance of resources that are

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<sup>4</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIR) Pub. L. No. 104-208, 110 Stat. 3009-546.

<sup>5</sup> Temple, Jonah M. "The Merry-Go-Round Of Youth Gangs: The Failure Of The U.S. Immigration Removal Policy And The False Outsourcing Of Crime." *Boston College Third World Law Journal* 31, 193 (2011): 198.

<sup>6</sup> Funes, Freddy. "Removal of Central American Gang Members: How Immigration Laws Fail To Reflect Global Reality." *University of Miami Law Review* 63, 301 (2008-2009): 314.

<sup>7</sup> Wolf, Sonja. "Mara Salvatrucha: The Most Dangerous Street Gang in the Americas?" *Latin American Politics and Society* 54, 1 (2012): 66.

<sup>8</sup> USAID, Basic Education Policy Support Activity. "USAID Central America and Mexico Gang Assessment." *USAID Bureau for Latin America and the Caribbean Office of Regional Sustainable Development*. April 2010.

not necessarily available to their Central American Partners.<sup>9</sup> There is no doubt that this plays a significant role in combating the MS-13 threat.

Both authors and governments that write on the Mara Salvatrucha have noted that a cycle currently exists, but it focused exclusively on individual gang members and their ability to cross back and forth between the different countries.<sup>10</sup> The term is used is a “revolving door” and describes a gang members’ ability to navigate between the north to the south and the south to the north.<sup>11</sup> This paper will take into account the individual movement of gang members but also expand to include the cyclical, state instability in the Central American region and the resulting migration to the United States due to MS-13.

### **Origins of MS-13**

Before MS-13 came into existence, there was a bloody civil war taking place in El Salvador between 1980 and 1992.<sup>12</sup> By the time the civil war came to a close, over 75,000 people would end up dying, or being “disappeared by government forces.”<sup>13</sup> Over the course of this decade, over a million Salvadorans would end up fleeing their home countries, the United States absorbing a large percentage of the migrants.<sup>14</sup> It is during this civil war, the youth would end up seeing the horrors of death and violence first hand.<sup>15</sup> Furthermore, if family members were lucky enough to survive the violence, they would often be broken up by a staggered migration to other countries. Often times, mothers would depart before their children, leaving them within the care of other family or friends. It is this environment of violence, human rights abuse and abandonment that would traumatize the first wave of immigrants and contribute to the viciousness of the gang.<sup>16</sup>

With an unfamiliarity of the new country, many of the immigrants would eventually settle within the ghettos and barrios of Los Angeles. However, this new home would not be the sanctuary that these immigrants had hoped, as these parts of the city were dealing with their own issues of violence and drugs, perpetrated by the local gangs.<sup>17</sup> It is this dangerous, urban environment that these immigrants from El Salvador

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<sup>9</sup> United States Government Accountability Office. “Combating Gangs: Federal Agencies Have Implemented A Central American Gang Strategy, But Could Strengthen Oversight And Measurement Of Efforts,” in *Transnational Gangs: The MS-13 Gang and Others*, ed. Michele L. Monteith (New York: Nova Science Publishers, Inc., 2010), 65.

<sup>10</sup> Temple *supra* note 5 at 198.

<sup>11</sup> USAID *supra* note 8 at 6.

<sup>12</sup> Ward, T.W. *Gangsters without Borders* (New York, Oxford: Oxford University Press, 2013), pg.33.

<sup>13</sup> Allison, Mike. “El Salvador’s brutal civil war: What we still don’t know”. *Al-Jazeera*.

<http://www.aljazeera.com/indepth/opinion/2012/02/2012228123122975116.html>

<sup>14</sup> Terrazas, Aaron, Salvadoran Immigrants in the United States. *The Online Journal of the Migration Policy Institute*. Jan. 5, 2010 <http://www.migrationpolicy.org/article/salvadoran-immigrants-united-states#1>.

<sup>15</sup> Siskind, *supra* note 2 at 305

<sup>16</sup> Ward, T.W. *supra* note 12 at pg.55.

<sup>17</sup> *Ibid.*, at pg. 55

would form their own gang, the MS-13, to protect themselves from the other gangs in the area.<sup>18</sup> It did not take long for MS-13 to expand outside of Los Angeles and into other states. From Los Angeles, these gangs expanded throughout the United States. The gang organized itself into individual groups in their separate territory called “cliques”. While these cliques are often independent of each other, they will share resources such as weapons to combat rival gangs. Likewise, there will be meetings between the gang leaders or “shot callers” in which they will share intelligence about rivals, law enforcement or organize criminal activities.<sup>19</sup>

The exact numbers of gang membership is unknown, but the current estimates are between 6,000 to 10,000 operating in the United States, with members in forty-two states and the District of Columbia.<sup>20</sup> Through migration, recruitment and the United States' removal policy, the gangs have continued to spread across El Salvador, Guatemala, and Honduras.<sup>21</sup> This forced deportation was due to a crack on gang violence in 1992 and the enactment of strict anti-gang laws.<sup>22</sup> Through the use of various legislation in the 1990's INS and local law enforcement were able to change the criteria for which an immigrant could be deported and expand upon the criminal law.<sup>23</sup> In the early 1990's, the United States had deported roughly 40,000 aliens per year, by 1997, the numbers had increased to 114,000, with over 34,000 due to criminal deportations.<sup>24</sup> It is with these deportations that the United States has unknowingly and unintentional role of converting MS-13 into a transnational problem. The perception is that the United States had overwhelmed the Central American countries by repatriating the criminal elements without properly informing the host nations.<sup>25</sup> In the initial stages of the strict anti-gang policy, the United States provided a limited criminal history of the last offense. Unfortunately, this partial information did not tell the full extent of a gang member's past, allowing many potential MS-13 members to slip through the repatriation process never facing criminal charges in El Salvador and other Central American countries.<sup>26</sup> It is in these countries that the Mara Salvatrucha would become the greatest threat to regional stability.

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<sup>18</sup> Franco, Celinda. “The MS-13 and 18<sup>th</sup> Street Gangs: Emerging Transnational Gang Threats?” ed. Michele L. Monteith (New York: Nova Science Publishers, Inc, 2010), 13.

<sup>19</sup> Funes, *supra* note 6 at 307.

<sup>20</sup> [https://www.fbi.gov/news/stories/2008/january/ms13\\_011408](https://www.fbi.gov/news/stories/2008/january/ms13_011408), The MS-13 Threat A National Assessment

<sup>21</sup> USAID *supra* note 8 at 6-Unfortunately there are no real good estimates of the specific ms-13 gang population as it is a regional issue in Cental America. USAID puts the estimate between 50,000 to approximately 305,000.

<sup>22</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546

<sup>23</sup> IIRIRA § 321, 110 Stat. at 3009-627 to -628

<sup>24</sup> Funes, *supra* note 6 at 307

<sup>25</sup> *Ibid.*, at 310.

<sup>26</sup> *Ibid.*, at 310.

### **MS-13 –Street Gang or Transnational Criminal Organization?**

MS-13 is unique in that it started off as a street gang but have expanded into multiple countries. By looking at various characteristics of the Mara Salvatrucha, we can define the issue and understand their capabilities. Franco in her essay on MS-13 and 18<sup>th</sup> street Gangs describes some of the characteristics as being involved in criminal activities in one country that were orchestrated by gang leaders in another country. Some of the evidence that this takes place is sparse, but news reports have mentioned that the prison systems in El Salvador work to organize and collaborate on activities within the United States.<sup>27</sup> However, the evidence is much more overwhelming that MS-13 will coordinate and work along with members of the Mexican narco-cartels.<sup>28</sup> Another characteristic that Franco uses to describe a transnational gang is for the gang to be mobile and adapt to new areas. This does not need further explanation, as the public and government are distressingly aware of how quickly MS-13 has adapted to new areas. Finally, a transnational gang is usually characterized by its members to maintain connections across national boundaries and native countries.<sup>29</sup> In his essay about the U.S. immigration policy, Temple speaks about how the initial reaction to MS-13 in the United States had created a knee jerk reaction to the deportation of immigrants to El Salvador. He continues by explaining how the gang members would frequently return illegally to the United States to escape prosecution from any of the Central American countries due to their harsh penalties or due to the risk of life from rival gangs.<sup>30</sup> This is a part of the individual cycle that is currently recognized and is on the tactical level that federal agencies try to address and prevent.

Within the US, it is believed that Ms-13 has between 8,000-10,000 gang members, controls territory in 42 states as well as Washington D.C. <sup>31</sup> It has been established that MS-13 is transnational in nature and shares some of the characteristics as a transnational gang, but what is more contentious is whether MS-13 is a transnational criminal organization. From the FBI's glossary, they define an organized criminal enterprise is any group having a formalized structure whose primary objective is to obtain money through illegal activities.<sup>32</sup> Often times, these groups will use violence, corrupt public officials, extortion, and have a significant impact on the people in their locals, region, or the country as a whole.<sup>33</sup> While the gangs usually operate within independent cliques, law enforcement officials have evidence that there are coordination of violent crimes and criminal activity among gang members in Atlanta, Dallas, Los Angeles, New York and Washington D.C. Some of the most violent crimes

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<sup>27</sup> Lopez, Robert J., Connell, Rich, Kaul, Chris. "Gang Uses Deportation to Its Advantage to Flourish in U.S." *Los Angeles Times*. <http://www.latimes.com/local/la-me-gang30oct30-story.html>

<sup>28</sup> Siskind, *supra* note 2 at 299

<sup>29</sup> Franco, *supra* note 29 at 10.

<sup>30</sup> Temple *supra* note 5 at 198

<sup>31</sup> Franco, *supra* note 29 at 9.

<sup>32</sup> *Ibid.*, at 5.

<sup>33</sup> "Glossary of Terms" *FBI.gov*. <https://www.fbi.gov/about-us/investigate/organizedcrime/glossary>.

include homicide, drive-by shootings, assault, robbery and prostitution.<sup>34</sup> However, the United States has had a difficult time prosecuting MS-13 with the Racketeer Influenced and Corrupt Organizations Act (RICO), which has been the backbone of dismantling organized crime. Originally the act was brought forth to target mafia members and the commercialization of crime across multiple states.<sup>35</sup> However, using the RICO Act against MS-13 has been very limited due to the difficulty in proving that the gang was working in concert, illegally for financial purposes. Likewise, due to the operational organization of MS-13, there is no centralized leadership that would set a strategic, criminal enterprise.<sup>36</sup> However, the gang is not above coordinating amongst the cliques. For example, in May 2015, thirty-seven gang members were indicted on racketeering and conspiracy charges in North Carolina. The prosecution was a part of a joint federal, state and local task force to target major drug trafficking.<sup>37</sup> The need to coordinate different law enforcement agencies and prosecute a large number of gang members is an example of how MS-13 has developed in complexity and range. Furthermore, the fact that it required multiple agencies on different levels of government show that the United States have adapted their strategy to the threat and utilize multiple resources.

### ***U.S. and International Partner Anti-Gang Initiatives***

While MS-13 has been prosecuted under organized criminal statutes, the majority of the gang is comprised of independent cliques. If the opportunities presents itself, the gang will coordinate resources but rarely for strategic and entrepreneurial planning. However, the range of gang members that share the Mara Salvatrucha namesake has transcended multiple national borders. Likewise, the movement of gang members between multiple countries and into other countries has characterized MS-13 as a transnational gang. Furthermore, the effects of the violence, i.e. the migration of people out of El Salvador due to violence, shows that MS-13 is not a localized phenomenon. This unique threat has required the United States to form initiatives within their federal agencies and partnerships in other countries. By taking an active role and supporting multiple programs at the federal, state and local level, the government can offer resources that address the gang problem in high risk jurisdictions.<sup>38</sup> Some of the shared anti-gang resources can include training international counterparts and sharing intelligence for countries that lack robust law enforcement capabilities. While not exhaustive, the agencies mentioned below showcase some of the capabilities the United States have utilized to fight the transnational threat. By including agencies like

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<sup>34</sup> Siskind, *supra* note 2 at 290

<sup>35</sup> CRIMINAL RICO: 18 U.S.C. § (1) (A) A Manual for Federal Prosecutors, 5<sup>TH</sup> REVISED EDITION <http://www.justice.gov/sites/default/files/usam/legacy/2014/10/17/rico.pdf>

<sup>36</sup> Franco, *supra* note 29 at 6

<sup>37</sup> U.S. Attorney's Office, "Thirty-Seven MS-13 Gang Members Indicted on Racketeering Conspiracy Charges; Some Also Charged with Murder, Attempted Murder, and Firearms Violations." <https://www.fbi.gov/charlotte/press-releases/2015/thirty-seven-ms-13-gang-members-indicted-on-racketeering-conspiracy-charges-some-also-charged-with-murder-attempted-murder-and-firearms-violations>.

<sup>38</sup> USAID *supra* note 8 at 28

USAID, Department of Homeland Security (DHS), State Department and the FBI, the government has broadened the strategic focus beyond pure law enforcement and immigration.<sup>39</sup> A complete approach that includes prevention, intervention and law enforcement will be necessary to reduce the cycle of transnational gang violence in the United States and Central American Region.<sup>40</sup> However, the proper balance of each approach will need to be constantly evaluated and adapted as MS-13 and other gangs evolve. The National Security Council within the executive branch has coordinated with other federal agencies to address Mara Salvatrucha and the issue of transnational gangs. This anti-gang response is to combat the expansion of MS-13 and delegates some of the roles and responsibilities of these different federal agencies.<sup>41</sup>

The Justice department comprises of a criminal division that consists of attorneys, along with four law enforcement agencies, which is the FBI, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration and US National Central Bureau of Interpol.<sup>42</sup> The Criminal Division is tasked with enforcing most federal criminal laws and works along with its international partners in Central America in instructing anti-gang training. Likewise, the FBI's National Gang Task Force will work with authorities in state and local law enforcement to coordinate strategies. This includes sharing intelligence and supporting investigative efforts amongst the different agencies. The FBI's criminal division will focus on violent crimes and criminal enterprises<sup>43</sup> that deal with transnational gangs while the ATF focuses on illegal firearms and trafficking. If the transport and distribution is of a large enough quantity, the DEA will investigate whether large scale suppliers are working in coordination with MS-13.<sup>44</sup> This can be very effective in containing Ms-13 and its cliques from working alongside other transnational criminal organizations, specifically the drug cartels who operate along the border U.S. and Mexico border.

ICE has a significant role within the Department of Homeland Security. ICE's responsibility is to deport alien gang members who reside illegally or who have committed specific crimes within the United States. Operation Community Shield is one of the largest international law enforcement initiatives, and works alongside Homeland Security Investigations.<sup>45</sup> Coordinating with the different levels of law enforcement, ICE will conduct large sweeps that target transnational gang members. In one particular sweep, they were able to arrest 4,700 gang members and seized 6,600 firearms.<sup>46</sup> To

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<sup>39</sup> Franco, *supra* note 29 at 11.

<sup>40</sup> USAID *supra* note 8 at 6

<sup>41</sup> Transnational gangs, pp45

<sup>42</sup> Franco, *supra* note 29 at 69

<sup>43</sup> "Going Global on Gangs New Partnership Targets MS-13." *FBI.gov*. Oct. 10, 2007.

[https://www.fbi.gov/news/stories/2007/october/ms13tag\\_101007](https://www.fbi.gov/news/stories/2007/october/ms13tag_101007)

<sup>44</sup> Monteith, *supra* note 31 at p. 47.

<sup>45</sup> "U.S. Immigration and Customs Enforcement, National Gang Unit." *ice.gov*.

<https://www.ice.gov/national-gang-unit>.

<sup>46</sup> "ICE arrests 976 gang members and associates during 'Project Wildfire' surge." April 08, 2015.

,<https://www.ice.gov/news/releases/ice-arrests-976-gang-members-and-associates-during-project-wildfire-surge>.



conduct such a broad, strategic operation, ICE will collaborate alongside their international partners to share information on specific criminal migration and repatriation. The sharing of criminal history and information can be instrumental for better preparing the host nation for receiving gang members and following the movement of criminals. Also in DHS is the Customs and Border Protection component which protects the U.S. borders against illegal immigration, drug smuggling and works to identify gang members who try to enter the United States.<sup>47</sup>

The Bureau of Western Hemisphere Affairs and the Bureau of International Narcotics and Law Enforcement Affairs was created out of the State Department to manage anti-gang initiatives in Central America.<sup>48</sup> The Bureau of Western Hemispheres works with international partners and encourages U.S. interests through diplomacy in Central America. They also foster cooperation with government agencies that focus on drug trafficking and crime. The Bureau of International Narcotics and Law Enforcement Affairs takes feedback from the host countries and then advises the U.S. government on ways to develop new initiatives and expand on programs that have seen success in the local community.<sup>49</sup> The bureau also provides resources to host nations so that they may bolster law enforcement institutions that counter transnational gangs.<sup>50</sup> They also provide leadership and guidance on battling public corruption. This is to minimize the effect of transnational gangs on government institutions and courts.<sup>51</sup> To provide a wide-ranging, balanced approach, USAID is responsible for creating programs that function through intervention and prevention. The agency works alongside international and local governments to provide a balanced approach that operates on the social level. These programs reach out to young men, who are the most at risk to becoming caught up in gang activities.<sup>52</sup> Most of the development and humanitarian assistance that USAID provides is in the form of employment opportunities and family oriented interventions programs.<sup>53</sup>

While there are many agencies and departments that work together to combat transnational gangs like MS-13, it is not without criticism. USAID states in their gang assessment that there needs to be better coordination throughout the departments. Furthermore, if the U.S. and their international partners are to be effective in combating the MS-13 threat, they need to integrate programs that go beyond a law enforcement focus.<sup>54</sup> Similarly, the United States Government Accountability Office mentions in their report on Central American Gangs, that all these different agencies lack a single

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<sup>47</sup> Ward, T.W. *supra* note 12 at pg.47

<sup>48</sup> *Ibid.*

<sup>49</sup> United States Government Accountability Office *supra* note 9 at 47.

<sup>50</sup> *Ibid.*, at 47.

<sup>51</sup> "INL Guide To Anticorruption Policy And Programming, United States Department Of State Bureau Of International Narcotics And Law Enforcement Affairs." June 2015. <http://www.state.gov/documents/organization/244730.pdf>

<sup>52</sup> United States Government Accountability Office *supra* note 9 at 47.

<sup>53</sup> USAID *supra* note 8 at 147.

<sup>54</sup> *Ibid.*, at 6.

overarching governmental branch that can oversee and implement the strategy set forth by the International Organized Crime Policy Coordinating Committee (IOCPCC).<sup>55</sup> Furthermore, while individual departments have set up their own metrics and parameters for measuring progress, there is no interagency wide goal of success. The GAO continues that due to the large scope of the national anti-gang strategy and departments involved, there is the need for oversight and accountability. Each department takes lead in their own roles and responsibilities, but the strategy does not provide framework for holding agencies accountable for implementation of their activities.<sup>56</sup>

### ***Strategic Planning for Regional Success***

The important question is: Where does that lead us now with the capabilities of the United States in protecting its citizens and fighting the transnational gang, MS-13? Looking at the different governmental agencies, there is a wide range of separate capabilities to combat transnational gangs through diplomacy, repatriation, law enforcement, capacity enhancement, and prevention.<sup>57</sup> However, multiple U.S. departments have highlighted that coordination still lacks within the interagency program. With so many roles and responsibilities designated between the different departmental agencies, this is somewhat expected. At the current situation, it is positive to see that these agencies have recognized it will take various approaches to combat transnational gangs but the national strategy lacks interagency metrics to measure success.

Different departments have established their own performance measures, but unfortunately the methods of success for the FBI will not be the same for the State Department. Furthermore, the United States will have to incorporate an international metric with its Central American partners, namely El Salvador. While it will be much easier to just focus on disrupting the operations and actions of MS-13 within the United States, this may only exasperate problems in Central America. For example, during the 1990's there was only concern with removing gang members from the United States. However, the unbalanced approach only relocated the problems into El Salvador, a country still reeling from its civil war. This influx of criminals and gang members pushed the law enforcement capacity to its limits, enacting the Mano Duro.<sup>58</sup> The Mano Dura and its variations were a number of hardline, anti-gang laws.<sup>59</sup> This zero-tolerance strategy was introduced into El Salvador in 2003. Under this expansive legislation, the police arrested almost 20,000 individuals with a law enforcement focus on gang

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<sup>55</sup> "Strategy To Combat Transnational Organized Crime: Addressing Converging Threats To National Security" July 2011.

[https://www.whitehouse.gov/sites/default/files/Strategy\\_to\\_Combat\\_Transnational\\_Organized\\_Crime\\_July\\_2011.pdf](https://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf)

<sup>56</sup> Ward, T.W. *supra* note 12 at pg.52.

<sup>57</sup> *Ibid.*, at pg. 49.

<sup>58</sup> Funes, *supra* note 6 at 308.

<sup>59</sup> Siskind, *supra* note 2 at 303.

affiliations. This could be anything from gathering regularly, having tattoos, or encouraging an individual to join a gang. Extortion, graffiti and gang violence were also specified and justly appropriate laws.<sup>60</sup> However, the Mano Dura was eventually struck down in El Salvador due to its unconstitutionality. The law was deemed unconstitutional that having social interactions with gang members was not enough of a predicate for committing criminal offenses.<sup>61</sup> Furthermore, due the large number of incarcerations in El Salvador, their prison and judicial system were certainly overwhelmed.

The Mano Dura is an example of El Salvador taking a reactive, law enforcement heavy approach to a crisis that risked public safety and security. To avoid putting too much pressure on governments and law enforcement agencies, the United States and other Central American partners will need to set strategic performance goals and measures that are applicable and accountable for their respective governments. By implementing an international strategic goal, with solid performance measurements and oversight, the countries can work together to better optimize resources in combating transnational gangs. The ability to have international oversight and measurements of performance can help the countries better allocate resources to law enforcement and provide necessary coordination. Furthermore, law enforcement and immigration can share intelligence on individual criminals, gang activity and transnational movement. For the State Department and USAID, this will include work for social service programs and insure they are being implemented appropriately. Likewise, by executing joint international oversight, there is the ability to catch and stop public corruption that might exist in NGO's or through the various levels of government. In the end, having an international strategic goal will protect the citizens of the U.S., foster stable democracies<sup>62</sup> and provide a better tool to ensuring accountability with more effective results.

At this time, USAID and the State Department have departmental performance measurements that pertain to anti-gang programs across Central America.<sup>63</sup> This includes arrests and prosecutions in the region, gang-related crime, and information that is passed between transnational anti-gang units in El Salvador to U.S. law enforcement.<sup>64</sup> While this information is passed between the two countries, this assessment information hits a wall between the other anti-gang departments that operate within the United States. For example, metrics information collected by the FBI gang units will not be accessible by their partners in Customs and Border Protection. Similarly, performance measurements will be law enforcement specific but will not be designed to incorporate the metrics of roles and responsibilities by the State Department or USAID. The interagency gang task forces such as the National Gang Targeting, Enforcement and Coordination Center allow some intelligence coordination

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<sup>60</sup> Siskind, *supra* note 2 at 305

<sup>61</sup> *Ibid.*, at 305

<sup>62</sup> United States Government Accountability Office *supra* note 9 at 43.

<sup>63</sup> Ward, T.W. *supra* note 12 at 53

<sup>64</sup> *Ibid.*, at 54.

and sharing between the different levels of government and agencies. However, there is no one agency that provides complete oversight to the strategic mission. Likewise, there is also no government entity that can enforce the different federal agencies to the anti-gang strategy. This can be a problem, as an individual agency's pet projects can be put ahead of the overall anti-gang strategic or certain resources may not be utilized for their appropriate purpose. With no head governmental agency, it makes it difficult to keep track of the national strategic progress against MS-13. Individual agencies can be measured to determine if they are meeting their role and responsibility, but without a cohesive collection of the departments' metrics, gaps may exist in the fight against MS-13. Furthermore, if MS-13 evolves to incorporate different criminal activities, agencies may end up missing the gang's operational shift.

The migration of people and gang members is the most apparent example of the cyclical, transnational nature of MS-13. A criticism of US deportation strategy is that gang members who commit crimes in their own countries will flee to the United States to hide, engage in criminal activity and earn income until they are caught and deported, repeating itself multiple times.<sup>65</sup>

It is apparent that the ability to capture or keep intelligence on gang members can pose a difficult task that requires coordination. ICE's main mission is the repatriation and removal of criminal immigrants that reside in the United States. The passage of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996 saw a large number of MS-13 gang members deported and sent back to El Salvador for criminal activities.<sup>66</sup> There is a belief that these deportations were an overreaction to stop gang violence within the United States. Furthermore, critics site that ICE and the Intelligence and Naturalizations Services did not do enough to inform the home country of the gang member's criminal activities.<sup>67</sup> However, from the GAO's 2010 report on transnational gangs, there has been progress in strategy as ICE will coordinate with the receiving country to provide the criminal history of gang members.<sup>68</sup> Furthermore they also provide related information that could help to reintegrate individuals back to their country. The assessment is unclear about the exact details of what might be related information, but could entail criminal markings, associations or other intelligence that would provide the receiving country more details about gang activities while the criminal was in the United States. Unfortunately, the ability to share information between international law enforcement agencies can still have its gaps. For example, if a criminal is on the run from the law enforcement personnel in Central America, there might not be any evidence of a gang member's final destination. A possibility could be the United States or another Central American country, but the FBI or ICE may never be notified due to the inability of law enforcement to trace the criminal's whereabouts. However, international criminal databases can work as a preventive measure if a criminal from El

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<sup>65</sup> Temple *supra* note 5 at 199

<sup>66</sup> Funes, *supra* note 6 at 309

<sup>67</sup> *Ibid.*, at 309

<sup>68</sup> United States Government Accountability Office *supra* note 9 at 66.

Salvador attempted to enter the United States legally and Customs and Border Protection were able to bring up the history before they entered the country. The use of international criminal databases can function for gang members fleeing the United States or if they have been deported for non-criminal offenses. In this case, the Department of Homeland Security can collaborate with the gang members' country of origin through an intelligence database. This would help the host country be prepared or anticipate the movement of criminal elements back and forth through the countries.

The agencies that work alongside their El Salvadoran counterparts also note limitations in the international gang strategy that were out of the control of the United States capabilities. The range of issues mostly dealt with the disproportion of resources between the American and Central American government. The sustainability of programs is only feasible with the ability to fund them. This has restrained El Salvador to keep their anti-gang programs viable. As mentioned above, corruption is always a factor when finances are tight. A concern would be the proper allocation of money to law enforcement by government officials. Corruption in the prison system is always a top concern with gang organizations. While the prisons in California face overcrowding, El Salvador's prison systems have struggled to keep up with the incarceration of gang members.<sup>69</sup> If the financial support is to end, a prison black market can become profitable for both corrupt penitentiary officers and gang leaders. Similarly, corruption in the prison system can facilitate the orchestration of criminal activities from within and affect the public on the outside.<sup>70</sup>

Beyond corruption, anti-gang task forces need to have continued upgrades and investment in the police force, which includes training and gear.<sup>71</sup> When looking at MS-13 in El Salvador and the United States, the operations of cliques in El Salvador seem to make it more institutionalized and better structured than the cliques in the United States. John Hagedorn in his writing on gangs mentions there are interstitial gangs and institutional gangs.<sup>72</sup> MS-13 in El Salvador has become institutionalized with a stronger structure and organization. Likewise, there are regional leaders that facilitate communication and resources between different groups.<sup>73</sup> The nation and environment that MS-13 and law enforcement operate plays an essential factor into what type of training and programs are relevant.<sup>74</sup> Its American counterpart still operate on the interstitial level and is a very much anarchic-independent confederate of cliques, with no real hierarchy. The American MS-13 cliques are loosely organized and will not often coordinate. While some anti-gang training and programs will carry over, the United States agencies will have to relearn some of their practices. Fortunately, the agencies have enough foresight and are able to build upon programs that already exist within El

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<sup>69</sup> Funes, *supra* note 6 at 313

<sup>70</sup> Hagedorn, John. *Gangs in the Global City :Alternatives to Traditional Criminology*. Urbana: University of Illinois Press, 2007 303.

<sup>71</sup> United States Government Accountability Office *supra* note 9 at 65.

<sup>72</sup> Hagedorn, *supra* note 70 at 310

<sup>73</sup> Central America And Mexico Gang Assessment 66

<sup>74</sup> United States Government Accountability Office *supra* note 9 at 65

Salvador, making them easier to be sustained.<sup>75</sup> Likewise, the judicial system and laws in El Salvador are different than American and this can be a hindrance as well. For example, there is no death penalty in El Salvador and this can be an obstacle for extradition for crimes committed in the United States if life or the death penalty is being sought. Similarly, El Salvador places restrictions on wiretapping and surveillance by their law enforcement. These are investigative tools used in many types of gang related criminal investigations in the United States. While not preventing investigations, it can prolong the corroboration of evidence and force law enforcement to work through other methods.<sup>76</sup> Fortunately, there is a recognition that MS-13 and other transnational gangs will require collaboration between nations and programs and there was enough forethought and planning to adapt to differences within international agencies and practices.

### ***Encouraging Progress in the United States***

With concerns to MS-13 as a transnational criminal organization, it seems that there are varied capabilities between the United States and El Salvador. As mentioned before, MS-13 has become a transnational threat but operates very differently. In his ethnography, *Gangsters without Borders*, Thomas Ward describes MS-13 as a large confederate street gang, made up of many different cliques or groups.<sup>77</sup> They share the same name, but often have different focus. The name is what mostly keeps them from battling with each other over turf and resources, and facilitates the cooperation against other gangs. Other than sharing a name, most of the cliques operate independently.<sup>78</sup> There is no hierarchy between cliques and no singular kingpin that orchestrates activities. That being said, MS-13 maintains a large footprint and has the capability to expand further.<sup>79</sup> However, it does not seem due to territorial fighting but is instead the product of individual members being transplanted to another area and continuing the gang lifestyle. This seems much less violent than gangs fighting over corridors and destroying or incorporating rivals.<sup>80</sup>

From USAID's gang assessment, they note that gang activity has decreased within the United States, due to a decline in youth and gang-related violence. The approach moved away from a pure law enforcement strategy to one that focuses on community policing.<sup>81</sup> Practiced throughout different urban areas, the strategies would encompass a collective accountability and target the social structure that gangs relied on.<sup>82</sup> This mostly deals with offering alternatives and opportunities to vulnerable youth, specifically young men. The approach also balanced these type of social programs with

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<sup>75</sup> United States Government Accountability Office *supra* note 9 at 65

<sup>76</sup> *Ibid.*, at 67.

<sup>77</sup> Ward *supra* note 12 at 91.

<sup>78</sup> "The MS-13 Threat A National Assessment" *FBI.gov*.

[https://www.fbi.gov/news/stories/2008/january/ms13\\_011408](https://www.fbi.gov/news/stories/2008/january/ms13_011408), The MS-13 Threat A National Assessment.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Wolf, *supra* note 7 at 95.

<sup>82</sup> USAID *supra* note 8 at 137

strict anti-violence law enforcement operations that focused on chronic offenders. The programs were predominantly community and interagency based at the local level. The message that seemed most successful was to employ varied prevention measures that offered opportunities to at risk youth, while having a strict law enforcement and suppression element to establish and maintain control of trouble areas.<sup>83</sup>

However, not all situations are the same. Communities and agencies must be able to adapt to new situations or recognize them before it becomes problematic. From the USAID's characteristics of gangs, the immigrants fleeing the violence from El Salvador exhibit the largest number of risk factors. USAID mentions that growing up in disorganized neighborhoods and coming from impoverished, distressed families can put youth at risk for joining a gang. Unfortunately, the areas in El Salvador are perhaps some of the most disorganized neighborhoods, with families often broken up to make the trip to the United States. Most of the children who come here do not speak English, which can place them at a huge disadvantage within the school system; another indicator of a risk factor. The last risk factor is the association with delinquent peers and engaging in various forms of problem behaviors.<sup>84</sup> At this time, it is too early to determine whether the immigrants share this risk characteristic. However, knowing these factors can increase the chance of gang involvement making it prudent to take steps to alleviate these pressures on immigrants that are settled or receive refugee status in the United States.

Fortunately, there has been social progress that can help mitigate these risk in communities. Integration and assimilation is perhaps the most effective way to keep these immigrant families from being left behind. Likewise, a strong prevention and intervention strategy that incorporates the family, school and community can reduce the risk. These programs success are of course contingent on the immigrants knowing about it and participating. While there has been a population increase in the Latino community in the United States, this does not mean that immigrants will necessarily feel accepted. For them to come out of the shadows, there needs to be a level of acceptance within the community. With the social and law enforcement resources available, the ability to reduce the capabilities of MS-13 in the United States is possible. Furthermore, the collaboration between law enforcement agencies will continue to put pressure on the MS-13 gangs. As independent cliques that operate separately, the agencies coordinated responses keep the anti-gang approach progressively ahead and add to the complex multi-dimensional approach.<sup>85</sup>

### ***MS-13 Perpetuates State Instability in Central America***

Unfortunately, the forecast for El Salvador and other Central American countries are not as positive. Crime and gang violence has increased and has severely impacted El Salvador and other Central American countries in many ways. The United Nations

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<sup>83</sup> *Ibid.*, at 146

<sup>84</sup> *Ibid.*, at 147

<sup>85</sup> *Ibid.*, at 152

funded a program to estimate the cost of gang violence in El Salvador. While difficult to calculate specifically, the United Nations Development Program puts that gang violence costs El Salvador roughly 1 Billion USD.<sup>86</sup> This cost is attributed to loss of lives, medical attention, public security, administration costs in the judicial system, loss of work, and material losses.<sup>87</sup> These numbers should not be surprising, as of August 2015, 3,830 people have been murdered in El Salvador, with trends looking to surpass 90 murders per 100,000 people. This has lead El Salvador to be the homicide capital of the world.<sup>88</sup>

The effect on the population due to gang violence is highly visible and translates well into news media. While the violence is enough of concern for the welfare for the population, there are residual effects that have direct and indirect impact on state stability and political development. The foremost is the latest wave of immigration to the United States and the loss of human capital. Another less obvious repercussion is the passing of strict anti-gang legislation to combat the violence. This aggressive approach has had mixed results, often times alienating the youth and infringing on constitutional rights.<sup>89</sup>

There is little evidence that MS-13 has been directly involved in the political system of El Salvador. Likewise, there has been little to no organized movements by the gangs to systematically change the national political systems. Furthermore, the MS-13 have not institutionalized in the sense that they could overthrow a Central American government and install a hostile regime. Instead, gang activity and violence has eroded away at political stability by creating the perception of public insecurity within El Salvador.<sup>90</sup>

The perception of public security in El Salvador has reached a monumental low within the last decade. The level of violence has increased the number of migrants who flee their homes and have come to the United States. In 2011, there was 1,466 unaccompanied Salvadoran minors apprehended in the United States. In 2014, that number nearly tripled to 17,019.<sup>91</sup> El Salvadorans currently represent the 6th largest population migrating to the United States,<sup>92</sup> with most migrating to Texas and California. The huge jump of immigration is due to the grim fact that for the poor, the choices are limited and equally treacherous. If the youth stay in El Salvador, it is either join the MS-13 gang or risk becoming a victim of the violence. Either way, the hazard of crossing

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<sup>86</sup> *Ibid.*, at 21

<sup>87</sup> *Ibid.*, at 47

<sup>88</sup> Watts, Jonathan. "One murder every hour: how El Salvador became the homicide capital of the world." *The guardian*. Aug. 2015. <http://www.theguardian.com/world/2015/aug/22/el-salvador-worlds-most-homicidal-place>.

<sup>89</sup> Siskind, *supra* note 2 at 305

<sup>90</sup> Macias, Ricardo Cordova, Cruz, Jose Miguel. "The Political Culture Of Democracy In El Salvador." *A Study of the Latin American Public Opinion Project*, ed. Mitchell A. Selgson. 2004.

<sup>91</sup> Watts, *supra* note 87.

<sup>92</sup> Terrazas, Aaron. "Salvadoran Immigrants in the United States." *Migration Policy Institute*. Jan. 5<sup>th</sup>, 2010. <http://www.migrationpolicy.org/article/salvadoran-immigrants-united-states>



multiple countries to get to the United States seems like a better situation.<sup>93</sup> Unfortunately, if the government wanted to provide asylum or refugee status for these immigrants, they would not be able to do so effectively. With the current system and legislation in place, there is a backlog of federal immigration cases.<sup>94</sup> Those who apply for asylum and refugee status face an increase amount of time, as judges must authenticate claims. However, given the known history and cycle of migration for gang members to cross back and forth between El Salvador and the United States, there is a responsibility to provide due diligence when vetting individuals.

The violence has been so severe, that there has been an increase with the number of private security firms, one of the few businesses to do well amongst the violence. The chaos behind the crime and violence perpetrated by MS-13 has reached all aspects of life, where society will look for any type of enforcement, even if heavy handed. The type of gang violence that exists in these Central American countries were met with the Mano Duro, a policy that was deemed unconstitutional. Resources that could go towards improving the quality of life are instead redirected to fight gang activities. When faced with overwhelming violence, the population may look to more authoritarian control. However, as the violence escalates, the state has become a combatant, as MS-13 battles rivals gangs, leaving civilians in the crossfire.<sup>95</sup> What is most alarming is the reports that El Salvador is reverting back to its civil war era, where masked squads comprised of police and military are “disappearing” suspected gang members.

These extreme actions show that the Salvadoran government is unable to extend legitimate control over its territory, leaving a space for criminal groups like Mara Salvatrucha to operate and compete for power. These areas that exist do not operate without rules, but are often at the whim of the MS-13 and rival gangs.<sup>96</sup> What is so dangerous, is that the laws can change and are rarely codified. This will often be at the discretion of the most powerful gang within the area and the “conditions on the ground”. This could be dependent on current pressure from the state or other rival gangs. Civilians living along a border or crossing into a rival gang’s territory can become a life or death risk.<sup>97</sup> This fear of insecurity can severely deter trade and investment in El Salvador and countries that need it the most.<sup>98</sup> For small businesses, this could mean extortion fees from a gang.<sup>99</sup> The toll taken on the transportation sector has been even

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<sup>93</sup> Watts, *supra* note 87

<sup>94</sup> Kniffin, Margot. Balancing National Security And International Responsibility: The Immigration System's Legal Duty To Asylees Fleeing Gang Violence In Central America Pg 332 Race Religion Gender & Class 314 2011.

<sup>95</sup> Watts, *supra* note 87

<sup>96</sup> Manwaring, Max G. “A Contemporary Challenge To State Sovereignty: Gangs And Other Illicit Transnational Criminal Organizations In Central America, El Salvador, Mexico, Jamaica, And Brazil.” in *Transnational Gangs: The MS-13 Gang and Others*, ed. Michele L. Monteith (New York: Nova Science Publishers, Inc., 2010) 101.

<sup>97</sup> Watts, *supra* note 87

<sup>98</sup> USAID *supra* note 8 at 48

<sup>99</sup> Wolf, *supra* note 7 at 67.

worse, with bus drivers and companies having to pay fees for every gang territory they cross or risk having their bus vandalized or stolen.<sup>100</sup> Extortion has made up most of the revenue for MS-13 and common criminals following their leads.<sup>101</sup> It is through these violent activities that MS-13 and their rivals put strain on the communities, different levels of government and overwhelm the judicial systems. The quantity and boldness of criminality of MS-13 challenges the legitimacy of the state<sup>102</sup> by acting as a second government. Finally, MS-13 has corrupted the multiple levels of the economy by their operations in the business sector through robbery, extortion, and trading through the black markets.

### ***Strategic Assessment of Public Insecurity in the Region***

It is this immense scale of criminal activity in which gangs create public insecurity and effect the welfare of the state. MS-13 and the gangs do not have an agenda to set up and establish a new form of government. Instead, the gangs challenge the state by corroding at the institutions the state needs to operate and govern. If unable to adapt and control these criminal elements, the different Central American countries risk becoming a failed state or slipping away from democratic values. The move to enact more zero-tolerance polices like the Mano Dura could pave the way for a more authoritarian regime. Either the state loses control of the ability to govern its people or reacts so strongly that it shifts to the other side of the extreme and tightens control over the population, limiting the freedoms of the people. However, this hardline approach has the real possibility of further alienating the poor and the youth, creating discontent in the state. The risk here is that the citizenry end up being oppressed and start to resent the state government. This can further escalate fissures between the government and people, creating such discord that the people revolt against the state government with the possibility of another civil war. This crisis would once again put the region in chaos, perpetuating the migration out of El Salvador.

Governments have witnessed firsthand that gang violence, if left to fester can create regional insecurity in one state and can spill into other countries.<sup>103</sup> El Salvador is not alone dealing with the plight of MS-13 and gang violence. Honduras has just recently been surpassed by El Salvador as having the most homicides per 100,000 population while Guatemala has eight times the amount of homicides as the United States.<sup>104</sup> The proximity of both these countries are indicators that the symptoms of MS-13 have a regional intensity not shared by the United States at this time.

On the other side, if gang violence continues to escalate, there is the possibility that El Salvador or one of the other countries will become a failed state, opening up a vacuum for criminal enterprises to step in and exert control. As of now, MS-13 is the

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<sup>100</sup> Watts, *supra* note 87

<sup>101</sup> Wolf, *supra* note 7 at 78

<sup>102</sup> Manwaring, *supra* note 95 at 105.

<sup>103</sup> Manwaring, *supra* note 95 at 106.

<sup>104</sup> Watts, *supra* note 87.

most notorious group to operate within Central America, but they are known to facilitate the trafficking of drugs for the narco-cartels. At the moment, MS-13 has been known to collaborate with the narco-cartels and have taken on the roles of hitmen and street distributors. While dangerous and still a transnational gang, they lack the resources, logistics and transportation to become a narco-enterprise. To expand on this idea further, if the government of El Salvador is to weaken considerably it could allow for a narco-cartel to step in and exert regional control. This criminal jurisdiction in the region would expose El Salvador to becoming a narco-state, opening up an avenue of drug distribution through the country and Central America.<sup>105</sup> Another potential threat that has regional repercussions is if MS-13 and a narco-cartel battle for regional control in the search for control of drug shipping lanes. The repercussions of a drug war in El Salvador would be catastrophic, catching the legitimate government and population in the crossfire as both criminal elements battle for control.

### **Conclusion**

The Mara Salvatrucha is truly a unique phenomenon of a threat that operates in many different levels of international security. As a serious problem throughout the region, it will require coordination and adaptation at all levels of government. Likewise, agencies must be able to coordinate and utilize their proper resources to stay forward of gang activities and their organization. Governments cannot solve this problem independently, as the characteristics of MS-13 allow it to evolve and perpetuate in different locations. While it may be impossible to completely eradicate the Mara Salvatrucha, through different anti-gang efforts the United States has been able to control the violence of MS-13. However, to deal with the repercussions of gang violence, the U.S. will have to work with international partners to create new initiatives while promoting those that work. There has been success in fighting the United States. However, an integrated approach that finds the right balance between intervention, prevention and law enforcement will be crucial in controlling the cycle of migration and gang violence between Central America and the United States.

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<sup>105</sup> Kahn, Carrie. "In El Salvador, Gang Killings Take An Agonizing Toll." *NPR*. July 12, 2015. <http://www.npr.org/sections/parallels/2015/07/12/422059575/in-el-salvador-gang-killings-take-an-agonizing-toll>.

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