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# SHARED RESPONSIBILITY

**U.S.-MEXICO POLICY  
OPTIONS FOR  
CONFRONTING  
ORGANIZED CRIME**

Edited by Eric L. Olson, David A. Shirk, and Andrew Selee



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**Trans-Border Institute**

University of San Diego  
5998 Alcalá Park, IPJ 255  
San Diego, CA 92110-2492

[www.sandiego.edu/tbi](http://www.sandiego.edu/tbi)

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# PREFACE

The clichés describing United States–Mexico relations are well known and well worn. Given the enormity of the geographic, historical, cultural, and economic ties between both countries it’s now a commonplace to say Mexico is the United States’ most important bilateral relationship, and vice-versa. The nature of this critical binational relationship has been dissected and probed from every conceivable angle.

Yet as we began to research the security relationship between both countries we realized that there is still much that is not generally known amongst the public and policy communities about how Mexico and the United States are working together to deal with the threats posed by organized crime. For example, the unique nature of money laundering operations taking place across the U.S.–Mexico border; the extent to which high-powered firearms are finding their way from U.S. gun shops into the hands of organized crime and street gangs in Mexico; and the surprisingly limited information about the amount of illegal drugs consumed in the United States are not widely understood.

Likewise, the deployment of Mexico’s armed forces is only one aspect of the country’s anti-drug strategy. Police agencies are being reorganized and efforts at professionalization are underway. A major reform of Mexico’s justice system was adopted in 2008 that, if fully implemented, should help greatly strengthen the rule of law and reduce the relative power and impunity of organized crime. Yet, while significant progress has already been made in some of Mexico’s 31 states, many questions remain about the efficacy and sustainability of these reforms.

But despite these developments, the extreme violence brought on by conflicts amongst and between organized crime groups still garners the most attention. The horrifying and gruesome details of drug violence are plastered on the front pages of daily newspapers and videos of narco-violence are easily available on public websites and YouTube. In some cases, the criminals themselves are publicizing their actions for their own aggrandizement and to terrorize the public.

While understanding the nature and extent of the violence afflicting Mexico in recent times is important, we also recognized that the violence itself is more symptom than cause of the underlying problem. For this reason, we thought it important to focus this project’s research on a series of key issues that are feeding the growth of organized crime and related violence in Mexico. We also found it important to examine several policy areas where reform and action by one or both governments could contribute to a long term sustainable approach to weakening the grip of organized crime and illegal drugs on both countries.

## PREFACE

The research for this volume is the product of a project on U.S.-Mexico Security Cooperation jointly coordinated by the Mexico Institute at the Woodrow Wilson Center and the Trans-Border Institute at the University of San Diego. As part of the project, a number of research papers were commissioned that provide background information on organized crime in Mexico, the United States, and Central America, and analyze specific challenges for cooperation between the United States and Mexico, including efforts to address the consumption of narcotics, money laundering, arms trafficking, intelligence sharing, police strengthening, judicial reform, and the protection of journalists.

Each chapter in this volume was first released in a preliminary form as part of a “Working Paper Series” throughout 2010. We did so out of a desire to make the research contained in each paper available in a timely manner to inform the public about key issues in the policy debates related to drug trafficking and organized crime.

The project was made possible with a generous grant from the Smith Richardson Foundation. The views of the authors do not represent an official position of the Woodrow Wilson Center, the University of San Diego, or our sponsoring organizations.

As the project coordinators, we would like to express our deep gratitude to the authors of each chapter for their dedication to the research, their probing and inquisitive minds, and the enormous patience with the editing process. This highly collaborative bi-national effort has benefited from a genuine spirit of cooperation among many of the leading scholars and experts from both countries. We feel that this collective effort has not only greatly advanced our understanding of these complex issues, but has contributed to improving the overall bi-national relationship.

Finally, but by no means least, we would like to express our appreciation and gratitude to our Wilson Center and Trans-Border Institute colleagues who gave many hours to proof-reading text, formatting, developing graphs, and catching the innumerable mistakes and errors that crop up in a project such as these. At the Wilson Center, we are especially grateful to Robert Donnelly, Katie Putnam, Chris Wilson, and Miguel Salazar for the high quality and detailed work they did to make each paper better, as well as a number of very talented interns that made this process work much more smoothly, including Elisse LaRouche, Carlos Castañeda, Sarah Beckhart, Dana Deaton, and Faye Whiston. At the Trans-Border Institute, our field research and data gathering benefited enormously from the work of Stephanie Borrowdale, Jesus Cisneros, Theresa Firestine, Charles Pope, Nicole Ramos, and Octavio Rodriguez.

Thank you one and all.

**Eric Olson**

Senior Research Associate, Mexico Institute at the Woodrow Wilson Center

**Andrew Selee**

Director, Mexico Institute at the Woodrow Wilson Center

**David Shirk**

Director, Trans-Border Institute at the University of San Diego





# INTRODUCTION

Eric L. Olson, David A. Shirk, and Andrew D. Selee

The news could hardly be worse. Car bombs, beheadings, massacres, and terror are now commonplace in many areas of Mexico. The best available estimate is that over 28,000 people have been killed in drug-related violence in Mexico since December 2006. The majority of those killed are believed to be members of criminal organizations, victims of the exploding conflicts between and amongst cartels fighting for control of territory and trafficking routes. But it is almost impossible to know with certainty who the victims might be, in large part because of the paucity of criminal investigations, trials and sentences that would provide judicial certainty about the violence.

Some general patterns can be discerned from available government data and news coverage. For example, it is clear that the worst of the violence is concentrated in specific areas of the country. According to recent analysis by the Trans-Border Institute, drug-related violence is concentrated in six states, where 56% of the murders take place during the first eight months of 2010. There are on average 97 drug-related killings per week in those six states, up from 51 per week in 2009. In contrast, Mexico's overall homicide rate is estimated to be about 15 per 100,000, below the average for Latin America. Some Mexican states suffered none or very few drug-related murders in 2009.

While the number of victims keeps growing, the statistics themselves tell only part of the story. The extraordinarily cruel nature of Mexico's drug violence is often beyond description, and its frequently spectacular nature is explicitly intended to shock rival crime groups, authorities, and the public. The human and emotional toll of the violence is hard to quantify, and will linger long after it has passed.

While the public's eye has been (understandably) focused on the violence unleashed by the cartels, violence itself is not a good indicator of success or failure when policymakers assess the impact of public policies. For example, it is entirely possible that the violence will get worse before it gets better, even if public policies have succeeded in weakening the grip of organized crime. Conversely, violence and homicide rates may decline, even dramatically, in a *Pax Mafioso* when one cartel is victorious over its rivals in a disputed territory and succeeds in neutralizing the State's action through corruption.

Moreover, a focus on criminal activities in Mexico tells only one side of the story. The illegal narcotics trade has its most violent expression in Mexico, but it is driven

by U.S. consumers who spend billions of dollars a year on cocaine, marijuana, heroin, and synthetic drugs, many of which are produced in or pass through Mexico. While the U.S. has been somewhat successful at reducing the threat of drug trafficking to a local law enforcement matter and public health concern in this country, U.S. demand for illegal drugs has a very real impact in Mexico and Central America fueling the violence and exacerbating corruption south of the border. Furthermore U.S. firearms supply much of the weaponry that these groups use to carry out their violent attacks. Addressing the violence in Mexico, and the underlying dangers posed by organized crime, will require a binational approach and the acknowledgement of shared responsibilities.

For the past year, through generous support from the Smith-Richardson Foundation, the Mexico Institute at the Woodrow Wilson Center and the Trans-Border Institute at the University of San Diego have commissioned a series of policy papers, now published in this chapter, that would go beyond the headlines and dig deeper into the complexities of organized crime and violence in Mexico and the United States. They would also consider a number of policy approaches to this seemingly intractable problem. The goal of these papers was threefold.

First, the project sought to describe the challenges each country is facing in its attempts to deal with organized crime. For the United States, this has meant examining the nature of its enormous domestic market for illegal drugs, as well as efforts to reduce demand for these drugs. We also examined the state of efforts to disrupt the flow of money and weapons from the U.S. to Mexico that is fueling the violence and corruption in that country. For Mexico, it has meant gaining a deeper understanding of the institutional challenges the nation faces within its police forces, justice system, armed forces and with the press.

A second goal was to gain a better understanding of binational efforts to work cooperatively to address these challenges. We examined the strategies each country is employing that build on the notion of “shared responsibility” so often emphasized by policy makers in both countries. The development of the Mérida Initiative is the by-product of this new binational framework; but, it is only one, albeit significant, element of a larger engagement that cuts across a wide range of federal, state, and local agencies working to address the security challenges faced in both countries.

Finally, we asked the authors to discuss, where feasible, possible policy options that might be useful to government authorities who must develop reasonable plans and strategies for dealing with this complex and confounding problem. In undertaking this discussion, there is an understandable tension between the short- and long-term solutions that must be employed. Our authors and the project coordinators come down decisively on the side of longer-term solutions, but we also acknowledge that the inhabitants of Ciudad Juarez, Reynosa, Monterrey, Tijuana and Durango, where gun battles on city streets are almost a daily occurrence, cannot stand by patiently waiting for long-term solutions to take effect. In the end, there must be a

## INTRODUCTION

combination of short- and long-term policies that address the immediacy of the crisis and also form the building blocks of a lasting solution to the problems of endemic corruption and the demand for illegal drugs.

It is understandable that, in the midst of a crisis, immediate fixes are sought. Yet quick fixes generally prove illusive and rarely lead to a change in the dynamics of chronic crime and corruption. Among the long-term solutions we considered were lowering overall consumption of narcotics in the United States and developing institutional structures in Mexico that ensure rule of law through effective and trustworthy policing and prosecutions, as well as a functioning and transparent justice system.

Additionally, both countries need to think beyond the bilateral dynamics and continue to develop more regional perspectives that include, at a minimum, Central America and the Caribbean. The United States has already begun this process through its Central America Regional Security Initiative and the Caribbean Basin Security Initiative. Both countries also actively participate in multilateral drug forums at the Organization of American States and the United Nations.

In the midst of these longer term imperatives, efforts to arrest the leadership of criminal organizations and disrupt logistical networks, including arms, money, and trafficking routes, are crucial, and bilateral cooperation can play a significant role in facilitating these. An intelligence-based law enforcement strategy, which allows the two countries to develop the capacity to identify key leaders and disrupt the flows of narcotics moving north and weapons and money moving south, is urgently needed.

Fortunately, much of this is already underway. The two governments have reached agreement on a four-pillar strategy for cooperation that emphasizes dismantling criminal organizations, strengthening law enforcement institutions, building a “21<sup>st</sup> Century Border,” and building strong and resilient communities. This plan is to guide Mérida Initiative funding, as well as the broader effort between the two countries to address organized crime. Above all, the climate of cooperation between the two countries has allowed for an unprecedented sharing of information, technology, and training. Engagement by state and local governments and non-governmental organizations, especially in the border region, has been particularly notable.

However, implementing this strategy will take time and it faces significant limitations in capacity and willpower in both countries. Moreover, there are worrying signs that both governments are caught in old inertias that may undermine some of their best efforts. In Mexico, the initial strategy was to retake territory by deploying the military widely throughout the country. Despite the intention to move into a more intelligence-based strategy to detain key leaders and disrupt supply chains, the “presence and patrol” strategy continues to dominate. Even more worrying, institutional reforms, especially to the judicial system, have been slow to materialize. Likewise, urgently needed reforms to professionalize local and state police have not

taken place. Failure to engage civil society effectively and to provide clarity on the government's strategy, and transparency in its execution, are exacerbating the public's lack of confidence in their own authorities

On the U.S. side, funding for the Mérida Initiative, though intended to follow the four-pillar strategy, largely appears to reinforce the shortcomings of Mexico's efforts by underfunding judicial reform while prioritizing the "presence and patrol" strategy used thus far by the military and law enforcement agencies. Moreover, efforts to curb the flow of drug money and weapons south, while significantly enhanced in the last three years, appear to fall far short of weakening the drug trafficking organizations (DTOs).

Furthermore, emotional debates about immigration and misinformation about "spill over violence" from Mexico's organized crime groups have diverted public attention to protecting the border and shifted federal resources away from the urgent task of disrupting the flow of weapons and money to Mexico. Increasingly, there is a tendency to deal with these problems at the border instead at the point of origin, which is far more effective. The United States' legal framework and the polarized political landscape make significant progress in disrupting arms flows difficult. While some laudable efforts to reorient our nation's drug policy to address consumption have taken place, these are only a tentative start that will require a long-term commitment by this and subsequent administrations if it is to have any appreciable impact.

Bilateral cooperation is beginning which, if sustained, could strengthen Mexico's law enforcement and judicial institutions, reduce consumption of narcotics, and disrupt the operations of DTOs. These changes would make Mexico and the U.S.-Mexico border region more secure. However, structural limitations and programmatic inertias could easily undermine these promising initiatives and the opportunity would be lost.

With this complex and challenging backdrop, the project's authors undertook substantial original research and uncovered important new elements of the overall panorama that hopefully bring greater clarity to the public and policymakers. This publication breaks them down into three sections.

In the first section, we examine the rise of DTOs in Mexico, Central America and the U.S. The focus of the second section is on the major challenges that the United States confronts in disrupting firearms trafficking, money laundering, and reducing consumption of illegal drugs, all of which are fueling the power and violence of the cartels. A third section looks at the institutional challenges Mexico is facing as it attempts to address the need for police professionalization and judicial reform, and to define the role of the media, and of Mexico's military in its society. A final section looks at the nexus between both countries as they seek to hammer out a comprehensive strategy for confronting organized crime, and struggle with the challenges of sharing intelligence between two friendly but disparate law enforcement and security cultures.

## SECTION I. THE EVOLUTION OF DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA, MEXICO AND THE UNITED STATES

Understanding the growth and complexity of drug trafficking organizations in the region is essential to grasping the enormous challenges states face when confronting these criminal organizations. Mexico's organized crime groups are international criminal enterprises that are driven by profit motives and market forces, and are not limited by borders and concerns about national sovereignty. They operate in the United States, Central America, and the Andes. There is even growing evidence they have a global presence. Additionally, they are exceptionally nimble in circumventing governmental and law enforcement efforts, and they adapt quickly to changing political and economic realities. They are pragmatic and willing to forge new alliances with once rival trafficking organizations when the balance of power shifts amongst them. In this context, we examined how the geography of drug trafficking and organized crime has evolved in Central America, Mexico and the United States.

### Drug trafficking organizations and counter-drug strategies in the U.S.-Mexico context

Mexican DTOs have roots dating back to the early twentieth century, when laws in the United States and worldwide first began to prohibit the production, distribution, and consumption of alcohol and psychotropic substances. At the time, Mexico was a low-level exporter of drugs, and Mexican smugglers mainly trafficked in homegrown marijuana and opiates grown in areas that today remain important production zones, including the northern states of Durango, Chihuahua, and Sinaloa and southern coastal states like Michoacán and Guerrero. Over time, Mexican DTOs grew and flourished thanks in part to the rise in demand for illicit drugs as a result of the counter-culture movement of the 1960s. Mexico also became a more important transit point for drugs, as the crackdown first on European and, subsequently, on Colombian suppliers, redirected drug flows through Mexico. By the early 1990s, Mexico was the primary U.S. entry point for Andean cocaine and reportedly accounted for roughly a third of all heroin and marijuana imported into the United States.

Moreover, **Luis Astorga** and **David Shirk** argue in their chapter that Mexican drug trafficking organizations grew extremely powerful thanks to a highly centralized political structure that was not only permissive, but protective of organized criminal activities. Today, the picture looks substantially different, in large part because of Mexico's domestic political transformation over the last two decades that has produced a more complicated and inconsistent relationship between the Mexican state and transnational organized criminal networks. While these groups once enjoyed *carte blanche* in Mexico, they are now embroiled in a fierce fight

## MAJOR MEXICAN DRUG TRAFFICKING ORGANIZATIONS

1. **Sinaloa Cartel:** As Mexico's largest cartel, its operations stretch from Chicago to Buenos Aires, but its power base is in Mexico's so-called golden triangle where much of the marijuana and poppy is grown: Sinaloa, Durango and Chihuahua. It is also fighting for more control of routes through Chihuahua, and Baja California. At the top of the organization is Joaquin "El Chapo" Guzman, who escaped federal prison in 2001 and has evaded Mexican security forces since.
2. **Gulf Cartel:** This organization operates in the Eastern states of Nuevo Leon and Tamaulipas. However, its former armed wing, known as the Zetas, which was formed by former Mexican special forces, has broken ranks and created its own cartel. The two are now disputing its traditional strongholds.
3. **Zetas:** Formerly the armed wing of the Gulf Cartel, this organization is considered the most disciplined and ruthless of Mexican DTOs. Drawing from their military background, this cartel has systematically obtained new territory throughout Mexico and Central America.
4. **Juarez Cartel:** Centered in this northern city, the organization is at the heart of the battle against the Sinaloa Cartel for control of the surrounding border region and continues to be a major purchaser of cocaine in source countries such as Colombia.
5. **Tijuana Cartel:** Fractured in recent years by arrests and infighting, this organization remains a force in this important border city.
6. **Beltran-Leyva Organization:** After numerous arrests, authorities killed its top leader, Arturo Beltran-Leyva in December 2009. The organization has subsequently split with its former armed wing fighting for control over its territory in the central and western states of Morelos and Guerrero.
7. **La Familia Michoacana:** Originally a paramilitary force designed by the Zetas to fight the Sinaloa Cartel in Michoacan, this disciplined and ruthless organization now operates in numerous northern and southern states.

Source: Adapted from Stephen S. Dudley, "Drug Trafficking Organizations in Central America: Transportistas, Mexican Cartels and Maras," Working Paper Series on U.S.-Mexico Security Collaboration Woodrow Wilson International Center for Scholars: May 2010.

to protect their *plazas*, or zones of control, for channeling illicit goods to market in the United States. Astorga and Shirk map out the growing fragmentation of Mexican DTOs and the reason for the rise in hostilities amongst them.

The limited capacity and integrity of Mexico's domestic police forces to effectively reduce the violence caused by organized crime has paved the way for ever deeper military involvement in counter drug efforts and other aspects of public safety. In contrast to police, the military enjoys a high degree of public confidence — typically ranked higher than any other government institution in public opinion polls — and is widely believed to be the best hope for promoting law and order in Mexico. The involvement of the armed forces in Mexico's drug war has been accompanied by significant allegations of human rights abuses, corruption, and — above all — a continued escalation of violence that raises serious concerns about the long-term viability of the military approach.

## INTRODUCTION

Other than direct government confrontation of drug trafficking networks, there appear to be very few politically viable alternatives available to policymakers. As Peter Reuter later discusses, reducing drug consumption through prevention and treatment is unlikely to produce a game changing shift in the dynamics of the Mexican drug trade. Meanwhile, two other possibilities that some Mexican politicians have endorsed — returning to official complicity with organized crime and legalization of drug consumption — are widely regarded as unacceptable at present, and almost certainly impossible in any unilateral effort. From the perspective of many Mexicans, though, it is clear that a continued worsening of conditions is intolerable; this could lead to greater support for unconventional approaches in the near future.

### Drug trafficking organizations in Central America: transportistas, Mexican cartels, and maras.

As Mexican organized crime groups become more powerful, and as the Mexican and U.S. governments work harder to contain them, the importance of Central America as a trafficking route is rapidly increasing.

**Steven S. Dudley's** chapter focuses on the so-called Northern Triangle countries of Guatemala, Honduras, and El Salvador, and their links to Mexican criminal organizations. The chapter profiles local and international DTOs operating in the region, and describes their modus operandi and their attempts to infiltrate the highest levels of government. The chapter also traces the critical role that Central American trafficking routes played during the period of declining power for Colombian cartels and the ascendancy of the Mexican organization. Finally, Dudley examines the youth gang phenomenon in Central American and the nature of gang involvement in organized crime, taking a particularly close look at El Salvador and the infamous *MS-13* or *Mara Salvatrucha*.

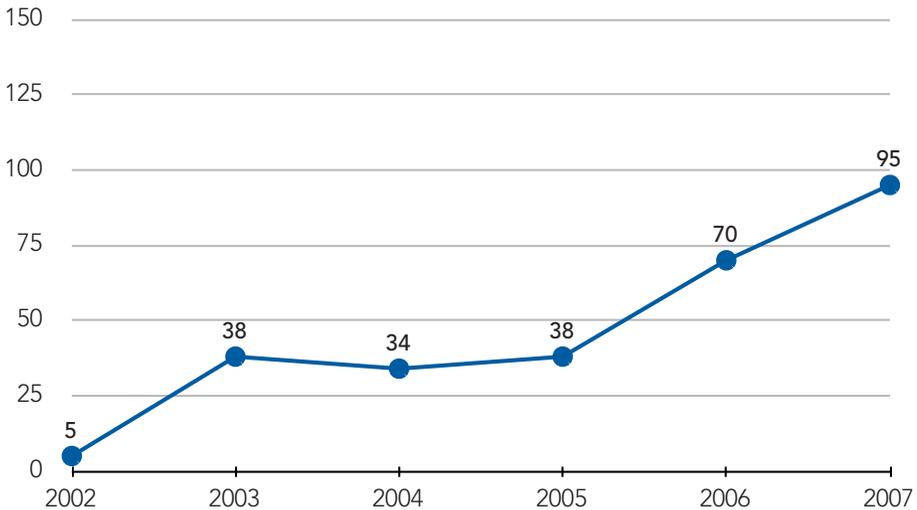
One important finding in the chapter is that organized crime operated extensively throughout Central American prior to the advent of Colombian and later, Mexican traffickers. Local organized crime groups specialized in moving contraband and stolen goods amongst and within countries and, hence, became known primarily as “*transportistas*.”

As trafficking routes for cocaine shifted away from the Caribbean and the Port of Miami in the 1980s, Colombian cartels sought alternative routes through Central America and Mexico. One Honduran trafficker, Juan Ramón Matta Ballesteros, become particularly instrumental in establishing the link between Colombian and Mexican traffickers. Essentially, the Central American “*transportistas*” took on the role of “receiving, storing, and transporting the drugs safely” through the region on the way to the United States.

One indication of the expansion of drug trafficking routes through Central America is found the dramatic increase in cocaine seizures in the region since 2002.

As the volume of drugs passing through Central America has increased, it would appear that Mexican organized crime groups, especially the Zetas and Sinaloa cartels, have developed a more direct presence in Central America in an effort to better

## COCAINE SEIZURES IN CENTRAL AMERICA 2002–2007 (IN METRIC TONS)



Source: United Nations World Drug Report 2009 “Seizures”

manage and guarantee the “safe” passage of their inventory through the region. Sadly, some of the conflicts and competition that have erupted into violence in Mexico are being duplicated in Central America, where crime rates were already quite high.

Furthermore, Mexican DTOs have taken advantage of local “transportistas” successful efforts to corrupt state institutions to further weaken portions of the police, treasury, customs, military, attorney general’s offices, jails, and court systems throughout Central America. In Guatemala, for example, Mexican DTOS and Central American “transportistas” work together with so-called “Illegal Clandestine Security Forces” (CIACS in Spanish) that are, in many instances, linked to former government officials and former security force personnel. “Many of them met while operating in intelligence branches of government” during the 1970s and 80s, according to Dudley. Over time, they have reportedly obtained high-level positions in the central government including in the interior ministry, customs and attorney general’s office. This has permitted them to move drugs with relative ease, as well as to establish embezzlement schemes, to traffic in government-issued weapons, and even to benefit from government public works contracts.

The startling reality of the DTOs’ reach has become public in the last several months. In February, for instance, Guatemalan authorities arrested the country’s police chief, Baltazar Gómez, and the top anti-narcotics intelligence officer, Nelly Bonilla.

## INTRODUCTION

Youth gangs, or *maras*, as they are known in Central America, represent a separate but related phenomenon and challenge to the state. Maras have a long history in the region but began operating in a significant way in the early 1990s. There are dozens of gangs but the Mara Salvatrucha, or MS-13, and the Barrio 18, or 18, are the largest and most notorious. They both originated as Salvadoran youth gangs in Los Angeles in the 1980s and took root in El Salvador when gang members were deported from the United States. They have thrived in Central America for a variety of reasons, including high levels of poverty, and lack of access to basic services and educational opportunities for young people.

Youth gangs, still strong despite government efforts to dismantle them, including through mass incarcerations, have served in various capacities as support for organized crime groups. While most gangs follow their own territorial dynamics, there are cases in which they have apparently served as hired assassins and local distributors — both retail and wholesale — of illegal drugs.

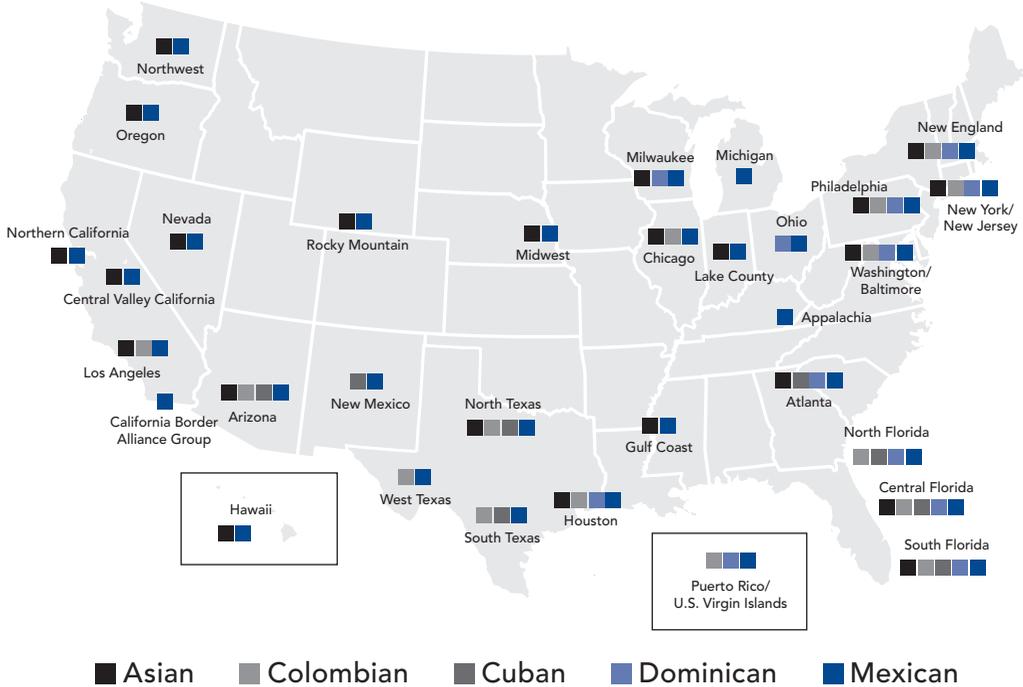
To confront these challenges, the United States government allocated \$165 million for Central America in Fiscal Years 2008 and 2009 as part of the Mérida Initiative. Additionally, the Obama administration has requested another \$100 million for Fiscal Year 2010, representing a substantial increase from previous years. As part of its Central America strategy, more recently announced as the Central America Regional Security Initiative, the U.S. is prioritizing the strengthening of the justice systems in these countries, as well as pushing through changes in the legal codes to facilitate modern crime fighting techniques, prosecutions and, it hopes, extraditions with a notable shift away from reforming the police through massive training programs. In El Salvador, for instance, the major success that officials and observers point to is the country's anti-kidnapping unit. The unit, with help from the private sector — which provided extra vehicles, radios and other equipment — steadily dismantled the then organized criminal gangs that were kidnapping mostly wealthy Salvadorans for ransom.

Despite tough talk from Central American presidents, the crime and extreme violence afflicting the region seem to have overwhelmed understaffed, under-resourced, and unprepared security forces and law enforcement throughout the region. In addition, widespread discontent and distrust of security forces have further weakened governmental capacity to effectively confront well-armed and sophisticated organized crime groups. The challenges facing the region are enormous and growing.

### Mexican drug trafficking networks in the United States

Ironically, while there is extensive and ongoing research about trafficking and organized crime groups in Mexico and Central America, less is known about the links between Mexican traffickers and distribution networks in the United States. Furthermore, there are questions about the apparent absence of violence associated with Mexican trafficking organizations operating in the U.S.

## DRUG DISTRIBUTION IN U.S. BY SELECT TRAFFICKING ORGANIZATIONS



From the National Drug Threat Assessment 2010. Map A2

According to the Department of Justice’s National Drug Intelligence Center, Mexican drug trafficking are the “dominant wholesale drug traffickers” in the U.S., and the only drug trafficking organizations to have a nationwide presence.<sup>1</sup> They control most of the cocaine, heroin, and methamphetamine distribution networks throughout the United States, and have a presence in more cities than any other DTOs. Additionally, they often depend on U.S.-based gangs and organized crime groups for retail sales, and are increasingly displacing the Colombian and Asian networks as the principle distributors and retailers of heroin.

In his chapter, “Lessons on the Distribution of Black tar Heroin in the Eastern U.S.,” Mexican researcher and journalist **José Díaz Briseño** describes how distribution of Mexican heroine has expanded into the Mid-Atlantic and North Eastern corridors of the United States.

Before 2006, U.S. officials reported that black tar heroin produced in the Pacific Coast states of Mexico was rarely available east of the Mississippi River.<sup>2</sup> Up until

<sup>1</sup>National Drug Threat Assessment 2010, National Drug Intelligence Center, Document ID: 2010-Q0317-001, February 2010.

<sup>2</sup>“Black tar” refers to the color and texture of the heroin produced in Mexico, which is processed differently than its cousin the more commonly known “white” pure heroin produced in Asia and the Andes region.

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then, heroin sold on the East Coast of the United States was primarily white heroin from Colombia and Asia. In October of 2006, however, U.S. authorities acknowledged that the old borders dividing the U.S. heroin domestic market were blurred, and that black tar heroin was not limited to the western-most states. Instead, it was readily available in cities such as Columbus, Ohio and Charlotte, North Carolina.

The spread of Mexican heroin was due to a number of unique aspects of the traffickers' marketing strategy, including an attempt to compete for the growing suburban drug market for opioids.<sup>3</sup> Black tar distribution cells appear to work independently of each other and seem to only sell black tar heroin. They try to disassociate their business from the back alley, seedy reputation of stereotypical heroin addicts; instead, they attempt to appeal to the growing number of middle-class, suburban opioid users. By emphasizing reliable, courteous and discrete service, as well as lower prices, black tar cells seem to have successfully cut into the exiting illegal market for opioids such as Oxycontin and Vicodin.

For example, Columbus, Ohio, a university town with abundant well-educated, suburban consumers, is not only a favorite market for black tar heroin but also a major trafficking hub since the early 2000s. Black tar cells in Columbus follow the so-called "McDonalds Drive-Thru" business model, which involves a dispatcher and sellers, or "runners." Typically, a dispatcher receives a call from a customer placing an order and a runner is then sent to deliver the order directly to the customer, often in suburban parking lots. Runner and buyer make eye contact in store parking lots and then buyers get into the runner's car, where the transaction occurs.

In a similar fashion, use of Mexican black tar heroin spread throughout the Charlotte metropolitan area amongst the relatively high number of opioid addicts sometime between 2003 and 2008, because of, to some extent, the astuteness of individual producers and traffickers. Unlike Columbus, black tar cells in Charlotte used a franchise business model; a supplier provides a trusted representative with money and product to start the business, along with advice on how to operate the cell. Suppliers also provide the immigrant labor that transports the heroin from its processing facilities on the Pacific coast of Mexico in exchange for a percentage of the net income, which can amount to over \$8,300 for the cell-head each day.

With the number of deaths due to opioid-related overdoses continuing to rise, especially in the Columbus, it is clear that law enforcement needs to adopt new and better techniques for dismantling the networks bringing the drug into the U.S. and distributing it across the country. This task is made immensely more difficult by the traffickers' efforts to remain below the radar screen and eschew any of the trappings of the high profile, ostentatious or violent lifestyles typical of drug trafficking in the Andes, Central America, or Mexico.

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<sup>3</sup>For example, the number of substance abuse treatment admissions for non-heroin opioids, for example, rose from about 1,000 in 1993 to 5,000 in 2008.

## II. POLICY CHALLENGES FOR THE UNITED STATES IN CONFRONTING ORGANIZED CRIME

While much of the public's attention is focused on the extreme violence wracking the region, the role of U.S. illegal drug consumption, weapons trafficking and money laundering are often overlooked and poorly understood. The seemingly insatiable demand for cocaine and other drugs in the U.S. is generating the profits that are fueling the violence and corrupting the governing authorities that are otherwise charged with stopping crime and guaranteeing public security. As a result, a closer look at these factors was central to the project's research.

### Reducing demand for illegal drugs in the U.S.

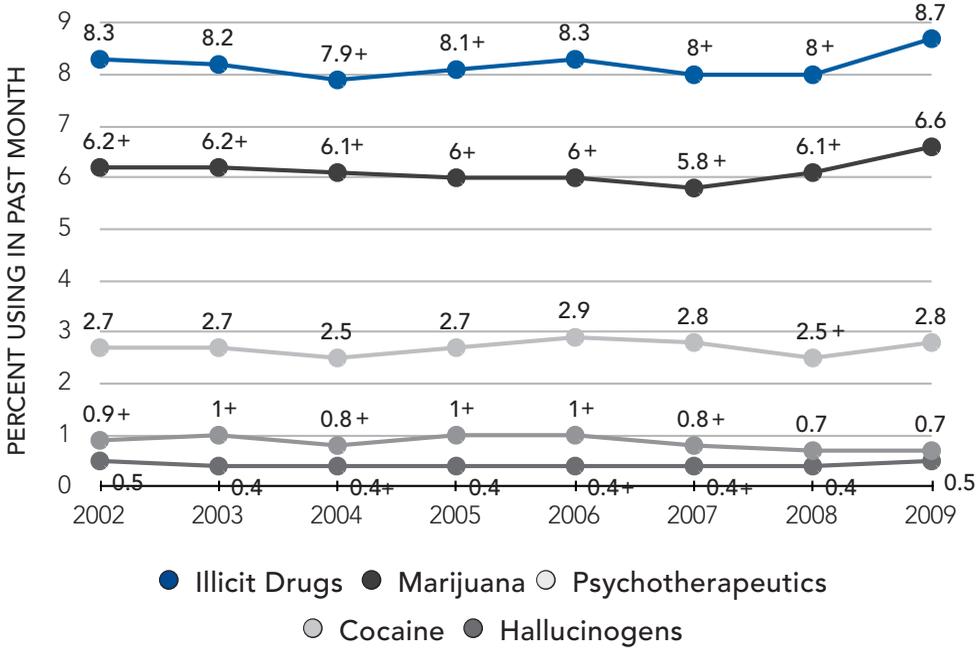
One of the significant breakthroughs in U.S.-Mexican relations in recent years has been the willingness of the United States to recognize that U.S. consumption of illegal drugs is fueling the excessive violence in Mexico. Traffickers and organized crime groups are fighting amongst themselves for control of territory, routes and access points into the United States in an effort to supply its vast consumer market.

In his chapter entitled "Illegal Drug Consumption in the United States: Can Domestic U.S. Drug Policy Help Mexico?" **Peter Reuter** argues that the large U.S. market for cocaine, heroin, marijuana, and methamphetamine amplifies Mexico's principal drug problems — the violence and corruption related to trafficking. "If the U.S. [illegal drug] market disappeared, Mexico's problems would diminish dramatically, even with its own domestic consumption remaining," Reuter states.

Yet the potential for significantly reducing U.S. consumption in the near future is limited. Reuter estimates that efforts to reduce U.S. demand will be modestly successful over the next five years, which will, in turn, have a limited impact in Mexico. "The evidence is that enforcement, prevention, or treatment programs cannot make a large difference in U.S. consumption in that time period," according to Reuter.

To arrive at this conclusion, Reuter reviews the successes and the shortcomings of each of major strategies for reducing consumption — prevention, treatment, and enforcement. *Prevention* remains largely an aspiration. Few of even the most innovative programs have shown substantial and lasting effects, while almost none of the popular programs have any positive evaluations. *Treatment* can be shown to reduce both drug consumption and the associated harms of drug dependent clients. However, given the chronic relapsing nature of drug dependence, the author maintains that it is unlikely that treatment expansion will have large effects on aggregate consumption. *Enforcement*, aimed at dealers and traffickers, which has received the dominant share of U.S. drug control funds, has failed to prevent price declines; thus supply side efforts are unlikely to reduce the demand for Mexican source drugs. Efforts to discourage users directly through user sanctions are too small-scale to have any

PAST MONTH USE OF SELECTED ILLICIT DRUGS AMONG YOUTHS AGED 12–17: 2002–2009



Note: Difference between this estimate and the 2009 estimate is statistically significant at the .05 level.

Source: From the “National Survey on Drug Use and Health, Volume I. Summary of National Findings.” 2010. U.S. Department of Health and Human Services. pg. 25.

noticeable effect. However, it is possible that the incarceration of criminal offenders, though not explicitly targeted to reduce demand, has managed to lock up a substantial share of consumption.

Despite the relatively sobering findings in his chapter, Reuter points to one promising program in Hawaii that has succeeded in reducing consumption and recidivism within its target population. Participants in Hawaii’s Opportunity Probation with Enforcement (HOPE) program are probationers who are frequently and randomly tested and monitored for drug use. Failure to comply with the program results in “certain, immediate, and relatively moderate” punishment. According to Reuter, “very few of those enrolled in the program fail more than twice and the recidivism rates have been dramatically lower than for the probation population previously. For example, only 21% of HOPE subjects were rearrested in the 12-month evaluation window, compared to 46% amongst those on routine probation conditions.”

Moreover, the results of a large-scale study of the Hawaii program suggests that it is possible to scale-up this program so as to make a measurable difference in a relatively few years.

The author also notes that the California ballot initiative for giving counties in that state the option of creating regulated marijuana production, as well as legalizing its sale and consumption. If that were to pass in November 2010, it could substantially reduce the U.S. demand for Mexican produced marijuana, simply by eliminating California's demand for imports (Kilmer et al., 2010).

Finally, Reuter highlights how little is really known about the size of and trends within the illegal drug market in the United States. Recent government reports offer insights into the prevalence of use, but the last available numbers on the total size of the U.S. market stem from 2000 and earlier. Not knowing the size and trends of that market make it exceedingly difficult to judge the effectiveness of any policy, and determine how policies could be better directed. Nonetheless, the aging of the cocaine-dependent population and the long-term reduction in marijuana use among youth over a long period in the U.S. and many other Western nations suggests that the U.S. demand for Mexican trafficked drugs is likely to decline over the next few years.

## Money laundering and bulk cash smuggling: challenges for the Mérida Initiative

Another key challenge for the United States involves disrupting the flow of money from illegal drug sales in the U.S. back to Mexico or to the Andes to purchase more drugs. In his chapter entitled “Money Laundering and Bulk Cash Smuggling: Challenges for the Mérida Initiative,” **Douglas Farah** describes the rapidly changing methods used by organized crime to move their illegal proceeds and highlights the particular importance of

### **MONEY LAUNDERING METHODS THAT PROVE TO BE PARTICULARLY TROUBLESOME FOR LAW ENFORCEMENT:**

- Open System prepaid cards that allow their holders to access global credit and debit payment networks.
- Digital currencies, which can be used by traffickers to anonymously fund digital currency accounts and send those funds, often in unlimited amounts, to other digital currency accounts worldwide, bypassing international regulatory oversight.
- Mobile payments through cell phones that provide traffickers with remote access to existing payment mechanisms such as bank and credit card accounts and prepaid cards.
- The more than 200 online payment systems that allow payment to be made through secure servers over the Internet.
- Online role-playing games or virtual worlds, where in-game currencies can be bought and exchanged for real world currencies.

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bulk cash shipment for Mexican drug trafficking organizations. While both the United States and Mexican governments agree that cutting off the flow of money is essential to stopping organized crime, almost no funds in the Mérida Initiative are designated for that task. There is little reliable data on either side of the border on the amount of money moved, and few efforts to track the flow of funds.

There have been at least two significant and related realignments in the cocaine trafficking world that should be factored in to the current assessment. The first is that Mexican DTOs have significantly displaced the traditional Colombian trafficking organizations and, because of this, Mexican cartels are reaping higher profit margins as the Colombian middlemen are cut out. Ironically, higher profits also mean greater competition, leading Mexican DTOs to spend more cash to equip and maintain their growing military-style armed operations to protect themselves against the Mexican state and each other.

The second is that this realignment, and new cipher technologies, has given the Mexican DTOs faster and less risky methods to move their money to Colombia to purchase new shipments of cocaine. This means that much of the money that used to be shipped through Mexico and then onward to Colombia is no longer smuggled into Mexico at all, but transferred through ethnic organized crime groups (primarily Russian and Chinese) directly to Colombia or Ecuador.

The net result is that a higher percentage of the money from cocaine sales in North America stays in Mexico because of higher profit margins. At the same time, the total amount of money being smuggled through Mexico appears to be smaller because many of the resources paid to re-supply the Mexican DTOs with cocaine from Colombia are no longer pushed through Mexico.

Nevertheless, though estimates vary widely as to how much, a significant amount of money returning to Mexico is actually transported in the trunk of a car or in a truck trailer. Money generated from drug sales or other illegal activities in the U.S. are often aggregated at “central county houses” in major U.S. cities such as Atlanta, Boston, and Los Angeles. There the cash is converted into \$50 or \$100 bills and vacuum sealed in stacks that are stuffed into hidden compartments or wheel-wells on vehicles. Shipments generally range from \$150,000 to \$500,000, so that the detection of one vehicle does not significantly effect the operation. With over 150 million vehicles crossing the U.S.-Mexico border each year, and less than 10 percent receiving a thorough “secondary” inspection, it is little wonder that such a low-tech method of moving dirty money is so efficient and almost unstoppable.

### U.S. firearms trafficking to Mexico

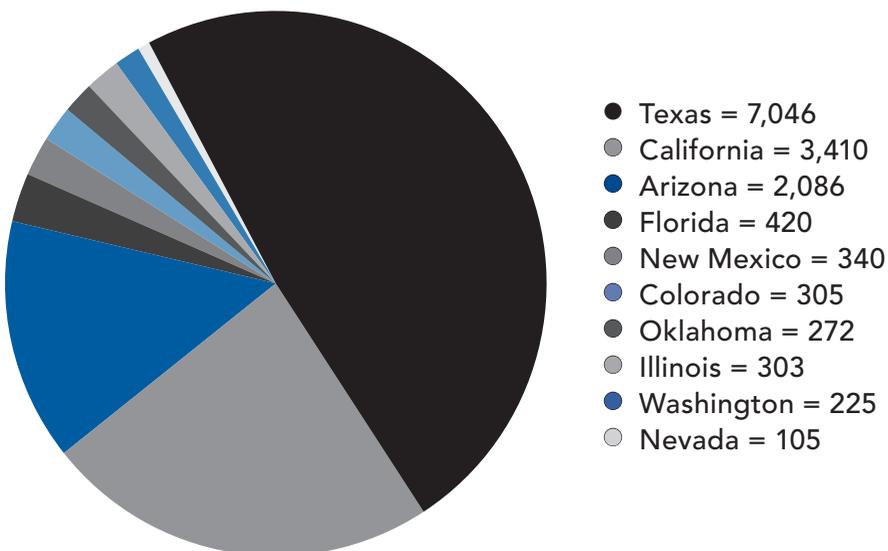
Profits from illegal drug sales in the U.S. are also being used by DTOs to purchase high-powered, semi-automatic weapons for use in their conflicts with rival cartels and against Mexican and U.S. authorities. The relative ease with which weapons can be purchased in the U.S. and then trafficked to Mexico has dramatically increased the lethality of the drug violence. Where hitman and “enforcers” once used less

powerful weapons, they are now able to spray entire rooms or public places with bullets intended for specific enemies.

In findings reported by **Colby Goodman** and **Michel Marizco** in their chapter on U.S. firearms trafficking to Mexico, efforts by both governments to reduce DTO's access to large volumes of firearms and rounds of ammunition have not kept them from obtaining and using such firearms and ammunition to attack Mexican police, justice officials, and, recently, officials from the U.S. Department of State. Amongst the 28,000 Mexicans killed in drug-related violence since December 2006, some "915 municipal police, 698 state police and 463 federal agents have been killed at the hands of criminal gangs" in Mexico, according to the authors.

New information shows that a significant number of military-style assault rifles, as well as other types of rifles and pistols, come directly from the United States and are being used by Mexican DTOs. In May 2010, the Mexican government estimated that 60,000 U.S.-origin firearms were seized in Mexico from 2007 to 2009. A review of U.S. prosecutions associated with ATF's Project Gunrunner concludes that an estimated 14,923 firearms were trafficked to Mexico from FY 2005 to FY 2009; 4,976 of these firearms were from FY 2009 alone. In addition, these numbers do not include the thousands of firearms and hundreds of thousands of rounds of ammunition headed for Mexico that U.S. authorities have seized. The price differential between U.S.-origin AK-47 semi-automatic rifles sold just across the U.S.-Mexican border (\$1,200 to \$1,600) and U.S.-origin AK-47s sold in southern Mexico (\$2,000 to \$4,000) is another indicator of the demand for U.S. firearms in Mexico and the lack of quality assault rifles from Central America. Information Mexico has provided to ATF also shows that U.S.-origin firearms are regularly used by DTOs to commit crimes in Mexico.

### TOP 10 U.S. SOURCE STATES 2007–2009



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The top two types of U.S. firearms recovered in Mexico that had been purchased in the United States in the past three years were AK-47 semi-automatic rifles and AR-15 semi-automatic rifle clones. ATF officials say many of the Romanian manufactured AK-47s are imported to the United States as a whole firearm or as a parts kit from Europe, despite a U.S. ban on the importation of semi-automatic assault rifles. ATF officials and a review of U.S. prosecutions also suggest that DTOs are increasingly seeking, receiving, and using U.S.-origin .50 BMG caliber rifles and 5.7mm pistols and rifles and AK-47 drum magazines with 50 to 100 rounds of ammunition.

In addition to describing the problem of firearms trafficking, Goodman and Marizco offer a number of policy approaches that could contribute to slowing and disrupting the movement of illegal firearms between the U.S. and Mexico. Amongst the numerous policy options they consider are several that would improve the ability of State and Federal prosecutors to bring cases against those engaged in firearms trafficking. For example, they suggest that State Attorneys General be empowered to bring charges against individuals engaged in “straw purchases”<sup>4</sup> of firearms based on state laws related to “fraudulent schemes,” as opposed to depending on a specific state law, which in many states does not exist, prohibiting fraudulent firearm purchases. Additionally, the authors argue that states should consider adding a separate state registration form, similar to the federal form 4473, so that state prosecutors do not have to base prosecutions on improper filing of a federal form. Likewise, federal or state law should be considered that would ensure that U.S. authorities are notified when individuals buy a large number of military-style firearms in a short period of time, the authors add. Current law requires notification for multiple purchases of handguns in a short timeframe, but the same is not required for frequent purchases of semi-automatic or assault rifles. Finally, the authors recommend that the Mexican government consider speeding up the time between a firearm seizure in Mexico and a trace request submission to ATF by placing field staff from the Mexican office of Attorney General (PGR in Spanish) in all Mexican states, and providing these agents with the authority and capacity to independently submit an electronic trace request directly to ATF, thereby by-passing a centralized system that results in delays and bottlenecks in Mexico City.

### III. STRENGTHENING INSTITUTIONS AND THE RULE OF LAW

While consumption trends, cash, and arms trafficking from the U.S. are fueling the violence in Mexico, Mexico’s own institutional framework for responding to organized crime has also become a major source of concern. Public opinion polls and victimization surveys suggest that there is little confidence in the capacity and

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<sup>4</sup>Straw purchases are those made by an legally eligible purchaser but the firearm is then transferred to an in-eligible person.

reliability of most public institutions to effectively tackle organized crime. As a result, institutional reform and strengthening has become a priority for Mexico, and the U.S. has shifted its own cooperation agenda in this direction as well.

## Justice reform in Mexico: change and challenges in the judicial sector

Mexico's efforts to improve public security and the rule of law have included ambitious judicial sector reform efforts. Specifically, these efforts are concentrated on improving the functioning and integrity of the criminal justice system by better targeting organized crime and strengthening police, prosecutors, public defenders, courts, and the penal system.

As **David Shirk** discusses in his chapter, in 2008, Mexico's federal government passed a package of constitutional and legislative reforms that was intended to bring major changes to the Mexican criminal justice system. These included: 1) new criminal procedures (oral adversarial trials, alternative sentencing, and alternative dispute resolution mechanisms); 2) stronger due process protections for the accused; 3) police and prosecutorial reforms to strengthen public security, criminal investigations, and 4) new measures to combat organized crime.

Overall, federal level efforts to implement the reforms got off to a slow start. Five months after the reforms took effect, the coordination efforts suffered an administrative blow when Assistant Secretary of the Interior José Luis Santiago Vasconcelos, then-technical secretary for the Coordinating Council for the Implementation of the Criminal Justice System (*Consejo de Coordinación para la Implementación del Sistema de Justicia Penal, CCISJP*), died in a plane crash in Mexico City in November 2008, alongside then-Secretary of the Interior Juan Camilo Mouriño. Although new heads were named to both positions the next month, coordination efforts remained slow. This was partly due to a lack of financial resources during the first fiscal year for implementation of the reforms, but also due to a lack of political will and coordination among different stakeholders.

Meanwhile, some Mexican states — Chihuahua, Mexico State, Morelos, Oaxaca, Nuevo León, and Zacatecas — had already approved or implemented provisions similar to the 2008 judicial sector reforms prior their approval at the national level, providing important precedents that informed the federal initiative.

Even so, there are several challenges for judicial reform in Mexico over the short-term, medium-term, and longer term, including the need to coordinate across branches of government to establish new regulations and statutes; the need to properly prepare a wide array of judicial sector personnel to implement the new system; the need to construct new physical infrastructure for live, video-recorded court proceedings; and the need to monitor and evaluate the performance of the new system.

Over the course of 2010, there has been significant progress in several states, thanks in large part to the development of state-level councils for implementation;

## SELECT INDICATORS ON MUNICIPAL FORCES, 2008 CONTINUES ON FACING PAGE

City	Minimum education requirement	Percent of qualified applicants accepted to the academy	Percent of police with a high school degree or greater	Duration of cadet training (months)	Basic monthly salary (pesos)
Ahome	High School	54.00%	55.15%	12	\$6,269
Chihuahua	High School	15.67%	47.07%	10	\$8,745
Cuernavaca	High School for traffic police		55.80%		\$5,952
Guadalajara	Secondary	26.60%	34.17%	8	\$7,916
Mérida	Secondary		28.39%	3	\$4,672
México DF	Secondary	22.02%	40.03%	6	\$8,186
Monterrey	Secondary	65.91%	33.97%	6	\$7,243
Puebla	High School				\$7,226
S.L. Potosí	High School	12.82%	35.27%	8	\$6,506
Torreón	Secondary	45.07%		6	\$6,625
Zapopan	Secondary	32.30%	34.55%	6	\$9,050

new financial assistance; and on-going training initiatives. Still, the fact remains that there are 18 states that have yet to approve key reforms, and five have made little or no effort to do so. Considering that many states have required at least one year to formulate, debate, and pass legislation, the Calderón administration will need to make enormous inroads in order to achieve its goal to have reforms passed in all federal entities by the end of 2012.

### Police reform in Mexico: advances and persistent obstacles

At no time in Mexico's history has there been a greater need for professional police forces. While law enforcement should be the primary tool to address the country's crime problems, the police are viewed as part of the problem rather than part of the solution.

In his article, **Daniel Sabet** seeks to provide an overview of police reform in Mexico and highlight the obstacles to institutional change. It begins with an introduction to policing in Mexico and offers a brief exploration of the evidence of corruption, abuse, and ineffectiveness that plague Mexico's various and numerous police departments. The analysis briefly considers the different approaches to reform, including limiting the discretion of the police, professionalizing, and militarizing. It then presents an overview of reform during the last three federal administrations of Ernesto Zedillo Ponce de León (1994–2000), Vicente Fox Quesada (2000–2006), and Felipe Calderón Hinojosa (2006–2012).

The analysis recognizes that some important advances have been made at the federal level. Investment in public security has increased dramatically and the size of the federal police has grown considerably. There now is a nationwide consensus on the need to professionalize all police including state and local forces; that consensus has been enshrined in law, and resources have been made available to help states and municipalities comply with the law. In addition, there have been improvements in the use of vetting and there are now institutional mechanisms, communications systems, and databases to facilitate coordination.

Despite these advances, one cannot help but conclude that the fundamental problems of corruption, abuse, and ineffectiveness remain. To understand why, the article explores the considerable obstacles that continue to challenge reform efforts. Central among these is the reality that institutional change is a long-term process that is particularly challenging in a political, legal, and cultural context that has traditionally failed to encourage professionalism. Even where advances have been made, reformers have as of yet been unable to develop robust accountability mechanisms and effective systems for merit-based promotion. Rather than steadily tackle the many implementation challenges, public officials have preferred dramatic police restructurings that tend to leave these fundamental problems unaddressed. The article concludes that while it is perhaps unrealistic to expect a radical revolution in Mexican policing in the short term, there has perhaps never been such an opportunity for real reform.

### Protecting press freedom in an environment of violence and impunity

Since President Felipe Calderón launched the “war on drugs” at the end of 2006, more reporters have been slain and attacked than ever before. Mexico has displaced Colombia as the most dangerous country in Latin America for reporters and the practice of journalism.

Since most crimes against journalists go unsolved, there is a growing sense that journalists can be threatened, beaten and killed with impunity. Self-censorship is so

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widespread that major events and issues like drug violence and corruption are not being covered in many parts of Mexico by editors and journalists, out of fear for their lives.

The chapter reviews the situation of violence against the press in Mexico and what each of the different actors involved is doing, or not doing, to address a problem that in some Mexican states has reached alarming crisis levels. The essay examines the political willingness and steps taken by the federal and legislative branches of government to protect freedom of expression, through the exercise of journalism. It discusses measures taken by reporters, editors, media companies and civil society, to defend that right. It also addresses the lack of solidarity by the major media in Mexico City with reporters under fire in cities and states throughout Mexico.

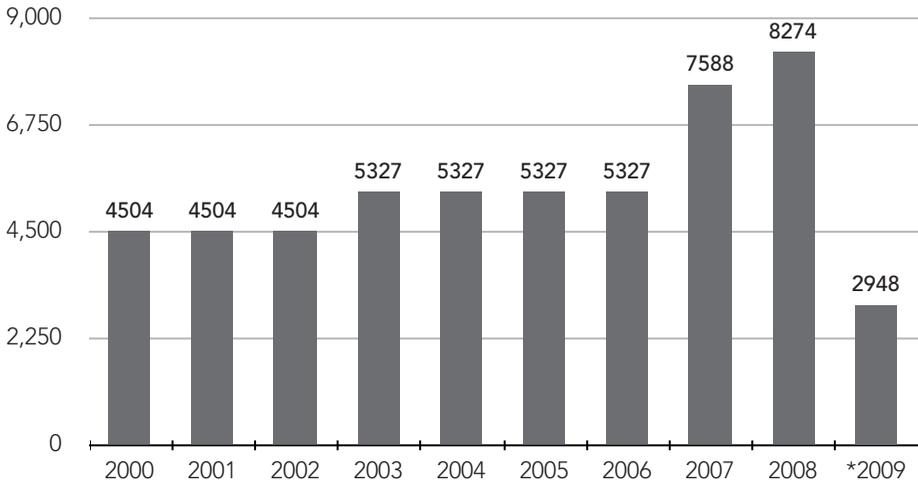
Special attention is given to explaining how the failure of federal and local authorities to effectively prosecute crimes against reporters has resulted in almost total impunity. Most crimes against reporters remain unsolved; authorities rarely determine who perpetrated the crime and there are no prosecutions, much less convictions. The chapter emphasizes freedom of expression and a free press as fundamental and universal rights protected by international law. These rights are also considered an effective way to measure the strength of a democracy.

The executive and legislative branches of the Mexican Government have taken some steps to address the problem, but much more needs to be done. The U.S. Government is well aware of the dangers reporters face in trying to do their job in Mexico, but despite this acknowledgement, protecting free press in Mexico has not become part of the regular human rights concerns raised in the bilateral agenda. Nor has it been considered in the new “institution building” approach under discussion for the second phase of the Mérida Initiative. The chapter concludes with a series of recommendations proposed by leading U.S. and Mexican NGOs which, if adopted by the federal government, media companies, and civil society, could help protect journalists, freedom of expression and press freedom in Mexico.

### Armed forces and drugs: public perceptions and institutional challenges

Mexico has increasingly come to see organized crime and drug trafficking as national security issues, according to chapter author **Roderic Camp**. In response, the Army and Navy have been tasked with anti-drug missions, notably increasing their involvement with the Army’s acceptance of a key role in drug interdiction efforts in 1995. By taking on such missions, the Army and Navy have undergone a period of profound transformation, both internally and in their relations with civilian authorities and the U.S. military. The number of human rights complaints against the Mexican Military has risen significantly with its involvement in the anti-drug mission, which has in turn subjected the armed forces to increasing pressure from the Catholic Church and has threatened the (still high) level of public confidence in the military.

## MILITARY PERSONNEL IN ALL FEDERAL, STATE AND MUNICIPAL SECURITY POSITIONS



Note: \*2009 figures only as of February.

Source: Transparency Request, February 24, 2009. Distinction between retired, active duty, and military personnel on leave was not supplied in response to the author's transparency request.

Also, "security positions" is understood to be largely, but not exclusively, civilian police forces.

The Mexican military has traditionally operated with considerable autonomy and distance from the nation's civilian leadership, but this has slowly begun to change. By taking on domestic security missions, the military has been forced to interact closely with other agencies and Mexico's political leadership. This, in turn, has caused a shift towards openness in the military's institutional culture, which opens avenues for even more cooperation. Key steps in this process include President Salinas' creation of the National Security Cabinet in 1988, President Fox's reforms of the Cabinet that led to further civilian-military integration and better intelligence sharing in 2003, and the recent increases in the deployment of military forces for anti-drug missions by President Calderón. Many ex-military figures have taken on key law enforcement positions in the Attorney General's Office and multiple police agencies. The number of military personnel serving in security positions has grown high since President Calderón took office in 2006.

Despite the growing role of the military in counter-narcotics efforts, levels of drug-related violence have increased substantially since 2006. Among many other factors, Camp finds this is partially attributable to a decline in tolerance for drug trafficking by the government since the PRI lost the presidency in 2000, citing cases of clear military corruption linked to drug trafficking during the Salinas and Zedillo presidencies.

As the result of a long history of suspicion and mistrust, the Mexican military has, until recently, maintained cool yet cordial relations with its U.S. counterpart. Nonetheless, the significant number of Mexican military (especially from the Navy)

that have received training in the United States over the last two decades has set the stage for the recent upsurge in institutional ties. Since 2006, Mexico has stationed several liaison officers at U.S. military installations and the number of Mexican officers being trained in the U.S. has increased significantly. Increased U.S.-Mexican security cooperation under the Mérida Initiative, the proliferation of institutional ties between the two nations' militaries, and strong public support for the acceptance of U.S. assistance in the fight against drug trafficking have combined to fundamentally change the nature of civilian and military bilateral security cooperation.

The expanding role of the military on matters of domestic security is not without its detractors. Registered human rights complaints of the military have increased dramatically in President Calderón's administration, from 182 in 2006 to 1,500 in 2009, and the majority of complaints have come from areas where the military's presence and drug-related violence are at their highest.<sup>5</sup> Despite the aforementioned changes in civilian-military relations and military culture, the military still remains insulated from public inquiry and the civilian justice system. Camp found that only ten military personnel were sentenced for crimes against civilians between 2000 and 2009, none receiving a sentence of more than 12 years in prison. In response to ongoing drug-related violence and a lack of accountability, a movement has developed calling for civilian prosecution in cases of military abuse of civilians during law enforcement operations. Additionally, the human rights record of the military has begun to be criticized by some members of congress and the influential Catholic Church, some going as far as to suggest that the military should not be involved in policing actions in any capacity.

## IV. STRATEGIES FOR BILATERAL COLLABORATION TO CONFRONT ORGANIZED CRIME

Finally, our project examined some of the ways in which both countries can and do work together to confront organized crime. In the context of "shared responsibility" for addressing this pressing security situation, it is important to examine the strategies being utilized by both countries and discern whether these are complementary or contradictory. Furthermore, a key element in the area of collaboration has been the desire for more and better intelligence sharing and law enforcement cooperation.

### Strategies to confront organized crime and drug trafficking organizations

In his chapter "Combating Organized Crime and Drug Trafficking in Mexico," **John Bailey** argues that today Mexico confronts the greatest threat to its democratic

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<sup>5</sup>Country Summary, Mexico, January 2010, 1; and Amnesty International, *Mexico, New Reports of Human Rights Violations by the Military*, London, 2009; Eugenia Jiménez, *Mileno*, "Derecho Humanos ha recibido 1,500 quejas contra militares durante el año," December 22, 2009.

governance from internal violence since the Cristero Revolt of the latter stages of the Revolution of 1910–29. In this case, the threat is posed by criminal groups, especially by politically savvy, hyper-violent drug-trafficking organizations (DTOs), currently inflicting spectacular damage in several regions and sowing insecurity throughout the country. This chapter first examines the evolution of the Mexican and U.S. national government strategies for confronting OC/DTOs, with particular attention to the institutional frameworks that have been established to implement these strategies. It then evaluates the degree of “fit” between the two governments’ strategies, considers metrics by which progress can be measured, and concludes with an assessment of progress.

President Felipe Calderón’s government produced a coherent, internally consistent strategy *at the declaratory level* to confront drug-trafficking organizations and other forms of organized crime, both domestic and trans-national. As Bailey asserts, *declaratory* means what the government *says it wants to do*, not necessarily what it does. The main points of the declared strategy are: (1) deploy the Army and federal police to take back control of territory from DTOs; (2) attack the finances of organized crime; (3) attack the political protection of criminal organizations; (4) implement an ambitious menu of institutional reforms to the police-justice system; (5) win public support in targeted areas through government development and welfare programs; and (6) promote international cooperation against organized crime. Put simply, when the police-justice-community development programs are stood up, the Army can stand down. The main problem to date is inadequate coordination among federal agencies and limited cooperation among levels of government in Mexico’s federal system.

As the author notes, the U.S. strategy in simplest terms is to follow Mexico’s lead. In contrast to Plan Colombia, which the U.S. government shaped in important ways, the Mérida Initiative was intentionally designed to respond to Mexico’s requests. The Obama administration has adjusted the Mérida Initiative to include more attention to community development and at least two pilot projects along the U.S.-Mexico border.

Bailey examines the effectiveness of these strategies. Indeed, there are both political and technical measuring tools. For Mexico, the policy will be evaluated politically based on its ability to bring down the elevated levels of DTO-related violence and capturing “kingpins.” To date, public opinion is generally negative about the success of the government’s strategy in the short term. It is less negative about eventual success, however. Technically, the Calderón administration reports much more success with respect to arrests and the confiscation of drugs, weapons, vehicles, and currency than its predecessors. For the U.S., the political measurement is based on perceptions about spillover violence along the border and trends in flows of illegal drugs into the country. To date, U.S. public opinion has focused more on the potential for spill over violence, and has been less concerned about stopping the flow of drugs by reducing demand for them in the United States. As to technical measures, State Department has not yet released an important assessment that was to be reported to Congress in April 2010.

## INTRODUCTION

Bailey goes on to make four significant points about Mexican institutional reform and timing in the Government of Mexico's strategy. First, the scope of the institutional reforms needed to reconstruct Mexico's national police; reorient the justice system from an inquisitorial to an adversarial (accusatory) model; build an intelligence system; and integrate the national, state, and local security apparatus requires decades, even in the best of circumstances. The cultivation of a culture of lawfulness to support institutional reform is also a generational shift.

Second, ordered into action, Mexico's armed forces necessarily learn and adapt in a much shorter time frame in carrying out police operations. Whether they become more effective in their police roles remains to be seen; nevertheless, their training, equipment, and methods underwent important change. Such change will likely affect the military's thinking and behavior with respect to their role in Mexico's political system.

Third, hundreds of officers from the armed forces have been recruited into civilian police and intelligence leadership positions at all levels.

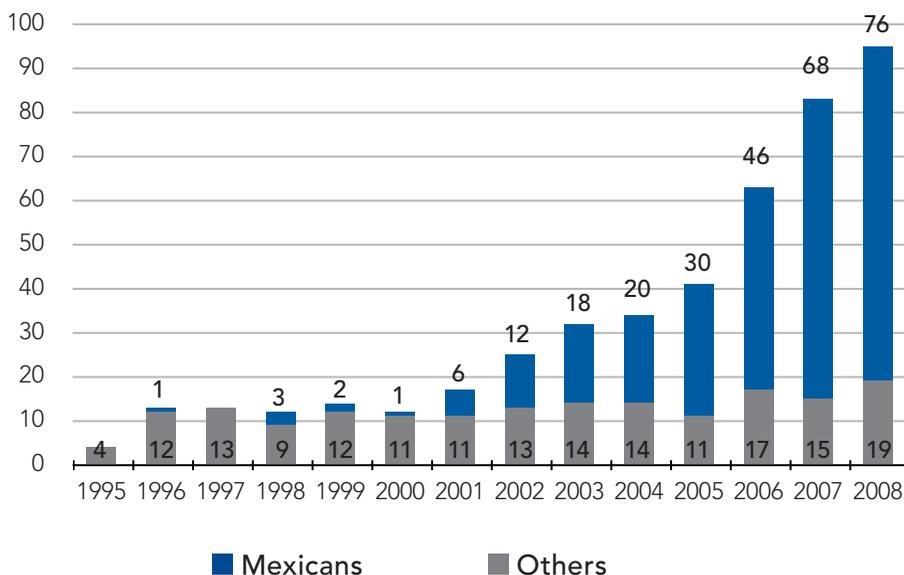
Fourth, as a result we should expect a hybrid institutional work-in-progress: a police-intelligence system shaped by military influences, and a military that is adapting to police roles. A possible result is a better integrated police-intelligence system, one that can operate more effectively with military support as needed. The challenge is the subordination of this hybrid police-intelligence-military apparatus to a reformed justice system, especially since the justice reform will require much more time than the 2016 target stipulated by law.

### U.S.-Mexico security collaboration: intelligence sharing and law enforcement cooperation

Developing greater bilateral law enforcement cooperation and intelligence sharing is an inherently difficult task. It is natural for officials to protect the sensitive information they gather from potential leaks or misuse, which is why the standardization of procedures, the professionalization of agencies, and the building of trust among agency heads and officials on both sides of the border are all key aspects of the struggle against regional drug trafficking and organized crime. In her chapter, **Sigrid Arzt**, former technical secretary of Mexico's National Security Council, looks at the history, progress, and current challenges of bilateral intelligence sharing and law enforcement cooperation.

While recent increases in drug-related violence in Mexico have lent increased urgency to efforts to build cooperation, the process has been underway for well over a decade. Mexican extraditions, for example, have increased dramatically since 1995, almost all of them going to the United States (see chart below). There were particularly large increases following a 2005 Mexican Supreme Court decision determined that the possibility of life imprisonment does not violate the Constitution and is therefore not grounds to refuse an extradition request.

## EXTRADITIONS FROM MEXICO BY NATIONALITY, 1995–2008



Source: <http://www.pgr.gob.mx/prensa/2007/docs08/Extraditados%20al%20mundo.pdf>

Arzt identifies three categories of mechanisms for law enforcement and intelligence cooperation.

- Institutional Agreements: memorandums of understanding, extradition treaty, etc.
- Leadership and Personal Relationships: key players in the Calderón Administration, such as the Secretary of Public Security, Genaro García Luna, and his first Attorney General, Eduardo Medina Mora, both entered their posts as known players in U.S.–Mexico security cooperation due to their positions during the previous administration, providing continuity and inspiring confidence in their U.S. counterparts.
- Standardization of Procedures and Institutionalization of Programs: In 1997, for example, U.S. DEA began to work with specially vetted members of Mexico’s Federal Investigative Agency (AFI) in the context of the newly created Special Intelligence Units (SIU).

Implemented in 2008 with the goal of tackling the rising power of Mexican drug trafficking organizations, the Mérida Initiative has promoted increased bilateral cooperation amongst law enforcement, military, and intelligence agencies in both countries. Under the Mérida Initiative, advances have been made in information sharing and data interoperability. Coordination points systems have been created, such as fusion centers that create platforms for information sharing, whether through Special Investigative Units (SIU) or Border Enforcement Security Task Force (BEST) teams.

## INTRODUCTION

Arzt finds that the quality of intelligence shared by U.S. officials has at times been questioned by their Mexican counterparts, yet offers unequivocal support for the training, screening and vetting of Mexican law enforcement, which has been supported with U.S.-Mexico cooperation efforts. Despite the difficulties, Arzt concludes that the transnational nature of the challenge demands improved cooperation and information sharing at and among the federal, state and local levels. She suggests that the goal should be to normalize and institutionalize law enforcement cooperation and intelligence sharing so that regardless of political moment and the officials in office, these activities continue unabated; this level of cooperation is necessary to achieve success in the bilateral struggle against drug trafficking organizations.

## V. CONCLUSION

The current four-pillar strategy is a significant step forward, but is not a magic bullet that will solve Mexico's security crisis in the near term. Indeed, there is no single or unilateral approach that can succeed in addressing these challenges, so a comprehensive, binational strategy is essential.

The weakness of Mexico's domestic security apparatus — the ineffectiveness and corruption of police forces, the judiciary, and the entire criminal justice system — severely limits the state's capacity, and requires deep, sustained changes over the long term. Mexico is making important progress on this front, and in the long run, this will dramatically improve Mexico's ability to manage both common and organized forms of criminal behavior. But institutional reform should not be limited to law enforcement agencies. Greater transparency and accountability in all aspects of Mexico's governing apparatus would dramatically reduce corruption and the capacity of organized crime to weaken and manipulate state actions. Additionally, these reforms cannot be limited to federal agencies but necessarily must include state and local agencies.

Meanwhile, looking to the social and economic roots of Mexico's recent public security challenges, the United States can help Mexico provide a foundation for the rule of law through increased economic assistance to aid programs that not only enhance Mexico's law enforcement capabilities, but that reduce poverty and encourage sustainable development. Since traditionally Mexico has not been a major recipient of U.S. foreign assistance for such programs, this would require a dramatic increase in funding — perhaps doubling or tripling USAID's \$28 million Mexico budget in FY2010 — to promote youth education, recreational programs, gang intervention, workforce development and technical programs, and micro-finance and micro-credit lending to create opportunities for poor families and micro-entrepreneurs in communities vulnerable to violence.

Essential to these strategies must be strong collaboration between the United States and Mexico, but the collaboration must be effective and focused on specific strategic areas such as disrupting the flow of money and firearms from the U.S. to Mexico, and improving binational law enforcement and intelligence sharing.

Fortunately, both countries are presently benefiting from unprecedented levels of cooperation, and Mexico's ability to confront violent organized crime will be bolstered through these promising efforts. As this threat continues to grow throughout Central America and the Caribbean, the United States will need to work multilaterally as well, in order to extend cooperation throughout the region.

There is also much that the United States can do at home, by working to reduce the impact of domestic drug consumption abroad. In addition to bolstering existing laws through greater enforcement, some new measures to restrict access to the most deadly firearms would help to disarm Mexico's drug traffickers and reduce the threats they pose to both U.S. and Mexican law enforcement. At the same time, with or without reforms to the existing policy regime for the regulation of illicit drugs, the United States needs to commit to a dramatic reduction in their consumption.

The following is a summary of some of the principal policy options that emerged from this study and that may be useful to policy makers as they consider how limited U.S. resources might be invested to address the pressing binational security challenges.

### **Encouraging Cooperation**

- Develop and fully fund a comprehensive strategy for binational security cooperation along the lines of the "four pillar" strategy both countries have adopted in the second phase of the Merida Initiative. Current funding levels are inadequate and should be increased.

The four pillars strategy (sometimes called the "Beyond Mérida" strategy) combines both short-term and long-term approaches to addressing the security concerns posed by organized crime. The short-term collaborative efforts focus on improving intelligence collaboration to arrest key DTO leadership and dismantle their networks, as well as, intercepting the money and weapons flowing south that support their organizations. Equally important are long-term investments in reducing consumption of illegal narcotics in the United States, building stronger judicial, police, and prosecutorial capacities in Mexico, and investing in the social and economic infrastructure in communities that are under stress from organized crime-related violence. Ensure robust inter-agency processes in each country to coordinate security cooperation efforts amongst agencies, as well as continuing regular high-level meetings between leaders and cabinet secretaries of both federal governments to ensure regular consultation and coordination.

- Extend federal-to-federal cooperative efforts to states and municipalities, and find innovative ways to engage civil society in both countries in these efforts.

### **Efforts to Reduce the Demand for Narcotics**

- Engage in a national debate on drug policy that focuses on developing indicators for success and establishes an outcomes-based approach to drug policy. Policies that have not worked should be discarded, and new policies based on evidence based research and evaluation adopted.
- Continue to reorient national drug policy to emphasize programs that will reduce consumption through treatment and prevention programs. Reducing consumption and addiction are long-term goals and not a quick fix, so they require a steady political and financial commitment to be successful. Reducing the demand for illegal drugs in the U.S. is the best way to reduce the power of organized crime in Mexico.
- Fund local initiatives with a proven track record of success in reducing consumption, addiction and recidivism. Programs such as the HOPE program for parolees in Hawaii should be carefully evaluated and replicated in other states where appropriate.

### **Efforts to Build Strong Law Enforcement and Judicial Institutions**

- Invest in programs to professionalize Mexico's federal, state and local police forces. These programs should include better training for police, but also improved professional standards, extensive vetting, and stronger control mechanisms to root out corruption and increase accountability.
- Enhance cooperative efforts to support the implementation of the 2008 constitutional reforms of Mexico's justice system. U.S. collaboration should embrace a balanced approach that includes support for both federal and state-level reform efforts. These should also include increased training and exchange opportunities between Mexican law school faculty and students, Mexican justice officials and those in other countries that have undertaken a similar reform process.
- Particular attention should be given to building the capacity of federal and state prosecutors to make the transition to an oral trial, adversarial system of justice in which evidence and investigations are elevated in importance.

### **Efforts to Contain Violence and Limit the Reach of DTOs**

- Continue to improve binational intelligence cooperation by strengthening cross-order liaison mechanisms between local, state, and federal authorities, and establishing additional "fusion centers" where law enforcement agencies from both countries can work collaboratively.
- Increase the cost to organized crime of money laundering and moving bulk cash across the U.S.-Mexico border by increasing financial and technical resources available to trace financial networks in both countries. Especially

important is the creation of improved inter-agency coordination mechanisms in the U.S. and binationally that will help unify and rationalize efforts to disrupt illegal financial flows to Mexico. Also important is developing human intelligence within organized crime groups that would enable law enforcement to better target their financial structures.

- Reduce the flow of arms from U.S. sources to Mexico by increasing and improving inter-agency cooperation between ATF, ICE, CPB, and DEA. Funding should be increased for programs such as Project Gunrunner and Operation Gunrunner Impact Teams that have led to increased prosecutions of firearms trafficking. Funding for more staff to monitor federally licensed firearms shops, pawn shops, and gun shows, especially along the Southwest border, are particularly important. Likewise, the U.S. and Mexico should work together to increase the capacity and speed with which Mexican authorities can summit trace requests. Finally, information about the origins of trafficked firearms, weapons seizures, and trace requests should be publically available in both Mexico and the United States.

#### **Efforts to Engage Society and Build Community Resilience**

- Increase funding for gang prevention, youth employment, development of public spaces, and civic engagement in communities under stress, especially along the U.S.-Mexico border, through the Mérida Initiative and other funding mechanisms available in both countries.
- Designate specific funding for programs to promote job creation and workforce training and development.
- Establish greater protections for Mexican journalists by federalizing crimes against journalists and freedom of expression. Additionally, Mexico's Special Prosecutor for crimes against freedom of expression and journalists should report directly to the Attorney General and all cases involving crimes against journalists should automatically become the jurisdiction of the Special Prosecutor.
- The Mexican and United States governments should engage in dialogue with a broad range of civil society, private sector, and academic institutions in both countries to allow for greater input into policy formulation and implementation, and increase public accountability for local, state, and federal authorities.

# DRUG TRAFFICKING ORGANIZATIONS AND COUNTER-DRUG STRATEGIES IN THE U.S.-MEXICAN CONTEXT

Luis Astorga and David A. Shirk

## OVERVIEW

The proliferation and impunity of organized crime groups involved in drug trafficking in recent years is one of the most pressing public concerns in Mexico and the U.S.-Mexico borderlands. These groups have perpetrated increasingly brazen, spectacular acts of violence that have resulted in thousands of deaths. From 2001 to 2009, there were more than 20,000 killings attributed to drug trafficking organizations (or DTOs), with the extreme levels of violence in 2008 and 2009 contributing to more than half of these.<sup>1</sup> While the vast majority of this violence reflects internecine conflicts between organized crime groups, at least 1,100 police officers and soldiers died in the line of fire from 2006 to 2009.<sup>2</sup> Moreover, while the vast majority of this violence remains concentrated within Mexico, particularly the central Pacific coast and northern Mexico, it has raised very serious concerns among U.S. observers about possible “spillover” into U.S. communities along the border.

In response to these trends, Mexico and the United States have taken significant measures to try to address the phenomenon of transnational organized crime. Mexico has relied heavily on the armed forces to combat drug trafficking organizations, particularly during the Calderón administration, which from its outset deployed tens of thousands of troops throughout the country. In terms of efforts to reduce the violence, the militarization of domestic public security in Mexico has brought mixed results, at best. At worst, it has produced a dramatic increase in human rights violations, contributed to corruption and defection among Mexican military personnel, and unnecessarily escalated the level of conflict and violence. Still, given the dysfunctions of civilian law enforcement agencies, Mexican officials appear to be at a loss for any effective alternative strategy.

For its part, the United States has sought to assist Mexico by channeling aid, in the form of training and equipment, through the Mérida Initiative. The Mérida Initiative will provide Mexico with \$1.4 billion in U.S. equipment, training and

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<sup>1</sup>The Trans-Border Institute (TBI) maintains a database of drug killings reported by *Reforma* newspaper at the *Justice in Mexico* project website ([www.justiceinmexico.org](http://www.justiceinmexico.org)). See also: Moloeznik (2009a)

<sup>2</sup>The Mexican attorney general’s office released official figures in August 2008 that identified DTO-related violence as the cause of deaths for more than 450 police officers from December 2006 and June 2008. From June 2008 to September 2009, TBI recorded more than 700 additional police deaths.

other assistance from 2008 through 2010, on top of the more than \$4 billion Mexico already spends annually combating drug trafficking.<sup>3</sup> In parallel, the United States has also deployed additional manpower and money to its southwest border in an attempt to stave off a possible cross-border overflow of violence from Mexican organizations. Thus far, the major successes of these efforts include a steady stream of arrests and extraditions targeting organized crime, as well as record seizures of drugs, guns, and cash. However, progress on the metrics that really matter — reducing the availability, consumption, or psychotropic potency of drugs — has remained illusive for both countries.<sup>4</sup> Indeed, by some accounts, despite a nearly forty year effort to wage the “war on drugs,” drugs are more accessible, more widely utilized, and more potent than ever before.<sup>5</sup>

This paper explores two fundamental questions pertaining to Mexico’s ongoing public security crisis. First, why has Mexico experienced this sudden increase in violence among trafficking organizations? Second, what are the current efforts and prospective strategies available to counter Mexican drug trafficking networks? In the process, we explore the development of Mexico’s DTOs, with particular emphasis on the relatively stable equilibrium among such groups in the 1980s and the subsequent fracturing of that arrangement. We also identify and consider the merits of four conceivable scenarios for managing drug use — complicity with traffickers, confrontation of traffickers, prevention and treatment, or tolerating consumption — all of which have significant limits or undesirable effects.

## THE EVOLUTION OF DRUG TRAFFICKING IN MEXICO

Mexican drug trafficking organizations have roots dating back to the early twentieth century, when laws in the United States and worldwide began to prohibit the production, distribution, and consumption of alcohol and psychotropic substances. At the time, Mexico was a low-level supplier of drugs, and Mexican smugglers mainly trafficked in homegrown marijuana and opiates grown in areas that today remain important production zones. Most notable is the “Golden Triangle” region where the northern states of Durango, Chihuahua, and Sinaloa meet, though south coastal states like Michoacán and Guerrero remain important areas for cultivation. Traffickers

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<sup>3</sup>Chabat (2002) indicates that Mexico spent about \$100 million in counter drug efforts in 1991, \$500 million in 1995, and \$1 billion by 1997. An inquiry to the Mexican Embassy found that the allocation designated explicitly for counter-drug spending in Mexico’s federal budget for the 2009 fiscal year was \$4.3 billion.

<sup>4</sup>Despite claims by authorities that drug enforcement efforts have had a positive effect in reducing supply and thereby increasing prices, these claims have been cast in doubt by recent WOLA findings that the Bush administration withheld information to the contrary. Reuters (2007) Walsh (2009).

<sup>5</sup>Use of the “drug war” metaphor dates back to the Nixon administration, which made important administrative changes — notably the creation of the Drug Enforcement Administration — to reorganize agencies and prioritize counter-drug efforts. The Obama administration has steadfastly avoided use of the term “war on drugs.” Brooks (2009).

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like the notorious Enrique Diarte moved illicit drugs through Mexicali and Tijuana in the 1940s, in leagues with U.S. organized crime figures like Max Cossman (alias Max Weber). Meanwhile, around the same time, Enrique Fernández Puerta became known as the Al Capone of Ciudad Juárez, Mexico's largest border city, through his activities as a bootlegger, counterfeiter, and drug trafficker and helped lay the foundations for the production and transit of drugs into the United States.

Over time, Mexican DTOs grew and flourished thanks in part to the “balloon effect,” as changing market dynamics and enforcement efforts displaced and redirected drug flows. By the 1970s, the emergence of the U.S. counter-culture movement and the breaking of the “French connection” for heroin trafficking in the late-1960s produced a significant increase in demand for illicit drugs from Mexico. Meanwhile, greater U.S. consumption of cocaine in the 1970s and 1980s led to the rise of powerful Colombian DTOs, which moved the Andean-produced drug into Miami via the Gulf of Mexico and the Caribbean. As U.S. interdiction efforts in the Gulf gained ground, the Colombians increasingly relied on Mexican smuggling networks to access the United States. Later, with the disintegration of Colombia's major DTOs in the late 1980s and early 1990s, Mexican DTOs began to play a larger role in controlling smuggling routes into the United States. By 1991, Mexico reportedly accounted for an estimated 300–350 tons of cocaine and roughly a third of all heroin and marijuana imported into the United States.<sup>6</sup>

Drug trafficking came to fruition in Mexico with excellent timing. On the one hand, Mexico was experiencing intense processes of economic integration that opened new channels of commerce with the United States. On the other hand, as discussed below, during the 1950s through the 1980s, Mexico had in place a highly centralized power structure that was not only permissive, but protective of organized criminal activities. Thanks to these conditions, Mexican drug trafficking organizations went virtually unchallenged by the state, operated in relative harmony, and grew extremely powerful. Today, the picture looks substantially different, in large part because of Mexico's domestic political transformation over the last fifteen years. Major institutional changes in the Mexican coercive apparatus in the late 1980s, the rise of democratic pluralism, and the decentralization of power in the Mexican political system complicated the equation, and destabilized the equilibrium that had developed between state actors and organized crime. These shifts have produced a more complicated and inconsistent relationship between the Mexican state and the transnational organized criminal networks that once enjoyed *carte blanche* in Mexico, who are now embroiled in a fierce fight to protect their plazas, or zones of control, and sustain their share of the lucrative U.S. market, where cocaine prices dramatically exceed those found in Mexico.<sup>7</sup>

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<sup>6</sup>Gerth (1988), Miller (1991)

<sup>7</sup>The extent to which violence among Mexican DTOs is driven by domestic competition is highly debatable. Simply having a sizeable domestic market does not, in itself, invoke violence elsewhere, so it is not clear that this is the primary explanation for Mexico's recent woes.

While there was significant competition among Mexican DTOs in the past, they did not operate on the same scale, directly challenge the state, or employ violence to as great an extent as we have seen recently. The 1980s were an important turning point, as the protection and involvement of key government actors and institutions became critical to the evolution of Mexican DTOs. Thanks to single party rule under the Institutional Revolutionary Party (PRI), Mexico's power structure was extremely centralized and hierarchical, which had important implications for the locus and effects of official corruption. With a complete lock on control of the Mexican state, the PRI held a monopoly on legitimate use of force, territorial control, and the power to grant impunity to organized crime.<sup>8</sup> Of course, while the PRI regime was not tolerant of criminal activity in general, such activities were more likely to be tolerated or even protected when they promised a substantial payoff to corrupt government officials. Moreover, since corruption frequently occurred at very high levels, this produced a substantial "trickle down" effect, creating a blanket of impunity that offered considerable protections to those organized crime groups that could afford it. Particularly significant was the Federal Security Directorate (Dirección Federal de Seguridad, DFS), which oversaw domestic security matters from 1947 to 1985. DFS was a primary instrument of social and political control for the central government, and enjoyed vast, relatively unchecked powers. During the 1980s, under President Miguel de la Madrid (1982–88), Mexican DTOs developed especially close ties to the DFS, then headed by José Antonio Zorrilla Pérez. Complicity between the DFS and Mexican DTOs ensured that organized criminal activity was extensively protected and well regulated.<sup>9</sup>

As such, Mexico's integration into the extremely profitable cocaine market in the 1970s and 1980s enabled Mexican DTOs to achieve a level of prosperity, access, and protection beyond the wildest dreams of Colombian traffickers. As Colombian DTOs fractionalized and imploded in the late 1980s and early 1990s, Mexico emerged as the hub of drug trafficking into the U.S. market, with Mexican DTOs increasingly controlling both the forward and backward linkages. Moreover, thanks to the protection of the state, competition among Mexican DTOs was significantly limited, with territories and markets often clearly demarcated, leading some to refer to these organizations as "cartels," a term that we avoid here for several reasons.<sup>10</sup> This relative harmony was possible in large part because of the explicit and implicit arrangements with government officials that established "plazas" and rules of the game.

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<sup>8</sup>Astorga Almanza (1995), Astorga Almanza (2000), Astorga Almanza (2003), Astorga Almanza (2005).

<sup>9</sup>Astorga Almanza (2005).

<sup>10</sup>In modern commercial usage, the term "cartel" draws from the German word (kartell), which has earlier uses derived from Latin, French, and Italian. In the conventional sense, a cartel refers to formal agreements among business associations, or firms, to control production, fix prices, limit competition, and/or segment markets (by product, clientele, or territory). The term "drug cartel" is frequently used to describe organized crime syndicates involved in the production, distribution, and sale of psychotropic substances. However, this usage is controversial because of the common understanding of cartels as price-fixing arrangements; hence, in this paper we give preference to the term "drug-trafficking organizations." Ayto (1990), Levenstein (2008), The Oxford English Dictionary (1978).

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The most important network of Mexican traffickers to benefit from this arrangement originated from the Pacific coastal state of Sinaloa, characterized by rough and difficult to access terrain and an ample coastline. The pioneering efforts of earlier Sinaloa traffickers had made the state the cradle of illicit drug cultivation and smuggling in Mexico. One legendary trafficker in Sinaloa during the 1960s and 1970s, Pedro Avilès Perez, helped lead the way by smuggling marijuana into the United States by air.<sup>11</sup> Such efforts laid the groundwork for later Sinaloan traffickers, perhaps most notably Miguel Angel Félix Gallardo, one of the first to develop ties with Colombian suppliers.<sup>12</sup> Félix Gallardo was a former police officer, who — thanks to close ties to political figures at the state and national level — developed an extensive trafficking empire and became one of Mexico’s wealthiest drug barons. The network that Félix Gallardo cultivated — often called the Guadalajara DTO — included many of Mexico’s most notorious contemporary drug traffickers, most of them also heralding from Sinaloa: members of the Arellano Felix family, Rafael Caro Quintero, Amado Carrillo Fuentes, Juan José “El Azul” Esparragoza, Ernesto Fonseca, Eduardo Gonzalez Quirarte, Joaquín Guzmán Loera, Héctor “El Güero” Palma, Manuel Salcido, and Ismael Zambada, among others.

This network constituted a vast, well-protected coalition that operated with substantial impunity, saw relatively little infighting, and attained incredible wealth. However, the relatively stable equilibrium among this coalition came to an end soon after the February 1985 kidnapping, torture and murder of DEA agent Enrique “Kiko” Camarena and his pilot, Alfredo Zavala Avelar, in Mexico City. Camarena was instrumental in a major bust in November 1984, in which several thousand tons of marijuana were seized at “El Búfalo,” Rafael Caro Quintero’s 220 acre ranch in Chihuahua, which was manned by thousands of employees. Drawing on in-depth interviews, Flores (2009) recalls claims by alleged witnesses that top-level defense and interior ministry personnel were involved in the decision to torture and kill Camarena and Zavala. Flores also notes that the major traffickers who were ultimately prosecuted for the Camarena-Zavala killings — Félix Gallardo, Caro Quintero, and Fonseca Carrillo — each reportedly held false DFS credentials that they received directly from the agency’s head, Zorrilla Pérez. Accusations against high-ranking officials were never proved, but strong suspicions led to intense U.S. pressure on Mexico and the ultimate dismantling of the DFS.<sup>13</sup> Although other federal law enforcement

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<sup>11</sup>It should be noted that, while Avilès operated as one of the early pioneers of drug trafficking in Sinaloa, his death certificate indicates that he originated from the town of Las Ciénegas de los Silva in the state of Durango. Astorga Almanza (1995), Boudreaux (2005).

<sup>12</sup>At the height of his empire, Félix Gallardo was reportedly worth \$1 billion and owned 25 homes and seven ranches. Lieberman (1990).

<sup>13</sup>The Camarena murder was the subject of intense U.S. scrutiny. According to Mabry, in February and March of 1985, the case accounted for sixteen out of twenty-four articles in the New York Times, and a significant portion of Mexican television coverage. Mabry (1989) p. 148.

organizations, notably the Federal Judicial Police, also became thoroughly corrupted in subsequent years, the hierarchy and controls that once protected and facilitated coordination among Mexican DTOs were significantly compromised and a once grand coalition began to fracture.<sup>14</sup>

Héctor Luis “El Guero” Palma Salazar was the first prominent defector. In 1988, Palma branched out to form his own organization, betraying Félix Gallardo, whom he once served as a bodyguard.<sup>15</sup> Palma’s defection drew a harsh response from Félix Gallardo — who never forgave his protégé — and marked the first break from the relatively disciplined, hierarchical model that had come to define organized crime in Mexico. In April 1989, months after Palma’s defection, Félix Gallardo was arrested and incarcerated in response to pressures resulting from the Camarena murder.<sup>16</sup> Félix Gallardo continued to have some influence from behind bars, yet his arrest signaled the end of a once cohesive network of traffickers, and a new era of competition and violence among Mexican DTOs.<sup>17</sup> From behind bars, Félix Gallardo exacted his revenge on Palma, arranging the murder of his wife and two children and reportedly sending Palma the woman’s decapitated head.<sup>18</sup> Thus, began a blood feud that went to unprecedented extremes of violence, and a new era of competition and conflict among Mexican drug trafficking organizations.<sup>19</sup> Following Félix Gallardo’s arrest, Palma and other Sinaloan traffickers battled over the remnants of the Guadalajara organization. After Palma was himself arrested in 1995, Joaquín Guzman Loera (alias “Shorty,” or El Chapo), fellow-Juárez affiliate Ismael Zambada, and members of the Beltran Leyva family continued to manage these operations. Guzman had previously coordinated airplane logistics for Félix Gallardo, and under his leadership a powerful new organization — often described as the Sinaloa DTO —

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<sup>14</sup>In 1985, the DFS was integrated into the Dirección de Investigación y Seguridad Nacional (DISEN), which subsequently became the Centro de Investigación y Seguridad Nacional (CISEN) in 1989.

<sup>15</sup>Veledíaz (2007)

<sup>16</sup>According to L.A. Times reporter Marjorie Miller, at the time of his arrest, “authorities said he was trafficking four tons of cocaine per month to the United States, primarily to the West Coast.” A later article by Richard Boudreaux indicates that U.S. authorities estimated that Felix Gallardo moved 24 tons of cocaine to the United States each month. Boudreaux (2005), Miller (1991)

<sup>17</sup>Félix Gallardo allegedly continued to operate his trafficking networks from the confines of his prison cell, with the assistance of his brother Jose Luis and Clemete Soto Pena.

<sup>18</sup>Félix Gallardo ordered the infiltration of the Sinaloa DTO, and eventually the murder of Palma’s wife Guadalupe Lajja Serrano Serrano — along with Palma’s children, Natali (aged 4) and Hector (aged 5) — by Rafael Clavel Moreno in 1989. Clavel Moreno, a Venezuelan nicknamed “El Bueno Mozo,” reportedly dated Palma’s sister Minerva to gain the druglord’s confidence. However, within months, Clavel Moreno seduced Serrano, who escaped with him to Los Angeles and later Caracas. There Clavel Moreno killed all three and allegedly sent Serrano’s severed head to Palma.

<sup>19</sup>In retaliation for the murder of his wife and children, Palma ordered the November 1990 murder of Félix Gallardo’s godson, Rodolfo Sánchez Duarte, the son of Sinaloa governor Leopoldo Sánchez Celis. El Universal (2005), Veledíaz (2007)

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gradually accumulated a major share (perhaps as much as half) of the Mexican drug trade. Guzman acquired a reputation for both ingenuity and brazen violence, and also accrued a massive fortune; by 2009, he was believed to be one of the world's richest people.<sup>20</sup>

The rise of the Sinaloa DTO involved an intense conflict with another offshoot from Guadalajara DTO. This network — often referred to as the Arellano Felix organization, or the “AFO” — involved members of the Arellano Felix family (comprising six brothers and four sisters), who are believed to be blood relations to Félix Gallardo.<sup>21</sup> Initially, the eldest brother, Francisco Javier, headed the family's business operations until his arrest in December 1993. Thereafter, two brothers, Benjamin and Ramon, respectively, took over the AFO's operations and enforcement.<sup>22</sup> The AFO developed links to law enforcement and government officials — allegedly doling out \$1 million a week in bribes — and cordial relations with “Juniors,” the young scions from wealthy and powerful Mexican families.<sup>23</sup> The AFO also acquired a reputation for its unabashed use of violence and intimidation, including the assassinations of rivals and journalists.<sup>24</sup> In the process, the AFO developed a lucrative franchise system for moving drugs into the United States, exacting tolls and fees for protection to a loose confederation of other traffickers from Central Mexico.<sup>25</sup> This effort to extort other traffickers was a major source of conflict as the Sinaloa DTO attempted to branch into Baja California's lucrative smuggling corridors, and refused to pay tribute to the AFO. In 1992, Guzman reportedly sent 40 gunmen to attack the Arellanos in a Puerto Vallarta discotheque; nine were killed, but the Arellanos escaped.<sup>26</sup> Later, in May 2003, Cardinal Juan Jesús Posadas Ocampo was shot to death at the Guadalajara airport in an alleged case of mistaken identity that

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<sup>20</sup>According to Forbes, out of an estimated \$18 to 39 billion in Mexican profits estimated by U.S. authorities, Guzmán's organization was believed to have garnered twenty percent. Guzman himself purportedly attained a fortune of over one billion. At the time of Forbes' report, the U.S. government was offering a \$5 million reward on Guzman. Forbes (2009)

<sup>21</sup>There is some uncertainty about whether the Arellano Félix are direct kin to Félix Gallardo, and he himself reportedly denies a family relationship.

<sup>22</sup>Ramon Arellano is reputed to have worked with U.S.-based enforcer group known as the “Logan Heights Calle 30” gang. Richards (1999), p. 24.

<sup>23</sup>During its heyday, the AFO also allegedly developed ties to international crime syndicates, including Russian organized crime and the Revolutionary Armed Forces of Colombia. Miro (2003), p. 7. See also: Richards (1999)p. 24.

<sup>24</sup>For example, the Arellanos are suspected of the 2004 murder of Zeta editor Francisco Ortiz Franco. Frontera Norte Sur (2004)

<sup>25</sup>“According an unnamed Mexican police official, the AFO charged 60 percent of the value of a 500 kilogram or greater shipment of marijuana to organizations that wanted to use Arellano territory to ship drugs into the United States.” Miro (2003), p. 7.

<sup>26</sup>Miller (1993)

brought intense scrutiny on DTOs.<sup>27</sup> In the aftermath of Posadas Ocampo's murder, the AFO's Sinaloa-based rivals suffered the arrest and incarceration of both Guzman in 1993 and Palma in 1995.<sup>28</sup>

Meanwhile, the AFO faced continued competition, since the Sinaloa DTO was closely allied to the organization headed by Amado Carrillo Fuentes. As noted above, Carrillo Fuentes, a.k.a. the "Lord of the Skies," had also worked with Félix Gallardo and pioneered large airborne shipments to transport drugs from Colombia to the United States.<sup>29</sup> During the 1990s, Carrillo Fuentes rose to become Mexico's wealthiest and most powerful trafficker by developing an organization with substantial operations in the El Paso-Ciudad Juárez trade corridor.<sup>30</sup> This network, also known as the Juárez DTO, involved "approximately 3,300 persons in as many as 400 cells distributed across 17 Mexican states."<sup>31</sup> The Juárez DTO enjoyed protection from high level officials in the Mexican Federal Judicial Police, as well as Mexico's drug "czar" Gen. Jesús Gutierrez Rebollo, who was eventually arrested for corruption in February 1997.<sup>32</sup> Months later, in July 1997, Carrillo Fuentes mysteriously died on the operating table of his plastic surgeon.<sup>33</sup> Thereafter, the overall influence of the Carrillo Fuentes network was significantly diminished, though it is believed that Amado Carrillo Fuentes' brother, Vicente, took over the coordination of its operations in collaboration other family members,<sup>34</sup> Ricardo García Urquiza, and Juan José "El Azul" Esparragoza.<sup>35</sup>

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<sup>27</sup>The official story suggested that as AFO gunmen seeking to assassinate Guzman confused the Cardinal's limousine for that of the drug kingpin. There is significant controversy and mystery around the Posadas Ocampo killing. It would be difficult to mistake Guzman for a man of God. There were also allegations that Posadas Ocampo was in fact the actual target of the assassination, which raises controversial questions about possible links between the Church and traffickers. Guzman was also allegedly responsible for nine more bodies — relatives and associates of Félix Gallardo — that showed up on a highway in Guerrero later that year.

<sup>28</sup>Héctor "El Guero" Palma Salazar took off in a private jet from Ciudad Obregón toward Toluca. However, he was unable to land there due to Federal Police waiting for him at the airport. He attempted to head to Zacatecas and Guadalajara, but was also blocked there. Attempting to head to Tepic, his plane ran out of fuel and crashed, killing the pilot and co-pilot, and badly injuring Palma. Palma was transported to Guadalajara, where he was incapacitated. As noted below, La Palma was captured by Capt. Horacio Montenegro. Veledíaz (2007)

<sup>29</sup>Specifically, Carrillo Fuentes is alleged to have developed relations with Gilberto Rodríguez Orejuela, head of the Cali cartel, and the three brothers who headed the Medellín cartel after the demise of Pablo Escobar: Juan David, Jorge Luis, and Fabio Ochoa Vásquez. Reed (1997).

<sup>30</sup>Cook (2008).

<sup>31</sup>Miro (2003), p. 8.; Richards (1999).

<sup>32</sup>PBS Website (2009).

<sup>33</sup>Some speculate that the greatest trick the trafficker ever pulled was his own death.

<sup>34</sup>In April 2009, Mexican authorities captured Juárez DTO scion Vicente Carrillo Fuentes, the son of Amado Carrillo Fuentes. Reuters (2009).

<sup>35</sup>Esparragoza evidently joined the Juárez cartel after his incarceration from 1986 to 1992 for the murder of DEA agent Enrique Camarena.

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While the trafficking organizations described above had a common heritage derived from the Felix Gallardo network originating in Sinaloa, the late 1990s also saw the rise of another important network, known as the Gulf DTO because of its origins and operations in the border state of Tamaulipas, along the Gulf of Mexico. Its founder, Juan Nepomuceno Guerra, got his start in cross-border smuggling by bootlegging alcohol in the Prohibition era. Later, in the 1980s, the networks he forged were taken to a new level by his nephew, Juan García Abrego, who developed ties with Colombia's Cali-based DTO and secured protections from the Mexican government.<sup>36</sup> Indeed, over the course of the next several years, García Abrego and the Gulf DTO allegedly enjoyed protection from the Federal Judicial Police and the Attorney General's office.<sup>37</sup> By 1989, Abrego's organization was reportedly moving an annual total of 40 tons of cocaine into the United States. In 1996, however, García Abrego was arrested and later extradited to the United States, where he had been added as the first drug trafficker on the FBI's 10 most wanted list in 1995.<sup>38</sup>

García Abrego's downfall led to an internal contest for power between members of his own organization.<sup>39</sup> After a series of clashes and betrayals, Osiel Cárdenas Guillén, a former quasi-official police informant, or *madrina*, emerged as the new leader of the organization.<sup>40</sup> In 2001, Cárdenas succeeded in attracting new muscle by corrupting elite Mexican military personnel from the Army Special Forces Air and Amphibian units (known by their Spanish acronyms, GAFE and GANFE, respectively) that had been sent to capture Cárdenas. Becoming Gulf DTO enforcers, this group formed a masked commando brigade commonly known as Los Zetas, and fusing with the Gulf DTO to form an amalgam known simply as "La Compañía."<sup>41</sup>

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<sup>36</sup>Nepomuceno Guerra was never successfully charged with drug-related offenses, and died on July 12, 2001. Castillo and Torres Barbosa (2003), Dillon (1996b)

<sup>37</sup>According to New York Times reporter Sam Dillon, "A notebook seized from Mr. Garcia Abrego's organization detailed one batch of payments: \$1 million to the national commander of Mexico's Federal Judicial Police; \$500,000 to the force's operations chief; \$100,000 to the Federal Police commander in Matamoros. Francisco Perez, Mr. Garcia Abrego's cousin, testified in one Federal trial in Texas in 1994 that he delivered \$500,000 to Javier Coello, Mexico's Deputy Attorney General who from 1988 to 1991 decided which drug lords to investigate and which loads to seize." Dillon (1996c)

<sup>38</sup>Abrego's organization was infiltrated by F.B.I. agent Claude de la O. De la O had feigned corruption — initially accepting a \$100,000 cash bribe wrapped in paper bags — and gained Abrego's close confidence during a three year investigation. Dillon (1996a), Dillon (1996c)

<sup>39</sup>Vying for power were Salvador "El Chava" Reyes; Adán "El Licenciado" Medrano; Gilberto García Mena; and Hugo Baldomero Medina Garza, alias "El señor de los trailers." Though Reyes emerged triumphant, he was eventually betrayed and killed in 1998 by Cárdenas (his protégé and top lieutenant), while Medrano, Medina, and García were later captured. Castillo and Torres Barbosa (2003)

<sup>40</sup>In the process, his traitorous reputation earned Cárdenas the nickname "the friend killer," (*or mata amigos*); Among other betrayals, Cárdenas is rumored to have killed Rolando Gómez in order to steal Gomez's wife. Cárdenas also acquired a reputation for his effective control of the "small border" (*frontera chica*) of Tamaulipas until his arrest in a spectacular, televised shoot out in Matamoros in March 2003.

<sup>41</sup>The Zetas derive their name from the radio code (Z-1) used by their leader, Arturo Guzmán Decena. Grayson (2008), Veledíaz (2007)

In short, DTOs in Mexico consist of numerous actors working within a vast supply chain, consisting of individuals operating independently, specialized and tightly knit groups, as well as larger, more hierarchical networks. These connections, of course, included important mid-level drug trafficking networks, like the Sonora-based Caro Quintero organization<sup>42</sup> and the Colima-based Amezcua organization, to which we give less attention.<sup>43</sup> What is clear is that, as Mexico's DTOs began to take on greater market share in the 1980s, they enjoyed a significant degree of hierarchy and cohesion, thanks in large part to the existence of a protective centralized power structure. By the late 1990s, however, there were four major DTOs fiercely vying for control of Mexico's lucrative drug trade in a new era of competition characterized by levels of extreme, high profile violence of a kind never seen before. This pattern has continued to unfold over the course of the last decade.

## FRACTIONALIZATION AND CONFLICT AMONG MEXICAN DRUG TRAFFICKING ORGANIZATIONS

After 2000, the degree of competition and conflict among the major Mexican DTOs intensified dramatically. We noted above that this dissolution was partly attributable to reorganization of Mexico's police agencies in the late-1980s, but also important was the rise of political pluralism in Mexico and the destabilizing effects of counter-drug enforcement efforts on drug trafficking networks. Over the 1990s, a gradual trend toward pluralism at the local and state level created a more diverse and complex political landscape. With the 1997 defeat of the PRI in the federal legislature and the 2000 election of President Vicente Fox, a candidate of the National Action Party (PAN), this trend advanced to the national level. In some cases, political change increased the political impetus to promote transparency, good governance, and a tougher approach toward organized crime; in others, it merely disrupted political connections to favor one organized crime group over another.

To be sure, none of Mexico's major parties remained ethically or genetically immune from corruption. Today, a look at Mexico's political map after the 2009 elections shows us that the trafficking corridors for cocaine and other drugs are concentrated states still governed — in most cases without interruption — by the old ruling party: the Pacific Coast (Oaxaca, Colima, Nayarit, and Sinaloa), the Yucatán peninsula (Campeche, Quintana Roo, and Yucatán), the Gulf states (Tabasco and

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<sup>42</sup>This mid-level DTO is operated by Miguel Caro Quintero and his brothers Jorge and Genaro. Another sibling, Rafael, is currently in prison on charges related to the torture and murder of Enrique Camarena.

<sup>43</sup>This organization is operated by Jesus, Adan, and Luis Amezcua Contreras, and allegedly controls all methamphetamine trafficking in Mexico, from the smuggling of precursor chemicals (ephedrine and pseudoephedrine) from Asia to production labs throughout North America and Europe. In one major bust in 1997, it was found that the Colima DTO has connections to U.S.-based organizations, including one operated by Rafael Anguiano-Chavez in Los Angeles and by Daniel Virgin in Dallas. Richards (1999), p. 24–5.

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Veracruz), and the better part of the northern border region (Tamaulipas, Chihuahua, Nuevo León, and Coahuila). However, other major corridors are controlled by parties from the PRI's traditional opposition, including states in the border regions (Baja California-PAN, Sonora-PAN, and Chiapas-PRD) and states along the Pacific Coast (Jalisco-PAN, Michoacán-PRD, and Guerrero-PRD). Mexico City, another major drug trafficking zone, is governed by the PRD. Still, while no party is immune from the effects of corruption, there have been more visible efforts by Mexican authorities to take on crime and corruption, particularly at the federal level. At the outset of the Fox administration, the federal government sacked 46 top customs officials, while his successor dismissed hundreds of mid-level customs officials in 2009. In 2009, ten mayors (and other state and local officials) in the state of Michoacán were arrested by federal authorities for having ties to drug trafficking organizations in May 2009.<sup>44</sup> While corruption no doubt persists at all levels and across all parties, these efforts represent a significant shift from the 1980s.

Meanwhile, U.S. law enforcement and interdiction measures also had important, if sometimes unintended effects on Mexican DTOs. Numerous U.S. federal and sub-national law enforcement initiatives have helped dismantle Mexican DTOs in recent years, sharing intelligence and arresting and prosecuting several major Mexican traffickers. For some Mexican analysts, there is some question as to whether sufficient efforts have been made to target the "U.S. cartels." This is a point beyond the scope of this paper, but it is important to note here the very different structure and function of organized crime in the two countries. In the United States, there is less need — and arguably less impunity — for retail operations to develop highly sophisticated organized crime networks to connect to their Mexican wholesalers. To be sure, like other global enterprises, these networks incorporate foreign elements in ways that significantly confuses what constitutes a "Mexican" trafficking organization. However, while leaving minor retail distribution to U.S. gangs and other groups operating at a lower level, it is the more sophisticated Mexican DTOs that primarily handle the difficult challenge of smuggling goods across the border and into major markets. Indeed, this particular challenge increased for Mexican smugglers over the 1990s, and especially in the aftermath of the September 11, 2001 terrorist attacks, as tighter border security controls made it more difficult to traffic illicit contraband into the United States. This, in turn, led to more innovative smuggling methods, including the use of tunnels and maritime vessels.<sup>45</sup>

Partly due to the above-noted factors, Mexican DTOs suffered disruptions that altered the balance of power and contributed to even greater fractionalization and infighting. In February 2002, Ramón Arellano Félix was killed in a shoot-out with police in Mazatlán, Sinaloa (possibly in a clash with Zambada's forces), while

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<sup>44</sup>This operation was highly controversial because it primarily targeted members of the government's political opposition immediately prior to the 2009 midterm elections.

<sup>45</sup>Ellingwood (2008)

Benjamín was arrested in the state of Puebla the next month.<sup>46</sup> In 2003, the arrest of Osiel Cárdenas and his top lieutenant, Adán Medrano Rodríguez, delivered a significant blow to the Gulf DTO.<sup>47</sup> In 2005, authorities arrested Juárez DTO leader Ricardo García Urquiza. In the wake of these upsets, the major DTOs became locked in an intense struggle for control, with the remnants of the Tijuana and Gulf DTOs battling the Juárez and Sinaloa DTOs, whose allied forces became known as “The Federation” or the “Golden Triangle” alliance.<sup>48</sup> In the process, the AFO suffered additional losses — Eduardo Arellano Félix was captured in October 2008 — and a bloody clash ensued between Fernando Sánchez Arellano Félix (son of Enedina Arellano Félix) and Teodoro García Simentel (head of one of the AFO’s subsidiary smuggling operations). Meanwhile, newly emergent groups — notably the Beltran Leyva organization (which broke from the Sinaloa DTO) and La Familia Michoacána (LFM) — entered the fray. The splitting of the Beltran Leyva Organization (BLO) from Sinaloa appeared to be the factor that contributed most directly to the dramatic increase in violence in northern Mexico, and specifically Ciudad Juárez, beginning in 2008.<sup>49</sup> Meanwhile, the emergence of the LFM provoked a spike in violence in Michoacán, a strategically positioned marijuana growing area and receiving point for cocaine shipments. Because the LMF lacks control of any significant smuggling points into the United States, it had to fight vigorously for market share and forge alliances with more established DTOs in Sinaloa and the Gulf.<sup>50</sup>

In addition, recent years have seen the proliferation of lower level organized crime networks, with new groups and gangs operating at the street level and contributing to the growing phenomenon of “narcomenudeo,” or small-time drug dealing. Moreover, as Mexican DTOs have become more decentralized and fractionalized, their operations have diversified to include other criminal activities, such as kidnapping and even petty crime that would have been below such organizations in the

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<sup>46</sup>After the loss of Benjamin and Ramón, operation of the AFO was believed to fall to siblings Francisco “El Tigrillo,” Javier, Eduardo, and Enedina Arellano Félix. Miro (2003)

<sup>47</sup>Cárdenas continued to coordinate the Gulf DTO’s operations from his jail cell until he was extradited to the United States in January 2007. Thereafter, Gulf DTO operations continued under his brother Antonio “Tony” Esquiel Cárdenas Guillén and top lieutenant, Jorge “El Coss” Eduardo Costilla.

<sup>48</sup>Trahan, et al. (2005/12/13)

<sup>49</sup>The reason why the splitting of the BLO also contributed to conflict between Sinaloa and Juárez is not entirely clear. However, it may suggest that the move by the Sinaloa DTO posed a threat to both of its partners, that BLO was able to enlist the indirect support of Juárez, or that Sinaloa’s need for access to the Juárez-controlled smuggling routes became more intense, or none of the above.

<sup>50</sup>In 2009, the LMF organization became the focus of intense government anti-drug efforts. In April 2009, Rafael Cedeño, an alleged collaborator of LFM leader Nazario Moreno González was arrested. At the time of his arrest, Cedeño was in possession of false credentials identifying him as a permanent observer for the State Human Rights Commission, a position that evidently does not exist. In February 2008, Cedeño headed a demonstration against the military’s involvement in counter-drug operations in the state of Michoacán. After Cedeño’s detention, his brother Rafael stepped down as a congressional candidate for the Mexican Green Ecological Party (PVEM) in the 10th District located in Moreliavi, Michoacán.

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past (e.g., bank robbery, grand larceny, etc.). Above all, each successive disruption of drug trafficking networks has intensified conflict and competition among organized crime groups, thereby contributing to unprecedented, high intensity violence.

Indeed, since the outset of the Fox administration, DTOs have contributed to a startling number of killings, or “narcoejecuciones.” From 2001 to 2004, the number of killings attributed to DTOs each year gradually increased from 1,080 to 1,304, while the number increased to 1,776 in 2005 to 2,221 in 2006, when central Mexican states like Michoacán and Guerrero experienced the largest number of killings.<sup>51</sup> Later, however, the larger share of killings shifted to northern and border states, with a significant portion of the 2,300 DTO-related killings in 2007 concentrated in Baja California (154 drug killings, or 5.14 per 100,000), Sonora (125, or 5.07 per 100,000), and Chihuahua (148, or 4.45 per 100,000). In 2008, there was a dramatic increase to more than 5,000 DTO-related killings, with violence heavily centered in the state of Chihuahua, and especially the border city of Ciudad Juárez. The more than 1,600 DTO-related killings that Chihuahua experienced in 2008 reflected a rate of 49.3 per 100,000 inhabitants, a five fold increase in the state’s rate of killings from the previous year.<sup>52</sup> By mid-year 2009, Reforma reported more than 3,000 killings, including nearly 900 in the state of Chihuahua. This represented a slight decrease in activity from the previous six months, but remained on track for record levels of DTO-related violence in 2009.

By comparison, a recent study by Fernando Escalante examined homicide rates in Mexico, Colombia, and the United States between 1990 and 2007, and found that “the problem of homicide in Mexico is much more similar to that of the United States than that of Colombia.”<sup>53</sup> In 1991, with a rate of about 380 per 100,000, the city of Medellín alone accounted for roughly 6,500 out of 28,280 homicides in Colombia (Osorno 2009). Even after 2007, when violence surged sharply in Mexico, U.S. Ambassador Carlos Pascual pointed out that the 2007 homicide rate for New Orleans was much greater than that of Ciudad Juárez in 2009. Such palliatives offer little comfort, of course, given that Mexico’s public security challenges are distinctly different from those of the United States, as is the capacity of the two countries to manage problems of crime and violence.

Particularly disturbing is that high-profile violence in Mexico has come to threaten law enforcement personnel, journalists, and even elected officials. For example, in February 2009, retired brigadier general Mauro Enrique Tello Quiñones and two others were tortured and killed in Quintana Roo, apparently by members

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<sup>51</sup>Moloeznik (2009a)

<sup>52</sup>This was nearly double the rate in the next closest state, Sinaloa (25.7 per 100,000), and more than fifteen times the national average (5 per 100,000). In 2006 and 2007, the national rate of cartel-related killings stood at 2.1 and 2.3 per 100,000, respectively. These statistics were gathered from Reforma by the Justice in Mexico Project and are available at [www.justicemexico.org](http://www.justicemexico.org).

<sup>53</sup>Escalante Gonzalbo, F. (2009). “Homicidios 1990–2007.” Nexos En Linea, from <http://www.nexos.com.mx/?P=leerarticulo&Article=776>.

of the Zetas, soon after his appointment as head of public security in the resort city of Cancun.<sup>54</sup> In May 2009, Carlos Ortega Melo Samper, a reporter for *Tiempo de Durango*, was killed during an attempted kidnapping while he was returning home in the state of Durango, days after he had been threatened by the mayor and local prosecutor's office.<sup>55</sup> In August 2009, PRD politician Armando Chavarría, a local deputy from Chilpancingo, Guerrero, was assassinated outside his home. A high-ranking member of the PRD in his state, Chavarría had been secretary general of the Guerrero state government from 2006 to 2008, but resigned in May of that year after 17 assassinations with high-powered weapons (AK-47s and AR-15s).<sup>56</sup> Such examples give serious pause, as they illustrate the type of violence that has coincided with the unraveling of Mexican drug trafficking networks, and the degree to which representatives of the Mexican state are under siege. Below, we consider the efforts that have been made to confront such organizations.

## EVALUATING EFFORTS TO COMBAT MEXICAN DRUG TRAFFICKING

We look at three levels of analysis in efforts to combat DTOs. First, we consider multi-lateral efforts at the international level, which largely reflect the policies and agendas of the major Western powers, particularly the United States. Second, we consider how Mexico and the United States have worked to develop stronger collaborative relationships, including closer cooperation on extraditions and a new aid package to bolster Mexican security. Finally, we consider Mexico's efforts to combat organized crime domestically by deploying its well-respected military to combat drug trafficking and efforts to improve the integrity of its law enforcement agencies.

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<sup>54</sup>Tello Quiñones was the highest-ranking military member to be assassinated to date by organized crime elements. Killed with Tello Quiñones were his bodyguard and driver, and the mayor's nephew. Aranda, et al. (2009), Blancas Madrigal (2009), Medellín (2009)

<sup>55</sup>Ortega had recently published an article alleging police corruption and unsanitary working conditions at a local slaughterhouse. Four days before he was killed, he sent a letter to the editor of his paper saying that he had been threatened by the mayor of El Oro, Martín Silvestre Herrera, along with two other officials including an agent with the local Public Prosecutor's Office. La Jornada (2009), Maldonado (2009)

<sup>56</sup>Chavarría was head of the PRD caucus in the state legislature, leader of the Polo Guerrerense de Izquierda faction of his party, president of the Comisión de Gobierno in the State Congress of Guerrero, and considered to be one of the strongest candidates for the Guerrero governorship in 2011. Among the 17 assassinations that preceded his resignation as state secretary general were two children of Roganciano Alba, whose niece was also kidnapped in the fray. Alba was mayor of Petatlán and leader of a local agricultural union affiliated with the PRI, and had been linked in the press to drug trafficking as well as the 2001 assassination of human rights attorney Digna Ochoa Cervantes Gómez (2008), Cervantes (2009b), *El Universal* (2008). However, the PRD's immediate reaction — on the heels of narco-corruption scandals involving PRD elected officials in the state of Michoacán — was to allege possible political motivations and demand the resignation of top state law enforcement officials Cervantes (2009a), Cervantes and Covarrubias (2009).

## International Counter Drug Trafficking Initiatives

Multilateral efforts to combat drug consumption began with the 1909 International Opium Commission conference brought together 13 countries in Shanghai, resulting in a 1912 agreement to monitor and restrict the manufacture and distribution of opium. While this initiative was interrupted by World War I, the provisions of the Shanghai convention were ultimately incorporated into the 1919 Treaty of Versailles. Subsequent international conventions initiated under the auspices of the League of Nations — in 1925, 1931, and 1936 — were later interrupted by World War II, postponing further coordination on these efforts until the creation of the United Nations and the convocation of a new series of international agreements in 1953, 1961, and 1971 (International Narcotics Control Board (INCB) 2009).<sup>57</sup> In 1988, a new convention broadened the scope of these efforts by including other forms of organized crime, including money laundering, as part of the agenda. In general, most of these agreements were driven by the United States and other developed countries, and established the international framework — and the essentially punitive approach — that dominates worldwide today in regulating the production, distribution, and consumption of psychotropic substances.

As a result of these initiatives, there are numerous international governmental organizations (IGOs) that work at a global level to combat drug trafficking, with particularly important roles played by the U.N. International Narcotics Control Board (INCB), the U.N. Office on Drugs and Crime (UNODC), the World Customs Organization, and the international police organization known as Interpol. However, some analysts suggest that international efforts to combat DTOs and other forms of organized crime are being decentralized and increasingly channeled to regional IGOs (as well as multi- and bi-lateral initiatives) in Europe and the Americas. Fazey theorizes that this trend reflects the greater difficulty with which developed countries like the United States are able to maintain control of the international agenda, due to the growing role of lesser developed countries that are less supportive of sustaining current drug policy (Fazey 2007). While this may be the case, at a March 2009 forum to evaluate the last ten years of international drug policy that was hosted by the United Nations in Vienna, the General Assembly offered no major changes to an overall strategy that remains heavily slanted toward punitive, rather than preventive measures. Hence, international drug control efforts remain largely focused on the use of interdiction and coercive law enforcement measures rather than on harm reduction and public health approaches. As we discuss below, this general

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<sup>57</sup>Three successive agreements were promulgated in Geneva in the 1920s and 30s: the International Opium Convention in 1925, the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs in 1931, and the Convention for the Suppression of Illicit Traffic in Dangerous Drugs in 1936. In a series of negotiations forged in New York, the United Nations oversaw the 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, the 1961 Single Convention on Narcotic Drugs, and the 1971 Convention on Psychotropic Substances. International Narcotics Control Board (INCB) (2009)

tendency is visible in the U.S.-Mexican context, although there appears to be increasing consideration of alternative approaches, both in terms of bilateral initiatives to combat organized crime and greater emphasis on reducing and regulating demand.

## U.S.-Mexico Collaboration

U.S.-Mexican cooperation in security matters has been subject to significant fits and starts throughout the post-war era. In September 1969, for example, the Nixon administration sought to clamp down on drug flows from Mexico by dramatically and unilaterally slowing traffic at the border in Operation Intercept; the move reflected Nixon's campaign promises to the U.S. "silent majority" that he would take a tough stance against drugs, but drew the ire of Mexican politicians who saw the move as a serious breach of trust (Doyle 2003). Although the two countries subsequently made important strides — joint border control efforts through "Operation Cooperation" in October 1969, collaboration on "Operation Condor" in 1975,<sup>58</sup> and the 1978 U.S.-Mexican Extradition Treaty — bi-national cooperation also saw significant setbacks in the 1980s and 1990s, with U.S. frustration over the aforementioned Camarena murder in 1985 and revelations of high-level corruption in Mexico. Meanwhile, Mexico also experienced frustration as a result of U.S. unilateralism (e.g., Operation Casablanca) and significant violations of Mexican sovereignty (e.g., the abduction of Dr. Álvarez Machain) that hindered greater cooperation. Moreover, the aftermath of the September 11, 2001 terrorist attacks produced serious tensions — U.S. pressure on Mexico related to the Iraq war effort and controversies regarding U.S. border security measures — between the two countries.

In recent years, however, Mexico and the United States have engaged in much closer collaboration in counter-drug efforts. Cooperation has advanced significantly on the extradition of criminals, exchange of information, police and legal training, and the sharing of equipment and technology, thanks in large part to high-level diplomacy. During U.S. President George Bush's 2007 goodwill tour of Latin America, conversations with Guatemalan President Oscar Berguer and Felipe Calderón laid the groundwork for the development of a regional security plan to control immigration and combat drugs, arms trafficking, and transnational gangs.<sup>59</sup> Some elements of this plan developed into what became known as the Mérida Initiative, a three-year agreement to provide U.S. support for Mexican security measures. In 2008, the U.S. Congress released the first installment of \$400 million to Mexico, and though U.S. legislators initially delayed the second installment in 2009 due to concerns about Mexican human rights violations, the Obama administration remained supportive of the policy.<sup>60</sup>

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<sup>58</sup>While this was a Mexican initiative, there was considerable collaboration with U.S. law enforcement agencies, notably the newly created Drug Enforcement Agency. Craig (1980), Toro (1999)

<sup>59</sup> El Universal (2007)

<sup>60</sup>When they met with their counterparts in April 2009, President Barack Obama, as well as his Secretary of State, Hillary Clinton, indicated that the United States shares responsibility for drug trafficking and its related problems, and urged the Senate to make haste in approving continued funding for the Mérida Initiative.

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Under President Obama, the United States and Mexico have sought to step up efforts to disrupt south bound weapons trafficking and bulk cash smuggling. The widespread availability of firearms in the United States — particularly high-powered weapons (including high caliber pistols, machine guns, and even grenades) — creates a readily accessible market for illegal weapons trafficking into Mexico, where there are strict limitations on the possession of firearms.<sup>61</sup> According to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), of all weapons confiscated in Mexico and turned over to U.S. authorities for tracing, more than 90 percent came from the United States.<sup>62</sup> While there is some controversy about these estimates, a significant number of weapons clearly make their way from the United States into Mexico. About one in eight registered gun dealers — an estimated 6,700 out of some 54,000 nationwide — are located along the U.S.-Mexico border, and U.S. gun shops are weakly regulated, with only 5 percent of the country's gun dealers inspected annually.<sup>63</sup> Meanwhile, there are significant barriers to cooperation, since Mexican law enforcement authorities do not have direct access to search U.S. gun registration databases. At the same time, both countries have looked to bulk cash smuggling as another area of possible collaboration. DTOs generally smuggle their bulk cash profits into Mexico, since U.S. law establishes strict reporting requirements for monetary instruments in the United States [§ 31 U.S.C. 5316] and U.S. law enforcement targets money laundering operations more actively than in Mexico.<sup>64</sup> Still, overall U.S. seizures of bulk cash capture a relatively small portion of the estimated \$18 to \$39 billion that various sources estimate as the total repatriated profits of Mexican drug trafficking organizations. Hence, there is room for greater cooperation in attacking DTOs financial operations, as well as other areas, such as satellite and communications surveillance.

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<sup>61</sup>Firearms are widely available in the United States, but owned by a relatively small portion of the population. According to the 2004 national firearms survey conducted by Hepburn, et al. (2007), there are an estimated 218 million privately owned firearms in the United States. However, only one in four U.S. citizens (26 percent) and two in five households (38 percent) actually owned a firearm. This means that the vast majority of firearms are owned by a small percentage of the population, with nearly half of all individual gun owners (48 percent) possessing four or more weapons and only 20 percent of owners holding 65 percent of all guns.

<sup>62</sup>Serrano, Richard A. 2008. "U.S. Guns Arm Mexican Drug Cartels," *Los Angeles Times*, August 10.

<sup>63</sup>Estimates for the total number of gun dealers and gun shops in the United States vary. In January 2008, Mexican Ambassador Arturo Sarukhán criticized the availability of weapons along the border: "Between Texas and Arizona alone, you've got 12,000 gun shops along that border with Mexico." Corchado (2008) More commonly, the figure of 6,700 — three dealers for every mile along the border — has been used by the ATF and in media reports Serrano (2008), Marks (2006)

<sup>64</sup>Beginning in 2005, CBP and U.S. Immigration and Customs Enforcement (ICE) launched a joint-operation titled "Operation Firewall," which resulted in the arrest of more than 260 people and seizures of more than \$115 million in monetary instruments from 2005 to early 2008. U.S. Immigration and Customs Enforcement (2008)

## Mexico's Domestic Efforts to Combat Drug Trafficking

In Mexico, law enforcement and judicial institutions suffer significant limitations in capacity — and, in some cases, troubling dysfunctions — that reduce their effectiveness in combating even ordinary forms of crime, sophisticated transnational organized crime syndicates. Local and state law enforcement agencies, in particular, suffer a lack of institutional capacity and, in any event, most drug-related crimes pertain to federal jurisdiction. Most Mexican police officers have had few opportunities for educational development, and lead lives that are terribly impoverished. Operationally, local law enforcement officers — who represent the vast majority of Mexican police — are not authorized to receive crime reports from citizens, are not equipped to conduct criminal investigations, and are not properly prepared to preserve crime scenes and evidence. Even at the federal level there have been obstacles and troubling breaches of institutional integrity, including corruption at the highest levels. All of this impedes effective law enforcement, hinders international security cooperation, and results in low public confidence in the Mexican justice sector as a whole. The imperfections of Mexico's domestic police forces have paved the way for the “militarization” of public security, as Mexican public officials have encouraged ever deeper military involvement in counter drug efforts and other aspects of public safety.<sup>65</sup>

In contrast to police, the military enjoys a high degree of public confidence — typically ranked higher than any other government institution in public opinion polls — and is widely believed to be the best hope for promoting law and order in Mexico. Moreover, the militarization of Mexico's anti-drug initiatives is a decades long phenomenon, a “permanent campaign” that stretches back to the deployment of troops in counter-drug initiatives as early as the 1930s.<sup>66</sup> The militarization of Mexican domestic security has included not only the deployment of military troops in troubled states, but also the appointment of military personnel to head civilian law enforcement agencies and the wholesale recruitment of soldiers to the ranks of law enforcement agencies. By the mid-1990s, more than half of Mexico's 32 states had military officers assigned to police command positions, and hundreds of military personnel were incorporated into rank and file positions in other civilian police agencies, according to a 1997 report by the Strategic Studies Institute of the U.S. Army War College.<sup>67</sup> After 2000, Mexican presidents Vicente Fox (2000–2006) and Felipe Calderón (2006–2012) significantly deepened military participation in domestic public security initiatives. During the Calderón administration, in particular, tens of thousands of troops were deployed throughout the country, though the overall effectiveness of this strategy is highly questionable. While the government claims that its troop deployments to Chihuahua produced a 30% decrease in violence

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<sup>65</sup>Moloeznik (2009b)

<sup>66</sup>Astorga Almanza (2003), Astorga Almanza (2007), Ruiz-Cabañas (1993).

<sup>67</sup>Schulz (1997)

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from January to March 2009 compared to the previous three months, a comparison of the last six months of 2008 and the first six months of 2009 reveals a decrease of only 16% (from 1,068 to 896 killings). Worse, comparing the same six-month time periods revealed dramatic increases in other Mexican states — Coahuila (from 8 to 108), Durango (from 161 to 343), and Michoacán (from 135 to 203) — which have sustained overall high levels of violence nationwide. Thus, at best, troop deployments appeared to merely displace the violence, perpetuating the so-called “balloon effect” that has manifested throughout the history of drug control efforts.

Meanwhile, there are several hazards to military participation in domestic public security, since it lacks the proper mandate and training for law enforcement and criminal investigations. Indeed, the military’s involvement in Mexico’s drug war has been accompanied by significant allegations of human rights abuses.<sup>68</sup> Moreover, there are major questions about whether the military is truly immune from the kind of corruption found in Mexican police agencies, and whether its integrity can be sustained over an extended period. Indeed, there have been important examples of military corruption, as noted above. Also, as Moloeznik points out, there have been disturbingly high levels of defection by Mexican military personnel, with at least some developing ties to organized crime (Moloeznik 2009a). Indeed, organized crime groups have brazenly recruited military personnel to join their ranks, with promises of higher pay, better food, and a more glamorous lifestyle. In some cases the defection of military forces — such as the Zetas — to work with DTOs has led to more extreme use of violence; indeed, escalating in direct response to the Zetas, the Sinaloa DTO developed its own elite enforcer groups: Los Negros, Los Pelones, and La Gente Nueva. Also concerning is that, while its overall popularity remains high, the military has become a target of popular protest. In February 2009, protestors demonstrated in Monterrey, Ciudad Juárez, Nuevo Laredo, and Reynosa, criticizing the military’s involvement and blocking roadways and ports of entry. The fact that these protests were likely instigated by drug traffickers offers little comfort, since it suggests a troubling capacity for such groups to manipulate certain sectors of society and public opinion at large (Emmott 2009a; Gutiérrez 2009; López Velasco 2009; Reforma 2009b; Tapía 2009).

Still, the Calderón administration views the military’s involvement in domestic security matters as a necessary measure to break organized crime — perceived as a national security threat — into a public security problem. Still, the idea that the military is “temporarily” involved in the drug war is questionable. Considering how long the military has been involved in the drug war, it is unclear when the military’s mandate for participation in domestic affairs will finally end. Government authorities have insisted that the military remain involved in the fight against organized crime until there are significant advances in the professionalization of domestic police

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<sup>68</sup>In January 2009, the National Human Rights Commission (CNDH) reported that complaints of human rights abuses at the hands of the military had nearly doubled from 2007 to 2008, with 631 complaints against the military by mid-December, 2008 (Reforma 2009).

forces.<sup>69</sup> For example, by late summer 2009, there were 10,000 federal forces (including about 2,000 federal police and 8,000 soldiers) stationed in Ciudad Juárez, and the top civilian police forces were headed by military personnel. PRI Mayor José Reyes Ferriz said in April 2009 that these troops would be gone within six months, since it would take that long to install a well equipped local police force. Later, he indicated that troops would slowly reduce their street patrols after September 15th, while federal forces (PGR, SEDENA, and federal police) would continue to combat organized crime in the city. However, with more killings in early September, Reyes indicated: “we believe it will be convenient for the Army to remain in the city for six more months” (Reforma 2009).

Meanwhile, a major reform of Mexico’s domestic public security apparatus appears a distant prospect. That said, Mexico has made important efforts to “purify” its domestic police forces. Indeed, the Mexico City newspaper Reforma reported that in 2008 there were 759 police arrested in sixteen Mexican states (most of them with ties to drug trafficking). In 2008 and 2009, a sweep called “Operation Cleanup” exposed corruption among some of the highest-ranking officials in Mexican law enforcement, including Mexico’s drug czar in the 1990s, two former directors of Interpol Mexico, personnel in the office of the Attorney General’s special prosecutor against organized crime. Such steps against law enforcement corruption constitute important efforts to introduce greater integrity to domestic law enforcement organizations.

Meanwhile, Mexico has also introduced significant institutional changes, passing new legislation in 2009 giving more investigative powers to the Public Security Ministry (SSP), creating a new Federal Police force, and replacing the Attorney General’s Federal Agency of Investigations (AFI) with the new Federal Ministerial Police.<sup>70</sup> Under these reforms, agents of the Attorney General’s new police force will have greater powers to investigate crimes but will also be subjected to more rigorous vetting.<sup>71</sup> These reforms also effectively bestowed investigative powers upon what was previously the Federal Preventive Police (PFP), which carried out a strictly preventive function, and created the new Federal Police (PF) within

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<sup>69</sup>Monte Alejandro Rubido, the executive secretary of the National Public Security System, declared that the military would only return to its barracks when the country’s police were properly qualified to handle public security matters, and not before.

<sup>70</sup>The AFI was created by presidential decree in 2001 to bolster the investigative capacity of the Federal Attorney General’s Office (PGR), but faced allegations of widespread corruption by 2005; the PGR later announced that nearly one-fifth of AFI agents were under investigation for suspected involvement in organized crime. AFI agents took to the streets in April 2009 to demand that the PGR and Congress not allow the agency to disappear. Nonetheless, reforms were approved by Congress, and President Calderón signed them into law in May 2009. *El Economista* (2005), *El Financiero* (2009)

<sup>71</sup>The Federal Ministerial Police will be led by Nicandra Castro Escarpulli, who in the past worked as head of the kidnapping department under the Assistant Attorney General for Special Investigation of Organized Crime (Subprocurador de Investigación Especializada de Delincuencia Organizada, SIEDO). Former AFI agents would be required to pass toxicology, medical, psychological, and background checks to continue in the new agency.

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SSP.<sup>72</sup> Under the new law, Federal Police officers will be able to collaborate with the PGR on its investigations, operating under the supervision of the Attorney General. Of significant concern to advocates of civil liberties, the Federal Police's new investigative powers include the ability to seek judicial orders to monitor telephone, satellite, and internet communications in the investigations of organized crime activity.<sup>73</sup> Other dedicated responsibilities of the Federal Police now include functions formerly performed by the AFI: securing crime scenes, carrying out arrest warrants, and processing evidence. Federal Police agents will also have authorization to operate undercover to infiltrate criminal organizations.

### Prospective Scenarios and Policy Recommendations

We have examined the recent evolution of drug trafficking in Mexico, the underlying causes of the violence that has proliferated among DTOs over the last two decades. We have also provided an assessment of the strategies used to combat organized crime the international context and in Mexico, emphasizing the significant role that the military and recent efforts to reform domestic law enforcement. We now turn to the possible course of future events and the strategic options for meaningful bi-national cooperation to address Mexico's current crisis. Looking forward, we see four conceivable scenarios for reducing violence among Mexican DTOs: complicity with organized crime, confrontation with drug trafficking networks, reducing drug consumption through prevention and treatment, or increased toleration of drug consumption.

The first scenario — complicity — is the prospect of some sort of pact, or *pax mafioso*, established between state actors and organized crime groups, which could help to reduce conflict among organized crime syndicates, as in the past. Generally speaking, complicity with organized crime is highly undesirable to officials on both sides of the border. That said, it is clear some politicians — particularly at the state and local level — have considered or entered into explicit relationships with drug trafficking organizations in an attempt to keep the peace. The case of Mauricio Fernández Garza, the 2009 PAN mayoral candidate and former mayor (1989–91) in the city of San Pedro Garza García in the state of Nuevo León is illustrative. Fernández Garza, the scion of one of the wealthiest families in Mexico and mayoral candidate in the country's wealthiest municipality, reportedly indicated his willingness to negotiate with traffickers in audio-recorded statements that were

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<sup>72</sup>Upon approval of the Federal Police Law, SSP director Genaro García Luna initiated a twelve-week course in the Iztapalapa Central Command for the agency's first aspiring investigative police.

<sup>73</sup>Under the law, the exercise of such functions must again be performed under the supervision of the PGR.

leaked to the press mid-campaign. Fernández Garza defended his remarks, which he claimed were taken out of context, and went on to win the election.<sup>74</sup>

However, immediately upon taking office, Fernández Garza stated that an alleged local drug trafficker named Héctor “El Negro” Salgada was no longer a threat, indicating the mayor’s prior knowledge of Salgada’s imminent death (his body was found a few hours later in the trunk of a car). Later, in the aftermath of the Beltrán Leyva raid in December 2009, a vehicle bearing the insignia of San Pedro Garza García was found in the possession of drug-traffickers. The mayor also admitted employing an informant named Alberto Mendoza Contreras, who was later arrested in March 2009 and found to have ties to the BLO (of which the mayor denied any knowledge). All these incidents have further fueled speculation that the mayor had struck an agreement with drug traffickers. True or not, the prospect is especially troubling because — unlike the past, when national level state structures effectively dominated and controlled organized crime — sub-national authorities lack the coercive capability to control organized crime, and are more likely to be controlled by it. As Sergio Arredondo, head of the PRI’s association of mayors, observed: “What organized crime mainly asks from mayors is very simple: ‘You see nothing,’... [Mayors are caught] between the sword and the wall... They’re fighting against an enemy that’s much better equipped, much better financed.”<sup>75</sup>

In this context, a return to the centralized, hierarchical model that once characterized Mexican organized crime is not likely to be feasible, given Mexico’s more pluralistic and decentralized political system. Indeed, even if Mexico’s once powerful PRI — which continues to govern more than half of Mexico’s state governments and the vast majority of municipalities — were to recapture presidency 2009, it is not clear that it could recreate the top-down controls of organized crime that formerly existed under past PRI governments, even if this was desirable. Perhaps the best hope for a *pax mafiosa* is for traffickers themselves to arrive at some cooperative arrangement — either explicit or implicit — to establish clearly demarcated territories, distinct product lines, pooled resources, or even shared distribution channels. However, this would require extraordinary negotiating or mediating capabilities that do not appear to exist among Mexican organized crime groups at present. Hence, the prospects for the state and/or organized crime groups to sort out their differences and cohabitate peacefully seem very limited for the foreseeable future.

A second scenario would involve reducing DTOs capacity to sustain large-scale operations through a strategy of direct confrontation. The Mexican federal

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<sup>74</sup> On the audio tapes, Fernández Garza indicated to a select group of prominent citizens that he had met with representatives of the Beltrán Leyva organization and established an arrangement to tolerate low profile drug trafficking and prevent violent incursions by hostile trafficking organizations (specifically, the Zetas). In his recorded remarks, Fernández Garza notes that the drug traffickers “give much importance to living in peace,” and that they are willing to modify their activities for a quantum of solace. El Universal (2009), Richards (1999)

<sup>75</sup>Ellingwood (2009)

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government explicitly embraces this outcome as the objective of its strategy to confront organized crime, which essentially seeks to accomplish two goals. First, the federal government seeks to disrupt and dismantle major DTOs, breaking them into smaller groups and networks that can be more readily managed by state and local law enforcement agencies. Second, these efforts would necessarily redirect major drug trafficking operations to other smuggling routes outside of Mexico, perpetuating the “balloon effect” that has characterized the drug war since its inception. From the Mexican government’s perspective, diverting major DTO activity from Mexico would be highly desirable; the critical question is whether this can in fact be accomplished using the government’s current tactics. Given the problems noted above with regard to the government’s current approach, a tactical shift from large-scale military deployments to more precisely targeted counter-drug operations seems necessary. According to former Colombian president Caesar Gaviria, while the message that President Calderón has sent — that violence and impunity will not be tolerated — is appropriate, massive military deployments simply do not work in the long run, and bring significant short- and medium-term risks of corruption and violations to human rights.<sup>76</sup> Gaviria asserts that a more effective strategy employs elite counter-drug units and effective intelligence work of the kind that has proved successful elsewhere.

At the same time, it is also necessary to continue to reduce the margins of impunity for Mexican organized crime groups through continued reforms to Mexico’s criminal justice system, particularly police, the judiciary, and penitentiaries. Mexican police are woefully under-equipped to handle the tasks they face on a daily basis, and recent police reforms have been concentrated at the federal level, not at the local level where 90% of crimes occur. To correct this, Mexico will need to make sustained investments over the next decade, akin to the major investments made in the United States following the 1968 Safe Streets Act. Meanwhile, Mexico will need to experience a significant transformation of its criminal courts and judiciary over the next decade in order to properly implement the judicial reforms passed in 2008. Lastly, Mexico will need to make major investments to modernize its prison system, which suffers from chronic overcrowding, riots and escapes, and continued criminal activity among inmates.

A third option is eliminate the black market for illicit drugs through prevention and treatment. In May 2010, the Obama administration announced that its domestic strategy for combating illicit drug consumption would place renewed focusing on prevention and treatment. Specifically, the administration unveiled a target of reducing illicit drug consumption among teens by 15% over the next five years, and additional resources for programs to help those who struggle with abuse. In recent years, there have been relatively few resources directed toward drug treatment programs. The National Institute on Drug Abuse (NIDA) estimates that in 2006 only

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<sup>76</sup>Otero (2009)

2.5 million U.S. citizens received treatment for drug and alcohol addiction, out of an estimated 23.6 million U.S. citizens in need. NIDA also estimates that illicit drug consumption costs the United States more than \$181 billion annually, and that “for every dollar spent on addiction treatment programs, there is a \$4 to \$7 reduction in the cost of drug-related crimes. With some outpatient programs, total savings can exceed costs by a ratio of 12:1.”<sup>77</sup>

Hence, prevention and treatment programs offer some promise as a strategy for dealing with drug consumption. The question is whether such programs can have a significant impact on aggregate consumption, and how this will affect organized crime. Unfortunately, even reducing drug consumption by the seemingly small fraction would likely require a substantially greater investment than currently contemplated. Indeed, while the Obama administration’s new 2011 budget proposal includes a 13% increase for alcohol and drug prevention programs and a 3.7% increase for treatment programs, the total budget for the latter is still reportedly lower than it was in 2009.<sup>78</sup>

Moreover, it is important to underscore that the program will target prevention of teen drug use, with the objective of reducing future consumption, which would be likely to have demonstrable effects perhaps five to ten years into the future. Hence, the proposed strategy will have very little immediate impact in reducing the customer base of the illegal drug traffickers wreaking havoc in Mexico. Moreover, even if total consumption (not just among teens) were reduced by 15% in the intermediate or long term, the effect on drug traffickers would likely be minimal. If anything, it could simply make drug traffickers hungrier to increase profits to protect the bottom line, thereby driving them to more extreme forms of competition and other illicit criminal activities.

Meanwhile, a final scenario for reducing DTO-related violence is to move away from the absolute prohibition of drug production, distribution and consumption toward a policy regime in which the state regulates these activities in some significant way. Many view this scenario as the least politically viable of the four. Yet, in recent years, there has been a growing number of calls to rethink international and domestic policies for managing drug consumption and addiction. There are basically two possible strategic options: decriminalization or re-legalization. Both countries have moved tentatively in this direction. In August 2009, President Calderón moved to decriminalize the possession of amounts of illicit drugs deemed for personal use.<sup>79</sup>

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<sup>77</sup>The National Center on Addiction and Substance Abuse at Columbia University actually provides higher estimates suggesting that the U.S. federal, state, and local governments spent a combined total of \$467.7 billion in 2005 alone to combating drugs. National Institute on Drug Abuse (2008)

<sup>78</sup>According to his otherwise favorable comments about the approach, the former drug control office spokesperson Robert Weiner noted that the Obama administration’s proposed plan constitutes “more tweaking the edges than a bold vision... It’s not enough.” Hananel (2010), Song (2010).

<sup>79</sup>By means of the new *narcomenudeo* law, Mexico moved to revamp its minor possession laws (dating back to 1978) to establish new regulations for minor possession of a wide array of drugs, including marijuana, cocaine, heroin, and LSD. Mexico’s Supreme Court upheld the government’s move toward decriminalization in September 2009, echoing a similar ruling by Argentina’s Supreme Court the month before that ruled incarceration for marijuana possession unconstitutional. Avilés Allende (2009)

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Over the last decade, in part due to the growing costs of drug-related arrests, many U.S. states have moved to eliminate jail time and reduce fines associated with minor possession of illicit drugs, and 13 have laws permitting medical use of marijuana.

Decriminalization is deemed to have two main advantages. First, it theoretically allows beleaguered law enforcement agencies to concentrate on large-scale trafficking operations (though opponents object that it also increases other illegal activities).<sup>80</sup> Second, decriminalization eliminates harsh criminal penalties, theoretically making addicts more inclined to seek treatment and making it possible to deal with drug use as a public health problem. Despite these supposed benefits, however, Mexico's minor possession law does not provide significantly greater support for the treatment of addicts, and only decriminalizes very small quantities. Moreover, as long as the production and distribution of drugs remains illegal, decriminalization may make law enforcement's job more difficult by expanding the market share of the criminal organizations that purvey and profit from illicit drugs. As a drug control strategy, decriminalization therefore faces critics on both sides: those who view it as promoting greater illicit drug use and profits, and those who see it as an inadequate substitute for full-scale legalization.

For most policy makers, however, the subject of legalization is considered taboo, as it has little popular support, especially for drugs deemed highly addictive and destructive (such as cocaine, heroin, and methamphetamines).<sup>81</sup> Still, the possibility of drug legalization has long been championed by libertarians,<sup>82</sup> and has begun to gain political traction in both Mexico and the United States, as well as internationally. Indeed, in a joint statement to the Latin American Commission on Drugs and Democracy, former presidents Fernando Henrique Cardoso (Brazil), César Gaviria (Colombia), and Ernesto Zedillo (Mexico) expressed their opinion that prohibition and criminalization of consumption has not worked and alternative approaches are

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<sup>80</sup>For example, U.S. drug czar Gil Kerlikowske supported Mexico's new decriminalization law, characterizing it as a "tool" in the struggle against drug traffickers since it will free up law enforcement resources to address larger players in the drug trade. Before his appointment as the Director of the Office of Drug Control Policy Kerlikowske served as chief of police for Seattle, where he oversaw the de-prioritization of marijuana possession for personal use. Emmott (2009)

<sup>81</sup>While the General Social Survey (GSS) conducted biannually since 1972 demonstrated an increase in support for marijuana legalization beginning in the 1990s, public approval has never exceeded 35 percent of GSS respondents. In Mexico, an April 2009 BGC-Ulises Beltrán poll suggested that support for legalization was slightly higher than in the United States, with 40 percent supporting the legalization of marijuana. Mexicans showed much less support for legalization of other drugs, like cocaine (17 percent), crack cocaine (14 percent), ecstasy (13 percent), methamphetamines (12 percent), and heroin (11 percent). The same poll reported that more than two-thirds of respondents perceived drug consumption to be a national problem in Mexico, rather than a regional problem. Forty-six percent supported giving addicts legal access to drugs during rehabilitation, while 49 percent opposed this option. Beltrán (2009), Center (2009)

<sup>82</sup>At a keynote address presented at the Fifth International Conference on Drug Policy Reform in Washington, DC, on November 16, 1991, Nobel Prize-winning economist Milton Friedman argued that, "The war on drugs is a failure because it is a socialist enterprise.... The U.S. government enforces a drug cartel. The major beneficiaries from drug prohibition are the drug lords, who can maintain a cartel that they would be unable to maintain without current government policy." Trebach and Zeese (1992)

needed.<sup>83</sup> Meanwhile, in November 2010, California will vote on a major ballot initiative to legalize marijuana, the Marijuana Control, Regulation, and Education Act (AB 390); recent polling results suggest that a majority of voters will approve the measure.<sup>84</sup>

Generally speaking, however, there has been little serious attempt to gauge the possible consequences of legalization for the United States, Mexico, or other drug-producing countries. Many pro-legalization activists assume that it will be a simple cure-all for drug-related crime and violence. Yet organized crime is highly adaptable and would no doubt continue to expand into other high-profile criminal activities (such as kidnapping or pirated materials). Legalization is therefore unlikely to be a magic bullet in the fight against organized crime. Moreover, as with other controlled substances, like tobacco and alcohol (whose costs to society arguably outweigh any tax revenue they generate), legal recreational drug use represents a potentially serious harm, including traffic fatalities, overdoses, addiction, and other impacts (such as second-hand effects on unborn children).

In the end, any effort to evaluate the merits of current policy versus legalization must conduct a careful accounting of the likely costs and benefits of either approach. Also, whether permitted or prohibited, more resources must to be directed to preventing and treating drug abuse. However, our assessment suggests that moving toward a policy regime that treats drug use as a public health problem could yield significant dividends, at significantly lower cost than both countries are currently paying in the war on drugs. Given changing U.S. demographic patterns (i.e., the aging of the generation of 1968), pressures to find new sources of tax revenue, and the potential profits and jobs that could be created through marijuana production and sales, the trend toward decriminalization or even partial legalization of drug consumption appears likely to continue.

## CONCLUSION

Over the last two decades, there have been three successive generations of Mexican drug trafficking organizations. With each generation there has been a shift in the balance of power, and the emergence of different poles of dominance in Mexico's drug trafficking underworld. First, there was a relatively uni-polar arrangement under Miguel Angel Felix Gallardo in the mid-1980s. Next, there came a fractioning of trafficking networks, and a brief bipolar moment as the Arellano Félix organization

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<sup>83</sup>In their words: "The war on drugs has failed. And it's high time to replace an ineffective strategy with more humane and efficient drug policies.... Prohibitionist policies based on eradication, interdiction and criminalization of consumption simply haven't worked." Cardoso, et al. (2009)

<sup>84</sup>While a majority of U.S. citizens oppose marijuana legalization, a majority of Californians support the measure according to a recent field poll. California's state budget woes factor heavily into the debate, with many favoring the legalization of marijuana as a means of reducing state expenditures on law enforcement while increasing revenues from vice taxation. Grad (2010), Sabatini (2010).

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faced competition from Amado Carrillo Fuentes and his allies in the 1990s. Finally, there has developed an increasingly multi-polar constellation of trafficking organizations with varying specializations and capacities in the late 1990s and 2000s. In the process, like other global supply chains, organized crime groups operating via Mexico have become increasingly decentralized, diversified, and complex. Smaller affiliated criminal organizations play varying roles as franchisees, precursor and retail suppliers, local and wholesale distributors, cross-border smugglers and logistical facilitators, and enforcers, among other activities.<sup>85</sup>

Generally speaking, efforts to combat trans-national crime — particularly with regard to drug trafficking — through tougher security measures have borne less than satisfactory results. Governmental and intergovernmental reports — such as the U.S. State Department’s International Narcotics Control Strategy Report (INCSR) and the United Nations Office on Drugs and Crime’s World Drug Report (UNODC-WDR) — tend to measure the drug war’s accomplishments in terms of eradication, interdiction, and disruption of drug production and distribution networks. Yet, despite billions spent in anti-drug enforcement and heightened border security measures, there is no indication that illicit northbound flows of drugs — not to mention southbound flows of weapons and cash — have been significantly diminished as a result of these efforts. Indeed, for every dollar invested in U.S. counter-drug enforcement, it is not clear that there is any significant impact on either of the two performance indicators that matter: the availability of drugs (in terms of quantity, price, or accessibility) or people’s inclination to consume them. Hence, our assessment is that there is a need to seriously reevaluate current approaches, and work toward alternative solutions to dealing with drugs and organized crime as separate problems.

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<sup>85</sup>Miro (2003), p. 15.

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# DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA: TRANSPORTISTAS, MEXICAN CARTELS AND MARAS

Steven S. Dudley

## INTRODUCTION

The U.S. Government estimates that 90 percent of the illicit drugs entering its borders passes through the Central American Isthmus and Mexico. Of this, close to half goes through Central America.<sup>1</sup> Functioning as a transshipment point has had devastating consequences for Central America, including spikes in violent crime, drug use and the corroding of government institutions. Mexico receives most of the media attention and the bulk of U.S. aid, but the Northern Triangle — Guatemala, El Salvador and Honduras — have combined murder rates roughly double that of Mexico.

While Mexico is having some limited success dealing with its spiraling conflict, vulnerable States in Central America are struggling to keep the organized criminal groups at bay, even while they face other challenges such as widespread gang activity. U.S. and Mexican efforts to combat the drug cartels in Mexico seem to have exacerbated the problems for Central America, evidenced by ever increasing homicide rates.<sup>2</sup> “As Mexico and Colombia continue to apply pressure on drug traffickers, the countries of Central America are increasingly targeted for trafficking, which is creating serious challenges for the region,” the State Department says in its recently released narcotics control strategy report.<sup>3</sup>

Problems are particularly acute in Guatemala, El Salvador and Honduras, three States with vast coastlines, large ungoverned spaces and the greatest proximity to Mexico. However, geography is only part of the problem. Armed conflicts in Guatemala, El Salvador and parts of Honduras between 1960 and the mid-1990s laid the foundations for the weapons trafficking, money laundering and contraband traffic that we are witnessing today. Peace accords in Guatemala and El Salvador, and police and military reform, only partially resolved deep-seeded socio-economic and

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<sup>1</sup>“International Narcotics Control Strategy Report: Volume I, Drug and Chemical Control March 2010,” U.S. Department of State, p.7.

<sup>2</sup>To date, the Mérida Initiative has provided \$165 million in aid to Central America, representing 20 percent of total funding provided.

<sup>3</sup>“International Narcotics Control Strategy Report,” *op cit.*, p.7.

security issues, and, in some cases, may have accelerated a process by which drug traffickers could penetrate relatively new, untested government institutions.

Despite the gravity of the problem, Central America has had little regional or international cooperation to combat it. Examples of cross-border investigations are few. Communication between law enforcement is still mostly done on an ad-hoc basis. Efforts to create a centralized crime database have failed. Local officials are equally frustrated by the lack of international engagement and policies that often undermine their ability to control crime, especially as it relates to alleged gang members.

Regional governments also face mixed messages from both the international community and their local populace, further hampering their efforts to combat rising criminal activity. A push for free trade in the region, for example, means more infrastructure, less centralized government control and unfettered borders, all important parts of any organized criminal operation. Long histories of the governments' abuse of authority, repression of political movements and outright murder of political opponents, make locals weary of giving authorities more power to monitor their private lives in an effort to root out crime.

This chapter is about drug trafficking organizations (DTO) operating in Central America. It is broken down by theme rather than by country. It provides a brief history of DTO activity in the region; descriptions of who operates the DTOs, both locally and internationally, and their modus operandi; the use of street gangs in DTO activities; DTO penetration in government and security forces; local, regional and international efforts and challenges as they try and combat DTOs. The chapter is centered on the three countries where the problem of DTOs appears to be the most acute: Guatemala, El Salvador and Honduras.<sup>4</sup>

## HISTORICAL BACKGROUND

DTOs in Central America can be broken down into two main categories: the managers and the transporters. Local and foreign agents interviewed by the author in three different countries indicate the managers are mainly Mexican groups [See box 'Major Mexican DTOs'] who obtain the supplies from Colombian, Bolivian and Peruvian groups in the source countries. These Mexican groups play an increasingly active role in all parts of a supply chain that has gone through a massive transformation in recent years and warrants a brief overview.

In the 1970s, when coca was a little known leaf outside of Latin America, Peru and Bolivia produced 90 percent of the crop and coca paste. Colombians obtained the paste in bulk, made the cocaine hydrochloride (HCL) and exported it to the United States via

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<sup>4</sup>This report is based mainly on four weeks the author spent visiting Guatemala, El Salvador and Honduras in January–February 2010, as part of work for both the Woodrow Wilson Center and the International Crisis Group. The author also interviewed officials and counternarcotics agents in Colombia, Mexico and Honduras in 2009.

## MAJOR MEXICAN DTOs

1. **Sinaloa Cartel:** Its operations stretch from Chicago to Buenos Aires, but its power base is in Mexico's so-called golden triangle where great quantities of marijuana and poppy are grown: Sinaloa, Durango and Chihuahua. It is also fighting for more control of routes through Chihuahua and Baja California.
2. **Gulf Cartel:** This organization operates in the Eastern states of Nuevo Leon and Tamaulipas. However, its former armed wing, known as the Zetas, which was formed by former Mexican special forces, has broken ranks and created its own cartel. The two are now disputing its traditional strongholds.
3. **Zetas:** Formerly the armed wing of the Gulf Cartel, this organization is considered the most disciplined and ruthless of Mexican DTOs. Drawing from their military background, this cartel has systematically obtained new territory throughout Mexico and Central America.
4. **Juarez Cartel:** Centered in this northern city, this organization is at the heart of the battle for control of the border and continues to be a major purchaser of cocaine in source countries such as Colombia.
5. **Tijuana Cartel:** Fractured in recent years by arrests and infighting, this organization remains a force in this important border town.
6. **Beltran-Leyva Organization:** After numerous arrests, authorities killed its top leader, Arturo Beltran-Leyva in December 2009. The organization has subsequently split with its former armed wing fighting for control over its territory in the central and western states of Morelos and Guerrero.
7. **La Familia Michoacan:** Originally a paramilitary force designed by the Zetas to fight the Sinaloa Cartel in Michoacan, this disciplined and ruthless organization now operates in numerous northern and southern states.

\*Sources: Author interviews with Colombian, Mexican and U.S. counternarcotics officials.

the Caribbean and Central America. By the late 1970s, the Colombians were trafficking large quantities of cocaine through Central America, principally through Honduras, and then Mexico, giving rise to the first Central American and Mexican DTOs.

The Honduran Juan Ramón Matta Ballesteros, for instance, split his time between Honduras, Colombia and Mexico, providing a bridge between the Medellín Cartel and what would become the Guadalajara Cartel in Mexico. Other routes through Nicaragua and Panama would eventually compete with Honduras, especially after leaders in the Guadalajara and Matta Ballesteros organizations were implicated in the murder of Drug Enforcement Administration (DEA) agent Enrique Camarena in Mexico in 1985 and went on the run.

In the 1990s, the supply chain changed after Colombia's two main organizations, the Medellín and Cali Cartels, were dismantled. The end of the Medellín and Cali Cartels meant the end of direct purchase of coca paste in Peru and Bolivia, and the resulting boom in coca production in Colombia. Regions such as Putumayo, along the Ecuadorean border, Norte de Santander, along the Venezuelan border, north-central Antioquia near the Panamanian border and the northern coast, and the Sierra Nevada de Santa Marta on the Caribbean, became centers for coca production. In this scenario, territorial control became more important. While both the Medellín and Cali Cartels operated large, sophisticated armed networks, the new groups were quite literally armies that competed for control of this production.

Of these, the Autodefensas Unidas de Colombia (AUC) was the largest. A nationwide movement of paramilitary groups formed in the 1990s ostensibly to fight leftist guerrillas, at its height, the AUC had some 35,000 soldiers at its disposal. At the AUC's center was Diego Murillo, alias Don Berna, an ex-guerrilla turned bodyguard and hitman of the Medellín cartel who later converted a local Medellín street gang into his own hit squad. Meanwhile, portions of the police split off to form the core of Norte del Valle Cartel, a loose syndicate of traffickers based near Cali that also had huge armed groups at their disposal. Pieces of the Norte del Valle Cartel eventually merged with the AUC. Some guerrilla fronts from the Revolutionary Armed Forces of Colombia (FARC) also became increasingly involved in the production and supply of cocaine, mostly through Venezuela, Brazil and later Ecuador.

Each of these organizations used Central America and Mexico to transport their drugs. One AUC leader used the same coastal property that Juan Ramón Matta Ballesteros once did to dispatch drugs by land and air to different points in the Caribbean, Central America and Mexico. The FARC focused mostly on developing their own routes through Venezuela but also sought contacts in Mexico.<sup>5</sup> The Norte del Valle Cartel, fortified the routes that are still the most utilized today, specifically the use of go-fast and fishing boats dispatched along the Eastern Pacific.<sup>6</sup>

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<sup>5</sup>"La conexión mexicana," *Semana*, May 22, 2005.

<sup>6</sup>Perhaps the most well known pioneer of these routes was Sandra Beltran Leyva. According to Colombian authorities, the so-called "Queen of the Pacific," Beltran Leyva, through her Colombian husband and her Colombian provider, moved hundreds of metric tons of cocaine in go-fasts.

### **MAJOR DTOs IN COLOMBIA, THEIR AREAS OF OPERATION AND POSSIBLE ALLIES:**

- 1. Rastrojos:** Former Norte del Valle lieutenants of Wilber Varela. They have teamed with the Ejército Revolucionario Popular Antiterrorista Colombiano (ERPAC), which is headed by two former AUC commanders who never demobilized: Pedro Oliveira Guerrero, alias 'Cuchillo', and Daniel 'El Loco' Barrera. They operate from two key points of dispatch: the Pacific Coast and the Venezuelan border. Their Mexican partners are Sinaloa and Juarez Cartels. They use aerial routes leaving from Eastern Colombia and southwestern Venezuela, and seafaring routes from the Pacific Coast.
- 2. Urabeños:** Remnants of what was the most powerful army within the AUC. Positioned along the Panamanian border in the north-western corner of the country with access to both coasts and a sparsely populated border, this is the natural gateway into and out of Colombia. Their Mexican partners are the Gulf Cartel.
- 3. FARC:** 48th Front, which operates along the Ecuadorean border, the 30th Front with access to the Pacific Ocean, its 10th, 45th, 27th, 44th and 16th Fronts, along the Venezuelan border, and possibly the 57th Front in Chocó, near the Panamanian border, are the most active suppliers of HCL. Their partner, in most of these cases, is thought to be remnants of the Tijuana Cartel, although recent arrests in Colombia also point to a working relationship with the Juarez Cartel.
- 4. Los Paisas:** The third generation Medellin-based DTO has taken the reigns of Diego Murillo's routes through that city, stretching north to the Caribbean coast. The Beltran Leyva Organization seems to be their biggest buyer.

There are a number of smaller DTOs, including the Organización Nueva Generación, Los Machos, Renacer and others, operating in mostly border and coastal areas.

Sources: Colombian police intelligence; Cambio; "Paramilitaries' Heirs," Human Rights Watch, February 3, 2010.

In 2003, the supply chain went through another transformation. The Norte del Valle Cartel began a bloody internal war after one faction assassinated one of the other faction's key leaders. The war coincided with the beginning of a peace process in which the AUC leaders demobilized their armies and handed themselves in to authorities. Several AUC leaders were also assassinated during this process. The Colombian government also began a military offensive against the guerillas, dislodging them from many of their strongholds in coca-producing areas.

The disintegration of the Norte del Valle and AUC Cartels left numerous groups battling for control over their territory and routes, including Mexican organizations such as the Gulf, Tijuana, Juarez and the Sinaloa Cartels, who have positioned themselves throughout the Andes to take advantage of the shakeup. In Colombia, these Mexican organizations are now negotiating directly with the HCL providers.<sup>7</sup> The economics are simple: What is a 20 to 30 percent stake for transporting the cocaine from Mexico to the United States becomes a 70 to 80 percent stake by obtaining it at the source.<sup>8</sup>

In addition, in Colombia, operating on a large scale has become more difficult. The life-span of today's capo is often months, not years, in part due to skyrocketing number of extraditions from Colombia to the U.S.<sup>9</sup> The vast number of informants and cooperators has accelerated the process by which U.S. and Colombian authorities can dismantle a DTO. Colombia's increased capacity to act on this intelligence has made for smaller, more agile and less consolidated chains of distribution. Still, it is clear that there are many big Colombian DTOs, not all of which have relinquished control of their supply and parts of the distribution chain. This was evident in the recent arrests of 30 Colombians, most of them pilots, who were flying loads of cocaine to Central America for two major Colombian traffickers.<sup>10</sup>

Today's HCL providers in Colombia are former paramilitaries or lieutenants of now defunct larger organizations [see box 'Major DTOs in Colombia']. They operate in many of the same zones as their predecessors and use many of the same routes with slightly updated methods. They are noticeably smaller in terms of numbers, but they maintain enough forces for territorial control of production, storage and dispatch. Their relations with each other are as fluid as their relations with the Mexican DTOs. Some former paramilitaries, for example, buy HCL directly from the FARC. For its part, the FARC also remains an important HCL source, especially along the Ecuadorean and Venezuelan borders, although there are also reports of a guerrilla group dispatching drugs from the Urabá region near Panama.

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<sup>7</sup>"La conexión mexicana," *op cit.*

<sup>8</sup>These are broad estimates based on prices in source countries and sale prices in the U.S.

<sup>9</sup>Since President Alvaro Uribe took power in August 2002, Colombia has extradited over 1000 suspected traffickers to the United States, including 28 AUC leaders. Numerous more have turned themselves in to authorities in third countries prior to being captured and extradited.

<sup>10</sup>"Así operan las alas de la mafia," *El Tiempo*, February 14, 2010.

## CENTRAL AMERICA'S TRANSPORTISTAS

Not since Juan Ramón Matta Ballesteros have Central American organizations played central roles in drug trafficking. They serve one purpose: to transport drugs between South America and Mexico. For that reason, they are known in the region as *transportistas*. Increasingly, however, these organizations have also taken on the role of local distributors and, in some cases, the suppliers of marijuana and poppy, for the production of heroin, as well as importers and suppliers for the raw ingredients of synthetic drugs that are manufactured in Mexico, Nicaragua and possibly Honduras.

Last year's indicators tell part of the story. Guatemala eradicated a record 1,300 hectares of poppy in 2009, while Colombia eradicated 546 hectares.<sup>11</sup> While estimates of its poppy production are still far lower than Mexico's, Guatemala has presumably supplanted Colombia as the second highest producer in the region. Guatemala also seized twelve metric tons of pseudoephedrine. Honduran authorities seized three million pseudoephedrine pills. Drug consumption, in particular powder and crack cocaine, is also up substantially and has governments in places like Costa Rica and Panama concerned. Consumption often correlates to DTO activity since the managers often pay the local *transportistas* in product who distribute it themselves or parcel it out to the street gangs to distribute.

Nonetheless, the transportista organizations' main function on a regional level remains that of receiving, storing and transporting the drugs safely, mostly to Mexico but sometimes directly to the United States.<sup>12</sup> The transporters tend to come from similar backgrounds and operate in similar spaces. They are, by and large, thieves or experts in contraband. Before working with DTOs, they had prior knowledge of the routes and contacts in the right government circles to move or sell their illicit products. Increasingly in Honduras, some are reportedly emerging from the landed classes — sons of large cattle owners and other agri-business.

They have, over time, expanded their businesses to include illegal drugs, as well as other operations that also facilitate the movement of drugs, such as human smuggling. They operate in border regions and coastal areas. Some even have dual citizenship, which facilitates their movements and, at times, their ability to avoid law enforcement. They are beholden to larger organizations, at one time Colombian now mostly Mexican, but their relations with these organizations are fluid. They tend to work with whomever pays and, up until recently, did not appear to be swallowed by the often bloody conflicts that envelop their employers in Colombia and Mexico.

In Guatemala, three traditional families have reportedly long dominated the transport business: the Mendozas, Lorenzanas and Leones. The Mendozas concentrate on the Petén province, the Lorenzanas in the central highlands and along the eastern

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<sup>11</sup>"International Narcotics Control Strategy Report," *op cit*, p. 308.

<sup>12</sup>In February, Panamanian authorities arrested several members of the board of directors of Panamerican Metal, along with three Mexicans, two Colombians and a Guatemalan, for packing cocaine into recycled cans and shipping it to the United States.

border near Honduras, and the Leones in Zacapa province, along the Honduran border. On the western edge of the country, a trafficker identified as Juan Alberto Ortiz Lopez is believed to control the critically important San Marcos province, along the Mexican border and the Pacific coast. A smattering of smaller groups operate along the Pacific Coast and central highlands, including several that are operated by Otoniel Turcios and Hearst Walter Overdick, both of whom appear on the DEA's shortlist of the country's top traffickers.<sup>13</sup>

In Honduras, the *transportistas* are, by and large, locals who have some experience trafficking contraband, stealing automobiles or rustling cattle. Although several intelligence sources mentioned that large landowners are increasingly entering the business, these landowners appear to be more important as infrastructure than personnel. Nonetheless, as in Guatemala, it is usually a family trade. Two of the more infamous transporters are Nelson and Javier Rivera, former car thieves and cattle rustlers. They run the so-called Cachiros gang, which stretches from Colón along the northern coast to the Gracias a Dios province in the East and the Olancho province to the south. Other, lesser known groups appear to operate in Yoro, Olancho and Cortés.<sup>14</sup>

There's a substantial crossover of transport groups in the region, especially in the south of Honduras where the country reaches the Fonseca Gulf. There, longtime transporters such as Reynerio Flores Lazo and Jose Natividad "Chepe" Luna trafficked in dairy contraband before entering the drug trade [see box 'Reynerio Flores Lazo']. Flores eventually ran his own fleet of trucks that moved contraband and later drugs from Panama to El Salvador. Luna figured out creative ways to conceal the origin of his cheese along the border area before branching into concealing drugs through the region. Both are dual citizens. Flores was arrested last year in Honduras.<sup>15</sup>

Other smaller operations exist in Nicaragua, Costa Rica and Panama. These groups operate in abandoned regions along the coastlines and border areas. Like their counterparts in the Northern Triangle, they reportedly take orders from more powerful organizations. Of these three countries, evidence of the most DTO activity is in Panama, due to its proximity with Colombia. Costa Rica and Nicaragua appear to be more way stations than transit points. These groups' activities include providing intelligence, temporary storage and transportation assistance, including trucks or human mules to move the drugs via commercial aircraft out of the countries' international airports. Panama and Costa Rica also offer attractive local drug markets as well as numerous possibilities to launder money.<sup>16</sup>

<sup>13</sup>Author interviews with former and current intelligence officials, local and foreign counterdrug agents, Guatemala City, Guatemala, January 19–February 4, 2010.

<sup>14</sup>Author interviews with local and foreign counterdrug agents, Tegucigalpa, Honduras, February 21–25, 2010.

<sup>15</sup>Author interviews with local counterdrug and police officials, San Salvador, El Salvador, February 15–26, 2010.

<sup>16</sup>Author interviews with local and foreign counterdrug agents in Colombia, Mexico, Guatemala, El Salvador and Honduras between November 2009 and February 2010. See also "International Narcotics Control Strategy Report: Volume I, Drug and Chemical Control March 2010," U.S. Department of State.

## DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA: TRANSPORTISTAS, MEXICAN CARTELS AND MARAS

### REYNERIO FLORES LAZO

A native of Bolivar, El Salvador, just 10 miles from the Honduran border, Flores got his start fetching water for townspeople using mules. He eventually branched into contraband in Honduras, then slowly spread his network's tentacles to Panama where he gathered and sold everything from rice to counterfeit jeans. He also used his transportation network to send illegal immigrants through the well-traveled migrant routes of Central America. The leap into drugs was not far. Authorities believe he and what has since become known as Los Perrones, which included his friend Juan Natividad "Chepe" Luna, made contact with Colombians in the mid-1990s and began facilitating shipments for their Mexican partners.

Source: Author interview, prosecutor in the Public Ministry, San Salvador, El Salvador, February 16, 2010.

## DTOS IN CENTRAL AMERICA

Large DTOs have long operated in Central America. As outlined earlier, the Honduran Juan Ramón Matta Ballesteros worked closely with both Colombian and Mexican traffickers in the region. Nicaragua was a critical transit point for the Medellín Cartel during the 1980s. General Manuel Noriega also let Medellín Cartel traffickers use Panama as a safe-haven, bank and launching pad for drug shipments through the 1980s. In the 1990s, there is some evidence that Mexican traffickers began a more concerted effort to control the flow of drugs through the region. Sinaloa Cartel head Joaquin "el Chapo" Guzman was captured in Guatemala in 1993.<sup>17</sup> Still, evidence of large-scale operations by Mexican DTOs has been scant until recently.

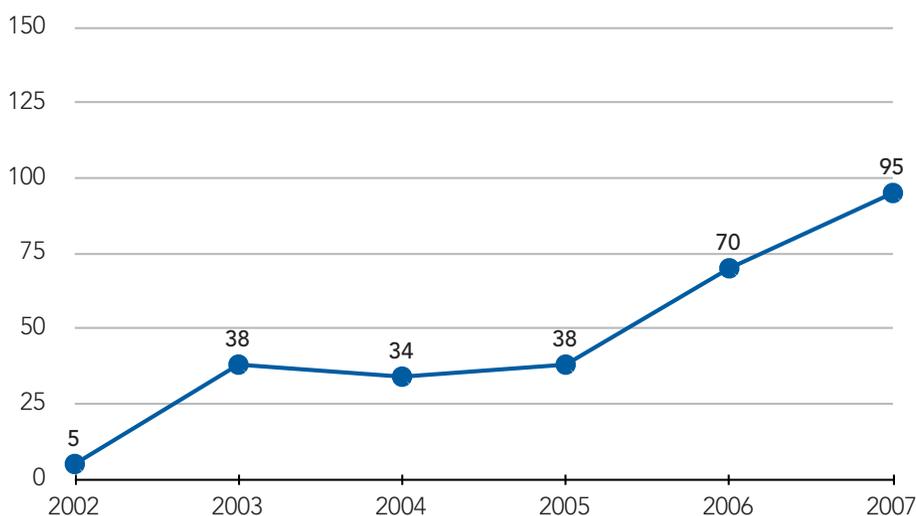
There are several clues that bolster local and international agents' assessment that Mexican groups have shifted their some of their operations to Central America. To begin with, cocaine seizures in Central America have climbed steadily. The increases suggest that larger organizations have begun to use the region to store and move larger quantities of drugs. This requires more infrastructure and logistics, which lead to more of a physical presence in the countries where most of the trafficking is occurring.

The biggest seizures occur near the "mouth" of what remains the world's biggest cocaine depot: Colombia. In 2007, Panamanian authorities captured 21 metric

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<sup>17</sup>"The Drug Lord Who Got Away," *Wall Street Journal*, June 13, 2009.

## COCAINE SEIZURES IN CENTRAL AMERICA 2002–2007 (IN METRIC TONS)



Source: United Nations World Drug Report 2009 “Seizures”

tons of cocaine off the coast, the largest seizure ever recorded.<sup>18</sup> But other sizeable seizures have occurred farther north. In February, Costa Rican authorities captured three metric tons of cocaine in a cargo truck, one of the biggest seizures ever for that country.<sup>19</sup> Last year, Guatemalan and U.S. authorities captured a semi-submersible submarine off the coast carrying 4.9 metric tons.<sup>20</sup>

Homicide rates in the region are climbing and changing in nature, another key indicator of stronger DTO presence. To cite just one example, through late February, *El Diario de Hoy* newspaper in El Salvador had counted 35 bodies found in plastic bags since September in that country.<sup>21</sup> In addition, in a presentation at the end of 2009, forensic doctors said they had found an increasing number of bodies with signs of torture, others that died with coup de grace and still others in mass graves. Longtime crime watchers said these were all signs of mafia-style hits, which are normally well-planned, coordinated attacks on specific targets using high-caliber weapons and often include evidence of torture and excessive force to send messages to rivals.<sup>22</sup>

<sup>18</sup>Karen P. Tandy, Panama Cocaine Seizure Press Conference, U.S. Coast Guard Headquarters Washington, D.C., March 21, 2007.

<sup>19</sup>“*Decomisan tres toneladas de cocaína en Costa Rica*,” EFE in *Proceso Digital*, posted February 26, 2010.

<sup>20</sup>“International Narcotics Control Strategy Report,” *op cit*, p. 308.

<sup>21</sup>“*Encuentran el cadáver de un hombre dentro de una bolsa plástica*,” *El Diario de Hoy*, February 20, 2010.

<sup>22</sup>“*Nuevos escenarios, viejas prácticas*,” *Diario CoLatino*, February 15, 2010.

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The locations of the high incidence of homicides also coincide with areas of heavy drug trafficking activity. These include the northern coast of Honduras, the eastern border of El Salvador and the northern jungles of Guatemala. A United Nations Office on Drugs and Crime report from this year that included a section on the Northern Triangle and Mexico said that the threat of organized crime was “increasing” in the Mesoamerica region.<sup>23</sup> “Contrary to what would be expected, in none of these countries is the highest murder rate found in the largest cities: rather it is found in provinces that have strategic value to drug traffickers,” the report said.<sup>24</sup>

Local and foreign narcotics agents in the Northern Triangle said that the two countries facing the greatest threats due to the presence of Mexican DTOs are Honduras and Guatemala. These two countries also see the most trafficking: In 2009, an estimated 200 metric tons passed through Honduras, and an estimated 250 tons went through Guatemala.<sup>25</sup> The two main Mexican DTOs operating in these countries are the Sinaloa Cartel and the Zetas.

In Honduras, these agents say that Sinaloa factions work closely with *transportistas* in Olancho and near the Gulf of Fonseca. Sinaloa Cartel members are also reportedly buying land, building houses and co-opting local officials in the Copan, Santa Barbara and Cortés provinces along the Guatemalan border, areas they are also using for storage and trafficking activities [see box ‘A Sinaloa Mayor in Honduras’].<sup>26</sup>

According to local intelligence sources in Honduras, the Zetas mostly operate in Olancho and Cortés. Local press reported the capture of five Zeta members in January just north of San Pedro Sula.<sup>27</sup> The Zetas are also hiring members of the Barrio 18 gang as hitmen in Honduras, intelligence officials said. Evidence, they say, emerged in February when authorities intercepted a Barrio 18 package on a bus. In the package was a note authorizing the assassination of Security Minister Oscar Alvarez. “Let’s try and do this job as soon as possible,” the encoded note allegedly said, “Since our ‘friends’ the Zetas gave us a \$20,000 advance and said they would give us another \$150,000 if we do this job well.”<sup>28</sup>

In Guatemala, the situation may be worse. There, these same two Mexican factions have been slowly taking control of the country’s drug trade. The Sinaloa Cartel has reportedly focused on the Guatemalan–Mexican border and along the Pacific coast. Anti-narcotics agents believe that most of the cocaine transiting Guatemala comes via the Pacific Ocean through Sinaloa operators’ hands. It is one of the oldest

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<sup>23</sup>“Crime and Instability: Case studies of transnational threats,” the United Nations Office on Drugs and Crime, February 2010, p. 19.

<sup>24</sup>*Ibid.*, p.23.

<sup>25</sup>“International Narcotics Control Strategy Report,” *op cit.*

<sup>26</sup>Author interviews, Honduran police intelligence and officials, Tegucigalpa, Honduras, February 21–25, 2010.

<sup>27</sup>“Policía de Honduras captura mexicano ligado al grupo ‘Los Zetas’ de México,” *La Tribuna*, January 11, 2010.

<sup>28</sup>“Desbaratan plan para ultimar a Oscar Álvarez,” *La Tribuna*, February 18, 2010.

## A SINALOA MAYOR IN HONDURAS

Honduran police intelligence say the mayor of El Paraiso, Copan, Alexander Ardon, works with the Sinaloa Cartel. Ardon has built a town hall that resembles the White House, complete with a heliport on the roof, and travels with 40 heavily armed bodyguards. Cameras monitor the roads leading in and out of the town, intelligence services say. And there are reports that the mayor often closes the city to outsiders for big parties that include norteña music groups flown in from Mexico.

Source: Author interviews, Honduran police intelligence and officials, Tegucigalpa, Honduras, February 21–25, 2010.

and still the surest route, they say.<sup>29</sup> The Sinaloa Cartel also appears to be working with powerful local *transportistas* in the mountainous parts of the San Marcos province where most of the country's poppy is grown. And the cartel reportedly has a strong working relationship with a host of smaller families in the Huehuetenango region along the Mexican border to control passage through that vital region.<sup>30</sup>

While Sinaloa factions have operated in Guatemala for years, it's the Zetas that garner the most attention and press coverage. This may be due, in part, to their brash tactics. In March 2008, the group attacked one of the principal Guatemalan drug gangs leaving eleven people dead, including Juancho Leon, the head of the one of Guatemala's primary trafficking clans, the Leones. Since then the Zetas have reportedly moved to take control of several important junctures: the Zacapa province, a critical entry point for drugs coming from Honduras in the east; Petén province, Guatemala's largest state, where they control hundreds of unsanctioned border crossings into Mexico; and the Alta Verapaz province in the central highlands, which gives them access to Guatemala City to the south, Petén to the north and Zacapa to the east.<sup>31</sup> Alta Verapaz is also the crossing point for the Transversal Norte, a trucking route across the north that leads to Mexico through Huehuetenango in the west.

Huehuetenango may be where the battle for Guatemala between the Sinaloa Cartel and the Zetas is decided. The two Mexican cartels have clashed in that province, a critical juncture that provides easy access to the Gulf, the Pacific Ocean and land routes through the center of Mexico. The battle for Huehuetenango began in

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<sup>29</sup>Author interviews, Guatemala, January 19–February 4, 2010.

<sup>30</sup>Author interviews, Guatemala, January 19–February 4, 2010.

<sup>31</sup>The *Zetas* increased control over this region explains much of their entry into human smuggling business. After Hurricane Stan destroyed portions of the railroads in southern Mexico vital for human smuggling in 2005, the routes shifted north into less populated areas where the cartel was already smuggling drugs, weapons and cash.

## DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA: TRANSPORTISTAS, MEXICAN CARTELS AND MARAS

November 2008, when Zetas ambushed a Guatemalan pro-Sinaloa group who was hosting a horse festival. The attack left as many as 60 dead, according to locals who spoke to the firemen who recovered the bodies. But locals said the ambush failed, and that most of the dead were members of the Zetas. Much of the fighting is in La Democracia, a small city along the country's northwestern highway, where regular gun battles occur. Local sources indicated that the Sinaloa factions maintain the upper hand.<sup>32</sup>

The Sinaloa Cartel's ability to keep the Zetas out of Huehuetenango may be explained by examining their different *modus operandi*. Sinaloa seems more willing to negotiate with local traffickers. In Huehuetenango, this means Sinaloa has integrated itself into the local community as well as included it in some of the benefits: They give jobs, provide health care and fund local festivals, several people who live in the region said. Sinaloa members have also replaced the state in terms of security by killing or disposing of smaller criminal enterprises. The Zetas, meanwhile, have a more vertical structure and impose their will by force. They rarely negotiate with the locals, and they tend to bring in their own people rather than recruit people who live in the area. This is in line with their military backgrounds, analysts and counternarcotics agents said.<sup>33</sup>

In some respects, the Zetas may have advantages over the Sinaloa Cartel. The Zetas reportedly have a sophisticated and generous work package for those who join, which includes such perks as dry cleaning clothes for their members. A number of ex-military have also joined their ranks, local and international intelligence officials said. For instance, numerous Guatemalan special forces, known as Kaibiles, many of them out of work following peace talks with the leftist guerrillas and the reduction of the size of the military forces, have allegedly become operatives for the Zetas.<sup>34</sup> This accelerates their training and gives them a tactical advantage during battles, officials said.<sup>35</sup>

However, Guatemalan intelligence officials also said the focus on the ex-Kaibiles is misdirected. The real issue, they and analysts say, is the little oversight of the proliferating private security industry in Guatemala. There are as many as 150,000 private security guards in the country.<sup>36</sup> Most of them began after the peace talks. Much of the industry is run by ex-army intelligence and high-ranking officers, including many with long-time ties to organized crime, as is explained later in this chapter.

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<sup>32</sup>Author interviews with local analysts and local security official, Huehuetenango, Guatemala, February 1, 2010.

<sup>33</sup>Author interviews with current and former security officials, Guatemala City and Huehuetenango, Guatemala, January 19–February 1, 2010.

<sup>34</sup>Guatemala's military saw a two-thirds reduction in size, most of that at the soldier and specialist levels.

<sup>35</sup>Author interviews with former Guatemalan security official and current top security official, Guatemala, January 2010; author interview, Ciudad Juarez, Mexico, of counternarcotics agent, May 4, 2010.

<sup>36</sup>"Seguridad Privada en América Latina: el lucro y los dilemas de una regulación deficitaria," by Patricia, Arias, FLACSO Chile, 2009, p. 27.

These private armies carry legally registered guns, including automatic weapons they can obtain in Guatemala. They also use their experience gathering intelligence to intercept phone calls, emails and gather other intelligence for both legitimate and illegitimate purposes.<sup>37</sup>

The battles in Guatemala are not limited to fights between the Mexican Cartels. In Cobán, the Zetas are fighting with local groups who are reluctant to give up their territory. The city has regular mafia-style hits and gun fights in public places. One recent shootout at the city's main mall left several members of a local faction dead. Fireman said they pick up between three and six bodies per month with signs of torture and victims with their hands and feet tied, symbols of a tit-for-tat between the groups.<sup>38</sup> Drive-by shootings are also common, police said.<sup>39</sup> The Zetas appear to be using a divide-and-conquer strategy. At least one local faction has reportedly split; one of its major leaders now works for the Zetas.<sup>40</sup>

## PENETRATION OF THE GOVERNMENT FORCES AND INSTITUTIONS

To varying degrees, international DTOs and local *transportistas* have penetrated portions of the police, treasury, customs, military, attorney general's offices, jails and court systems in Central America. They regularly finance public works and bank-roll political campaigns. Their ability to outspend the governments frustrates the local authorities and thwarts efforts to slow the DTOs' growth. This is particularly true in Guatemala and Honduras, two governments that have seemingly lost control over large swaths of their territory. "It's not Somalia. You can look outside and still see that things work here," one foreign diplomat in Guatemala City told said before naming seven provinces — San Marcos, Huehuetenango, Petén, Alta Verapaz, Izabal, Jutiapa and Zacapa — that he believed are not under government control.<sup>41</sup>

In Guatemala, both the DTOs and the *transportistas* work with "hidden forces" or so-called *Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (CIACS)*, which loosely translates as *Illegal Clandestine Security Apparatuses*.<sup>42</sup> The CIACS include active and ex-military officers, special forces operatives and high-level government officials. Many of them met while operating in intelligence branches of the government [See box 'The Cofradia']. They have their own operations or offer their services

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<sup>37</sup>Author interview with former and current security officials, Guatemala City, Guatemala, January 19–February 4, 2010.

<sup>38</sup>Author interview, Cobán, Guatemala, January 24, 2010.

<sup>39</sup>Author interview with police, Cobán, Guatemala, January 24, 2010.

<sup>40</sup>Author interview with local analysts, Cobán, Guatemala, January 23, 2010.

<sup>41</sup>Author interview, Guatemala City, Guatemala, January 28, 2010.

<sup>42</sup>The term was coined by former security official and analyst Edgar Gutierrez.

## THE COFRADÍA CLANDESTINE SECURITY GROUPS

The most famous of the CIACS was known as the Cofradía or “The Brotherhood,” a reference to name Mayan elders take in rural Guatemala. The Cofradía began as kind of an informal club where current and former intelligence officers fraternized. Eventually, however, it became an organized criminal enterprise where many of these same military officials could undermine the authority of civilian governments using the intelligence services and take advantage of their vast knowledge of the gaps in public security to make money legitimately and illegitimately. The Cofradía has since split into multiple factions. Some of its former associates are in private security. Others operate in the public sphere, working closely with political parties that serve their interests. Several have been arrested, accused of crimes ranging from murder to embezzlement.

Sources: Author interviews of former and current security officials, Guatemala City, Guatemala, January 19–February 4, 2010.

to other criminal organizations, which includes access to intelligence, weapons, and planning expertise. Their criminal activities range from drug trafficking to contraband and the sale of Guatemalan passports. Over the years, they have obtained high positions in the central government, which has led to embezzlement schemes, the sale of government-issued weapons on the black market, and the engineering of lucrative government public works contracts for a fee.<sup>43</sup>

The DTOs in Guatemala also appear to have penetrated the interior ministry, customs and the attorney general’s office. For years, the *transportistas* have influenced courts by sponsoring lawyers in their studies and their law practices. This helps them engineer the selection of judges in the high and appellate courts as well as influence the selection of the attorney general. Last year, the United Nations’ backed International Commission Against Impunity (CICIG), an international investigative unit working with Guatemala’s government on high profile cases, blocked the selection of five questionable judges.<sup>44</sup> Inside the police, these official connections help the DTOs obtain safe passage for their drugs. Police often clear roadblocks, provide weaponry and, at times, give armed escorts for the drugs to enter, be stored and move with relative ease.

<sup>43</sup>“CIACS, el nombre de la mafia,” *el Periódico*, March 12, 2010.

<sup>44</sup>“Informe proceso de elección de magistrados a la Corte Suprema de Justicia y cortes de apelaciones y otros tribunales colegiados de igual categoría año 2009,” the International Commission Against Impunity in Guatemala, found at: [http://cicig.org/uploads/documents/Resumen\\_Ejecutivo\\_Informe\\_Proceso\\_de\\_Eleccion\\_de\\_Magistrados\\_anio\\_2009.pdf](http://cicig.org/uploads/documents/Resumen_Ejecutivo_Informe_Proceso_de_Eleccion_de_Magistrados_anio_2009.pdf)

When DTO members are arrested, these government officials can also often ensure favorable jail conditions or a quick release because the prosecutors sabotage the case.<sup>45</sup>

The startling reality of the DTOs reach has become public in the last several months. In February, Guatemalan authorities arrested Guatemala's police chief Baltazar Gómez and the top anti-narcotics intelligence officer, Nelly Bonilla. The two were connected to the deaths of five police officers that were ambushed by the Zetas in April 2009, as those police were trying to steal 900 kilos of cocaine from a Zetas' stash house. The weapons used to kill policemen were stolen from an army cache. Gomez was the second chief arrested in less than a year. Last August, authorities captured Porfirio Perez for stealing a cocaine cargo in Guatemala City.

Outside the capital, Mexican DTOs have allegedly penetrated local governments, police and traditional political structures, local and national government intelligence officials say. In Huehuetenango, for instance, the Sinaloa Cartel is reportedly bank-rolling several political parties and has a stake in important economic sectors like the construction industry. The cartel has also apparently used its influence in the interior ministry to steer investigations and law enforcement toward its rival, the Zetas. For example, one Huehuetenango official said the police had found several drug and weapons stash houses in the area in recent months, all of them pertaining to the Zetas.<sup>46</sup>

Guatemalan authorities seem to have little interest or ability to fight against this wave of firepower and relative sophistication of these new arrivals. In Cobán, for instance, heavily armed men dressed in civilian clothes ride around in truck beds, often crossing paths with the police. With only 30 officers on any given day, the police in Cobán say they are undermanned.<sup>47</sup> However, residents say police collusion is well known. In January, Zetas overran a private recreational swimming area near Cobán. Fearful of the traffickers' antics and weaponry, the owners called the police. Up to five police vehicles and personnel surrounded the area, but when they were about to move on the Zetas, their commander received a phone call from his regional boss calling him off, sending him and his patrolmen back to base.<sup>48</sup>

In Honduras, in addition to the Copan, Santa Barbara and Cortés provinces alluded to earlier, authorities say the Cachiros' control the local police in Colón, Gracias a Dios and parts of Olancho. Penetration into the police was evident last July when ten members of the elite anti-narcotics Operation Group were arrested transporting 142 kilos of cocaine. The Cachiros have also attempted to control policy at a national level. When their liaison failed to secure their pick for vice-minister of security, they killed him. The would-be vice-minister is now a representative for congress.<sup>49</sup>

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<sup>45</sup>Author interviews with former and current security officials, foreign counterdrug agents and analysts, Guatemala City, Guatemala, January 19–February 4, 2010.

<sup>46</sup>Author interviews with local analysts and a current security official, Huehuetenango, Guatemala, February 1, 2010.

<sup>47</sup>Author interview, Cobán, Guatemala, January 24.

<sup>48</sup>Author interviews with local analysts and police officials, Cobán, Guatemala, January 23–24, 2010.

<sup>49</sup>Author interviews with police officials and counterdrug agents, Tegucigalpa, Honduras, February 20–24, 2010.

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Politics and drug trafficking may have crossed paths recently in the province of Olancho as well. Last November, two truckloads of armed men attacked longtime Liberal Party leader, Ulises Sarmiento, while he was visiting with his son. The attackers, some 12 to 15 of them, according to witnesses, fired on the house with semi-automatic weapons and grenade launchers, leaving two of Sarmiento's bodyguards dead and 400 bullet holes in the walls. Sarmiento's son said the attack bore signs of an organized criminal operation and blamed the local police for assisting.<sup>50</sup>

The Perrones case in El Salvador also revealed the level of penetration the *transportistas* have in that government. Authorities connected some of these individuals with police officials, prosecutors and politicians in El Salvador. The list included the director of the police and a high-ranking officer, a high-ranking prosecutor and a senator. The prosecutor was never investigated, and the politician committed suicide under mysterious circumstances. Neither police official has been charged. But three policemen were indicted this year for assisting one of the Perrones' operations along the coast.

### Modus Operandi

DTOs are businesses. Their objective is to limit costs and maximize profits. They do this by trying to minimize the number of participants, borders crossed, and authorities they have to bribe. This helps explain why they insist on established forms of transport through Central America. While officials and counterdrug agents say the use of land routes has increased significantly in recent years, the most reliable, quickest and presumably cheapest routes remain via sea in go-fasts, fishing trawlers or increasingly semi-submersibles; or by air in single or twin-engine aircraft. U.S. officials in Guatemala say that 70 percent of the drugs passing through the country arrive via its Pacific Coast.<sup>51</sup> Honduran intelligence officials say the majority of the drugs going through Honduras arrive via boat as well.<sup>52</sup>

The seafaring traffic leaves Ecuador's Pacific Coast and Colombia's Pacific and Caribbean coasts in mostly go-fasts and semi-submersibles. A go-fast can make it to Honduras' Gracias a Dios province in six hours, officials said. To maximize efficiency, traffickers hollow out the boats, loading them with the gasoline/oil mix they use as fuel and drugs. Along the way, they reportedly use the Corn, Blue and San Andres Islands off Nicaragua, or the Roatan Islands off the coast of Honduras, to rendezvous with other boats, aircraft or to leave the load at a temporary storage point. They offload along both Nicaraguan and Honduran coasts, although U.S.

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<sup>50</sup>Author interviews with witnesses, Olancho, Honduras, February 25, 2010.

<sup>51</sup>In its "Program and Budget Guide, FY2010," the Bureau for International Narcotics and Law Enforcement Affairs of the State Department says that up to 400 metric tons of cocaine flows through the Eastern Pacific.

<sup>52</sup>Author interviews with security officials and counterdrug agents, Tegucigalpa, Honduras, February, 20–26.

authorities believe that most of the traffic moves straight through Honduras. There, smaller vehicles take the cargo to depots or waiting trucks where they continue their journey north through Guatemala and Mexico.<sup>53</sup>

The northern-most Nicaraguan-Honduran border has the added advantage of being an important shrimp, clam and lobster fishing area, making enforcement difficult under any circumstances. Mosquito Indians live on both sides of the border. The impoverished Indians have little economic opportunities aside from working in the fishing industry, which regularly exploits them. They have also long distrusted the governments that have virtually ignored them. The region is nearly bereft of state services and roads, save for the few dirt tracks that the Central Intelligence Agency and Contras made to help them establish training camps in the 1980s to battle the Sandinista regime. The locals' disdain for authorities was evident after a boat full of drugs was beached in the Gracias a Dios province last year. Authorities arrived to find hundreds of men, women and children emptying the boat of its cocaine. The load, an estimated 500–800 kilos, disappeared into the homes and businesses of the Mosquito Indians in a matter of minutes. Efforts to recover it were only partially successful. House by house searches turned up just over 200 kilos.<sup>54</sup>

El Salvador also gets shipments via sea, in particular via the Fonseca Gulf and the Sonsonate province. One of the famous Perrones, Rafael Quezada, used his beach-front hotel to receive drug shipments that he and his men, with the help of police, then moved through San Miguel by road and eventually into Guatemala. The coastal province of Sonsonate offers a more direct route into Guatemala. Sonsonate is also home to several powerful gangs, which can provide protection for these loads.<sup>55</sup> There is more on the gang question below.

An uptick by authorities in interdictions of fishing trawlers and cargo ships — “stateless vessels” — has pushed DTOs to rely more on go-fasts and the so-called semi-submersibles. The use of what are essentially mini-submarines is a relatively new phenomenon dating to the late 1990s when a clandestine factory for the first subs was discovered in rural Colombia. Today's semi-submersibles are 45 to 82 feet in length and are made of fiberglass or steel. They have a range of 2,000 miles and can carry up to seven metric tons of cocaine. U.S. officials estimate that over 60 submarines move over 300 metric tons of cocaine per year. Most of the subs leave Colombia's and Ecuador's Pacific Coastlines.<sup>56</sup>

Air traffic into Honduras has long been a problem, but it rose significantly following the military ousting of President Manuel Zelaya last June. The increase was attributed to a shift in resources to the capital city to keep control of the protests following the coup and the decrease in U.S. radar and naval support. Police and

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<sup>53</sup>*Ibid.*

<sup>54</sup>Author interview with counternarcotics intelligence agent, Tegucigalpa, Honduras, February 25, 2010.

<sup>55</sup>Author interviews with police and counternarcotics agents, San Salvador, El Salvador, February 15–26, 2010.

<sup>56</sup>“International Narcotics Control Strategy Report,” *op cit*, p. 208.

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government intelligence officials said the flights they were able to track in the last six months of 2009, took off from the Apure and Zulia provinces in southwestern Venezuela. They headed straight north towards the Dominican Republic in an apparent attempt to avoid Colombian-based radars, then turned sharply to the west and landed in the Gracias a Dios, Colón, Olancho, Atlántida and Yoro provinces.<sup>57</sup>

Infrastructure abounds in Honduras to facilitate these landings, in particular in the Yoro and Olancho provinces. There are hundreds of clandestine landing strips and numerous old air fields in Yoro courtesy of the banana exporting companies that once dominated the economy. Yoro's relatively flat terrain also permits airplanes to land on highways and sparsely trafficked roads. Olancho, meanwhile, seems to be a relative newcomer to the drug business. While the infamous Juan Ramón Matta Ballesteros bought large quantities of land in the department, it appears as if enough local agri-business kept drug running activities to a minimum until relatively recently when a so-called "new generation" began "lending" their large haciendas for drug airplanes. Farm owners are reported to receive \$50,000 per flight.<sup>58</sup>

The infrastructure needed to operate these landing strips is minimal. In just a few hours, teams of 25 to 30 men can cut the grass and trees, open up the fences and set up the lights to receive the airplanes. The airplanes are hollowed out and the drugs are packed in what are called *fardos*, which can weigh as much as a heavy suitcase (about 50 pounds) but are still easily manageable. The amount of drugs the planes carry vary, but one Honduran official said that traffickers found the shorter distance to Honduras gave the DTOs an opportunity to pack more drugs into each airplane. Once a plane lands, it takes between 20 and 30 minutes to offload the cargo into the waiting vehicles. As extra insurance, police are sometimes hired to provide protection and escorts for these drug shipments, for which the commander can receive between \$2,500 to \$5,000.<sup>59</sup>

Moving the drugs by land immediately becomes more complicated for the DTOs. The rule appears to be to hide in plain sight. Most of the drugs that move by land go on large trucks in hidden compartments or camouflaged within legitimate cargo. They move via main highways, in particular the Pan American highway. They also cross the borders at the major checkpoints, which have to deal with the largest amount of traffic. They understand that Central American and Mexican authorities have not prioritized their border controls. The Mexican-Guatemalan border, for example, is 600 miles long and has but eight checkpoints. A Mexican official in Guatemala said that his government does not really begin to mount significant checks of cargo and people passing into Mexico until Coatzacoalcos, more than 200 miles from the Guatemalan border. The Mexican government has also facilitated

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<sup>57</sup>Author interviews with police and security officials, local and foreign counternarcotics agents, Tegucigalpa, Honduras, February 20–26, 2010.

<sup>58</sup>*Ibid.*

<sup>59</sup>*Ibid.*

labor mobility, allowing and encouraging Guatemalans to seek work in Mexican tourist areas. “We don’t want to militarize our border,” he said.<sup>60</sup>

## Gang Involvement in DTOs

Gangs, or *maras* as they are known, have a long history in the region but began operating en masse in Central America in the early 1990s. The reasons for their growth are many: poverty, marginalization, lack of access to basic services and educational opportunities; dysfunctional families; rapid and unplanned urbanization in the region; repatriation of experienced gang members from the United States; and the culture of violence that preceded their emergence, including one in which guns were prevalent and ex-combatants from the long-standing civil wars were active in criminal networks.

There are dozens of gangs, but the *Mara Salvatrucha*, or MS-13, and the *Barrio 18*, or 18, are the largest. Both began in Los Angeles. The 18 has Mexican roots; the MS-13 has Salvadoran roots. They emerged as a response of these immigrant groups to protect themselves. They have evolved into sophisticated and lethal international operations that have spread throughout the United States, Mexico and Central America, in part, as a result of U.S. policy of repatriating members to their home countries after they serve out their prison sentences in the U.S. [see box ‘U.S. Deportations’] El Salvador, for example, still receives an average of five airplanes of close to 100 repatriates a week, one U.S. official said; one airplane per week is full of convicted criminals, he added.<sup>61</sup>

The United Nations and U.S. Southern Command estimate there are approximately 70,000 gang members, most of them concentrated in the Northern Triangle: 36,000 in Honduras, 10,500 in El Salvador and 14,000 in Guatemala.<sup>62</sup> The gangs have a grave impact on the security situation in the region. *Maras* extort, kidnap, and murder local rivals, neighbors and security personnel. Their grip on many communities has crippled them and forced governments to reassess their security strategies. Their rise has also corresponded to higher murder rates. The Northern Triangle currently ranks as the most dangerous place in the world, according to the United Nations.<sup>63</sup> However, assumptions that these gangs are at the heart of this violence is somewhat flawed, and the belief that they play a significant role in drug trafficking is exaggerated.

Gang size and dynamics in each of these countries are different, hence their connections to DTOs are also different. Aside from being one of many local distributors of illegal drugs, there is no evidence the Guatemala-based *maras* have any organic

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<sup>60</sup>Author interview, Guatemala City, Guatemala, January 29, 2010.

<sup>61</sup>Author interview, San Salvador, El Salvador, February 17, 2010.

<sup>62</sup>“Gangs in Central America,” Congressional Research Service (CRS), December 4, 2009, p. 4.

<sup>63</sup>See “Informe sobre desarrollo humano para América Central 2009–2010,” United Nations Development Programme, October 2009. See also “Gangs in Central America,” Congressional Research Service, December 4, 2009.

## U.S. DEPORTATIONS AND PERCENTAGE OF CRIMINAL DEPORTEES: NORTHERN TRIANGLE

Country	FY2007	% Criminal Deportees	FY2008	% Criminal Deportees	FY2009	% Criminal Deportees
Honduras	30,227	17.6%	29,758	18.8%	27,566	25.1%
Guatemala	26,429	15.3%	28,866	18.5%	30,229	21.5%
El Salvador	21,029	24.2%	20,949	27.4%	21,049	30.0%

Source: “Gangs in Central America,” Congressional Research Service, December 4, 2009.

connection with the DTOs in that country. In Guatemala, the large DTOs have their strongest presence in precisely the areas where there is little *maras* activity. This pattern generally repeats itself in Nicaragua, Costa Rica and Panama. In Honduras, there appears to be a stronger connection between the *maras* and the DTOs, particularly as it relates to the use of the gangs as hired assassins. However, the evidence is almost purely anecdotal and largely unsubstantiated.<sup>64</sup> In Southern Mexico and throughout Central America, gangs have also worked closely with larger criminal organizations in human smuggling. While these ties still exist in Central America, it seems that the *Zetas* have largely displaced the gangs in Southern Mexico.<sup>65</sup>

El Salvador appears to be the country where the relationship between the major DTOs and the gangs has advanced the most. Because of the growing evidence supporting this perception, this section focuses on El Salvador. The contacts between the *maras* and DTOs are potentially game-changing in that country. El Salvador is also the spiritual heart of the *maras* world in the region and where much of the leadership is based. For reasons that will become clear, these gang leaders have the space and ability to shift from small neighborhood operations to international narcotics traffickers, although that process is neither finished nor a foregone conclusion.

Throughout the region, in particular in the Northern Triangle, the governments have responded to the real and perceived threat of gangs with a so-called “Mano Dura,” or “iron fist,” approach. In El Salvador, this included rounding up thousands of youth based on their appearance, associations or address. Most of these arrests did not hold up in Salvadoran courts but served to further stigmatize already marginal communities and may have accelerated recruitment for the gangs themselves.<sup>66</sup> Far more troubling, from a criminology standpoint was the effect Mano Dura had on the prison system, the *maras* leadership and its operational structures.

<sup>64</sup>Author interviews, Guatemala, El Salvador and Honduras, January–February 2010.

<sup>65</sup>Author interviews, Guatemala, El Salvador and Honduras, January–February 2010.

<sup>66</sup>“Gangs in Central America,” *op cit.*, p. 10.

Mano Dura operations were successful in jailing many mara “soldiers” and leaders for everything from petty crimes to murder to extortion. By some estimates, between 2004 and 2008, the number of gang members in El Salvador’s jails doubled from 4,000 to 8,000, representing about a third of the total jail population. The already clogged and inadequate prison systems were overwhelmed.<sup>67</sup> The jump in mara jail population strained the system even further and immediately changed the dynamic of the prisons. The fighting on the street between the MS-13 and the 18 spilled into the overcrowded jails. Hundreds died in several riots. The authorities, seemingly desperate for a short-term solution, split the groups up. Now, MS-13 and 18 members are sent to different prisons, a de facto nod to their increasing power and a de facto admission that the state was relatively powerless to stop them.

Grouping the leaders and large portions of the hard-core soldiers together in Salvadoran jails had an additional effect, especially once the two gangs were separated. The leaders of these gangs had more time to organize, strategize and plan their activities. They were safer in jail, from both their enemies and, ironically, from criminal prosecution. They could communicate easier: Their near total control of the facilities gave them ready access to cellular phones, which they used to hold meetings with leaders in other jails via conference calls, as well as messengers to pass more sensitive information. The facilities themselves were also well-suited to their communications since they have electrical outlets throughout to recharge their cellular phones. The leadership of both gangs took advantage. They formed more hierarchical command structures, reinforced old codes of conduct and instituted new ones. These included forbidding tattoos and instructing new initiates and cell leaders to dress less “gang-like,” i.e., blend in, which they have.

They also began entering new criminal territory, specifically extortions and kidnappings. These criminal activities are almost exclusively run from the prisons. The Salvadoran prosecutor in charge of the anti-extortion unit estimates that 84 percent of all extortion operations are run from jail.<sup>68</sup> Some are very sophisticated rackets that target entire public transportation routes or transportation companies that deliver food and beverages to poor neighborhoods. Others are quick hits of individuals that the gang members see on television, read about in the paper or hear about through the network of outside informants that include other gang members, family, girlfriends, friends and other associates. The more sophisticated extortions involve multiple players, each with a specific role such as driver, lookout, pickup and negotiator. Most of the money collected from these operations goes to the gang leader in jail and his immediate circle of family, friends and close associates. What’s left goes to logistics and further operations.

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<sup>67</sup>El Salvador has 26 adult and juvenile facilities, 25 of which are not jails but rather old schools, military barracks or other facilities that have revamped.

<sup>68</sup>Author interview with Salvadoran prosecutor, San Salvador, El Salvador, February 16, 2010.

## DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA: TRANSPORTISTAS, MEXICAN CARTELS AND MARAS

These further operations include controlling drug distribution networks in mostly poor neighborhoods where the maras peddle crack, powder cocaine, marijuana and methamphetamines. While academic observers and police intelligence officials all said that maras have long had a hand in this aspect of the drug trade, they also acknowledged that the gangs are increasingly seeking to wrest total control of this market from the traditional distributors and that part of the recent increase in the homicide rate in El Salvador can be attributed to these battles.<sup>69</sup>

There are indications that some mara leaders may be reaching further afield, trying to control bulk distribution. In September, authorities arrested Moris Alexander Bercian Manchon, alias “El Barny,” a leader of an MS-13 cell along the coast, carrying seven kilos of cocaine near La Libertad, directly south of the capital.<sup>70</sup> Seven kilos is very small, but police intelligence said it was much higher than what maras are used to managing. In addition, police intelligence sources said Bercian does not normally operate in the area where he was arrested. He is part of a Sonsonate cell known as La Normandy, one that has been gaining power with its own increased control over the local drug market in both Sonsonate and La Libertad, two areas that may interest bigger players such as the Zetas because of their direct access to the Pacific Ocean and proximity to Guatemala.<sup>71</sup>

Police intelligence documents obtained by the author illustrate this trend. In one document titled “Los Zetas en El Salvador,” mara sources tell the police that Bercian “had moved up to the level of narco, that he was not just a gangbanger and that he was directing the gang’s activities in Santa Tecla, the port in La Libertad, Ateos (sic), Sonsonate, Ahuachapan, Santa Ana, Quezaltepeque and Lourdes.”<sup>72</sup> The source says the mara cell controls the corridor from the Pacific to the border with Guatemala, including receiving product by boat.<sup>73</sup>

The same document says that another cell, the Fulton Locos Salvatruchas (FLS), had sent 40 members to a farm in the Petén, Guatemala, near the Mexican border, to receive training from the Zetas. FLS are known as some of the most violent of the MS-13 cells. The document quotes an MS-13 leader warning authorities that in January 2010, an offensive would begin.<sup>74</sup> The leader did not specify what he meant but authorities are linking this threat, made last year, with a February 6 massacre in Tonacatepeque, just north of San Salvador in which masked men armed with M-16 semi-automatics and 9 mm pistols shot and killed six people in a restaurant. The massacre came a day after seven people were killed in a similar manner in Suchitoto,

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<sup>69</sup> Author interviews, San Salvador, El Salvador, February, 16–25, 2010.

<sup>70</sup> “Capturan a cabecilla de la ‘MS’ y le decomisan siete kilos de cocaína valorados en más de 175 mil dólares,” El Salvador National Civilian Police statement, September 28, 2010, found at: [http://www.pnc.gob.sv/informacion/noticia\\_detalle.php?noticiasID=189](http://www.pnc.gob.sv/informacion/noticia_detalle.php?noticiasID=189)

<sup>71</sup> Author interview with police intelligence official, San Salvador, El Salvador, February 17, 2010.

<sup>72</sup> “Los Zetas en El Salvador,” police intelligence report, obtained by the author.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

just northeast of Tonacatepeque. Another police intelligence report obtained by the author said one of the victims in the Tonacatepeque massacre was linked to a drug trafficking organization along the border with Guatemala, along the same corridor police suspect the Zetas may be aiming to control.<sup>75</sup>

There was also a press report that the MS-13 has had meetings with the Zetas in El Salvador. The story, based on a leaked police intelligence report, said gang leaders from four cells met with Gulf Cartel members at a bar in November 2008, where they discussed killing a transportista who owed the Zetas money.<sup>76</sup> It's not known if this meeting led to the massacres in Toncatepeque or Suchitoto. Police intelligence said that there may have been other meetings, including one in Guatemala with the Zetas involving an MS-13 intermediary working with the gang in Ahuachapan and Sonsonate. This intermediary was presumably trying to make direct contact with traffickers for the purpose of trafficking, police intelligence says, not contract killings for hire.<sup>77</sup>

Police intelligence sources also say that the MS-13 are increasingly maneuvering to gain territory in San Miguel and La Unión, two eastern border provinces that are still thought to be under the control of the loose federation of transportistas, Los Perrones. One theory of the MS-13s expansion in that area is that it is related to their attempts to gain control of the bulk distribution market along that border as well.<sup>78</sup> Salvadorans from the MS-13 may also be reaching abroad. In August, Costa Rican authorities arrested MS-13 gang leader, Ivan Paz Jiménez, with six kilos of cocaine. They charged him with drug possession and attempted kidnapping. Police intelligence sources say that Salvadoran gang leaders have been located in Juarez and arrested in Nicaragua in drug cases but did not reveal their identities as they form part of ongoing investigations in the United States.

Still, many police and foreign agents cautioned that the gangs are still very far from having the sophistication, discipline and wherewithal to make good partners in the drug business. In January of last year, MS-13 members in Sonsonate bought several kilos of cocaine in bulk, and then kidnapped the middle man, according to one foreign investigator. After the middle-man's cohorts paid the ransom, the gang killed the captive. To be sure, the MS-13's kidnapping practice illustrates just how little infrastructure and discipline they have. Police and foreign agents say that the gang kills between 80 and 90 percent of their victims because they take little precaution in concealing their identities and have nowhere to keep the victims once they have them in their possession. In addition, gangs also tend to attract the most law enforcement attention, making an alliance with them risky.

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<sup>75</sup>Untitled Salvadoran police intelligence report, obtained by the author.

<sup>76</sup>"Detectan reunión entre cartel del Golfo y pandilla en El Salvador," *La Prensa Gráfica*, December 7, 2008.

<sup>77</sup>Author interviews, San Salvador, El Salvador, February, 15–20, 2010.

<sup>78</sup>Although no data is available, police intelligence says the murder rate has jumped in San Miguel and La Unión, which they attribute to turf wars following the apprehension of various members of *Los Perrones*.

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Investigators, police intelligence and academics also emphasized the often great variance from gang to gang in operations and sophistication, and the multiple subsets that exist in each of the two major mara groups. Some cells are more organized and disciplined. Some are more violent and disorganized. Some are more wealthy and entrepreneurial. The differences are causing divisions within the gangs. Many are starting to question the status quo, leading to violent and bloody battles both inside and outside of the prisons. A few gang leaders in the street appear to be freelancing, searching for business opportunities, rather than following direct orders from the jails. The press report on the MS-13 and Zetas meeting said the gang leaders spoke openly about differences with the leadership. These differences may also be what's fueling part of the increase in homicides.<sup>79</sup>

Regardless of the questions surrounding the gangs' involvement in the upper echelons of organized crime or their ability to take over bulk distribution of illegal narcotics, there is much evidence pointing to their increasing financial and firepower. Police intelligence says that mara leaders have purchased apartments, car washes, used car dealerships, discos, bars and restaurants in an attempt to launder proceeds and conceal their drug, kidnap, car theft and extortion businesses. They have also made vehicles and properties available for common use, illustrating their tendency toward subsuming personal gain for the creation of a larger, more sophisticated criminal network.<sup>80</sup>

On the weapons side, police have seen an uptick in the use of M-16 assault rifles and military issue grenades in recent attacks. In the first two weeks of January police confiscated four M-67 grenades and four grenade launchers, among other armaments. Maras are also suspected to have tossed grenades at several businesses in the last few months, a warning to shopkeepers who do not pay their quotas on time. Some police theorize that the gangs may be getting this armament from more sophisticated groups, such as the Zetas, as suggested in the aforementioned intelligence report.<sup>81</sup> But the black market arms market in El Salvador is so big, it is hard to pinpoint the origin of the weapons.<sup>82</sup>

The maras have also become more politically savvy. While in most communities, their power is still based on fear and retribution, one journalist noted an increasing tendency to reach out to the community. In one neighborhood in San Salvador, he said the mara leader was also a member of the community organization.<sup>83</sup> In recent years, maras have also opened themselves up to academic and non-governmental studies, increasing their ties to these organizations in the process. The NGO

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<sup>79</sup>“Detectan reunión entre cartel del Golfo y pandilla en El Salvador,” *op cit.*

<sup>80</sup>Author interviews with police officials, San Salvador, El Salvador, February 15–20, 2010.

<sup>81</sup>*Ibid.*

<sup>82</sup>There are an estimated 500,000 guns in El Salvador, only half of which are registered. Since 2007, the police said it has confiscated a little more than 8,000 weapons.

<sup>83</sup>Author interview, El Salvador, February 17, 2010.

community, in particular one known as the Fundación de Estudios para la Aplicación de Derecho (FESPAD), has begun an ongoing dialogue with the mara leaders, becoming organizers and advocates of their rights inside and outside of jail. Salvadoran President Mauricio Funes tapped several FESPAD leaders to work with his government on security issues, thereby formalizing this push towards what has been called a “dialogue.” In February, leaders from the MS-13 and the 18 issued a joint press release calling for negotiations, and several sources inside the government confirmed that it had been meeting with the mara leaders inside the prisons.<sup>84</sup>

## Money, Efforts and Challenges

As part of the Mérida Initiative, the United States Government allocated \$165 million for Central America in FY2008 and FY2009. The Obama administration has requested another \$100 million for FY2010. Most of the money goes to Guatemala, Honduras and El Salvador. The money is split between institution-building, rule of law and development programs on the one hand, and anti-gang and anti-narcotics enforcement on the other.

The U.S. is concentrating on fortifying the justice systems as well as pushing through changes in the legal codes to facilitate modern crime fighting techniques, prosecutions and, it hopes, extraditions. On the policing side, the U.S. is aiming at improving port, airport and border security, and helping the local governments mount more effective interdiction efforts with fixed and mobile inspection equipment. With an eye on gangs, the U.S. is also trying to increase the use of databases and community policing and to improve prison management. It is also focused on information sharing, which includes increasing access to the United States’ own files on repatriated gang members, and developing a regional fingerprint analysis system.

The funds represent a substantial increase over previous years. In FY2007, for example, the only Central American countries to receive counternarcotics funds were Guatemala (\$1.9 million) and Panama (\$3.3 million). The new funds, however, will hardly change the game, especially given that some of these countries are starting with few resources.

Consider Honduras. Only this year, did some Honduran naval and air force get the equipment to operate at night and even then for a limited time.<sup>85</sup> Wiretapping laws are in place, but the organized crime unit at the attorney general’s office said it does not have the equipment and complains that the private telephone companies will not supply it. What’s more, the law requires all tapping to have a judge’s permission, something local and foreign investigators say they would avoid because of the

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<sup>84</sup>Author interviews with analysts, police officials and counterdrug agents, San Salvador, El Salvador, February, 15–20, 2010. See also, “*El diálogo, la mejor propuesta para la solución de conflictos,*” MS-13 and 18 statement, February 15, 2010.

<sup>85</sup>One anti-drug agent told the author they have six hours of infrared night vision when they go on night-time raids.

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possible information leaks. The Honduran Public Security Ministry says the strategy is to send a message by capturing top-level guys. It is a long road, however. In Honduras, there is not even a case against Juan Natividad “Chepe” Luna, one of El Salvador’s most wanted *transportistas* who authorities say operates in both El Salvador and Honduras.

There’s also a notable shift away from reforming the police through massive training programs. In Guatemala, the U.S. seems to have embraced a different model. Working in tandem with the Commission Against Impunity in Guatemala (CICIG), a UN-sanctioned judicial international body that works side by side with Guatemalan investigators and police, the two are trying to develop and fortify cells of highly trained, vetted prosecutors and police. The hope is that these cells of “untouchables” will eventually head the institutions, and that they can lead reform from within. For its part, the CICIG is working with 12 prosecutors and 20 policemen. So far, however, its efforts have borne more fruit with the prosecutors than the police. Ten police were dismissed from the CICIG program without explanation, and CICIG officials said that no major cases have come from their relationship with the police.<sup>86</sup>

The United States Government has had good success working with local governments to change legal codes so they allow for more modern crime fighting techniques such as wiretapping, undercover operations and controlled buys of narcotics. The U.S. Department of Justice (DOJ) has helped design legislation that would permit judges to grant leniency to cooperating witnesses and has started to create effective witness protection programs, which, in the case of Guatemala, include specially trained police to act as marshals. The DOJ is also assisting in the creation of Financial Intelligence Units in the various government prosecutors’ offices throughout the region, to head up local and cross-border money laundering investigations.

Guatemala, Honduras and El Salvador have each updated laws to close legal loopholes that permitted the importation of ephedrine products. There’s still a need for updated search and seizure laws in many of these countries so authorities can better squeeze traffickers via their assets and bank accounts. Extraditions are also difficult to negotiate and, in the case of Honduras, not allowed in the constitution. Part of this is due to the United States’ historical record of taking unilateral actions against traffickers in other countries when the U.S. feels the local judicial systems have failed (see box ‘Extradition’).

Institutional success stories, however, are hard to find in the region. Many point to Nicaragua as a model. In a series of raids in 2006 and 2007, authorities arrested dozens of local and foreign traffickers and decommissioned boats, weapons and ammunition in the process. The raids at least temporarily disabled the Sinaloa Cartel’s operations in that country.<sup>87</sup> In 2009, a similar series of raids occurred dismantling what was said to be a Zetas’ operation.<sup>88</sup>

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<sup>86</sup> Authors interviews with CICIG officials, Guatemala City, Guatemala, January 25, 2010.

<sup>87</sup> “La ruta nicaragüense de ‘El Chapo,’” *Proceso*, October 18, 2009.

<sup>88</sup> “Crece población narco en cárceles nicaragüenses,” *La Prensa*, February 17, 2010.

## EXTRADITION

Following the murder of DEA agent Enrique Camarena in 1985, the United States Government took several unilateral actions that still color relations between the U.S. and Central America. The U.S. indicted 22 individuals for Camarena's murder, including Juan Matta Ballesteros, but investigations into the case stalled in Mexico, and while some arrests were made and prosecutions followed, no one was extradited. Frustrated, the DEA paid Mexican bounty hunters to kidnap one of the suspects, Humberto Alvarez Machaín, in clear violation of the country's extradition treaty with the U.S., and bring him to the United States to face charges. Alvarez Machaín was a doctor by profession. His role in the drug ring and the kidnapping and death of Camarena was far from clear, and, in Mexico, he'd avoided prosecution. In 1988, DEA agents also illegally apprehended Juan Ramón Matta Ballesteros in Honduras, put him on an airplane and flew him to the United States to face murder charges. In both Mexico and Honduras, the DEA's extrajudicial actions led to massive diplomatic and, in the case of Honduras, civilian protests. Honduran protesters burned a portion of the U.S. embassy to the ground, and Honduras remains one of the few countries in the region that does not allow extraditions. Mexico has only recently initiated extraditions to the U.S., but the Machaín case still resonates: the DEA, for instance, is not authorized to participate in law enforcement operations in Mexico.

In El Salvador, the one major success that officials and observers point to is anti-kidnapping unit. The unit, with help from the private sector — which provided extra vehicles, radios and other equipment — steadily unhinged the then organized criminal gangs that were kidnapping mostly wealthy Salvadorans for ransom. Kidnapping, which hit a high of 101 known cases in 2000, dropped to 6 in 2004, according to police officials. The unit eventually morphed into the anti-narcotics unit, where it has had less success. In FY2008, authorities captured a mere 26 kilos of cocaine. In FY2009, authorities captured less than two metric tons.

The public prosecutor's office in Guatemala has also seen some improvement. With the help of the CICIG, the office has arrested two police chiefs for their involvement in drug trafficking activities, as well as a former president and a former defense minister who are accused of embezzlement. However, the CICIG project, which ends September 2011, is dependent on securing more resources, security and insulating the Guatemalan prosecutors from political shifts, three variables that may put continued success in breaking the wall of impunity in that country in jeopardy.

## DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA: TRANSPORTISTAS, MEXICAN CARTELS AND MARAS

Overall, despite tough talk from its presidents, the region seems ill prepared to face what is arguably a bigger threat to regional security than the civil wars of the 1980s. In many ways, Central American countries are fighting against simple economics. An estimated \$38 billion in cocaine flows from South to North America. The U.S. Government estimates that 42 percent of these drugs, representing \$16 billion, pass through Central America, more than national government expenditures of Guatemala, Honduras and El Salvador combined in 2009.<sup>89</sup> Fifty-nine percent of Hondurans live below the poverty line; 56 percent live below the poverty line in Guatemala; and 31 percent live below the poverty line in El Salvador.<sup>90</sup> The poverty, mixed with the lawless environment that presides over the region, makes it an ideal place for the DTOs to operate. Murder rates in the northern triangle are some of the highest in the world. Impunity reigns. Few crimes are investigated. Fewer are resolved. In Guatemala, for instance, of the 6,451 murders in 2009, investigators resolved just 256.

There is also widespread discontent and distrust of the security forces throughout the region. Just to cite one example, a recent poll in El Salvador by Vanderbilt's Latin American Public Opinion Project (LAPOP) found that over 41 percent of respondents did not report a crime because they thought it would do no good; nearly 25 percent did not report crimes because they feared reprisals.<sup>91</sup> Multiple attempts to reform police have also done little to slow the pace of crime or corruption inside the forces. Many corrupt officers in Guatemala were purged, only to be recycled back into the police later.<sup>92</sup>

Police have also become highly politicized and unstable in much of the region. In Guatemala, the Portillo administration (2000–2004) had eight national police chiefs, the Berger administration (2004–2008) had three police chiefs, and Alvaro Colom has already had five since entering office. In El Salvador, the new police that formed after peace talks mixed different factions, including 20 percent from the demobilized guerrillas. By the early 2000s, the conservative ARENA party had removed most of the former guerrillas and politicized the top police posts, analysts say. The party denies this, but during the 2009 elections it selected a former police chief as its presidential candidate.

The private sector also appears unwilling to help the governments. Guatemala's government has been unable to pass a tax reform bill to help it beef up its security forces and put money into social services, education and youth programs. Instead private money is going into a multi-billion dollar private security industry that is growing exponentially. For his part, Salvadoran President Funes, one of the region's most popular leaders, has little support from the business elite. After he was

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<sup>89</sup>For 2009, the CIA Factbook puts their expenditures at \$5.563 billion, \$3.4 billion, and \$4.803 billion respectively.

<sup>90</sup>CIA World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/>

<sup>91</sup>The AmericasBarometer by the Latin American Public Opinion Project (LAPOP), [www.LapopSurveys.org](http://www.LapopSurveys.org)

<sup>92</sup>"To Serve and Protect," Washington Office on Latin America, December, 2009, p.4.

## POLICE RATIOS IN CENTRAL AMERICA AND MEXICO

Country	Population	Police per 1000 inhabitants	Police per km2
Guatemala	13,276,000	1.5	0.47
El Salvador	7,185,000	2.5	2.2
Honduras	7,834,000	1.2	0.21
Nicaragua	5,891,000	1.7	0.19
Panama	3,360,000	5.1	0.59
Costa Rica	4,254,000	2.6	0.22
Mexico	111,212,000	3.3	0.52

Sources: author interviews; Observatoriopara la violencia, Honduras; CIA World Factbook.

elected, the private sector pulled its support from the special anti-crime unit it once generously funded, particularly when that unit was the target of kidnapping rings.

The massive crime wave seems to have overwhelmed an undermanned, under-resourced security system throughout the region. Honduras and Guatemala have the two lowest ratios of police per population. Honduras has the second lowest ratio of police per square kilometer. This translates into some difficult challenges. For example, Olancho, a Honduran province bigger than El Salvador, has 250 police. Other places are simply undermanned given the task they are facing. Alta Verapaz, for example, has 415 policemen, but only 60–65 percent are on duty at any one time.<sup>93</sup> The province is one of the headquarters of the Zetas in Guatemala.

Being undermanned only partially explains the police's difficulties. High and low level police have been tied to several criminal groups, including Los Perrones in El Salvador and the Zetas in Guatemala. It is a vicious circle. Those who are trying to implement reform face a culture of corruption, fear and low morale, all of which feed the circle. "As long as we keep kicking them like stray dogs, they'll keep biting us," one member of a commission to reform police in Guatemala said.<sup>94</sup>

Fear, however, may be harder to overcome. In Guatemala, 29 national police officers and 9 prison guards were murdered in the line of duty in the first 10 months of 2009.<sup>95</sup> In December, Honduras' drug czar, retired General Julian Aristides Gonzalez, was assassinated shortly after he had dropped off his daughter at her Tegucigalpa school. Gonzalez had denounced police involvement in trafficking activities for months prior to his assassination. Current Honduran Security Minister

<sup>93</sup>Author interview with police official, Cobán, Guatemala, January 24, 2010.

<sup>94</sup>Author interview, Guatemala City, Guatemala, February 3, 2010.

<sup>95</sup>"International Narcotics Control Strategy Report," *op cit.*, p.307.

## DRUG TRAFFICKING ORGANIZATIONS IN CENTRAL AMERICA: TRANSPORTISTAS, MEXICAN CARTELS AND MARAS

Oscar Alvarez says he has received threats from the Zetas. In El Salvador, when police officials and prosecutors recommended recently that the government rewire the prisons to ensure that inmates cannot recharge their cellular phones — a measure they believe will greatly decrease the ability of the gangs to communicate and extort from the inside — prison officials balked saying they worried about riots.<sup>96</sup>

In the end, the DTOs are one of many organized criminal groups and arguably not even the biggest threat. In contrast to the street gangs that regularly extort small shopkeepers, food delivery trucks and bus drivers, the traffickers run a relatively harmless operation and are sometimes viewed as local heroes. When traffickers do make public appearances, it is often to spend money. In Cobán, Guatemala, traffickers such as Hearst Walter Overdick regularly appear in bars and discotheques, sometimes with a police escort. In some cases, the popular support is not so subtle. When the DEA mounted an operation to capture Waldemar Lorenzana in Zacapa in January, it was met by a dozen protestors. An hour later, there were 200 people blocking the DEA's access. Lorenzana got away, even though he was just 50 yards from where the DEA had to stop.

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<sup>96</sup>Author interview with police intelligence official, San Salvador, El Salvador, February 17, 2010.



# CROSSING THE MISSISSIPPI: HOW BLACK TAR HEROIN MOVED INTO THE EASTERN UNITED STATES

José Díaz-Briseño

## INTRODUCTION

Until January 2003, U.S. federal authorities considered black tar heroin, produced in the Pacific Coast states of Mexico, an illegal drug rarely available in the eastern half of the United States.<sup>1</sup> According to that year's National Drug Threat Assessment, Mexican black tar heroin was uncommon in cities east of the Mississippi river where heroin markets had been dominated by Colombian white heroin for two decades and, to a lesser extent, by heroin produced in Southeast and Southwest Asia.<sup>2</sup>

Prior to 2003, federal authorities considered Los Angeles as the main market for Mexican black tar heroin in the U.S. From there it was typically transported to other cities such as Denver, Honolulu, Las Vegas, Portland, Salt Lake City, San Francisco, Seattle and St. Louis. Just three years earlier, the U.S. Drug Enforcement Administration (DEA) had concluded its much publicized "Operation Tar Pit," which netted over 200 defendants in more than 26 U.S. cities, including some distribution cells as far East as Atlanta, GA, Columbus, OH and Pittsburgh, PA.<sup>3</sup> Nevertheless, U.S. federal officials were still confident in January 2006 that Mexican black tar heroin had no chance of moving into eastern markets:

Significant and prolonged shortages in South American heroin most likely would not result in an increase in distribution of Mexican heroin in Eastern states because Mexico's heroin production capacity appears insufficient to meet total U.S. demand and because users of white heroin have strongly resisted using black tar heroin.<sup>4</sup>

— Department of Justice, "National Drug Threat Assessment," January 2006

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<sup>1</sup>National Drug Intelligence Center, "National Drug Threat Assessment 2003," January 2003.

<sup>2</sup>"The color and consistency of black tar heroin result from the crude processing methods used to illicitly manufacture heroin in Mexico. Black tar heroin may be sticky like roofing tar or hard like coal, and its color may vary from dark brown to black... Black tar heroin is often sold in chunks weighing about an ounce. Its purity is generally less than South American heroin and it is most frequently smoked, or dissolved, diluted, and injected." (Drug Enforcement Administration, "Drugs of Abuse," 2005).

<sup>3</sup>Drug Enforcement Administration, "Nearly 200 Arrested in Multi-Million Dollar Heroin Smuggling Operation," June 15, 2000.

<sup>4</sup>National Drug Intelligence Center, "National Drug Threat Assessment 2006," January 2006.

Yet, in a dramatic reversal of this forecast, U.S. authorities acknowledged seven months later, that the old borders separating the domestic heroin market were blurred and that black tar heroin was readily available in cities like Nashville, TN and Detroit, MI.<sup>5</sup> Moreover, in December 2008 the U.S. Department of Justice predicted that black tar heroin would not only expand to the Midwest and the Southeast but that it would probably find its way to the traditional heroin markets of the Northeast, from New Jersey to Vermont.<sup>6</sup> According to one U.S. law enforcement official the “leap” made by Mexican black tar heroin over the Mississippi River was an historic move made by what they refer to as Mexican Drug Trafficking Organizations (or ‘Mexican DTO’s’) seeking to undermine the Colombian share in the large heroin markets of the East Coast: “They literally jumped across the Mississippi and began coming into East Coast cities, Pittsburgh, Columbus and lot of places where they really haven’t been before.”<sup>7</sup>

The expansion of black tar heroin trafficking eastward marked an historic shift in the U.S. heroin market in much the same way the arrival of Colombian white heroin in the U.S. in the late 1980’s, dramatically re-drawing the basic structure of the U.S. heroin market that existed in the prior two decades.<sup>8</sup> Since the late 1980’s, the U.S. heroin market developed into exclusive regional markets where Colombian and Mexican heroin gained market share at the expense of Asian heroin. Prior to the 1980’s, Mexican heroin (brown powder and black tar) played a secondary role in a market where Asian heroin was dominant.<sup>9</sup> At the same time that Colombian heroin dominated the Eastern U.S. market, Mexican heroin, mostly black tar, became dominant in the Western states.

Table 1 illustrates the percentage for the Asian, Colombian, and Mexican heroin markets over the course of roughly two decades. As with other illicit drugs, there is no authoritative source that can calculate precisely the size of the U.S. domestic market for heroin. Yet since 1979, DEA developed a “Domestic Monitor Program” which analyzes samples of purchases of different drugs purchased in the street to identify its origins.

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<sup>5</sup>“For the past several years, the heroin market in the United States was generally divided along the Mississippi River. To the west of the Mississippi River, black tar heroin and, to a lesser extent, brown powder heroin from Mexico were the primary types available. To the east of the Mississippi, white powder heroin, primarily from Colombia, but also from Southwest and Southeast Asia, was the primary type of heroin available...law enforcement reporting indicates that Mexican heroin is now available in more markets east of the Mississippi than traditionally has been the case” (National Drug Intelligence Center, “National Drug Threat Assessment 2007,” October 2006).

<sup>6</sup>National Drug Intelligence Center, “National Drug Threat Assessment 2009.”

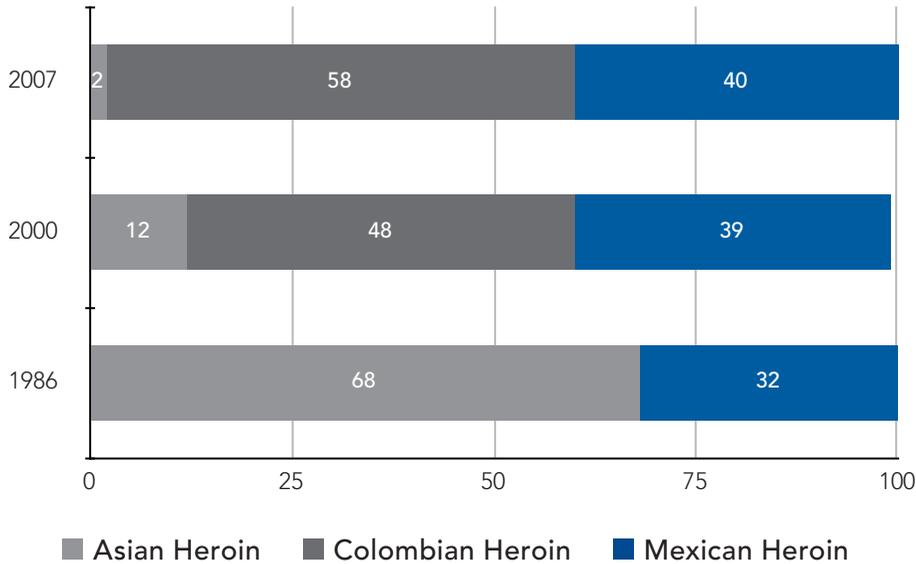
<sup>7</sup>Interview with federal law enforcement official, August 2009.

<sup>8</sup>Daniel Ciccarone, “Heroin in brown, black and white: Structural factors and medical consequences in the U.S. heroin market,” *International Journal of Drug Policy*, 2009.

<sup>9</sup>According to newspaper accounts, authorities have known about “the existence of small isolated poppy plots since 1984” but the first time that Colombian heroin was intercepted in the U.S. was in May 1991 when a young man was carrying the powder inside a guitar while arriving at JFK airport. (“Colombian Heroin May Be Increasing,” *The New York Times*, October 27, 1991 and Joseph B. Treaster, “Colombia’s Drug Lords Add New Product: Heroin for U.S.,” *The New York Times*, January 14, 1992).

CROSSING THE MISSISSIPPI: HOW BLACK TAR HEROIN MOVED INTO THE EASTERN UNITED STATES

TABLE 1: SHARE OF U.S. HEROIN MARKET



Source: Daniel Ciccarone, 2009 using DEA’s “Domestic Monitor Program” data

When compared to other illicit drugs, heroin continues to be at the bottom of the drug abuse problem in the U.S. The latest national drug use survey estimated that past month heroin users were above 200,000.<sup>10</sup> Meanwhile, cocaine users are estimated in 1.6 million and marijuana users reach 16.7 million, as displayed in Table 2.

Since the early 2000’s, however, health officials have alerted that heroin use levels are relatively high especially when compared to the early 1990’s. Moreover, they have stated that the increasing purity of the drug and its decreasing price make it particularly attractive to young people.<sup>11</sup> In their most recent assessment, U.S. federal narcotic officials report an increasing availability of heroin in several domestic markets for the year 2009. The evidence of this increased heroin availability is low prices, increased purity, growing abuse, and higher number of overdoses.<sup>12</sup> In 2010, the U.S. reported that 21 of the 26 counties reporting heroin related overdoses in the last two years were located east of the Mississippi River (see Table 3).

<sup>10</sup>The initial findings of 2009’s *National Survey on Drug Use and Health*, were released on September 16, 2010. An exact estimate of past month users of heroin was not publicly available. In 2008, the same survey estimated past month users of heroin in the U.S. were 213,000 (Substance Abuse and Mental Health Administration *National Survey on Drug Use and Health 2008*, 2009)

<sup>11</sup>Nora D. Volkow, “Heroin Abuse and Addiction,” National Institute on Drug Abuse Research Report Series, May 2005.

<sup>12</sup>National Drug Intelligence Center, “National Drug Threat Assessment 2010,” February 2010.

At the same time, there is growing evidence from interdiction data that the Mexican border has become the preferred gateway for most of the heroin entering the U.S. According to the latest interdiction figures, 2008 was the first year on record during which heroin seizures on the U.S.-Mexico border surpassed those occurring in commercial airports, the main gate for Colombia's heroin.<sup>13</sup> This shift would mean that Mexican DTO's controlling the trafficking routes into the U.S. have become more important players in the heroin trade.

The growing share of Mexican heroin in several markets East of the Mississippi provides a glimpse into a slice of the U.S. domestic drug trade and its connections abroad.<sup>14</sup> This chapter will look at two cities, Columbus, Ohio and Charlotte, North Carolina that have experienced recent heroin problems directly linked to Mexican black tar. The paper will look at three specific areas: (1) the level of involvement of Mexican DTO's in the black tar heroin trade; (2) the organizational structure for distribution networks in these two cities; and (3) law enforcement's response to this phenomenon.<sup>15</sup>

## COLUMBUS, OHIO

In July 1999, Raúl Villa-Guerra, then 18 years old, was arrested in New Mexico with nine balloons of black tar heroin in his mouth weighing a total of 4.5 grams. Villa-Guerra worked as one of the three "runners" for a Santa Fe heroin (and some cocaine) distribution cell comprised of Mexican nationals who delivered the product to U.S. retailers. Villa-Guerra's largest customer was a so-called "tiendita" (little store) managed by a 52 year-old woman in the small town of Chimayó, just South of the Colorado border.<sup>16</sup> The arrest of Villa-Guerra along with other fellow 'runners' came after a surge in high-grade black tar poisonings in Chimayó that produced 85 deaths between 1995

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<sup>13</sup>According to the 2008 figures, heroin seizures at the Southwest border reached 556.1 kilograms meanwhile seizures from commercial airlines (the traditional way for Colombian heroin to arrive in the U.S.) were 398.1 kilograms (*Ibid*)

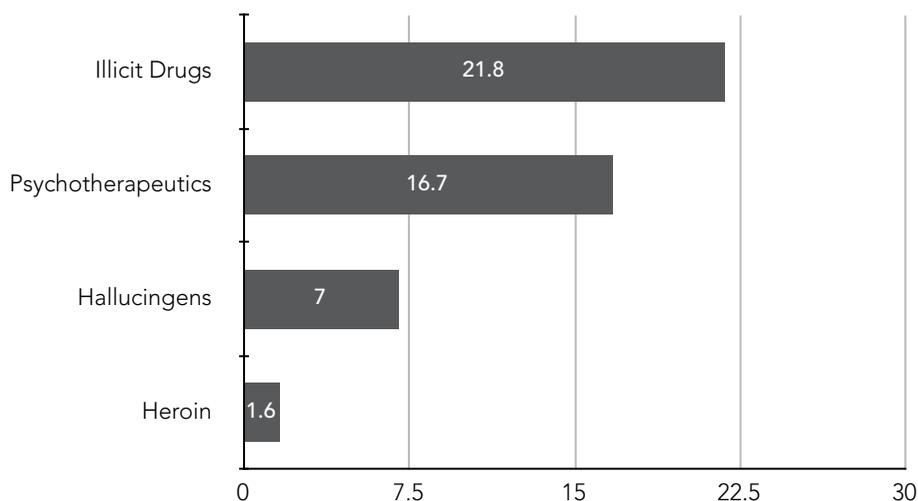
<sup>14</sup>This chapter had its origins in a newspaper story by the author published in September 2009. Further research for this chapter started in October, 2009 and included brief visits to Columbus, Ohio, Charlotte, North Carolina and Nashville, Tennessee. (José Díaz Briseño, "Llevan mexicanos nueva droga a EU," *Reforma*, September 1, 2009)

<sup>15</sup>At the same time that this chapter was being written, a superb account on Mexican black tar heroin's effect in the U.S. appeared in the *Los Angeles Times*. Published in February 2010 under the title "The Heroin Road," the work is a three series of articles by investigative reporter Sam Quinones. An expert in Mexico, Mr. Quinones was able to travel to the country's Pacific Coast and chronicled the life of a poppy-producing region just in the foothills of the Sierra Madre. Mr. Quinones superb work is the only story encompassing the whole heroin trade. This chapter however will focus on the "leap" made by Mexican traffickers over the Mississippi and how does did move affected the U.S. heroin market.

<sup>16</sup>Although press reports at the time said Villa-Guerra had 23 years of age, court records in New Mexico state that his date of birth was May 9, 1981. (Brendan Smith, "Agent Describes Chimayo Drug Ring in Sentencings," *Albuquerque Journal*, June 27, 2000).

## CROSSING THE MISSISSIPPI: HOW BLACK TAR HEROIN MOVED INTO THE EASTERN UNITED STATES

TABLE 2: PAST MONTH ILLICIT DRUG USE IN THE U.S., PERSONS AGED 12 OR OLDER: 2009



Source: National Survey on Drug Use and Health, 2009.

and 1998.<sup>17</sup> An undocumented immigrant, Villa-Guerra served 11 months in a U.S. prison and was later deported to Mexico in 2001. U.S. authorities linked the Santa Fe cell to what they called a “major drug trafficking organization” based in the Mexican state of Nayarit and which operated from Phoenix and Los Angeles.<sup>18</sup> With his arrest, U.S. federal officials undertook the first major investigation into how black tar heroin was making its first inroads into new markets in the Midwest and Northeast.<sup>19</sup> Mexican authorities later alleged that at least part of the Nayarit-based network was under the control of one of Mexico’s major DTOs – the Sinaloa Federation.<sup>20</sup> According to a later account by Villa-Guerra, just after he was deported he returned to his native Majadas — a small rural hamlet in the mountainous state of Nayarit, along the Mexican Pacific Coast — to work as a farm laborer.

<sup>17</sup>Drug Enforcement Administration, “Operation Tar Pit,” March 2000.

<sup>18</sup>*Ibid.*

<sup>19</sup>According to Joe Keefe, then chief of Special Operations for the DEA, “The Mexicans also have brought the price down to compete with Colombians in areas East of the Mississippi River that they were not in before” (Drug Enforcement Administration, “Nearly 200 arrested in Multi-Million Dollar Heroin Smuggling Operation,” June 15, 2000 and Michael J. Sniffen, “Agents smash Mexican heroin trafficking ring,” *The Associated Press*, June 16, 2000).

<sup>20</sup>Allegedly, the section based in Los Angeles (not the Phoenix section from which the Santa Fe cell got its product) was under control of José Ramón Lajja Serrano, a major operative in the Sinaloa Federation, who took control of the Nayarit Cartel when Sinaloan kingpin Héctor “El Guero” Palma Salazar was arrested in 1995 (Presidencia de la República, México “Detención de uno de los principales productores de heroína en el estado de Nayarit,” February 18, 2003 and Brendan Smith, “Agent Describes Chimayó Drug Ring in Sentencings,” *Albuquerque Journal*, June 27, 2000).

TABLE 3: U.S. COUNTIES REPORTING INCREASES IN HEROIN-RELATED OVERDOSES, 2008–2009

West	East
Pima County, AZ	Mecklenburg, NC
Bernalillo County, NM	Dane County, WI
Tarrant County, TX	Milwaukee County, WI
Dallas, TX	Racine County, WI
St. Louis City, MO	Lake County, IL
	Lake County, IN
	Porter County, IN
	La Porte County, IN
	Franklin County, IN
	Allegheny County, PA
	Dauphin County, PA
	Washington, DC
	Nassau County, NY
	Suffolk County, NY
	Middlesex County, MA
	Essex, MA
	Chittenden County, VT
	Strafford County, NH,
	Rockingham County, NH
	York County, ME
	Androscoggin County, ME

Source: National Drug Threat Assessment 2010, February 2010

Ten years later, on October 26, 2009, a U.S. immigration officer who visited the Franklin County Jail in Columbus, Ohio found an inmate accused of trafficking black tar heroin and going by the name of Daniel Ortez-Soto. The officer discovered that Ortez-Soto was actually Raúl Villa-Guerra, now a 28 year-old man.<sup>21</sup> It is unknown exactly when Villa-Guerra returned to the U.S. and when he settled in the Columbus metropolitan area, but his path from the Southwest U.S. into the

<sup>21</sup>Affidavit by Jeremy P. Lake, Immigration Enforcement Agent, Immigration and Customs Enforcement, *United States of America vs. Raúl Villa-Guerra*, November 5, 2009.

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industrial Rust Belt seems to exemplify the historic shift of some Mexican-based black tar organizations past the Mississippi River after the year 2000.

In 2006, federal officials launched “Operation Black Gold Rush” against Mexican black tar heroin distribution. In Ohio, police took down two different trafficking cells comprised of Mexican nationals from Nayarit along with U.S. citizens.<sup>22</sup> While the Justice Department claims that the Sinaloa Federation is the only major Mexican DTO present in Columbus, black tar heroin cells seem to be operating as independent teams rather than under the structure of a major DTO.

By 2007, the central Ohio heroin market was dominated by Mexican black tar after almost two decades of dominance by Colombian white heroin.<sup>23</sup>

Crisscrossed by at least two important inter-state highways, Columbus became not only a favorite market for black tar consumption but it also transformed itself into a major trafficking hub to supplying other U.S. geographical regions: the Northeast, the Great Lakes, the Midwest and Appalachia.<sup>24</sup> With a population of 1.7 million people, Columbus is considered a medium size metropolitan area and it ranks 33 in terms of its economic output among all U.S. cities.<sup>25</sup>

Federal officials in charge of narcotic investigations in Columbus estimate that 80 percent of their cases now originate along the Southwest border.<sup>26</sup> In the case of black tar heroin, cells in Columbus obtain their product from cities in Southern Arizona (Phoenix and Tucson) after being transported by operatives across the U.S.–Mexico border all the way from Nayarit.<sup>27</sup> Black tar heroin would be transported in private vehicles from Arizona into Columbus trying to make few stops in order to lessen the chance of detection and interdiction. In 2006 an ounce of black tar sold for

<sup>22</sup>Drug Enforcement Administration, “28 Central Ohioans Targeted in ‘Operation Black Gold Rush,’ August 15, 2006 and Drug Enforcement Administration, “International Black Tar Heroin Trafficking Group Dismantled,” August 15, 2006.

<sup>23</sup>“Law enforcement officials in several areas of northern Ohio (Cleveland, Toledo, and Summit and Stark Counties) report that since 2007, either Mexican black tar heroin or brown powder heroin has become the primary type available in their jurisdictions. In some areas of southern Ohio, such as Columbus and Dayton, Mexican heroin is also the primary type available. Numerous law enforcement officials also report that the quantity of heroin available in their jurisdictions has increased since 2007 and that prices are decreasing. For example, in Columbus, the price of Mexican black tar heroin fell from \$50,000 per kilogram in December 2007 to between \$35,000 and \$50,000 per kilogram in June 2008” (National Drug Intelligence Center, Ohio “High Intensity Drug Trafficking Area Drug Market Analysis,” April 2009).

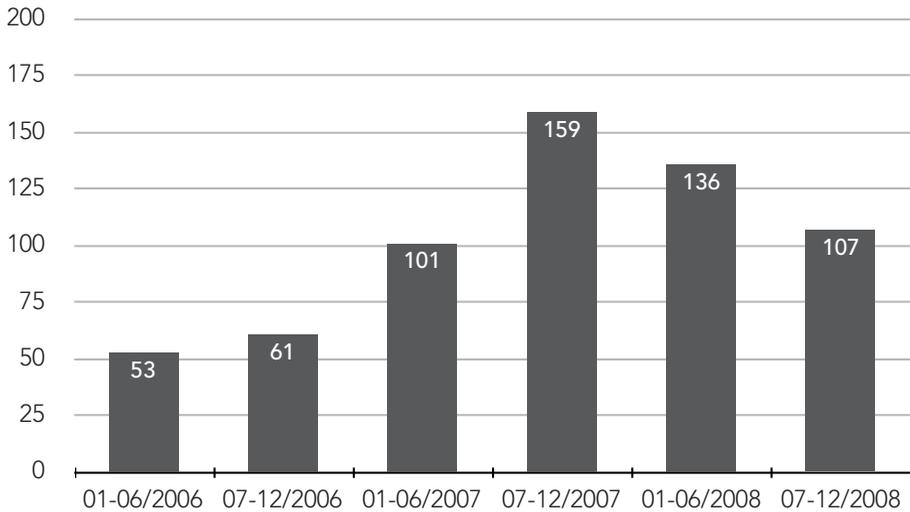
<sup>24</sup>“We have had cases where Columbus has supplied West Virginia, and Baltimore, Maryland. We have gone up to Indiana, Chicago, and Detroit. So we have unfortunately become a transfer point, too, besides feeding the ‘hunger’ in the city;” (Interview with a federal official, December 2009)

<sup>25</sup>Columbus GDP in 2008 was \$89–829 billion ranking 33 among U.S. cities. Its population was 1,773,120 people. Columbus has a similar GDP to Guadalajara, Mexico (Bureau of Economic Analysis, September 2009 and U.S. Census Bureau, July 2008).

<sup>26</sup>Interview with a federal law enforcement official in Columbus, December 2009.

<sup>27</sup>“What generally they do, is that the heroin will come from Mexico, lets say from Nayarit, goes up in lets say Tucson, Arizona, and then somebody from the organization in Columbus ... will them bring it to Columbus. And then this individual in Columbus will not only sell it there but all his customers will now go to him being from the Columbus area or being from some other location,” (Interview with a federal law enforcement official in Columbus, December 2009)

**TABLE 4: HEROIN CASES AT THE COLUMBUS POLICE CRIME LAB**



Source: Surveillance of Drug Abuse Trends in the State of Ohio, January 2009.

\$800 to \$850<sup>28</sup> in the city of Phoenix. Currently, the price of black tar in Columbus is around \$1000 to \$1200. Evidence suggests that operatives like Villa-Guerra who arrived in the late 1990’s are responsible for turning the central Ohio heroin market into a market for Mexican black tar. As Table 4 demonstrates, the number of heroin cases at the Columbus police crime lab more than doubled from 53 between January and June of 2006 to 107 between July and December of 2008.

Local law enforcement in Columbus believe that there are currently at least 20 different black tar heroin cells in central Ohio working independently and comprised of 4 or 5 individuals and a cell head.<sup>29</sup> Most cells work solely on the distribution of black tar heroin, so police only occasionally find other drugs while executing search warrants in safe houses. The very fact that these cells are dealing only with black tar is a feature that distinguishes them from the operations of the major Mexican DTO’s, considered to be poly-drug organizations. Local and federal law enforcement has found that the heroin hitting the streets of Columbus in the past 5 to 6 years comes from the Mexican state of Nayarit. Just as in the case with Villa-Guerra, most of the people arrested working in these cells are from the municipality of Xalisco, a verdant county in the foothills of the Sierra Madre in Nayarit.<sup>30</sup>

<sup>28</sup>Office of National Drug Control Policy, “Phoenix, Arizona. Profile of Drug Indicators,” January 2007.

<sup>29</sup>Interview with a local law enforcement in Columbus, December 2009.

<sup>30</sup>“In Central Ohio we are dealing with one (black tar) that comes from the area of Nayarit and then from the small town close to Tepic which is at the foothills of the Sierra Madre. So what you have is that this town and the people we are arresting, the common thread is that they come from this area” (Interview with a federal law enforcement official, December 2009).

## CROSSING THE MISSISSIPPI: HOW BLACK TAR HEROIN MOVED INTO THE EASTERN UNITED STATES

In contrast to networks controlled by the major Mexican DTO's, mainly known to be wholesale distributors of drugs such as cocaine, the cells from Nayarit developed a business model that reached into retail sales. Formed by independent growers/brokers and traffickers, these networks are less structured and are responsible for the transportation of the drug from areas like Nayarit into various U.S. cities. The Nayarit cells deliver to Columbus a highly addictive product with levels of purity not seen before in this heroin market.<sup>31</sup>

At the heart of its success is the fact that the Nayarit cells in Columbus transformed the heroin business into a suburban sales phenomenon, no longer synonymous with dark alleys in inner cities or rooms filled with mattresses and other similarly sordid scenes like in the movies of the 1970's. Local law enforcement in Columbus has found that the best way to characterize the distribution business model in the city would be somewhat like a fast food drive-thru restaurant, explained in the following table.

**TABLE 5: THE 'MCDONALDS DRIVE-THRU' BUSINESS MODEL**

1. Trafficking cell formed by one head (dispatcher) and some sellers (runners)
2. Customers place heroin orders via phone to the dispatcher
3. Runner is sent to deliver order; usually in or around suburban parking lots
4. Runner and buyer would make eye contact in the store parking lot
5. Buyer will board the runner's car where transaction occurs, then leave

Source: Affidavits before the Federal District Court of Southern Ohio.<sup>32</sup>

Mexican 'black tar' heroin cells have managed to flourish in the Columbus area by mastering this suburban retail system. Operating in direct communication with the source of heroin in Mexico, cell heads and runners also do not live the flashy, drug trafficker lifestyle and try to remain inconspicuous.<sup>33</sup> It is clear from interviews with law enforcement that these heroin trafficking cells do not work with local organized,

<sup>31</sup>Interview with a local law enforcement official, December 2009.

<sup>32</sup>"Generally, what we will see is the parking lot. They'll take a WalMart or a Target store, one of those and they'll do it off the parking lot." For a classic example of the mechanics of the parking lot transaction you can look at the case against cell leader José Manuel Cázares Contreras in 2007 where police was able to mount surveillance outside stores like CVS pharmacies and WalMart stores (Interview with a local law enforcement official in Columbus, December 2009 and, "Affidavit by Timothy R. Reagan, DEA Special Agent," *United States of America vs José Manuel Cázares Contreras*, October 17, 2007).

<sup>33</sup>"They don't want to be on the radar. A very low profile...I think the traffickers that we deal with here, they want to maintain that low profile. That's the reason they are not driving Mercedes Benz. They are driving non-descript vehicles. No high-end cars." (Interview with a local law enforcement official in Columbus, December 2009).

juvenile gangs and there is little public evidence that they engage in violence. Typically, a team of runners under the direction of a cell head would be provided a nondescript home in upper and middle class neighborhoods along with sleeping bags or mattresses. They would also be given non-descript ‘junkie’ cars for deliveries and be paid around \$500 a week. Law enforcement likes to say that these cells are particularly good in counter-surveillance often talking in code and monitoring streets.<sup>34</sup> Runners and the cell head would also have a separate location where they will divide the product and prepare personal doses, wrapping them in plastic balloons.<sup>35</sup>

According to court documents, each of the cells works independently from each other, and are not dependent on the other for distribution. Yet, cell heads in Columbus speak to each other whenever they are running out of product. Local police report that 3 out of 4 of those arrested for participating in any black tar cell are undocumented immigrants from Nayarit. Much in the mold of Villa-Guerra, runners are mostly youngsters from villages in Xalisco and are paid \$400 to 500 per week<sup>36</sup> Many are recruited directly in Nayarit and sent by the leader in Mexico to work in a specific cell. Other than the cell leader, who maintains contact with the source in Mexico, the runners are, in many ways, disposable assets within the organization, according to police agencies. With a growing Mexican population in Central Ohio, members of these cells have found cover among hard-working immigrants in the area. In Franklin County, for example, the Mexican immigrant community doubled in size between 2000 and 2008 from 12,005 to an estimated 26,319 according to the U.S. census.<sup>37</sup>

Equally important to the development of a very efficient distribution model is a domestic market force that swept Ohio in the early 2000’s. Beginning in 2000, abuse of prescription opioids started an upward trend in the state that continues today. At the same time that the Nayarit cells were rushing to capitalize on their product, they encountered the rising trend in some cities east of the Mississippi of addicts hooked on U.S. prescription opioids such Oxycontin or Vicodin, with a similar narcotic effect to heroin. Overdoses from artificial opioids were so high in Ohio that in 2008 they became the number one reason for unintended deaths surpassing motor vehicle accidents for the first time in history. Mexican cells identified a huge business opportunity by offering these addicts a less expensive product with the same (or even

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<sup>34</sup>“What they do is they come here, they rent a nice house or a nice apartment, drive nice vehicles, they come and bring their heroin here and then they collect the money and then they take the money and ship it back south to Mexico where is repatriated. And more than three quarters of these people that we are arresting are illegal and unfortunately they are Mexican” (Interview with a federal law enforcement official in Columbus, December 2009)

<sup>35</sup>Interview with a federal law enforcement official, December 2009.

<sup>36</sup>Interview with a local law enforcement official, December 2009.

<sup>37</sup>Franklin County’s Mexican origin population in 2008 was 26,319 (2.4 percent of total) meanwhile in 1990 it was 2,892 (.3 percent of total population). (U.S. Census Bureau, “1990 Census” and “2008 American Community Survey Estimates”).

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stronger) narcotic effect. According to state studies, 65 percent of heroin abusers in Ohio between 18 and 30 entered into heroin use from prescription opioids.<sup>38</sup> In the words of a federal law enforcement official:

The abuse of pharmaceutical drugs is in direct correlation to the rise of black tar heroin (in Central Ohio) ... The big explosion (in heroin comes from) this explosion of prescription drug (abuse) That's where it starts. That is the overriding thing.

— Federal law enforcement official Columbus, Ohio December 2009

Within Ohio, the abuse of man-made opioids is particularly strong in the state's southern counties near Appalachia that lead to West Virginia and Kentucky but increasingly in Central Ohio counties too.<sup>39</sup> Due to its location, Columbus law enforcement is seeing many Caucasian dealers from Southeastern Ohio traveling to the city to purchase black tar heroin for resale in their communities.<sup>40</sup>

Less than 10 years after arriving in Columbus, Mexican black tar heroin has become one of the two main priorities for central Ohio's law enforcement along with cocaine.<sup>41</sup> Just as the black tar heroin abuse started to mature in Central Ohio, sometime around 2005, local and federal law enforcement in the Columbus metropolitan area started to partner to confront the Mexican cells. At the beginning, the changing nature of the heroin trafficking routes coming from the Southwest border presented a challenge for law enforcement agencies used to dealing mostly with heroin coming from Detroit and Chicago. Due to a limited number of personnel, local law enforcement agencies, such as the Franklin County Sheriff's Department, were eager to partner with DEA and state partners like the Ohio State Highway Patrol to confront the black tar traffickers.<sup>42</sup>

Sometime around 2005, local and federal agencies developed a mechanism called the "Southwest Border Task Force (SBTF)" that targeted criminal organizations coming from Mexico.<sup>43</sup> Federal prosecutors started to work closely with the SBTF

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<sup>38</sup>National Drug Intelligence Center, "National Drug Threat Assessment," 2008.

<sup>39</sup>Holly Zachariah, "Prescription drug abuse expanding," *The Columbus Post Dispatch*, August 21, 2010.

<sup>40</sup>Interview with a local law enforcement official in Lancaster County, December 2009.

<sup>41</sup>Interview with a local law enforcement official in Columbus, December 2009.

<sup>42</sup>One of the key agencies in a regional task force investigating black tar heroin trafficking has been the Franklin County Sheriff's Department. This mechanism is important considering that the Sheriff Department has only 18 officers in its Special Operations Division (Interview with a local law enforcement official)

<sup>43</sup>"I believe it was (black tar). But it was until we started retooling the way we investigate criminal organizations...Once we retooled and for example, the DEA has a Southwest Border Initiative here in Columbus, Ohio...its a HIDTA group...What DEA did in Columbus, we wrote an initiative that targets Southwest Border drug organizations. Because here in Central Ohio, more than three quarters of our cases that we do, or 80 percent come from the Southwest Border coming out through Mexico" (Interview with a federal law enforcement official in Columbus, December 2009).

in order to build up flagship cases against some of these cells.<sup>44</sup> At least one of the prosecutions resulted in a manslaughter charge when prosecutors were able to document that heroin provided by a specific cell and runner resulted in an overdose-induced death. Despite the successes of the “Southwest Border Task Force,” federal officials have mandated a Tactical Diversion Squad in Central Ohio to exclusively combat the non-medical use of painkillers<sup>45</sup> In the end, law enforcement has understood that black tar heroin cells benefit from a large pool of artificial opioids addicts.

## CHARLOTTE, NORTH CAROLINA

Just after midday on June 16, 2009, Javier Torres-Gutiérrez received a phone call at his two-story home in a residential neighborhood outside the Charlotte metropolitan area. Located five minutes away from the gleaming campus of the University of North Carolina-Charlotte, Torres-Gutiérrez’ home was modern and quiet, at the end of a suburban cul-de-sac. On the other end of the line was a man only known at the time to law enforcement as “Juancho” and who was based somewhere in Mexico. “Juancho” was asking Torres-Gutiérrez whether another man known as “Costeño” had arrived in Charlotte to work in their shard business. Torres-Gutiérrez told “Juancho” that “Costeño” had arrived safely in Charlotte that morning after being smuggled into the U.S. from Mexico. After being handed the phone, “Costeño” explained that “Juancho” had gone through “Don Juan,” a human smuggler at the U.S.-Mexico border, who made him walk 40 minutes through the desert and later made him take a tractor-trailer along a U.S. highway without incident.<sup>46</sup> Police investigations later confirmed that “Costeño” was the newest runner of a five-man Mexican black tar heroin distribution cell in the Charlotte metropolitan area, whose leader was Javier Torres-Gutiérrez, a U.S. citizen.

Despite being somewhere in Mexico, “Juancho” seemed to have a tight grip on the Charlotte cell’s daily operations. One week after carefully monitoring “Costeño’s” arrival in the U.S., “Juancho” questioned Torres-Gutiérrez about the whereabouts of another member of the cell, an undocumented immigrant from Mexico known only as “Gallo.” According to Torres-Gutiérrez, Gallo was making some inroads distributing black tar heroin in Winston-Salem, just 90 minutes north of Charlotte.<sup>47</sup>

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<sup>44</sup>Among the most relevant cases against black tar cells in Central Ohio is: *United States of America vs. David González Rendón* and *United States of America vs. Victor Delgadillo-Parra*.

<sup>45</sup>On April 2, 2010 Ohio Governor Ted Strickland signed an executive order establishing the Ohio Prescription Drug Abuse Task Force with artificial opioids as one of its most important drugs of concern (Alan Johnson, “Ohio taking aim at opiates. Strickland task force will fight pill addiction,” *The Columbus Dispatch*, April 3, 2010)

<sup>46</sup>“Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. Javier Torres-Gutierrez*, July 1, 2009.

<sup>47</sup>“Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. FNU LNU, also known as ‘Gallo,’* July 20, 2009 and *Ibid*)

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During the same conversation “Juancho” also asked Torres-Gutiérrez whether there was anyone else from the group helping him with the business that day. Torres-Gutiérrez replied that another undocumented Mexican immigrant known only as “Pelirrojo” was helping him package black tar heroin inside a suburban apartment complex in Rock Hill, a city just across the state border in South Carolina, where they were cutting the product into personal doses.<sup>48</sup> Considering the level of oversight that he had of the Charlotte cell, law enforcement had reason to believe that “Juancho” was providing the basic knowledge necessary to run a black tar heroin business in the U.S.

Most importantly, however, “Juancho” was not only providing Torres-Gutiérrez with business management knowledge, but was also the main source of his product.<sup>49</sup> During their conversations in the summer of 2009, both men discussed the whereabouts of other black tar heroin producers in Mexico. Phone conversations intercepted by law enforcement in June 2009 revealed that Torres-Gutiérrez committed himself to buying two ounces of heroin delivered by “Juancho” at a price of \$1,050 per ounce.<sup>50</sup> “Juancho” arranged for an intermediary to bring the product into Charlotte driving all the way from the well-established heroin market of Columbus, Ohio.<sup>51</sup> During their conversations, “Juancho” assured Torres-Gutiérrez of the high quality of his heroin and offered in consignment three more ounces. It is important to note that from time to time Torres-Gutiérrez and other independent cells in Charlotte bought ounces of heroin from each other.<sup>52</sup> Judging from the evidence in this case, and other cases like it, Torres-Gutiérrez’ activity can be better described as a franchise-kind of business. Through this arrangement, a trusted brand (“Juancho”) provided Torres-Gutiérrez with seed-money to start his business, operational know-how, and immigrant labor in exchange of the transfer of some percentage of the drug proceeds.<sup>53</sup> Despite not being totally clear, wiretaps show that the Charlotte cell was sending some of the proceeds back to Mexico. The following Table 6 outlines the sources, intermediaries, cell heads, runners, and resellers for the Torres-Gutierrez cell.

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<sup>48</sup>“Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. Javier Torres-Gutierrez*, July 1, 2009.

<sup>49</sup>“Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. Candelario González-Rivera*, March 19, 2010.

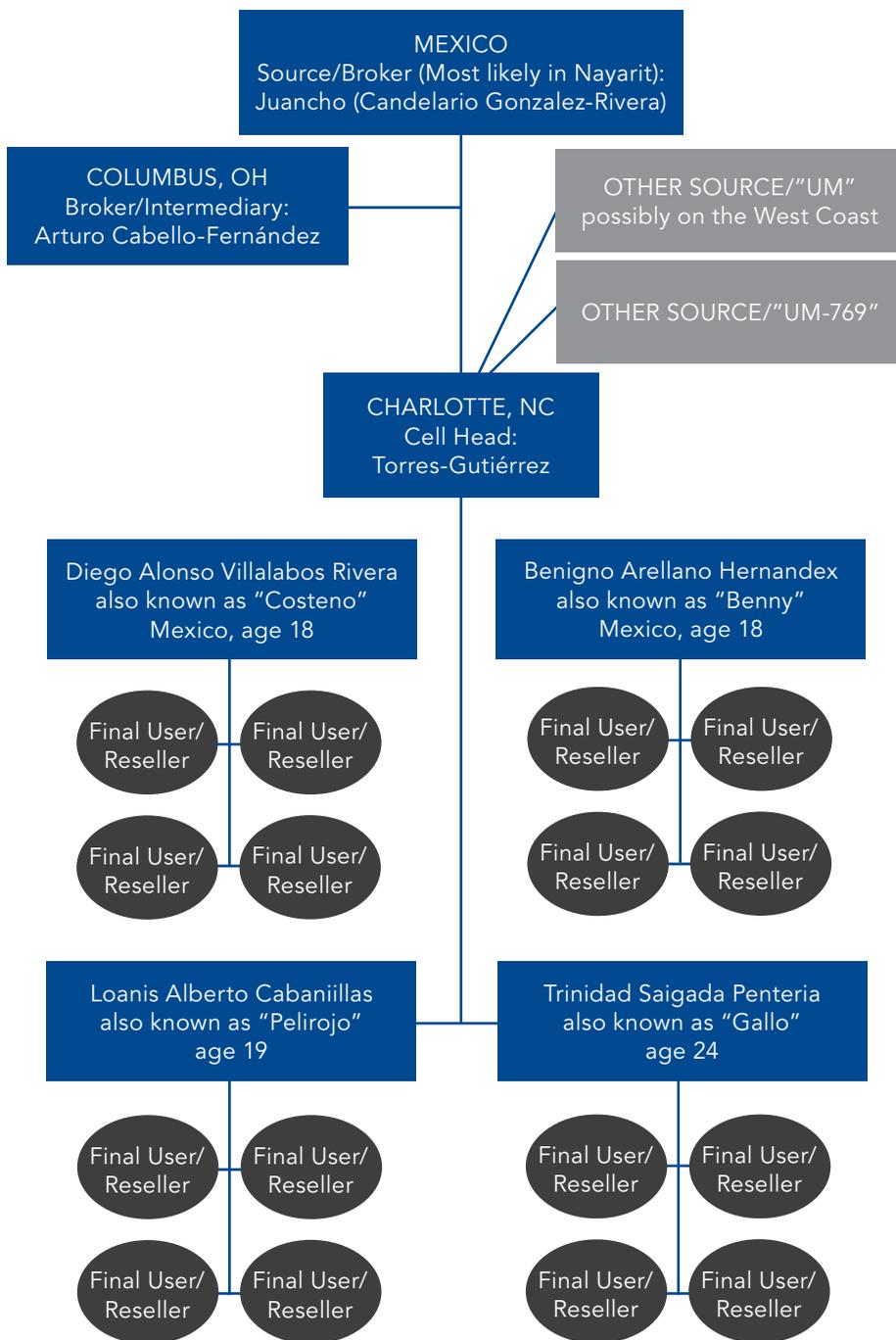
<sup>50</sup>*Ibid.*

<sup>51</sup>*Ibid* and Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. Javier Torres-Gutierrez*, July 1, 2009).

<sup>52</sup>*Ibid* and Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. FNU LNU, also known as ‘Julio,’* July 20, 2009).

<sup>53</sup>During the investigation against the Torres-Gutiérrez cell, a runner only know as “Greñas” was heard in a surveillance action saying that he was sending proceeds from drugs to Mexico (Affidavit by DEA Special Agent Robert C. Smith,” *United States of America vs. Javier Torres-Gutierrez*, July 1, 2009).

TABLE 6: TORRES-GUTIÉRREZ HEROIN CELL IN CHARLOTTE



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Like some other cities east of the Mississippi, Mexican black tar heroin became prevalent in Charlotte somewhere between 2003 and 2008. Local law enforcement started to see some cases during 2000 and 2001 but still considered it a problem within a small and close-knit community of users.<sup>54</sup> By 2003, local authorities were still concentrating most of their anti-drug efforts on curtailing cocaine importation from Colombia and had stepped up enforcement at Charlotte's international airport against the smuggling of this drug.<sup>55</sup> Yet, the discovery of a Charlotte connection in 2005 during "Operation Black Gold Rush" made clear that black tar heroin was a serious problem in the city.<sup>56</sup> Accordingly, in June 2007, federal officials stated that Mexican black tar heroin had officially landed in North Carolina.<sup>57</sup> Six months later, in February 2008 the DEA stated that black tar heroin's availability in North Carolina was underrepresented in their estimates.<sup>58</sup> By February 2009, the agency fully acknowledged the pervasiveness of the black tar heroin problem in North Carolina saying that heroin seizures had increased 77 percent between 2007 and 2008.<sup>59</sup>

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<sup>54</sup>"Black tar heroin really started surfacing here in 2000 and 2001; and I think that it was a smaller, closely knit community. The prices were higher per dose, but since the larger police departments and the federal government have done a push towards focusing on opium based prescription painkillers they've made it harder... (so) these same users are now converting to the cheap form of heroin to get that same opiate driven high. And I think what we have seen you just have seen it a shifting of people targeting your pill heads, so to speak, to now they are heroin junkies. So I don't think that you added more people, you only shifted your focus" (Interview with local law enforcement official in Charlotte, August 2009).

<sup>55</sup>Robert F. Moore, "Drug war shifting to points of entrance: Seizures of cocaine at Airport have risen," *The Charlotte Observer*, June 9, 2003 and Mary Elizabeth De Angelis, "Heroin making a comeback, with a vengeance," *The Charlotte Observer*, January 19, 1995.

<sup>56</sup>Drug Enforcement Administration, "International Black Tar Heroin Trafficking Group Dismantled: 'Operation Black Gold Rush' Leads to 138 Arrests in 15 Cities," August 15, 2006.

<sup>57</sup>"Heroin use and availability is reportedly low in North Carolina and is mainly confined to the major Central and Eastern metropolitan centers; however, developing information may suggest heroin trafficking has been underreported. Mexican drug-trafficking organizations transport small consignments of Mexican brown and black tar heroin from the Southwest Border states to North Carolina using private and commercial vehicles and express parcel services" (Drug Enforcement Administration, "State Fact Sheet, North Carolina 2007," June 2007).

<sup>58</sup>"Heroin use and availability is reportedly low but growing in North Carolina. It is mainly confined to the major central and eastern metropolitan centers. Mexican DTO's transport small consignments of Mexican brown and black tar heroin from the Southwest Border states to North Carolina using private and commercial vehicles and express parcel services. Other Hispanic, Asian, and African-American traffickers transport South American, Southeast Asian, and Southwest Asian heroin from Miami, New York/New Jersey, and Philadelphia by private vehicles and networks of commercial bus and airline couriers." (Drug Enforcement Administration, "State Fact Sheet, North Carolina 2008," February 2008).

<sup>59</sup>"Heroin use and availability is growing in North Carolina. It crisscrosses the state and is present in every metropolitan area. Statistics indicate a 77 percent increase in heroin seizures in the last year (2007-2008). Mexican DTO's transport small consignments of Mexican brown and black tar heroin from the Southwest Border states to North Carolina using private and commercial vehicles and express parcel services. Other Hispanic, Asian, and African-American traffickers transport South American, Southeast Asian, and Southwest Asian heroin from Miami, New York, New Jersey, and Philadelphia by private vehicles and networks of commercial bus and airline couriers" (Drug Enforcement Agency, "State Fact Sheet, North Carolina 2009," February 2009).

Yet, it was not until April 2009 that the first major news story labeling Charlotte a “black tar hub” emerged.<sup>60</sup> Mexican black tar heroin traffickers had by now taken control of Charlotte’s heroin market, making inroads into Raleigh-Durham, the other big North Carolina market.<sup>61</sup>

As the case of Torres-Gutiérrez cell shows, the arrival of Mexican black tar can be linked, in part, to the business astuteness of individual producers/brokers and traffickers.<sup>62</sup> As in Columbus, the relevant question is: where are the big Mexican DTO’s? According to the 2008 NDIC situation report, both the Sinaloa Federation and the Juárez Cartel have footprints in Charlotte.<sup>63</sup> Yet, federal law enforcement thinks that the Charlotte black tar heroin cells and their sources in Mexico are a network with only indirect links to the big drug syndicates. A federal law enforcement source in Charlotte summarized his thoughts on this pressing question with the following statement:

Mostly you hear [in the press] about the cartels. And although there is some cartel connection, with black tar heroin it’s more been about individual traffickers that control the whole production... down there in Mexico. And then they get it up here. But they stay underneath the radar screen. So I think that is an advantage to them. And the second advantage is how organized they are.

— Interview with a federal law enforcement official, 2009.<sup>64</sup>

These intrepid entrepreneurs are responsible for Mexican black tar reaching the eastern U.S. and becoming the dominant form of heroin in Charlotte over the past few years.

With very little presence 10 years ago, traffickers from Mexico not only reached into Charlotte but also transformed the city into the regional distribution hub for Mexican black tar heroin. In the Carolinas, evidence suggests that most black tar dealers across the state receive their supplies from the cells in Charlotte’s metro area.<sup>65</sup> Black tar heroin resellers from smaller cities (Winston-Salem, Asheville, Hickory, Concord, Salisbury, and Statesville, for instance) either come to Charlotte for product or ask for it to be delivered to their cities by the organization retailers.

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<sup>60</sup>Franco Ordoñez, “Charlotte emerges as hub for potent heroin Mexican traffickers control market. Arrests, abuse are up,” *The Charlotte Observer*, April 5, 2009.

<sup>61</sup>National Drug Intelligence Center, “Atlanta High Intensity Drug Trafficking Area Drug Market Analysis 2009,” April 2009.

<sup>62</sup>Interview with a federal law enforcement official in Charlotte, January 2010.

<sup>63</sup>National Drug Intelligence Center, “Situation Report: Cities in Which Mexican DTO’s Operate Within the United States,” April 11, 2008.

<sup>64</sup>Interview with a federal law enforcement official, January 2010.

<sup>65</sup>“Its not profitable for them to go to Monroe. To set up a shop they come to Charlotte and draw those people from the outer areas in” (Interview with a local law enforcement official, August 2009)

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These links extend to surrounding cities in South Carolina like Rock Hill and Fort Mill and also to places as far as the Southern border of Virginia, three hours by car.<sup>66</sup> Located four hours north of Atlanta with highways connecting it the Northeast and Appalachia, it is not a surprise that Charlotte became a regional hub for Mexican black tar. Local law enforcement believes that there are at least 10 black tar heroin trafficking cells working in the Charlotte metro area.

As court records show, the Southwest border is the main source for black tar for all Charlotte black tar cells transporting their product mainly from Southern Arizona and Southern California.<sup>67</sup> However, many recent cases have seen black tar heroin supplies making stops in places such as Columbus, OH, Memphis, TN and even Portland, OR before arriving in Charlotte.<sup>68</sup> Mexican black tar heroin traffickers usually use private cars with hidden compartments for transporting the drug via interstate highways. Price per ounce in Charlotte is reported to be somewhere between \$800 and \$1000, similar to the prices in border cities such as Phoenix or Tucson. According to law enforcement, price remains low because producers/brokers in Nayarit and Charlotte cells use very few intermediaries in the process. Table 7 contains a conservative estimate of profits for the Torres-Gutiérrez cell.

Black tar heroin cells arrived during a time of relative prosperity for Charlotte's fast growing metropolitan area. With 1.7 million people, the whole metro area is ranked number 34 in the country.<sup>69</sup> The growing size of the Mexican immigrant population in Charlotte allows the trafficking cells to blend in among hard-working individuals. Law enforcement acknowledges that the vast majority of those arrested as part of the cells have been Mexican.<sup>70</sup> Most of the runners operating in Charlotte are undocumented immigrants who, basically, are assigned one specific function like distributing drugs or guarding a house.<sup>71</sup> In 1990, there were only 2,030 persons of Mexican origin in Charlotte-Mecklenburg County while in 2008 the number had grown to 42,691.

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<sup>66</sup>"It comes here first and then from here, you will have resellers coming from Asheville, from Hickory, from Winston-Salem, to buy 100 balloons, 200 balloons and go back...I have arrested somebody that come as far as the line between Virginia and North Carolina. They were coming to Charlotte to purchase heroin. It's a regional problem (Interview with a local law enforcement official, August 2009 and Charlotte-Mecklenburg County Detective Paul Brent Foushee, "Local and Regional Heroin Trafficking," Presentation for Dr. Joseph Kuhns, UNC-Charlotte, Fall 2008).

<sup>67</sup>Charlotte-Mecklenburg County Detective Paul Brent Foushee, "Local and Regional Heroin Trafficking," Presentation for Dr. Joseph Kuhns, UNC-Charlotte, Fall 2008.

<sup>68</sup>A typical route for black tar trafficking would be Tijuana, Phoenix, Columbus, OH, Memphis/Nashville and Charlotte (*Ibid*)

<sup>69</sup>Charlotte GDP in 2008 was 118 billion 350 million dollars ranking in number 21 among U.S. cities. Its population was 1,701,799 people. Charlotte has a similar GDP to Monterrey, Mexico (Bureau of Economic Analysis, September 2009 and U.S. Census Bureau, July 2008).

<sup>70</sup>Interview with a local law enforcement official in Charlotte, August 2009.

<sup>71</sup>Mecklenburg County's Mexican origin population in 2008 was 42,691 people (4.7 percent of total) meanwhile in 1990 they only reached 2,030 people (.3 percent of total population). (U.S. Census Bureau, "1990 Census" and "2008 American Community Survey Estimates").

TABLE 7: POTENTIAL PROFITS OF TORRES GUTIÉRREZ BLACK TAR HEROIN CELL: A CONSERVATIVE ESTIMATE

Quantity		Price paid to source
1 ounce = .028 kilograms = 28 grams		\$1,000
Quantity		Price paid to source
1 dose = 1 balloon = .08 grams = 80 mg		\$8
1 ounce = 350 balloons = 28 grams = .028 kilograms		\$2,800
Total value of sales for 1 day (5 runners selling 5 oz)		\$14,000
Cost of drugs from source (5 ounces)	\$5,000	
Daily revenue before operating costs:		\$ 9,000
Daily Operating Costs:		
\$500		
(daily salaries 5 runners)		
\$80		
(daily rent for 2 homes)		
\$16	\$630	
(daily cell phone use; 6)		
\$17		
(daily gas 6 cars)		
\$17		
(daily utilities for 2 homes)		
Total net profit per day (Some stays with cell head and the rest goes to Mexico)		\$ 8,370

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Whereas in Columbus, Ohio authorities like to compare the Nayarit cell model to the “drive-thru” model, law enforcement in Charlotte prefer to call it the “Domino’s Pizza” model. Nonetheless, the heart of the business is the same; both cells cater to a suburban population, away from the inner city, who is trying to find a cheaper opiate-type of high. Usually, transactions occur after a customer or a final reseller meets a runner in parking lots. Sometimes a customer can develop a level of trust with the runner and could receive the drug directly at his/her home.<sup>72</sup> As a general rule, local law enforcement says they have seen little violence in the Mexican heroin trade in Charlotte.<sup>73</sup> They say they generally do not see a business connection between the runners and gangs. Yet, when incidents of violence occur they usually involve gangs trying to rip off the black tar cells from its proceeds.<sup>74</sup> Law enforcement in Charlotte says that runners usually have Caucasian final resellers or users, typically suburban white males between 16 and 28 years.<sup>75</sup>

Less than one year ago, in October 2009 the mayor of Charlotte held a press conference “to inform [his constituents] that heroin has now returned to the streets and homes throughout the city of Charlotte: North, South, East and West.”<sup>76</sup> According to local authorities, heroin overdoses in Charlotte grew exponentially from 4 in 2007 to 30 in 2009. Similar to what is happening in other parts of the U.S., the arrival of Mexican black tar heroin in Charlotte was fed by increasing numbers of people hooked on prescription opioids. North Carolina authorities say that the state has witnessed a steady increase in the rates of unintentional poisoning deaths since 1999 and according to them, “methadone, oxycodone, hydrocodone, and other opioid painkillers are the most common causes of unintentional poisoning.”<sup>77</sup> Following

<sup>72</sup>“So, if you are a young white kid, and you go up to a bad neighborhood you probably are either going to get ripped off or you are not going to be served at all. You can’t buy it. And if you do buy it, you are going to buy it for twice as much as you would pay from the Mexican source. So what would you do, would you rather go to a nice neighborhood, buy it for 10 dollars and you are going to get served because you made a phone call and just like, he said, like Domino’s, they arrive with your heroin. And in many cases when you are well known, you are trusted by them, they would even go to your house, or they would go near your house” (Interview with a local law enforcement official in Charlotte, August 2009).

<sup>73</sup>“We got the question (of violence) from the local media quite a bit. Because when the cartels started to ramp upon the border everybody was wanting to make a connection and a story to be quite honest with you” (*Ibid*).

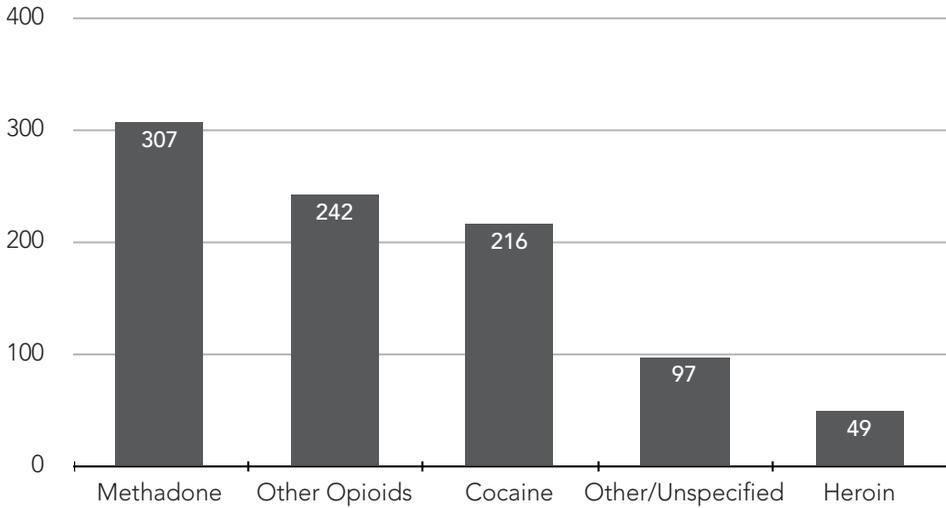
<sup>74</sup>“In fact they are the ones that get preyed upon...They get routinely robbed and ripped off, and things like that. But as far as that’s the violence they are part” (*Ibid*)

<sup>75</sup>“Their target demographic and the other night we made an arrest and we talked to them and this particular person said that ‘your trust fund babies’, that’s exactly the term he used: your ‘wealthy trust fund babies.’ (They)...throw just huge amounts of money at this heroin distributors because they have it. But the target demographic we’ve seen is: white males -and this is obviously not 100 percent but it is the sweet spot- white males, ages 18 to say 27. And we’ve started to be very concerned that we’re starting to see the younger kids. You know the 16 and 15 year-old level, 17 year-old level are now being brought into it. It’s the new (thing), some call it a fad, and some don’t really understand what it is they are really getting into when they start smoking it” (*Ibid*).

<sup>76</sup>Franco Ordoñez, “Heroin deaths on rise in ’09,” *The Charlotte Observer*, October 21, 2009.

<sup>77</sup>North Carolina Division of Health, “The Burden of Unintentional Poisoning in North Carolina,” January 2010.

**TABLE 8: TOP FIVE CAUSES OF PRESCRIPTION AND ILLICIT DRUG DEATHS NORTH CAROLINA 2007**



Source: N.C. Center for Health Statistics, Vital Statistics, 2007. Analysis by Injury Epidemiology and Surveillance Unit in *The Burden of Unintentional Poisoning in North Carolina*, January 2010.

the pattern of other states, Mexican black tar heroin traffickers are finding in North Carolina a significant pool of addicts craving a cheap opioid. As Table 8 shows, opioids are the second-most prevalent cause of death by prescription drugs.

Still, North Carolina is not the same as Ohio; while in Ohio unintentional poisoning deaths surpassed motor vehicle deaths in 2007, North Carolina authorities predict that even with a growing death rate, the state would not reach that point until about 2017.<sup>78</sup> The areas in the state with the highest rates of prescription opioid poisoning are those counties in the Appalachian region just west of Charlotte.

For local law enforcement, the arrival of black tar heroin cells in Charlotte was a phenomenon about which they had little knowledge in 2006. According to local investigators, federal authorities provided the insight into this innovative business model. Only a few of Charlotte’s 1,685 police officers were dedicated to narcotics investigations so they needed to join forces with other agencies to combat black tar.<sup>79</sup> By then, however, the local DEA office (part of the Atlanta Field division) had already put in place a Task Force with state and local officers in Charlotte.<sup>80</sup> Federal prosecutors in the Western District of North Carolina have pursued a very tough

<sup>78</sup>*Ibid.*

<sup>79</sup>Data from Charlotte-Mecklenburg’s Police Department

<sup>80</sup>Interview with a federal law enforcement official, January 2010.

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policy against many of the black tar cells since 2008. The DEA has publicized some of the cases filed at the U.S. District Court for the Western District of North Carolina, but still many others have not gained the attention of the media. During the summer of 2010, federal officials designated three counties in metro Charlotte (Mecklenburg, Union and Gaston) along with another three counties in Appalachia (Buncombe, Henderson and McDowell) as part of the High Intensity Drug Trafficking Areas program (HIDTA). Following a year of lobbying, the program will help fund joint law enforcement efforts coordinated by the regional HIDTA office in Atlanta. It can be said that public concern surrounding black tar in 2009 helped to put Charlotte on the map for more antidrug resources.<sup>81</sup>

### CONCLUSIONS

The arrival of Mexican black tar heroin to the eastern half of U.S. during the last decade can be considered a turning point for certain domestic heroin markets. As the cases of Charlotte, NC and Columbus, OH show, the arrival of Mexican black tar broke the nearly 20-year dominance of Colombian white heroin in those cities. The severity of Mexican black tar heroin abuse has become a priority for law enforcement in both cities, but more prominently in Columbus. The history of the two previous heroin epidemics in the U.S. (the first after World War II and the second during the 1970's) shows that both had a direct correlation to the drug's low cost and high purity.<sup>82</sup> The current low prices and high purity of Mexican black tar in some Eastern markets, such as those of Ohio and of North Carolina, have raised concerns among law enforcement and health officials. Back in the early 1990's when U.S. officials admitted that Colombian syndicates had started producing white heroin for exportation to the U.S., experts raised some concern because of their distribution capabilities.<sup>83</sup> At this point, the latest national statistics (2008) show that heroin continued to be at the lowest end of the drug abuse problem in the U.S. However, developments in Charlotte, NC and Columbus, OH show that this story may be shifting in certain heroin markets.

For at least half a century, Mexican black tar heroin found its way to cities in the Western U.S., most notably Los Angeles, CA. Known in Mexico and the American

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<sup>81</sup>Following the first reports of Charlotte as a black tar heroin hub, Congresswoman Sue Myrick along with local agencies in the Charlotte metro area requested in August 2009 HIDTA designation. Before August 2010, when the Office of National Drug Control Policy (ONDCP) announced the expansion, the only area in North Carolina under HIDTA designation was Raleigh-Durham. (Office of National Drug Control Policy, "Nine Counties Receive Federal Designation to Fight Drug Trafficking," August 24, 2010 and Congresswoman Sue Myrick, "Myrick Announces Possible Program to Combat Drug Trafficking in Charlotte Area," August 19, 2009).

<sup>82</sup>P.H. Hughes, and O. Rieche, "Heroin Epidemics Revisited," *Epidemiologic Reviews*, 1995, 17 (1), p. 66.

<sup>83</sup>"These international trafficking groups already had cocaine distribution networks in North America. The fear is that they will introduce large quantities of low-cost, high-purity heroin, and that we could experience another large-scale heroin epidemic" (*Ibid*)

Southwest by the Spanish slang of “Chiva,” black tar heroin’s share of the U.S. market rose to 39% by 1972, in the middle of the country’s second heroin epidemic.<sup>84</sup> However, it was not until the late 1990’s that federal authorities started to see connections between black tar trafficking networks in the Southwest and locations east of the Mississippi.

At a time when the influence and reach of the large Mexican DTO’s is prominently showcased in the American media (particularly the powerful Sinaloa Federation) the cases of Charlotte, NC and Columbus, OH show a different story. Law enforcement in both cities has found scant evidence to link the arrival of a new cheap, potent version of Mexican black tar to the operations of large, monolithic Mexican DTO’s.<sup>85</sup> Produced on the Mexican Pacific Coast, notably in Nayarit’s township of Xalisco, the movement of black tar heroin into Columbus, OH and Charlotte, NC the past decade happened due to the work of individual teams (or cells) connected to autonomous poppy growers/brokers. The following are the main forces behind the flourishing of the Mexican black tar trafficking networks in these two cities:

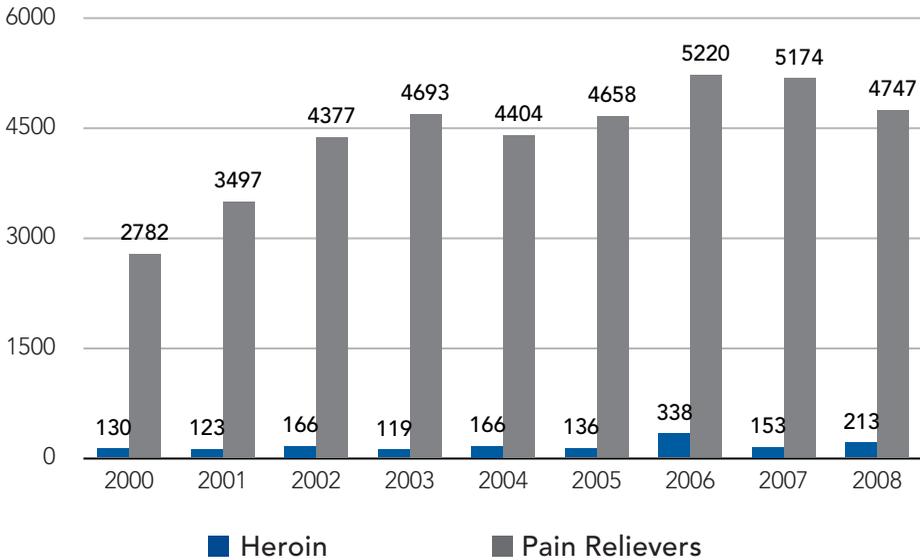
**Increased demand for opioids in the U.S:** The arrival and consolidation of Mexican black tar heroin east of the Mississippi during the past decade cannot be understood without considering the recent, steady increase in consumption of prescription opioids in the U.S. Without a population already addicted to painkillers, as in the case in Central Ohio or Western North Carolina, it is difficult to imagine how the “Nayarit cells” could have been successful. The large pool of people addicted to relatively expensive artificial opioids in the U.S. created a business opportunity for any creative entrepreneur who was able to bring a cheaper and high purity production opioids. As a result, it can be said that the “Nayarit cells” are reaping profits for the large pool of prescription pain reliever addicts. Indeed, as Table 9 indicates, drug use has risen steadily since 2000. It remains to be seen whether heroin will gain a larger share of the painkiller market or if prevention campaigns will be able to stop a surge over the next few years.

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<sup>84</sup>Chellis Glendinning, *Chiva. A Village Takes on the Global Heroin Trade*, New Society Publishers, 2005. p. 46.

<sup>85</sup>This finding is consistent with recent academic literature regarding drug trafficking organizations that can be summarize in the following assessment: “Little evidence supports the idea that upper and mid level dealing is controlled by tightly organized, complex and hierarchical organized crime groups that operate around the world. Even the Medellin and Cali “cartels” seem to be only loose syndicates of independent entrepreneurs, who sometimes collaborate but who also compete with each other and with other, smaller organizations” (Mangai Natarajan, “Understanding the Structure of a Large Heroin Distribution Network: A Quantitative Analysis of Qualitative Data” in *Quantitative Journal of Criminology*, 2006, 22(2), 171–192).

TABLE 9: DRUG USE IN THE PAST MONTH AMONG PERSONS AGE 12 OR OLDER: NUMBERS IN THE THOUSANDS



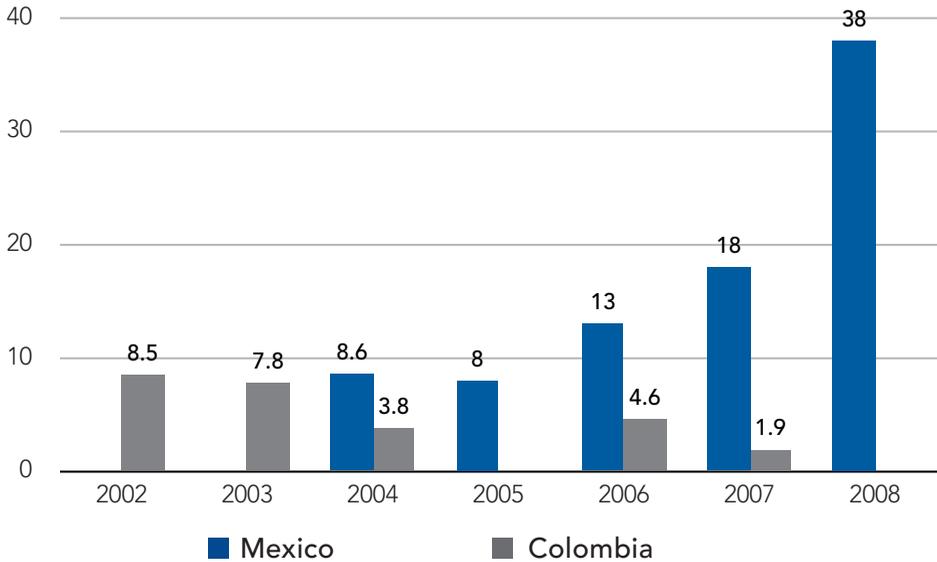
Source: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002, 2003, 2004, 2005, 2006, 2007, and 2008.

**The control of production in Mexico:** The success of the “Nayarit cell model” in Charlotte, NC and Columbus, OH is rooted in the entrepreneurial vision and business model of autonomous producers in Mexico’s Pacific Coast. These producers keep control of their product by providing cells, or franchises, abroad with supplies, know-how, and a labor force, all coming directly from Nayarit. But their success is fundamentally tied to the network’s ability to access a relatively abundant production at home.

It is difficult to assess levels of production in Mexico, but due to the acuteness of the problem in some U.S. markets, the latest American government assessment showed a dramatic increase during the past three years in poppy cultivation across Mexico. U.S. drug analysts think that the current levels of availability, with low prices and high purity in cities like Columbus, OH and Charlotte, NC, is directly linked to the Mexican government’s decision to move many of the Mexican military units from their traditional eradication role of poppies and marijuana towards one of providing public security in urban areas. As a result, Mexican DTO’s are able to produce significantly more heroin:<sup>86</sup>

<sup>86</sup>National Drug Intelligence Center, “National Drug Threat Assessment 2010,” 2010.

TABLE 10: POTENTIAL PURE HEROIN PRODUCTION, IN METRIC TONS (WHEN 0: VALUE IS NOT AVAILABLE)



Source: U.S. Government estimates; National Drug Threat Assessment, 2010.

**The franchising of a successful business model:** Heroin brokers/producers in Mexico have excelled in replicating in the East their successful business model out West. In contrast to the large Mexican DTO’s –long considered poly-drug organizations– these brokers/producers have developed a cell system dealing only with heroin. Two key factors in the success of these independent brokers/producers is the control of production at the farm and the relatively small quantities of heroin needed for reaching profitability. U.S. agents suspect that heroin brokers in Mexico have arrangements with the major DTO’s. Federal law enforcement officials think that there must be at least some kind of payment for letting heroin brokers export their product through specific “border plazas.”<sup>87</sup> At the very least, court records show that heroin brokers in Mexico have been able to reduce the number of “middle men” in the chain connecting them to the cells in places like Charlotte, NC and Columbus, OH. Most importantly, brokers and cells have been able to exploit the increasing appeal for artificial opioids in certain regions of the U.S. since the year 2000. Black tar trafficking cells in these cities have adapted by catering directly to the suburban consumer of and opioid dependant population. By deploying an efficient “Domino’s Pizza”-style retail system in middle- and upper-class neighborhoods in the

<sup>87</sup>Interview with a federal law enforcement official, January 2010.

## CROSSING THE MISSISSIPPI: HOW BLACK TAR HEROIN MOVED INTO THE EASTERN UNITED STATES

suburbs, these cells were able to reverse heroin's 1970's reputation as an inner-city drug, synonymous of dark alleys.

The trafficking of black tar heroin from Mexico to the U.S. has received a relatively small amount of attention from the news media, even in the midst of heightened coverage regarding Mexico's war on drugs. Relevant prosecutions in federal courts in the U.S. such as North Carolina's Western District (Charlotte) and Ohio's Southern District (Columbus) have been out of the public eye except when federal prosecutors specifically publicize them.

After growing concern in the U.S. regarding heroin independent producers, Mexican authorities made arrests of two individuals that they claim were significant heroin producers: one in Sinaloa and one in Michoacán.<sup>88</sup> On the U.S. side federal authorities recognize that going after heroin producers is not at the top of their priority list, due to limited resources:

Let's face it: the cartels are the priority. And cocaine is still the number one drug threat in this country. So, we have limited resources and we have to prioritize...

— Interview with a law enforcement official, January 2010

Going after the "corporate-type" structures of the large Mexican DTO's (instead of prosecuting individual brokers and cells with no identifiable leadership that deal only with one drug) may also be occurring because of the challenges that this innovative structure poses to authorities on both sides of the border.<sup>89</sup>

With heroin markets in the Eastern U.S. increasingly open to Mexican black tar, the next few years present challenges for the immediate future of heroin trafficking in the region. For example, the next few years will clarify whether the black tar heroin "cells model" can be introduced to the major heroin markets in the Northeast

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<sup>88</sup>In March 2010, the Mexican Government said it had captured José Antonio Medina Arreguín, whom they dubbed as "The King of Heroin" and whose base were the towns of Uruapan and Apatzingán in Michoacán. More importantly in June 2010, Mexican law enforcement captured Carlos Ramón Castro Rocha, a suspect accused to be connected to some Charlotte cells and whose base was Guasave, Sinaloa. (Presidencia de la República, "Capturan a José Antonio Medina Arreguín, "El Rey de la Heroína," March 25, 2010 and Drug Enforcement Administration "High Priority Target Indicted for Heroin Trafficking, Arrested in Mexico," June 10, 2010).

<sup>89</sup>"The view that drug trafficking is primarily conducted by small groups of entrepreneurs who almost randomly come together to conduct particular deals and then disperse, perhaps to reconvene at a later date to conduct a new deal with some other entity, presents law enforcement with a difficult challenge. It is much harder to hit a moving target than static one, such as that presented by a large criminal organization. Furthermore, there are many advantages for law enforcement in portraying themselves as engaged in a fight against a powerful, highly organized enemy. This attracts resources and media attention. Fighting loose networks of opportunist entrepreneurs is not only more difficult, but is less glamorous and somehow less worthwhile" (Mangai Natarajan, "Understanding the Structure of a Large Heroin Distribution Network: A Quantitative Analysis of Qualitative Data" in *Quantitative Journal of Criminology*, 2006, 22(2), 171–192 2006).

(chiefly, New York and Boston); and also, whether prosecutions will be an effective way to deter cells (in places like Columbus, OH and Charlotte, NC) from expanding their business. But the single most important aspect in the coming years is whether the U.S. will be able to reduce the current market for artificial opioids and stop the bleeding of some of these consumers into the Mexican black tar heroin market.

# HOW CAN DOMESTIC U.S. DRUG POLICY HELP MEXICO?

Peter Reuter

## ABSTRACT

Mexico's principal drug problems, the violence and corruption related to trafficking, are the consequence of the large U.S. market for cocaine, heroin, marijuana and methamphetamine. If the U.S. market disappeared, Mexico's problem would diminish dramatically, even with its own domestic consumption remaining.

Nonetheless, there is little that the U.S. can do to reduce consumption over the next five years that will help Mexico. The evidence is that enforcement, prevention, or treatment programs cannot make a large difference in U.S. consumption in that time period.

Prevention remains largely an aspiration. Few of even the most innovative programs have shown substantial and lasting effect, while almost none of the popular programs have any positive evaluations. Treatment can be shown to reduce both drug consumption and the associated harms of drug dependent clients. However, given the chronic relapsing nature of drug dependence, it is unlikely that treatment expansion will have large effects on aggregate consumption. Enforcement, aimed at dealers and traffickers, which has received the dominant share of funds for drug control, has failed to prevent price declines; thus supply side efforts are unlikely to reduce the demand for Mexican source drugs. Efforts to discourage users directly through user sanctions are too small scale to have any noticeable effect. However, it is possible that the incarceration of criminal offenders, though not explicitly targeted to reduce demand, has managed to lock up a substantial share of consumption.

The most promising interventions aim at reducing use among criminally active users under community supervision. Reducing drug use among parolees and probationers may lead to substantial reductions in drug consumption in a population that accounts for a substantial share of all U.S. cocaine and heroin consumption. Moreover, the results of a large-scale study of mandated desistance among probationers in Hawaii suggests that it is possible to scale this program so as to make a measurable difference in a relatively few years. There are also epidemiological factors that may help lower U.S. consumption of cocaine, heroin, and methamphetamine.

The median forecast is that U.S. consumption of cocaine, heroin, marijuana, and methamphetamine will slightly decline over the next five years — a result that should provide some benefit to Mexico.

## INTRODUCTION

Mexico's principal drug problems, the violence and corruption related to trafficking, are the consequence of the large U.S. market for cocaine, heroin, marijuana, and methamphetamine. If the U.S. market disappeared, Mexico's problem would diminish dramatically, even with its own domestic consumption remaining. Thus, it is easy to argue that the key to reducing Mexico's problems is vigorous efforts to reduce consumption in the United States.

Unfortunately, it turns out that there are numerous obstacles to obtaining a major reduction in U.S. consumption in the next five years, the period used throughout this paper as the policy horizon. First, drug prevention programs, even if they were effective in substantially reducing the number of young Americans who started using drugs, would have almost no effect on total consumption in the U.S. in that period because they aim at individuals much younger than those who consume large quantities of drugs. Second, drug treatment, which does aim at those who are consuming most of the cocaine, heroin, and methamphetamine in the United States, can only make a modest difference in total consumption because it is characterized by high drop-out rates and regular relapse. Third, enforcement which aims to raise prices and make drugs less available has simply not shown a capacity to do that on more than an episodic basis. Incarceration does reduce demand for drugs but, after a huge increase in incarcerations over the last forty years, incarceration is not likely to increase in the near future.

Any promise for sharp reductions in total consumption lies in a new and just-tested program that is targeted at frequent users under criminal justice supervision.

While this paper is fairly pessimistic about the potential of U.S. policy to help Mexico, policy is only a modestly important factor in determining the demand for drugs. Culturally-formed attitudes towards the dangers and pleasures of drugs are much more influential. In addition, the use of drugs (apart from marijuana) is an epidemic phenomenon. The timing of epidemics, which occur independently of policy, have important and lasting effects. These other factors may, in the medium-term, help Mexico. The cocaine epidemic has been waning for many years as the number of regular users is declining and they are aging. The demand for cocaine has been falling for perhaps 20 years and, without the outbreak of a new epidemic, this trend is likely to continue. Marijuana trends throughout the Western world point to continuing declines, though there is more reason to doubt the persistence of that trend. For heroin and methamphetamine there is weaker evidence of decline. Nonetheless, it is likely that, absent an external disturbance, the U.S. demand for drugs from Mexico will decline.

For the purposes of this paper, we take that as desirable. It may, however, be that the current violence itself is in part engendered by the gradual decline in the U.S. market and that further declines will, for a while at least, increase the inter-gang

disputes over falling revenues. Nevertheless, in the long run, smaller consumption in the United States is surely going to lower the corruption and violence associated with drug trafficking in Mexico.

### CHARACTERIZING U.S. CONSUMPTION

Our focus is the demand for illegal drugs in the United States. There are no tested models of the determinants of that demand. Economists have invested a great deal studying the responsiveness of demand for specific drugs to variations in price (see Grossman, 2004 for a recent review), but there is no reason to believe that the principal determinant of the demand for drugs is price. Drugs are fashion goods and spread in an epidemic fashion, as described below.

Epidemics historically begin when drugs are very expensive. Subsequent declines in price, as observed with cocaine and heroin, have not sparked new epidemics. Changes in beliefs regarding the desirability and harmfulness of a specific drug are, in fact, far more important in ending epidemics. Theories have yet to be fully developed, though Caulkins and collaborators have developed models in which the shape of observed epidemics can be accounted for by simple models about the evolution of beliefs in the wake of experience (e.g. Caulkins, 2007; Caulkins et al., 2004).

#### The epidemic model of drug use

Heroin is the drug that is classically associated with ‘epidemics’ (Hunt, 1974). The notion of a drug epidemic captures the fact that drug use is a learned behavior, transmitted from one person to another. Although there are individuals — drug importers and distributors — who consciously seek to create new markets for their drugs, it is now clear that almost all first drug experiences are the result of being offered the drug by a friend or family member. Drug use, thus, spreads much like a communicable disease; users are ‘contagious’ and some of those with whom they come into contact are willing to become ‘infected.’

At the onset of an epidemic, rates of initiation in a given area rise sharply as new users of a drug initiate friends and peers (Caulkins et al., 2004). Long-term heroin, cocaine, and crack addicts are not particularly ‘contagious.’ Instead, they are often socially isolated from new users. Moreover, they usually present an unappealing picture of the consequences of addiction to the specific drug. In the next stage of the epidemic, initiation declines rapidly as the susceptible population shrinks because there are fewer non-users and because the drug’s reputation sours as a result of better knowledge of its effects. The number of dependent users stabilizes and, typically, gradually declines.

Most Western countries have just one discrete heroin epidemic. The Netherlands and the United States, for example, both experienced an epidemic of heroin use

between the late 1960s and early 1970s. Since then each has had only moderate endemic levels of initiation.

The model is best tested for heroin but is not restricted to that. The U.S. has been through four drug epidemics in modern times; heroin (ca. 1968–73), cocaine powder (ca. 1975–1985), crack cocaine (ca. 1982–1988), and methamphetamine (ca. 1990–2000).

No one claims to have a model that predicts when an epidemic might start. Many mocked those who predicted the coming of an “ice” epidemic (involving a crystal-line form of methamphetamine) in the early 1990s (see Jenkins, 1994 for a history of the “ice” panic) but no one has been able to explain why methamphetamine broke out of its long-time niche in San Jose and a few West Coast cities around that same time. Nor can anyone explain why the pattern of methamphetamine use across cities (as measured by arrestee drug testing) remains so patchy.

In summary, the United States in 2010 is in a post-epidemic phase for all drugs that involve Mexico. A major new drug epidemic might emerge from among the many synthetics that enter the market each year but there is no clear reason to believe that Mexico will have an important role for that new drug.

## ESTIMATING AMERICAN DRUG CONSUMPTION

We have an interest in both the absolute level of U.S. consumption of drugs, which determines Mexican earnings, and in the trend over time. The only evidence on trends in consumption is from the 1990s and from an unrelated estimate of total consumption for 2005.

During the 1990s, the Office of National Drug Control Policy commissioned a research organization (Abt Associates) to produce estimates on at least three occasions. These estimates are of (1) the number of “chronic users” of cocaine, heroin and methamphetamine, defined as those who used the drug more than eight times in the previous 30 days; (2) the total consumption of those three drugs, plus marijuana; and (3) expenditures on the four drugs. I emphasize consumption rather than prevalence or domestic expenditures as most relevant to Mexico’s violence and corruption:

Table 1 provides the most recent consumption estimates, covering the period 1988 to 2000, though the final year itself was a projection.<sup>1</sup> It shows that total consumption of cocaine declined throughout this period — sharply in the early part and then more gradually. The other drugs have complex patterns; heroin fluctuates modestly around 13 tons and methamphetamine increased sharply from 1990 to 1996 before then falling by almost two-thirds over the next four years. Marijuana, after falling by one ninth between 1988 and 1992, rose by about one quarter through 2000.

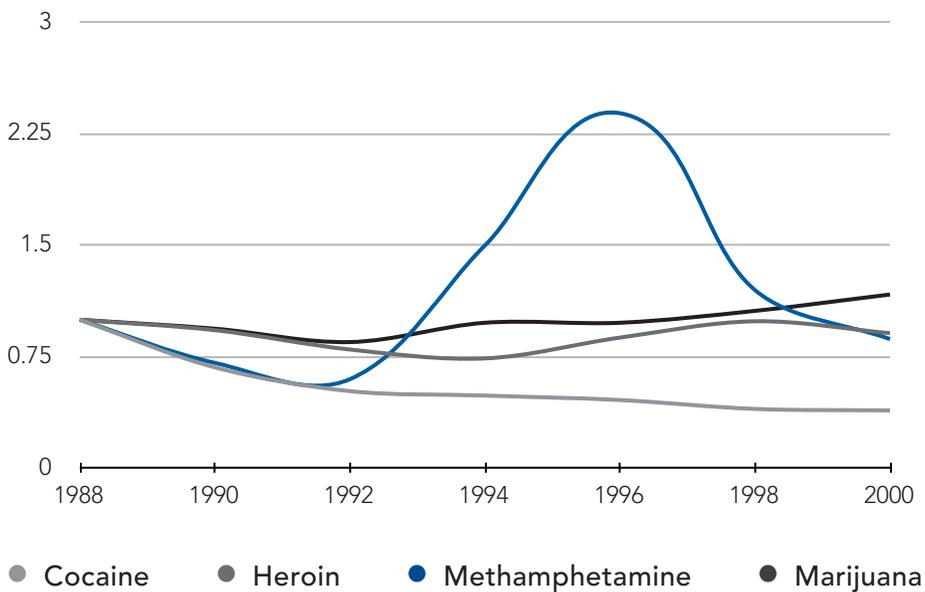
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<sup>1</sup>A more recent estimate, through the year 2003 was prepared, as indicated by a brief reference to it in the *National Drug Control Strategy 2005*. It was never released by ONDCP.

TABLE 1: TOTAL CONSUMPTION OF FOUR DRUGS, 1988–2000 (METRIC TONS)

	Cocaine	Heroin	Methamphetamine	Marijuana
1988	660	14.6	22.7	894
1989	576	16.6	19.0	866
1990	447	13.6	16.1	837
1991	355	12.5	10.0	793
1992	346	11.7	13.6	761
1993	331	11.2	18.9	791
1994	323	10.8	34.1	874
1995	321	12.0	54.2	848
1996	301	12.8	54.3	874
1997	275	11.8	35.3	960
1998	267	14.5	27.2	952
1999	271	14.3	18.3	1028
2000	259	13.3	19.7	1047

GRAPH 1: TRENDS IN TOTAL CONSUMPTION OF FOUR DRUGS, 1988–2000



Source: ONDCP 2001. (normalized to 1988 value)

TABLE 2: ESTIMATES OF U.S. CONSUMPTION BY DRUG, CA.2005

	Weight (metric tons)	Expenditures (\$ mil.)
Cocaine	381	52,910
Heroin	14	7,152
Methamphetamine	32	3,485
Marijuana	2947	16,990

These are the best available estimates of trends, albeit now distant ones. What is striking is how unstable these estimates are; estimates published by the same research group only one year earlier showed quite different trends over time. For example, estimates published in 2000 showed a one third decline in heroin consumption early in the 1990s, followed by a resurgence in the following three years, leading to essentially an unchanged total by 1994. This finding is quite discrepant with the estimates published in 2001 and shown in Table 1.

There are no published estimates of this series after 2000. A more recent estimate of these figures is available but not as part of a time series. Kilmer and Pacula (2009) synthesize many sources to produce a series of estimates that are consistent across rich, consuming countries for, approximately, the year 2005. Their figures for the U.S. are provided in Table 2.

Despite the lack of estimates of the total market since 2000, there are indirect indicia of declining demand for all four drugs except heroin. In the case of cocaine, for instance, there has been a steady and substantial aging of the population seeking treatment. In the 1992 national treatment data, 40% of clients were under the age of 30 and by 2006, that figure had dropped to 26% (Pollack, Reuter and Sevigny, forthcoming). The fraction of clients over the age of 40 rose from 15% to 47% over the same period. This finding was not the consequence of an epidemic of new use among older individuals but, rather, it represented the aging of those who were caught in the earlier epidemics. For methamphetamine, the aging of the treatment population is less dramatic but also marked.

For marijuana, we rely on the National Survey on Drug Use and Health (NSDUH), which has much better coverage of that drug than of cocaine, heroin and methamphetamine; all but marijuana are typically used by individuals who have chronic problems that reduce their participation in household surveys. The NSDUH marijuana data have shown not so much epidemics as medium-term cycles of use. The prevalence among 18 year olds rose sharply in the second half of the 1970s and then fell steadily and substantially over the next decade. It rose again after 1991 , never reached the levels of 1980, and has fallen slightly since about 2003. The most recent upturn followed by a downturn mirrors what has happened in many other Western nations over roughly the same period (Room et al, 2010; Chapter 3).

## HOW CAN DOMESTIC U.S. DRUG POLICY HELP MEXICO?

Heroin epidemics are far more complicated. Those caught in the first epidemic, which occurred roughly between 1967 and 1973, are now mostly dead (see Hser, Hoffman, Grella and Anglin, 2003) and have been replaced by younger cohorts, spread over many birth years. Thus there have been increases in the fraction of heroin clients over the age of 40 and between 20 and 30.

There are no documented estimates of the share of Mexican drug revenues from each specific drug. A cursory calculation based on the 2005 distribution of revenues across the four drugs and taking into account other information about the contribution of Mexican domiciled actors, suggests that the ranking of the drugs in terms of revenues to Mexican residents is as follows: cocaine, marijuana, heroin and methamphetamine. But these are highly speculative claims and the DEA routinely asserts that marijuana is the most important of the drugs for the Mexican traffickers (Perkins and Placido, 2010).

## PROGRAMS AIMED AT REDUCING DEMAND<sup>2</sup>

### Prevention

A substantial number of programs have been developed that aim to reduce the number of adolescents who try illegal drugs. Most programs have shown little effect but a few have delayed the initiation of drug and alcohol use (Faggiano et al., 2005). For example, a small number of reputable studies find that specific family-based or classroom management programs are able to prevent drug or alcohol use. An important characteristic is that these programs attempt to improve behavior and social skills more generally, within the family or classroom environment. They do not focus exclusively or specifically on drug or alcohol use per se and indeed have a variety of effects beyond drugs and alcohol.<sup>3</sup> The record for specialized programs is fairly dismal; purely didactic prevention programs and some of the most widely used ones, such as the Drug Abuse Resistance Education (DARE), have no evidence of effectiveness, whether delivered through the mass media, in the community, or in the classroom (West and O'Neal, 2004).

Economic analyses indicate that prevention programs may be cost-effective even if they are only modestly effective because they are relatively inexpensive and even small changes in use rates over the lifespan of the user can be valuable. Societies tend to make a small investment in prevention and, on average, they reap a small return. Poor choices of programs can result in no benefit. However, even the wisest choices will not generate a large benefit. (Caulkins et al., 2002).

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<sup>2</sup>This section draws on Babor et al, 2010.

<sup>3</sup>One study (Caulkins et al., 1998) found that the non-drug benefits from these programs, in particular the reductions in cigarette use, outweighed the drug effects.

These programs are usually targeted at children who are 10–15 years old for two main reasons. First, elementary and middle schools are thought to have more ability to deliver such messages compared to high schools in large part because of absenteeism. Second, these are the years in which children are most susceptible to the messages themselves. The peak years of initiation are a little later (15–17) but those who start earlier are more likely to become frequent users or abusers of illicit drugs.

The evidence on mass media campaigns has been consistently negative (e.g. Orwin et al. 2005). What does seem to work are effective classroom management and other factors associated with good school performance generally (e.g., Kellam et al., 2008)

## Treatment

In contrast to the prevention evaluation literature, there are numerous encouraging findings with respect to treatment, particularly for those who are dependent on heroin; for an accessible and relatively brief recent review see Chapter 9 of Babor et al. 2010. There is now a long, rich set of studies which demonstrate that methadone maintenance can substantially reduce consumption of illicit heroin by those in treatment (e.g. Uchtenhagen et al., 2004). More recently, this result has been extended to include buprenorphine, another substitute for heroin (see e.g. Johnson et al., 2000).<sup>4</sup> For other drugs, the results are less positive; no substitutes have been found for the stimulants or marijuana. Nonetheless, there are modestly positive findings for a variety of treatments (e.g. contingency behavioral therapy) aimed at users of cocaine and quite positive ones for marijuana (Marijuana Treatment Research Project, 2004), though the primary result was reduction in marijuana use rather than abstinence.

The results must be placed in the context of Mexico. The outcome of primary interest for our analysis is how much treatment can reduce the consumption of drugs, since that is how the U.S. affects Mexico. The levels of drug use related crime in the United States, on the other hand, has minimal consequence for Mexico. In economic analyses of treatment interventions, crime reduction provides the most conspicuous and, sometimes, the dominant benefit (e.g., Cartwright 1998 Flynn et al. 2003; Godfrey et al., 2004;). Much of the estimated benefit of substance abuse treatment arises from the minority of patients who, before treatment, commit serious offenses. The social benefits of crime reduction are much smaller for the median client and are smaller for marijuana than for other substances that are more correlated with felony offending.

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<sup>4</sup>Buprenorphine is longer acting than methadone and has perhaps less abuse potential. It is still not widely used in the United States but is commonly used by private practitioners in France (Emanuelli, 2006).

## HOW CAN DOMESTIC U.S. DRUG POLICY HELP MEXICO?

An informal scan, which is the only possible method at present, suggests that no democratic nation with a major opiate problem has managed to cut the number of regular users sharply within a decade, even when a large share of those eligible are served by treatment services. The Netherlands, for instance, are committed to the provision of treatment for anyone in need. It provided treatment to an average of 15,000 heroin users annually throughout the 1990s — about 50% of the heroin dependent population. Yet in 2001, the estimated number of heroin-dependent persons was 28–30,000 — essentially unchanged from the 1993 estimate. This result is not just the result of including some of those in treatment; many patients remain active heroin users (National Drug Monitor, 2003).

The stability of numbers in the Netherlands does not represent the consequence of high initiation canceling out the effects of high treatment success. Data on treatment clients suggested that very few of those dependent on heroin in 1999 had started use during the preceding decade. In 1989, the median age of those in treatment in Amsterdam was 32 while in 2002 the median age was 43. (National Drug Monitor, 2003). Many other Western nations also experienced an aging of the heroin dependent population during the 1990s.

Similar statements may hold for Australia and Switzerland, two other countries committed to a generous supply of decent quality treatment services.

Treatment is generally acknowledged to be useful, frail, and incomplete. Viewed at the population level, treatment is cost-effective and perhaps cost-saving. Viewed at the client level, treatment reduces but rarely fully halts problems of alcohol use or the use of illicit drugs. Most clients are imperfectly adherent to “good” programs and many clients will continue their use at some level after treatment is completed.

The NTORS (National Treatment Outcome Research Study) study in the United Kingdom, the most recent large-scale longitudinal research, illustrated both the benefits and the limitations of treatment intervention. Treatment induced large declines in heroin use and in the use of non-prescribed methadone and benzodiazepines. Rates of acquisitive crime and drug-selling also declined by large margins.

Treatment was markedly less effective in other domains. Even five years later, most respondents continued to report some recent use of at least one target substance. Among methadone patients, 61 percent reported recent heroin use. Only 26 percent reported that they had not recently used any of the examined target drugs. Among residential treatment clients, 51 percent reported recent heroin use and only 38 percent reported no recent use of any target drug. Compared with results for opiates, treatment proved less effective in reducing crack cocaine use and many clients left treatment within three months. Similar results are reported in DATOS (Drug Abuse Outcome Study), the most recent large-scale longitudinal treatment study in the U.S. (Hubbard et al., 2003).

Treatment for heroin and cocaine use reduces individual demand for these substances. However, the aggregate reductions have been surprisingly slight, due to both high rates of continued use during treatment and to high relapse rates.

## Enforcement

Even compared to treatment and prevention, enforcement is a heterogeneous category of interventions, ranging from efforts to eradicate poppy growing in Afghanistan to street sweeps against buyers in inner city neighborhoods that serve as markets. Two general characteristics of these interventions are (1) a near-total absence of impact or outcome evaluation and (2) a near-total absence of public and policymaker demands that such evaluations be performed.

There is, at present, no empirical basis for estimating how much any of these enforcement efforts contribute to reductions in drug use and related problems, let alone a basis to evaluate the broad costs and benefits of competing enforcement approaches for society. Research gaps reflect methodological problems (for example, absence of small area drug indicators to match with enforcement intensity measures) and the view that drug enforcement is a moral obligation, for which the term “crusade” is not too strong in the United States. Prevention and treatment have been more carefully studied in part because policymakers and clinicians have demanded that these evaluations be done to justify program funding. Absent similar demands, we have no comparable body of evaluation research pertaining to law enforcement interventions.

The case for enforcement aimed at higher levels of the drug trade is narrow. Interdiction and source country controls aim to raise prices, reduce availability, signal social disapproval, and, perhaps, reduce the political influence of drug suppliers in source countries. Yet the impact of these policies remains hard to measure credibly. Only one study finds that interdiction raised prices and treatment admissions (Crane, Rivolo and Comfort, 1997) but it has been extensively critiqued for methodological flaws by the National Research Council (Manski, Pepper and Thomas, 2000).<sup>5</sup> Other simulation studies have found that interdiction, at least by the U. S., is unlikely to raise drug prices or to restrict drug availability (e.g. Caulkins, Crawford and Reuter, 1993).

Current research does not imply that interdiction should be eliminated. Smuggling cocaine and heroin is expensive, costing approximately \$15,000 to move one kilogram of cocaine from Bogotá to Miami. Interestingly, Federal Express would charge less than \$100 to move (much more reliably) a kilogram of legitimate white powder between the same cities. The combination of illegality and some enforcement seems to generate higher prices and, thus, somewhat lower drug use. Illegality surely deters some potential users, in part because of availability effects (MacCoun and Reuter, 2001). Yet because of gaps in the available research, there is no empirical basis for assessing whether current interdiction efforts, at the margin, should be increased or reduced.

Because U.S. interdiction strategies appear rather unsuccessful in raising drug prices, the available research does not provide much guidance about what would actually happen if supply-side enforcement policies achieved greater market effects. Recent data suggest that some interdiction-like activity may have been responsible

<sup>5</sup>It is worth noting that Crane et al. analyzed the short-term effects of interdiction, while the review focused on long-term effects. (Jon Caulkins, personal communication)

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for a sharp decline in Australia's heroin availability starting at the end of 2000 (Degenhardt, Reuter, Collins and Hall, 2005). An analysis of this Australian experience may provide useful insights for policymakers in other industrial democracies. At present it is impossible to establish precisely what the Australian Federal Police did that led to a tightening of the market.

Low-level enforcement has a broader set of mechanisms to address drug problems. In particular, a police focus on street distribution can make dealers more discreet and thus hinder new users finding suppliers.

Even if street enforcement aimed at retailers and buyers has little ultimate effect on drug availability, the arrest process itself can further secondary and tertiary prevention by sweeping users into treatment. Kuebler et al (2000) found that enforcement aimed at closing down open drug scenes in Zurich led to an increase in the demand for methadone maintenance treatment. If substantial relapse poses high risk of arrest and thus return to treatment as an alternative to penal sanctions, criminally-involved drug users are more likely to halt or reduce their substance use. Treatment may be frail, but it is likely to work better if providers have more opportunities to treat the same person. Existing evidence suggests that treatment episodes motivated by criminal justice pressure are no less successful than those with other motivations, (Miller and Flaherty, 2000; or for a more recent study of European outcomes, McSweeney et al., 2007).

Incarceration of drug users is one element of enforcement that is likely to reduce demand. Very few users are imprisoned solely for possession offenses, as indicated by self-report from the inmates themselves. Though many are formally convicted of drug possession charges, those convictions are usually the consequence of plea bargains and, often, the true offense was distribution or some other serious involvement in the drug trade (Sevigny and Caulkins, 2004). However, it is still the case that a majority of those incarcerated, whether in prison (state and federal) or jail (local), are themselves heavily drug involved (Pollack, Reuter and Sevigny, forthcoming); most have not merely used drugs but appear to be dependent on one or more drugs. They are sentenced to prison either because they are convicted of drug selling or of property or criminal offenses. The result is that around 2003<sup>6</sup>, there were almost as many drug abusers incarcerated as were in formal treatment systems.

### Non-traditional programs

Drug courts are an interesting effort to combine criminal justice and treatment resources for drug-related offenders. Drug court participants appear to have better legal and drug-use outcomes than comparable non-participants (Gottfredson, Najaka and Kearley, 2003). Similarly, UCLA public policy professor, Mark Kleiman,

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<sup>6</sup>The vagueness on timing is a consequence of the different years in which data were collected from prisons (2002) and jail (2003). The surveys of prisoners and jail inmates are conducted only every 5–7 years.

has been arguing for twenty years for “coerced abstinence.” in effect making the criminal justice system an explicit recruiter for treatment and other ways of reducing individual drug use, a suggestion I address in detail below.

Stricter controls on precursor chemicals appear to have at least short-term effects on methamphetamine consumption (e.g. Cunningham and Liu, 2003). Workplace testing is argued by some to have led to reductions in adult drug use, by threatening job loss (French et al., 2004). Evaluations of school testing programs provide hints that these, too, might reduce adolescent substance use.

## PROSPECTS FOR REDUCING DEMAND THROUGH THESE PROGRAMS

In each of the following instances, I first consider the likelihood that the program could make a large difference and then the barriers to expansion. I do not include prevention because of the arguments in the prior section; regardless of whether it can be effective in reducing initiation in the targeted age group, it cannot substantially reduce the demand for drugs in the United States in the next few years.

Research suggests that heroin should be separated from the other drugs for these purposes.

### Treatment by Expanding Methadone and Buprenorphine

The low fraction of U.S. heroin addicts in opiate substitution treatment is striking when compared to other countries that also have major heroin problems. A number of Western countries have 50–70% of heroin addicts in opiate substitution treatment; these include Australia, Switzerland and the United Kingdom (Reuter and Trautmann, 2009). In the United States it is probable that fewer than one-third are in such treatment at any one time.<sup>7</sup> Expanding methadone and buprenorphine could make a noticeable difference to U.S. consumption of heroin.

That it is possible to expand such treatment rapidly is evidenced by Baltimore’s experience. Baltimore’s distinction as a drug city has been the persistence of a very large heroin problem over a period of four decades. With a sharp increase in aid from local foundations and ‘NGOs’ as well as from city and state government during the late 1990s, there was a large increase in the number of methadone slots throughout the city. Even though there was probably a moderate decline in the number of heroin addicts in Baltimore during this period, the number of individuals entering treatment increased by 15% from 2000 to 2005 (Reuter, 2009).

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<sup>7</sup>The number of admissions with heroin as the primary drug of abuse in 2007 was 246,871 (<http://www-dasis.samhsa.gov/teds07/teds2k7a508web.pdf>). The 2000 estimate of chronic heroin users was 880,000. Assume the number has continued to decline and is now only 750,000 (a 15% decline in those 7 years) this would generate a treatment rate of approximately one third.

### Expanding Other Treatment Modalities

Other forms of treatment rely more heavily on skilled personnel. Thus, the possibility of expansion is dependent upon the availability of those personnel. Rapid expansion has not occurred in decades so it is difficult to judge whether it is possible to make large increases in a few years.

The recently passed Patient Protection and Affordable Care Act will pose a test. The Act expanded coverage to a large number of low-income individuals and households. The minimum coverage specified in the Act includes “parity” for mental health problems. In other words, the coverage should be comparable to that for physical health problems. Substance abuse is included in the list of mental health conditions for which coverage is provided. As a result, a large fraction of the population dependent on cocaine, heroin and methadone may now be able to purchase treatment services. How this will work out is impossible to predict; there are far too many parameters that are still to be determined at the state level. For our purposes, it is important to note that the state exchanges, which implement this program, will not be functioning before 2014.

### Enforcement

There is no evidence that the intensified enforcement of the last thirty years has raised prices or reduced availability of the principal drugs. There are official claims that retail cocaine prices have risen post-2007, perhaps as a consequence of disruptions in Mexico (DEA, 2008). Similar claims have been made in recent years that were later contradicted by more careful analysis of the data (Walsh, 2007). However, even if true, this does not give guidance as to how increased enforcement in the U.S. can increase prices on a sustained basis.

Cutting demand through incarceration has been an unintended though predictable consequence of the massive increase in imprisonment. Incarceration rose massively over the period 1977 to 1999, more than tripling. It has grown much more slowly since then, though even that growth is surprising since rates of serious crimes have continued to decline. The current fiscal crisis has spurred further discussion of the possibility that budget difficulties will lead states to finally reduce their levels of incarceration. In fiscal year 2010, 26 states reduced funding for corrections, a reversal of the decades-long trend of rising expenditures (Scott-Hayward, 2009). Whether or not budget cuts lead to prisoner population decreases, it is highly unlikely that incarceration will increase greatly over the next five years and, hence, unlikely that more drug users will be imprisoned.

Even with declining prison populations, however, the number of inmates who are frequent users of expensive drugs may continue to rise. This finding again reflects the aging of the populations of cocaine and methamphetamine users. Their aging means that they will present longer records and histories of addiction and

failed treatment with each successive encounter with the criminal justice system. Unfortunately, there is no basis for estimating the size of this effect.

Drug courts, perhaps, have promise in reducing the demand for drugs since they allow for frequent monitoring of high rate users along with rapid sanctions. However, as Bhati et al. (2008) document, the numbers of clients currently handled by drug courts is so small (approximately 50,000 per annum) that they do not have any substantial impact on crime or drug use. More recently, Pollack, Reuter and Sevigny (forthcoming) demonstrate that the current eligibility requirements of drug courts are so restrictive that these courts are unlikely in their current configurations to reduce the prison or jail population. Typically, a drug court excludes defendants who have prior convictions for violent crimes; an experienced cocaine, heroin or methamphetamine user is very likely to have such a conviction in his long criminal record. The drug courts would have to substantially broaden their eligibility criteria in order to make a major contribution to reducing drug consumption in the U.S. I do not see signs that this will occur.

## COERCED ABSTINENCE/MANDATORY DESISTENCE

I single out this program because it is the one intervention that has promise for making a substantial contribution to reducing the consumption of expensive drugs in the United States over the course of the next five years. The idea was developed almost twenty years ago by UCLA's Mark Kleiman (1992; 1998) who based it on a number of simple findings from behavioral economics, psychology, and public policy. A large number of offenders are under community supervision at any one time, whether it be pretrial release, probation, or parole. Because they have been arrested or convicted, the government can subject these individuals to random drug tests and, indeed, does from time to time.

What makes this important for present purposes is that the population under community supervision appears to account for a large share of the total consumption of cocaine, heroin, and methamphetamine. This population also shows high rates of marijuana use but does not account for a large share of the total.

Coerced abstinence involves making sanctions certain, immediate, and relatively mild rather than (as is normally the case) random, delayed, and severe. Such interventions have not received widespread evaluation. The small number of existing studies have found that such programs have the predicted effects on recidivism. Until 2009, were no efforts to implement them on a large scale.

Recently, Hawaii's Opportunity Probation with Enforcement (HOPE) program<sup>8</sup> has implemented the approach for the entire probation population of the state. The

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<sup>8</sup>Probationers in Hawaii were randomized into two groups. The control group received the usual level of monitoring and services. The experimental group were subject to frequent and random monitoring. Testing positive for drug use or failure to turn up for a scheduled test resulted in a modest penalty delivered immediately on detection.

TABLE 3: HOPE EXPERIMENTAL RESULTS

	HOPE	Control
No-shows for probation appointments (average of appointments per probationer)	9%	23%
Positive urine tests (average of tests per probationer)	13%	46%
New arrest rate (probationers rearrested)	21%	47%
Revocation rate (probationers revoked)	7%	15%
Incarceration (days sentenced)	138 days	267 days

results of a random assignment evaluation have been very promising; very few of those enrolled in the program fail more than twice and the recidivism rates have been dramatically lower than for the probation population previously. For example, only 21% of HOPE subjects were rearrested in the 12-month evaluation window, compared to 46% amongst those on routine probation conditions.

These results along with a clear articulation of the theory underlying the model by Mark Kleiman and others have given this intervention a great deal of political and professional prominence. HOPE-like experiments are being considered in a number of states. It offers the prospect of a large-scale intervention that could be implemented relatively rapidly and without requiring the development of a new expertise in the probation community.

However, for those interested in promoting drug treatment as a major intervention to reduce the incarcerated population, it is striking that coerced abstinence does not necessarily involve treatment. Probation officers want their clients to desist from drug use, and this program gives them the tools to motivate and monitor abstinence. Many drug-involved offenders do not satisfy screening criteria for actual dependence. It is unclear whether many of the successful clients entered drug treatment programs or whether these individuals needed such services. The adverse consequences of a failed urine test have been enough to generate abstinence. Whether abstinence will

continue post-supervision is an open question but in making a judgment about the utility of coerced abstinence, relapse is the common experience post-treatment.

The HOPE evaluation involved experienced offenders at risk of jail or prison. Probationers assigned to HOPE were significantly less likely to produce positive drug tests or to be arrested over a 12-month study period. These offenders spent about one-third as many days in prison on revocations or new convictions (See Table 3, reproduced from Hawken and Kleiman, 2009).

If HOPE were implemented on a wide scale nationally, it might cut consumption of cocaine, heroin, and methamphetamine substantially. Hope, then, is the program with the most promise to aid Mexico in the near future.

## CONCLUDING COMMENTS

Though there is a political consensus in support of demand reduction programs as a way for the United States to ameliorate Mexico's drug problems, there is little that can be done with the mainstream programs that will make a noticeable difference in the next five years. Prevention is largely irrelevant, since it affects consumption of drugs only with a very long lag, assuming it works at all. Even if no new teenagers started using drugs in the next five years, it would make minimal difference to the demand for drugs from Mexico.

For treatment, the pessimism has more complex sources. Treatment does make a difference to drug use by addicted users, but the major gains are from reductions in crime rather than in drug use. A cursory calculation, which is the best one can do, suggests that an expansion of cocaine treatment places by 25%, a massive expansion by historical standards, might reduce cocaine consumption by only 6%.

Furthermore, there has been no recognition that U.S. interdiction of Mexican drugs may have a negative effect on Mexico. There are two consequences of an increased interdiction rate. The first is what the interdictors focus on, namely that the cost of delivering drugs to final consumers rises. As a consequence, the price rises and less is consumed. However, there is a second countervailing effect that is never recognized, even though it was first described by Donald Henry in 1988 (Reuter, Crawford and Dave, 1988; Appendix D); in order to deliver a kilogram of heroin to the final user, more kilograms must be shipped from the source countries. Henry showed that this second effect, under most reasonable assumptions about supply and demand elasticities, was larger than the first. The result is that though fewer tons of heroin are consumed so a larger number of tons are shipped from the producer countries, thus worsening their domestic problems.

Finally, it is worth mentioning the California ballot initiative for giving counties in that state the option of creating regulated marijuana production, as well as legalizing the sale and consumption. If that were to pass in November 2010, it could substantially reduce the U.S. demand for Mexican produced marijuana, simply by

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eliminating California's demand for imports (Kilmer et al., 2010). It may turn out to be difficult to prevent smuggling from California, so that Mexico could lose a substantial share of the total U.S. national market. Though the early polls suggests a majority of potential voters in favor, the history of California initiative voting suggests that support tends to decline as the election gets closer.

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# MONEY LAUNDERING AND BULK CASH SMUGGLING: CHALLENGES FOR THE MÉRIDA INITIATIVE

Douglas Farah

## THE SCOPE OF THE PROBLEM

It is widely accepted that cutting off the flow of money from the sale of cocaine in the United States to the Mexican drug trafficking organizations is one of the most efficient ways to decrease the power of the cartels. Without the cash influx there would be less money for corruption and the purchase of weapons, and cash seizures directly take away what the drug traffickers want most — profits from their illicit activities.

On both sides of the border the smuggling of bulk cash and money laundering tied to the billions of dollars in profits is not just viewed as a problem for Mexico, but as a significant security threat to the United States. Parts of Mexico have seen the homicide rate skyrocket in recent years, particularly Ciudad Juárez. The Calderón administration has felt obligated to deploy the military to support and in some cases supplant local law enforcement because of the strength of the cartels and the deep seated corruption among the law enforcement and judicial structures.

“The prevention of money laundering and the financing of terror are today a matter of high priority, both nationally and internationally because they concern complex phenomena with serious economic and social consequences because they allow organized crime to finance criminal activities,” said a recent Mexican policy statement. “These activities generate public insecurity and social destabilization and can severely damage the reputation of financial sectors and the country itself.”<sup>1</sup>

The 2009 National Drug Threat Assessment of the U.S. Department of Justice (NDIC report) described Mexican drug trafficking organizations as “the greatest organized crime threat to the United States.”<sup>2</sup> The report found that drug trafficking organizations place a high priority on legitimizing the proceeds of their drug sales and that “bulk cash is a prominent method” for Mexican organizations to move their cash.<sup>3</sup>

Given the stated priorities of both governments to enhance the money laundering structures and halt bulk cash shipments, it is striking that direct funding for such

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<sup>1</sup>“Tipologías Del GAFI Aplicables a Los Sectores Asegurador y de Remesas,” Unidad de Inteligencia Financiera, Secretaría de Hacienda y Crédito Público Informe 2009.

<sup>2</sup>“National Drug Threat Assessment 2009,” National Drug Intelligence Center, Department of Justice, January 2009, p. 43.

<sup>3</sup>“National Drug Threat Assessment 2009,” *op cit.*, p. 45.

efforts is a very small part of the Mérida Initiative.<sup>4</sup> Some components of the Initiative, such as the non-intrusive inspection equipment at border check points, the training of prosecutors in financial crime investigations, and exchange of personnel for financial intelligence work touch on the financial issues but very little is directly aimed at the structural issues of money laundering and bulk cash shipments.

While Mexico has taken significant steps to allow the state to seize illicit funds and goods obtained from illicit funds, the near-unanimous consensus of those interviewed and the available literature is that very little is effectively being done to either impede the movement of drug money into the formal economy or significantly reduce the flow of bulk cash across the U.S.-Mexico border.

A recent International Monetary Fund assessment of Mexico's money laundering efforts found that of the 149 indictments issued for money laundering from 2004 through 2007, only 30 have gone through the judicial system, resulting in only 25 convictions. That is roughly only six convictions a year. The IMF report noted that "most of those convictions resulted from uncomplicated investigations arising out of seizures of cash at the airports and borders where the defendants were unable to demonstrate the legal origin of the funds. Given the level and sophistication of organized criminal activity in Mexico, these results reflect a disappointing lack of effectiveness in Mexico's money laundering offense."<sup>5</sup>

More bluntly, Dr. Edgardo Buscaglia of the Instituto Tecnológico Autónomo de México said, summarizing the sentiment expressed by many experts, efforts to combat money laundering "are a small dam in the middle of a large ocean."<sup>6</sup>

Current border detection architecture on both sides of the border is designed almost entirely to detect and halt the northward flow of cocaine and heroin. Despite years of discussions about the importance of cutting off bulk cash shipments, only over the past year have serious efforts begun to effectively monitor and interdict southbound flows of bulk cash and weapons. Even so, there is almost none of the infrastructure in place that would be necessary seriously tackle the issue.

In addition to these broad structural and funding issues, there are significant challenges in assessing the amounts of bulk cash shipments and money laundered through Mexico's formal and informal economies, and the relative importance of different methodologies to the cartels. This is in part because it is an illicit business that is highly lucrative and designed to make the money movements as opaque as possible. The first challenge is defining the scope of the problem.

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<sup>4</sup>The Mérida Initiative, announced in 2008, has provided roughly \$400 million a year for three years to support Mexico's counter-narcotics efforts, primarily equipment, and \$65 million a year for the Central American nations for the same purpose. See: Manuel Roig Franzia, "Anti-Drug Assistance Approved For Mexico," *Washington Post*, June 28, 2008.

<sup>5</sup>"Mexico: Detailed Assessment Report On Anti-Money Laundering and Combating the Financing of Terrorism," International Monetary Fund, Country Report 09/7, January 2009, p. 8.

<sup>6</sup>Author interview, Mexico City, Feb. 4, 2010.

## MONEY LAUNDERING AND BULK CASH SMUGGLING: CHALLENGES FOR THE MÉRIDA INITIATIVE

Historically, Mexico has been the single greatest source of U.S. currency repatriated by a foreign country to the United States. Documented inflows from Mexico have customarily exceeded outbound reporting linked to legitimate sources such as worker remittances and cross-border commerce, exposing a substantial unexplained gap.

The gap has long been attributed, in part, to bulk cash smuggling associated with transnational criminal activity such as drug trafficking and alien smuggling activity.<sup>7</sup> Regardless of the precise numbers, there is little doubt that bulk cash smuggling is an important element in the drug trade. The March 2007 seizure of \$207 million in cash from drug trafficking proceeds from a Mexico City residence is a dramatic example of the scope of the problem.<sup>8</sup>

The challenge is to accurately assess the size and meaning of that gap. While the Mexican government estimates the amount at about \$11 billion a year, the financial services firm KPMG estimates the amount at \$25 billion, while the estimates of respected academics range from \$6 billion to \$36 billion.<sup>9</sup>

A second challenge is determining how and why different methods of transferring money are used, and how they shift over time. This is useful particularly in seeking to identify points of vulnerability in the process. Historically much of the money — up to 80 percent by some estimates generated by the Mexican drug trafficking cartels are used to buy new shipments of cocaine, meaning that the total amount left in Mexico for the traffickers' use is considerably less than the amount of revenue generated by drug trafficking activities. For reasons described below the estimates of 80 percent in outbound payments is likely significantly higher than reality now indicates.

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<sup>7</sup>Author interviews in the United States and Mexico.

<sup>8</sup>Mexican authorities on March 15, 2007, announced the seizure of approximately \$207 million in currency from the Mexico City home of pseudoephedrine trafficker Zhenli Ye Gon. Mexico's Office of the Attorney General (PGR) reported that \$205,564,763 in U.S. currency, €201,460 Euros, 17,306,520 Mexican pesos, \$20,000 in American Express Traveler's Checks, \$180 in Canadian currency, HK\$113,260, 17,000 yen, 9,935 Chinese renminbi (RMB), two Portuguese 20-denomination banknotes, and 53 counterfeit U.S. \$100 banknotes were seized from Ye Gon's residence. For details, see: Paul Duggan and Ernesto Londoño, "Not Your Average Drug Bust: Suspect Wanted in Mexico Found in Wheaton Restaurant," *Washington Post*, July 25, 2007.

<sup>9</sup>The government figure was given in interviews with senior members of the Mexican Financial Intelligence Unit, but they declined to provide any methodology for reaching that figure. Mexican Attorney General Eduardo Medina Mora, appearing before the Mexican Congress in October 2007, stated that Mexican banks receive about \$1 billion from their U.S. counterparts annually, but return up to \$16 billion, of which about \$10 billion "does not have an explanation ... and could be attributed to the flow of drug trafficking money." For KPMG information, see: Raúl Sierra, "Evolución y Situación Actual de la Prevención de Lavado de Dinero en el Sistema Financiera Mexicano," KPMG, April 2006. The lower figure comes from interviews and writings by Ricardo Gluyas Millán, in particular, "Ganancia Ilícita: Prevención Contra el Lavado de Dinero, México, 2005," p. 233. The upper-end figure was provided by numerous academic sources in interviews, and is the most generally accepted. According to Samuel Gonzalez of the Mexican Autonomous Institute of Technology (*Instituto Tecnológico Autónomo de México* — ITAM) drug proceeds laundered in Mexico account for as much as four percent of the country's GDP, or roughly \$35.7 billion annually. See: "Marching as to War," *Economist.com*, January 31, 2008. [http://www.economist.com/world/la/displaystory.cfm?story\\_id=10608676](http://www.economist.com/world/la/displaystory.cfm?story_id=10608676)

There have been at least two significant and related realignments in the cocaine trafficking world that need to be factored in to the current assessment. The first is that Mexican DTOs, as described below, have significantly displaced the traditional Colombian organizations and because of this are reaping higher profit margins because there are fewer middlemen. This coincides with the Mexican DTOs need for more cash to equip and maintain their growing military-style armed operations that wage war on both the state of Mexico and each other.

The second is that this realignment, and new cyber technologies, have given the Mexican DTOs faster and less risky methods of moving the cash to Colombia to purchase shipments of cocaine. This means that much of the money that used to have to be shipped through Mexico and then onward to Colombia is no longer smuggled into Mexico at all, but shipped through ethnic organized crime groups (primarily Russian and Chinese) directly to Colombia or Ecuador.

The net result is that a higher percentage of the money from cocaine sales stays in the hands of Mexican cartels because they are dealing with fewer middlemen in the Andes and, instead, making purchases directly from producers. This also means that the total amount of money smuggled into Mexico has likely declined because more of the money is flowing directly to the Andes to resupply the Mexican DTOs with cocaine.

There are no reliable and current estimates of exactly how much drug money is flowing back to Mexico given this new way of doing business for the cartels. Nonetheless, available estimates, even if dated, show the amount of money staying in Mexico is significant. If one uses the lowest estimate of \$6 billion that would still leave minimum earning of \$1.2 billion for profits and corruption inside Mexico (based on an assumption of a 20 percent profit margin). Using the conservative Government of Mexico estimates, the approximate earnings for Mexican DTOs would be \$2.2 billion. Using the more generally accepted number of about \$25 billion, the earnings would be \$5 billion, and using the upper estimates would yield at least \$7.2 billion.

A third challenge is data collection. No single entity in the U.S. government collects or consolidates bulk cash seizure figures from national, state and local enforcement efforts. The DHS's offices of Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE), the Drug Enforcement Administration (DEA), the Treasury Department and others all keep a sub-set of the data, and that data is largely separate from what state and local authorities seize. The Bulk Cash Shipment Center, established in December 2009 under the direction of ICE, is an effort to remedy both the reporting aspects and give national, state and local officials a one-stop stop for information, intelligence support and expertise.<sup>10</sup>

In Mexico the situation is similar. While the Financial Intelligence Unit keeps statistics on suspicious transactions in the formal sector, there is no consolidated center among the law enforcement, attorney general's office (Procuraduría General

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<sup>10</sup>See: <http://www.ice.gov/pi/bcsc/index.htm>

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de la Republica — PGR) and Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público — SHCP).

### Assessing Current Trends

Bulk cash smuggling across the U.S.-Mexico border cannot be viewed in isolation. Rather, the process of illegally moving large quantities of dollars across the border must be viewed as part of the movements in a larger recombinant pipeline that flows across the northern tier of South America, through Central America and Mexico and into the United States.

The pipeline, fed by many smaller feederlines, moves products both north and south. The drug trade and other illicit activities move as a circular flow of goods, rather than linear transactions. A significant portion of the violence in Mexico today, particularly that which occurs in Ciudad Juárez and environs, as well as among the maras in Central America, revolves around disputes over control of portions of that pipeline, its plazas and branches. The primary goods flowing northward are cocaine, human traffic, gang members hired by the drug cartels as enforcers, and marijuana. The primary products moving south are large amounts of cash generated from the illicit activities, stolen cars and other goods, and weapons.

Most of these products move through the same basic architecture and rely on many of the same facilitators to enable the flow of goods and services. This is not to say that the groups engaged in myriad criminal activities work together or maintain stable alliances. Sometimes drug trafficking groups, such as the Zetas, branch out to control other criminal activities such as human smuggling and extortion. More frequent, however, is the use of different criminal groups of the same set of facilitators or gatekeepers to the pipeline, to move their illicit products both north and south.

At the same time, new actors are constantly entering the arena of money laundering activities, leading to new challenges and new inputs for the trafficking pipeline. These are driven both by profit seeking and the ongoing shakeups and realignments within the drug trafficking world. Among the most important elements of the new geography of the cocaine trade is the growing strength of the Mexican drug trafficking organizations and the relative weakening of the traditional Colombian structures.

The demise of the Medellín, Cali, Northern Valley cartels and the formal structure of the paramilitary group known as the Autodefensas Unidas de Colombia (AUC) has atomized Colombian cocaine production and left the Fuerzas Armadas Revolucionarias de Colombia (FARC) as the main cocaine producing organization. Recent Colombian police and military reports estimate that the FARC now produces about 70 percent of Colombia's refined cocaine, while smaller organizations, including remnants of the AUC and Northern Valley organizations make up the remainder.<sup>11</sup>

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<sup>11</sup>Author interview with Colombian National Police leaders, December 2009. This has not always been the case. During approximately 1990–2003 the AUC was a much more important cocaine producing and shipping organization than the FARC, in part because most of the early Colombia cartel leaders (Gonzalo Rodríguez Gacha, Pablo Escobar, the Northern Valley) had close ties to the AUC.

But the FARC, the oldest insurgency in hemisphere, has never built up the infrastructure necessary to move the cocaine to the international market. It traditionally relied on local cartel intermediaries to pick up the product and sell it abroad, primarily to Mexican trafficking organizations.

The result is that, for the first time in almost three decades there would appear to be no predominant Colombian drug trafficking organization in the international sales market. Mexican groups are taking advantage of the vacuum to increase their influence by directly buying — in Ecuador particularly — cocaine directly from the FARC and other cocaine producers, and moving it to market. Most importantly, this has greatly enhanced the financial returns the Sinaloa and Tijuana cartels, primarily, because these groups are taking control of more elements in the production cycle and bypassing Colombian intermediaries.<sup>12</sup> This implies, as noted earlier, that the Mexican DTOs have more cash at their disposal than usual.

This chapter will look at three distinct parts of the financial structure of the Mexican drug trafficking organizations. First, it will assess bulk cash shipments moved largely by vehicle across the U.S.-Mexican border. Another examines how other types of drug money circulate in Mexico's formal and informal economies. A third looks at how money obtained from the sale of cocaine in the U.S. is moved back across the border to purchase more cocaine to keep the enterprise operating

## **BULK CASH SHIPPING: HOW THE MONEY MOVES**

Like much else in the drug trade, the current situation with bulk cash shipments is the product of adaptation and evolution by the drug cartels to law enforcement efforts. This means that any analysis of the movement is constantly subject to change, and at best we get a snapshot of relatively current conditions in a fluid environment. With this in mind, it is important to first understand the role bulk cash shipments play in the financial architecture of Mexican drug trafficking organizations, how the money is moved, and the efforts to halt that flow.

Using the pipeline analogy, products can be rerouted around whatever law enforcement obstacle is established, when cartel warfare raises unforeseen risks, or a blockage or bottleneck occurs. Globalization and the “dollarization” of the Mexican economy have opened a variety of new fronts for the movement of profits from drug cartels and other transnational criminal organizations.

However, the money derived from the sale of drugs and other illicit activities, and the need to move and place that cash, are vital to the criminal organizations that generate the revenue. This offers some vulnerabilities that can be exploited by law enforcement and intelligence operations on both sides of the border. The impact of cash seizures is high, in the short term because it deprives the criminal organizations

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<sup>12</sup>Author Interviews with Mexican and Colombian intelligence officials, December 2009 and February 2010.

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of both profits (their reason for existing) and operating funds (the source of power, weapons and impunity). Over time the impact is lessened if more shipments are delivered and revenue streams are again opened.

According to U.S. and Mexican law enforcement officials, money from regional drug sales are generally taken to a central counting house in one of several major U.S. cities, including Atlanta, Chicago, Boston and Los Angeles.<sup>13</sup> Either at the centers or in the original points of sale, the money, usually arrives from the street in the form of smaller bills and is, then, converted to \$100 or \$50 bills. This is done primarily to reduce the bulk of the cash and make it easier to conceal.

Once the cash is converted into larger bills it is vacuum sealed in plastic bags, to further reduce the bulk, and concealed in the wheel wells, panels and spare tire compartments of vehicles that are clean, meaning they have no reason to raise any suspicion if they are stopped. The cash is often concealed in tractor-trailer trucks as well, often the same vehicles that bring cocaine north.

Cartels utilize several tactics in an attempt to minimize the impact of potential seizures by authorities. For example, the cash transport vehicles are rotated often so as not to be detectable or raise suspicion. Most shipments range from \$150,000 to \$500,000, so that if any one vehicle is stopped the loss is not significant to its leader and does not disrupt operations. Typically multiple cars are sent, each carrying a relatively small percentage of any given cash shipment.

Each Mexican organization employs a group of constantly rotating drivers who drive the cash shipments from the city to the designated border town close to the *plaza* or drug trafficking center of that particular trafficking organization. While in the past the cash was often aggregated and vacuum packed in a safe house on the U.S. side of the border before being shipped into Mexico, officials said that the cartels often now have the drivers continue directly into Mexico to deliver the money. This change is likely due to several factors, including a growing U.S. law enforcement emphasis on monitoring the sales of particular equipment such as money counting machines and different types of packing equipment.

### Crossing the Border

Border crossing times and locations are decided in large part by the flow of traffic across any of the main entry points and the information derived from lookouts, known as *halcones* or hawks. Each *halcón* watches specific lanes of a border crossing to determine traffic flows, patterns of cars being stopped and any unusual signs of searches. In addition to the *halcones*, the drug traffickers employ sophisticated communications networks along the border, often more sophisticated than federal agents have, and more than they can monitor. As the NDIC report stated:

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<sup>13</sup>This description of the movement of cash across the United States and then across the U.S.-Mexico border is based on interviews with U.S. and Mexican law enforcement officials.

several Mexican DTOs maintain cross border communication centers in Mexico near the U.S.–Mexico border to facilitate coordinated cross-border smuggling operations. These centers are staffed by DTO members who use an array of communication methods, such as Voice over Internet Protocol, satellite technology (broadband satellite instant messaging), encrypted messaging, cell phone technology, two-way radios, scanner devices, and text messaging, to communicate with members. In some cases DTO members use high frequency radios with encryption and rolling codes to communicate during cross-border operations.<sup>14</sup>

“They shift as the border opens and shuts,” said one U.S. official. “They have very good intel on our operations. We are always one step behind. They are willing to lose two of 10 cars. We are only equipped to deal with half the problem (south-north), and we need to add the southbound part.”

Those seeking to smuggle goods south start out from a position of distinct advantage. While 10 percent of the vehicles crossing from the United States to Mexico are supposed to be stopped for secondary screening, the number is often less, according to Mexican and U.S. officials. This means that the chances of being stopped and searched are minimal from the start. In addition, only one lane at a time is usually closed to search vehicles. If any enforcement activity is detected, the courier is simply rerouted by *halcónes* to another crossing deemed to be less risky.<sup>15</sup>

The sheer numbers of vehicles and pedestrians crossing the border each day helps illustrate the magnitude of the problem of identifying and interdicting illicit cargo, akin to searching for the proverbial needle in a haystack.

In 2008, the last year for which complete statistics are available from the Bureau of Labor Statistics, 78,856,542 passenger vehicles entered the United States from Mexico, carrying 157,981,839 passengers. In addition, 4,844,250 freight trucks crossed the border. Unfortunately, no similar statistics are kept for southbound traffic. Pedestrian crossing totaled some 30 million just at the top five border crossings.<sup>16</sup> A recent Texas A&M study estimated that in 2008 27 million vehicles crossed into Mexico from Texas alone.<sup>17</sup>

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<sup>14</sup>“National Drug Threat Assessment 2009,” *op cit.*, p. 45.

<sup>15</sup>While the figure of 10 percent checks on southbound traffic is often used, in fact, according to U.S. and Mexican officials, the figure is less. There are compelling reasons for not increasing the inspection rate. The most pressing issue is to balance the needs to check cars with the imperative to keep traffic flowing and not cause backups that have a significant economic impact. That tension, between security concerns and trade concerns, is one that will likely grow in coming years as traffic grows.

<sup>16</sup>Table 1–45: U.S.–Mexican Border Land Passenger Gateways: Entering the United States,” Bureau of Transportation Statistics, accessed at: [http://www.bts.gov/publications/national\\_transportation\\_statistics/#front\\_matter](http://www.bts.gov/publications/national_transportation_statistics/#front_matter); “Table 1–49a: U.S.–Mexican Border Land-Freight Gateways: Number of Incoming Truck or Rail Container Crossings, accessed at: [http://www.bts.gov/publications/national\\_transportation\\_statistics/#front\\_matter](http://www.bts.gov/publications/national_transportation_statistics/#front_matter).

<sup>17</sup>“Mexican Drug War: Some Cash, Few Guns Found in Southbound Checks,” Associated Press, May 15, 2009.

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In this vast sea of vehicles and pedestrians, if couriers find themselves in lanes that could prove risky they have several options to avoid getting caught. One is to simply pull out of line and gun through the border point, a risky but viable option as the inspecting officers are protected only by plastic cones, and, according to authorities on both sides of the El Paso–Ciudad Juárez crossing, no one has been apprehended when doing this.

A second option is to simply get out of the vehicle, blend in with the crowd and walk into Mexico. As noted in interviews with border officials, there is essentially a no-man’s land between the two countries and, while there is the technical capability to call from one side of the border to the other to alert authorities to a runaway vehicle or driver, this has never actually been done.<sup>18</sup>

“We are simply not configured to deal effectively with southbound traffic,” said one U.S. official in El Paso. “It is something that is relatively new to us. What we do know is that what we are doing now is not working.”<sup>19</sup>

### THE USES OF BULK CASH IN THE CARTEL FINANCIAL STRUCTURE

The primary role of bulk cash shipments from the United States into Mexico, largely by vehicle, is to pay the operating expenses of the different drug trafficking organizations, including the expense of bribes to political protectors and law enforcement officials, and allow the senior cartel leaders to enjoy the fruits of their illicit labor. This is a role that has changed over time.

For many years, when Mexican drug cartels were largely dependent on Colombian organizations delivering the drugs to Mexico to be moved across the U.S. border and sold, bulk cash shipments and unregulated money exchange houses were the favorite ways to remit cash. Most of the money needed to be held in Mexico because the payment to the Colombian providers was usually made in Mexico and in dollars.<sup>20</sup>

Now, bulk cash shipments, while remaining vital to overall cartel operations, are not necessarily the primary means of moving money to pay for ongoing cocaine shipments from Colombia. Other cartel affiliations with ethnic organized crime structures that span the globe, coupled with the official adoption of the dollar as the currency of Ecuador, Panama and El Salvador and new electronic transfer mechanisms have opened up new avenues for that type of large value movement as the Mexican DTOs have grown in wealth and importance.

The need to move larger amounts of money via bulk cash transfers has developed at the same time as stronger U.S. anti-money laundering regimes, particularly after the 9/11 attacks, have made other electronic methods (smurfing, layering through banks,

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<sup>18</sup>Author interviews in El Paso, Texas and Ciudad Juárez, Feb. 1–3, 2010.

<sup>19</sup>Author interview in El Paso, Texas, Feb. 1, 2010.

<sup>20</sup>This information is based on interviews with counter-drug officials on the U.S.–Mexican border, Mexico City, Colombia and Ecuador.

and other uses of the formal financial sector) more difficult and risky. Greatly increased pressure on U.S. banks to enhance and comply with Know Your Customer protocols have also increased the risks of dealing with U.S. banks, at a time when many new and less stringent banking jurisdictions were becoming more accessible in the Internet age.

At the same time, the cartels need to rely far less on their own money service businesses such as *casas de cambio* and *centros cambiarios* to convert dollars to pesos because Mexico, through the NAFTA agreement, was much more “dollarized” or open to the use of dollars that it had historically been.

The revenue generated from drug trafficking and criminal activity is dispersed throughout Mexican society, including the business community, politicians, law enforcement and military personnel, the media, and scores of other individuals.

Recent political changes in Mexico have also led to a significant change in corruption patterns and how the criminal organizations distribute their cash. Under the one-party rule of the PRI, corruption was largely top down. That is to say that senior officials could be bribed and distributed the money down the chain of command. With the advent of multi-party rule, most states and towns have several parties that must be paid off at the local level, forcing the criminal organizations to pay less to each party but more overall to ensure continued freedom of operations. This has led to the need to buy into the electoral process earlier, as the winner is no longer guaranteed, spreading the corruption further throughout the body politic.<sup>21</sup>

Another unintended side effect of the growing controls, reporting requirements and regulations placed on the *casas de cambio* and *centros cambiarios* is that many of those companies are going out of business. For example, *casas de cambio*, which are allowed to move money internationally and exchange currencies, must now report all transactions above \$3,000 in an effort to detect suspicious activities. Customers must now present identification and register their names for all transactions over \$500 in an effort to end the anonymity that made them so useful for money laundering. *Centros Cambiarios*, which were almost entirely unregulated until 2009, must also identify their customers like the *casas de cambio* and are limited both in the amount individuals can exchange on a daily basis. Leaders of organizations representing both groups said the requirements were so onerous that the businesses could no longer remain profitable.<sup>22</sup>

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<sup>21</sup>In August 2008, *El Universal* reported that Mexican Defense Secretary Guillermo Galvan stated that 500,000 individuals in Mexico are tied to the illegal drug trade. According to Galvan, this includes 300,000 growers, 160,000 small-time drug dealers or transporters, and 40,000 individuals in leadership positions. These figures may be considerably understated, as private security forces, complicit public officials, and willing members of the business or financial community were not mentioned in Galvan’s remarks. See Brendan Walsh, “Mexico Estimates 500,000 Tied to Drug Trade, *El Universal* Says,” *Bloomberg.com*, August 9, 2008; <http://www.bloomberg.com/apps/news?pid=20601086&sid=a2CHFyfv3gn8>.

<sup>22</sup>Author interviews, Mexico, D.F., January 2010. This does not mean these types of companies no longer exist. Because of lax enforcement in Mexico, many of these institutions simply do not register their operations with the government and continue to carry out their business.

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These companies are being replaced by unregulated money remittance houses, including Western Union and other U.S. based companies.<sup>23</sup> In a stark admission of the vulnerability presented by money transfer systems, in February 2010 Western Union reached an historic agreement with four Southwest border states where the company agreed to pay \$94 million to help improve border enforcement of drug money movements and reimburse Arizona for the cost of a lengthy legal battle. In addition, Western Union agreed to grant investigators from Arizona, California, Texas and New Mexico “unprecedented” access to records of transactions to Mexico.<sup>24</sup>

Other vulnerabilities include the lack of regulation in the registration of used car sales, as well as the purchase and sale of real estate, both favorite ways for drug trafficking organizations to launder and invest cash.

Particularly vulnerable are the 3,603 notary publics in Mexico, where land transactions and other sales are registered. They remain largely antiquated, limited computerization, not searchable and unable to communicate with other registries, meaning that land records are virtually impossible to trace.

This is important because proceeds from the drug trade are flowing directly into land purchases in Mexico. These purchases are highly valued by drug traffickers on a personal level, to enhance prestige and show power. But the expanses of land also allow criminal organizations to establish territorial control, set up training camps and safe havens and expand their influence in significant parts of the country.

Another vulnerability was outlined by a senior Mexican agricultural official, who warned that drug traffickers had become the principal source of credit for many farmers in rural Mexico who were cut off from the formal credit market. According to Ricardo García Villalobos, president of the Superior Agricultural Court (*Tribunal Superior Agrario*), some 30 percent of Mexico’s agricultural land is now dual use, with both licit and illicit crops, primarily marijuana and poppy for heroin, being planted together.

“They [the narcos] provide seeds and the illicit plants, and that allows the campesinos to buy other types of seeds, so that is why I call it dual use,” he said. “They are not purely marijuana or poppy, they are always mixed with legal crops.”<sup>25</sup>

Among the most significant uses of bulk cash shipments for Mexican drug trafficking organizations are believed to be:

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<sup>23</sup>For an interesting look at the new concerns about Western Union, see: <http://www.supreme.state.az.us/opin/pdf2009/WesternUnionOpinion%20FINAL.pdf>; and Josh Meyer, “Blood Wires’ Over the Mexican Border,” *Los Angeles Times*, June 8, 2009, accessed at: <http://www.latimes.com/news/nationworld/nation/la-na-western-union8-2009jun08,0,4162344,print.story>

<sup>24</sup>Sean Holstege, “Western Union \$94 Million Settlement Broadens Border States’ Investigative Powers,” *Arizona Republic*, Feb. 12, 2010. The settlement sets aside \$50 million to establish a Southwest Border Anti-Money Laundering Alliance to investigate international money laundering rings; \$21 million to reimburse Arizona for a decade-long investigation into Western Union; \$19 million to improve Western Union’s internal security methods to combat money laundering; \$4 million for an independent monitor to scrutinize Western Union’s anti-money laundering efforts elsewhere.

<sup>25</sup>Carlos Avilés, “Cárteles Financian al Campo: Tribunal,” *El Universal*, Feb. 17, 2010.

- Money to pay gangs that act as muscle for the cartels, particularly those engaged by the different sides in the Ciudad Juárez plaza. These include the Barrio Azteca, working for the Juárez organization and the Artistas Asesinas (AKA AA or *doblados*), working for the Sinaloa cartel. Both gangs have developed relationships with the respective organizations to take over street corners for local sales enforce control of the *plaza*, in addition to providing manpower for specific jobs such as guarding safe houses, executions, and transportation of cash or personnel;<sup>26</sup>
- Money for bribes to political, military and police structure in order to move goods through the *plaza* unimpeded and insure the protection of the political structure.
- Drug trafficking organizations in Mexico prefer to hold onto their cash in U.S. dollars, as U.S. dollars are considered more stable than the Mexican peso;
- Due to generational differences, while some of the younger drug traffickers are accustomed to using alternative forms of value transfer, many of the old guard, older generation leaders still only feel comfortable dealing with cash, and demand that their illicit proceeds be paid in a tangible form;
- Most weapons purchases, both in the United States and elsewhere are made with dollars, not local currencies. This is particularly true in the United States, but weapons purchases from Guatemala and further afield also are dollar transactions;
- Many legitimate businesses in Mexico accept U.S. dollars, thus providing an easy means for drug trafficking organizations to place their illicit proceeds into the formal economy. Among the favorite places to place the dollars are in real estate, luxury vehicles, construction and other cash-intensive businesses. Hoarding cash is also common, to hedge against lost drug shipments or cash seizures.

The cumulative cartel expenditures amount to millions of dollars a month, underscoring the importance of bulk cash shipments in keeping the cartel machinery running. One U.S. government analysis estimated that in 2007 one Mexican group, the Gulf cartel, paid about \$2.5 million a week in bribes and smuggled \$30 million to \$50 million per month through each major plaza such as Nuevo Laredo, Matamoros and Reynosa.<sup>27</sup>

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<sup>26</sup>Author interviews in El Paso, Texas and Ciudad Juárez, Feb. 1–3, 2010.

<sup>27</sup>While the total value of the current U.S. cocaine market is not known, some guess work is possible based on official government estimates, Official U.S. figures for 2008 estimate that a total of 295 tons of pure cocaine could be produced from the available coca, and that 40.5 tons had been interdicted, leaving 254.5 tons available. Of that, some 200 tons were destined to the U.S. market, and the average price was \$120 per gram or \$120,000 per kilo, or \$120 million per ton or \$24 billion dollars in total sales. This does not include sales in Europe and elsewhere, or the income from the marijuana and heroin sales. These numbers were taken from: National Drug Threat Assessment 2010, National Drug Intelligence Center, U.S. Department of Justice, January 2010.

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While extrapolation of inexact figures does not lead to definitive conclusions, it might be useful to help illustrate the magnitude of the problem. While the Gulf Cartel has fragmented and weakened, one could safely estimate that the Sinaloa cartel now operates on an even larger scale. If one adds the Juárez organization, which recently was estimated to handle up to 60 percent of the cocaine heading to the United States, the *Zetas*, the *Familia Michoacán*, Tijuana and other groups, one could conservatively estimate that at least \$250 million in bulk cash is shipped to Mexico each month (\$3 billion per year) and \$2 billion a year paid out in bribes.

The expenses of the cartels are also rising in the face of the sustained efforts by the Calderón administration to attack the drug trafficking organizations militarily, coupled with the intra-cartel wars that inflict an enormous human and social cost.

In addition to the costs associated with using the gangs as muscle (and the gangs are often paid in cocaine rather than cash), the cartels have expanded their military training programs and recruitment of outside groups from Central America to help them gain the upper hand against their rivals.

This could significantly impact the profits the cartels and their associated criminal organizations earn. The cartels are faced with escalating purchases of ammunition, sophisticated weapons, surveillance equipment, armored vehicles, and bulletproof vests, as well as the recruiting and training of security forces.

This includes training camps and active recruitment campaigns, even among young men enrolled in the U.S. military and living on bases near the border.<sup>28</sup> As one U.S. official told the Dallas Morning News, “Traffickers go to great lengths to prepare themselves for battle. Part of the preparation is live firing ranges and combat training courses ... and that is not something we have seen before.”<sup>29</sup>

All of these activities and purchases require payments to be made, and the vast majority of those payments must be made in dollars. This internal dynamic could mean that, at least in the short to mid term bulk cash smuggling will increase and be even more important to the cartels’ financial structures because their internal costs of doing business have risen.

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<sup>28</sup>Numerous U.S. officials expressed their concern that the Mexican gangs such as Barrio Azteca were successfully recruiting among young enlisted men in Ft. Bliss, near El Paso, and that such recruitment could increase as the base was expanded by up to 30,000 people in coming years. For a look at the cartel recruitment and training tactics see: Alfredo Corchado, “Drug Cartels Operate Training Camps Near Texas Border Just Inside Mexico,” Dallas Morning News, April 4, 2008; and

<sup>29</sup>Corchado, *op cit*. It should be noted that only an elite cadre of cartel hit men are trained in this fashion. U.S. and Mexican officials and members of civil society said repeatedly that the gang members on the street, tasked with street sales of cocaine, heroin and marijuana, are “disposable,” and that they received little if any training at all. There seems to be a significant distinction in training and operational capacity between squads that are directly tied to the cartels and those in loose alliance with the cartels through the gangs.

## **MEASURING INTERDICTION OF BULK CASH SHIPMENTS**

Given the paucity of data on either side of the border it is difficult to determine with any precision how much bulk cash is being shipped or interdicted. While the rough calculations made above seem reasonable to numerous U.S. officials monitoring the process, they are simply ballpark figures that can fluctuate significantly to meet the drug traffickers' needs. Without even baseline data it is difficult to envision meaningful metrics for measuring success or if progress is being made. For example, even if seizures were to increase significantly, one would not know if it is because of enhanced enforcement techniques or because significantly more amounts of money were being shipped and the amount seized was a smaller percentage of the whole.

By their admission, U.S. and Mexican officials are getting only a small fraction of the money that flows across the border. How much is seized and how much flows through remains unquantifiable in any meaningful way. U.S. officials dealing with bulk cash transfers estimated that total seizures related to drug trafficking had risen from about \$19 million in 2006 to about \$30 million in 2008 due to increased focus. The officials said the large majority of seizures were intelligence-driven, meaning they had information on specific vehicles carrying cash, and had the vehicles stopped knowing it was likely to have money onboard. This is in contrast to detecting cash in a car that is randomly stopped at a border checkpoint.

Perhaps the most telling information came from Mexican border authorities who are monitoring an important border crossing area where two Gamma ray machines were installed in October for non-intrusive inspections vehicles, including south-bound vehicles. The inspections are part of the broader effort to install modern technology along the border to record license plates, vehicle weight and other data to detect anomalies and specifically installed to help detect the flow of bulk cash and weapons. Since the system was installed in November, it has led to no bulk cash seizures and had a limited impact on detecting weapons in that area. The system, Sistema Automático para la Revisión y Control Vehicular-SIAVE, remains unconnected to other data bases either geographically or with agencies outside the Mexican Customs service (Aduana). "We really cannot say SIAVE has helped us at all with bulk cash," said one Mexican official.

## **OTHER FACTORS IN THE SHIFTING MONEY LAUNDERING STRUCTURES**

There are several new factors in the money laundering and financial structure of the Mexican drug cartels and their rapidly shifting relationships with the Colombian suppliers that have changed the way drug money is moved and used.

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As noted above, the growing dominance of the Mexican drug trafficking cartels has allowed them to extend their reach into Colombia, Ecuador, Bolivia and Peru. Given these new revenue streams, it is reasonable to assume that the revenues generated by these organizations has grown considerably in the past two years.

The primary reason for this assumption is that Mexican organizations, particularly those associated with the Sinaloa syndicate, are gaining control of cocaine factories that produce cocaine hydrochloride (HCL), the finished powder that has the greatest value. This is particularly true in Bolivia and Peru, where the Colombian organizations had long kept local organizations from manufacturing HCL, preferring to control that high end production themselves in Colombia.

Another primary reason for this assumption is the widely-espoused view on both sides of the border that several of the major Mexican drug trafficking organizations, particularly the Sinaloa cartel and Los Zetas have moved beyond the illicit drug trade as a source of income and have diversified into human trafficking, extortion, kidnapping and other criminal activities that also generate significant amounts of income.

A secondary reason for this assumption is the growing intelligence indications that cocaine (HCL) can be shipped directly to Mexican waters from Ecuador and Colombia via semi-submersible crafts that can carry loads of several tons of cocaine. Not only does this lower transportation costs, but also the protection costs of moving the product through the various borders and checkpoints across Central America.<sup>30</sup>

## THE GROWING DOMINANCE OF THE MEXICAN DRUG TRAFFICKING ORGANIZATIONS

With the demise of large-scale Colombian operations, Peru and Bolivia are again producing significant amounts of HCL and selling the product directly to Mexican buyers.<sup>31</sup> The integrated supply of HCL from these regions has greatly increased the profitability of the Mexican groups, who no longer have to rely on Colombian intermediaries to receive the cocaine.

Perhaps nowhere is the change more noticeable and more important than in the Mexican organizations' ability to directly buy HCL from the FARC in Colombia, which now produces an estimated 70 percent of the Colombian cocaine.<sup>32</sup>

The transactions take place along the porous Ecuador-Colombia border region near the town of Lago Agrio. The region has long been under the control of the

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<sup>30</sup>For a look at the growing use of semi-submersibles in cocaine transportation, see: Douglas Farah, *Ecuador at Risk: Drugs, Thugs, Guerrillas and the Citizens' Revolution*, International Assessment and Strategy Center, January 2010.

<sup>31</sup>For a look at Mexican penetration of the Andean market see: Eliot Brockner, "Mexican Cartels' Andean Stronghold," *ISN Security Watch*, Nov. 18, 2009; and Douglas Farah, *Into the Abyss: Bolivia Under Evo Morales and the MAS*, International Assessment and Strategy Center, July 2009.

<sup>32</sup>"Las FARC se Fortalecen Como Cartel de Narcotráfico, revela Informe de la Policía," *Caracol Radio*, Feb. 18, 2010.

FARC's 48th Front, a military unit that has grown increasingly because of its control of cocaine shipments out of Colombia and the importation of precursor chemicals and cash into the FARC. According to Colombian, Mexican and Ecuadoran authorities, for the past several years the person in charge of handling the FARC's ties to Mexican drug trafficking organizations has been Oliver Solarte, a one-time petty criminal who has grown into the Front's chief cocaine handler.<sup>33</sup>

Further adding to the attractiveness of Ecuador is that its economy is dollarized, meaning that transactions in dollars draw no scrutiny, and it has one of the least regulated and most secretive banking systems in the hemisphere. In February 2010 the multi-lateral Financial Action Task Force (FATF) placed Ecuador on its blacklist as an "Uncooperative Jurisdiction," along with Iran, North Korea and Ethiopia for failure to take meaningful action against money laundering.<sup>34</sup>

The implications of this alliance with the FARC for money laundering in Mexico are important beyond the increased profits the trade has generated. For many years the Colombian cartels would collect their money — both profits and money to purchase more merchandise — in Mexico then use a variety of methods, from couriers to the Black Market Peso Exchange, to move the money back into Colombia. That routing is no longer essential.

Money can now be "smurfed"<sup>35</sup> directly from accounts in the United States to accounts in Ecuador, with no currency conversion necessary. With virtually unfettered access to the Ecuadoran banking system through accounts, ATMs and front companies, the FARC or any other HCL producing organization can presumably withdraw its payments with little risk and few fees.

Money can also be routed through other dollarized economies in the region, none of which have significant money laundering enforcement. These include El Salvador and Panama and other countries in Latin America use the U.S. dollar as an acceptable parallel currency. Of particular concern are Panama (especially the Colón Free Trade Zone) and El Salvador, which have some of the most rapidly growing banking systems in Latin America, while having little visible legitimate means to support such growth. In addition, multiple new electronic ways to move money outside the regulated financial structures are now readily available to the Mexican organizations, and will be discussed in more detail below.

There is growing evidence (part of which was made public in recent Colombian and U.S. statements) that Hezbollah is using the FARC/Venezuelan connection to raise and

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<sup>33</sup>"Colombian Rebels Linked to Mexico Drug Cartels," Associated Press, Oct. 7, 2008. For more details on the growing Mexican connection to the FARC and the role of Oliver Solarte see also: Douglas Farah, *Ecuador at Risk: Drugs, Thugs, Guerrillas and the Citizens' Revolution*, International Assessment and Strategy Center, January 2010; ; Arturo Torres, *El Juego del Camaleón: Los Secretos de Angostura*, Eskeletra Editorial, Quito, 2009, pp. 63–105.

<sup>34</sup>"Group Lists Iran on Money Laundering Blacklist," Reuters, Feb. 19, 2010.

<sup>35</sup>Smurfing is a term used by law enforcement to describe an operation of breaking up a large amount of cash and depositing the cash in multiple accounts, with all deposits being just under the \$10,000 reporting threshold, thereby not raising alarms.

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move money. The importance of this link is the subject of debate within the U.S. government, with some viewing it as a paradigm shift with significant implications going forward and some viewing it as only a limited, short-term business transaction.

The clearest example to date of the potential breadth of this phenomenon was hinted at in Operation Titan, executed by Colombian and U.S. officials in 2008. Colombian and U.S. officials, after a 2-year investigation, dismantled a drug trafficking organization that stretched from Colombia to Panama, Mexico, the United States, Europe and the Middle East.

Colombia and U.S. officials say that one of the key money launderers in the structure, Chekry Harb, AKA “Taliban” acted as the central go-between among Latin American cartels and Middle Eastern radical groups, primarily Hezbollah. Among the groups participating together in Harb’s operation in Colombia were members of the Northern Valley Cartel, right-wing paramilitary groups and the FARC.<sup>36</sup>

### THE INTRODUCTION OF NEW FACTORS IN THE LAUNDERING PROCESS

While it is likely that bulk cash shipments will remain important and perhaps of primary method for the drug trafficking organizations to move money from the United States to Mexico, it is likely that new patterns in money laundering and bulk cash movement will emerge and could already be underway. Because these factors are relatively new, there is little academic literature examining them. However, law enforcement officials on both sides of the border and anecdotal evidence suggest that, though hard to quantify, they are in use and of growing importance.

### THE CHINESE TRADE MODEL

One of these patterns is the reported growing use of over invoicing or under invoicing of products that are bought in China and shipped to Mexico. This makes sense in the context of the rapidly expanding trade between the two nations. Between 2000–2008 bilateral trade between Mexico and China grew from less than \$1 billion to \$17.56 billion. This is second in Latin America only to Brazil (\$48.5 billion).<sup>37</sup>

There is credible anecdotal evidence that Mexican drug trafficking organizations are buying container loads of cheap plastic products in China, which are shipped to Mexico

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<sup>36</sup>While much of Operation Titan remains classified, there has been significant open source reporting, in part because the Colombian government announced the most important arrests. See: Chris Kraul and Sebastian Rotella, “Colombian Cocaine Ring Linked to Hezbollah,” *Los Angeles Times*, Oct. 22, 2008; and “Por Lavar Activos de Narcos y Paramilitares, Capturados Integrantes de Organización Internacional,” *Fiscalía General de la Republica (Colombia)*, Oct. 21, 2008.

<sup>37</sup>“Growth Rate of China’s Trade with Latin America and Caribbean Decreased in 2008,” *People’s Daily Online (English Version)*, April 3, 2009.

at a substantially inflated declared value. Many of these containers are never claimed in Customs, but the person or company that ordered goods will most likely have successfully laundered the declared value of the products. This means the laundering organizations have moved their money from the point of origin, primarily the United States, to a bank outside of Mexico, and can now move it back through the banking system as clean money. The risk mitigation of this method, if it continues and is unchecked, could lessen the importance of bulk cash shipments for some cartel activities.

This system can also be used to justify the holding of large amounts of cash by cartel front companies, who can show a paper trail showing the “origin” of the money in the procurement and sale of fictitious Chinese goods. Due to the volume of legitimate trade, detecting and following through in tracking down the origin of the valueless shipment is not deemed by either side to be useful or cost efficient.<sup>38</sup>

## RUSSIAN MONEY LAUNDERING ACTIVITY

A second important shift is the growing presence of Russian organized crime in Mexico. These organizations, buying up large amounts of properties on Mexico’s west coast — particularly hotels and casinos because they are cash intensive businesses — offer new opportunities for Mexican organizations to launder and move their funds through the formal financial system as cash. Gambling in casinos is technically illegal in Mexico, but in fact is widespread. Casinos are not regulated by any government entity.<sup>39</sup>

If money can be placed into the Russian laundering structures outside of Mexico, they can be delivered in Mexico again as clean cash via the casinos, hotels or other cash-intensive businesses. Alternatively, if Mexican organizations have large amounts of cash on hand in country, they can launder those funds through the Russians’ structures and have those funds delivered either inside or outside the country as clean funds. Finally, if the money is needed elsewhere to pay for resupplying to cocaine pipeline, particularly Ecuador or Panama that are dollarized and have growing casino industries, the money can be moved there as well.

Inroads by Russian organized crime, particularly in the field of money laundering, have been noted by U.S. and Mexican academics studying drug trafficking, but has been largely ignored by government reporting. The primary area of operation of the Russian groups is reportedly the San Diego-Tijuana corridor, and the primary activity is to aid in money laundering activities through hotels and other cash-intensive businesses.

In return for their cooperation Russian groups are allowed to operate unmolested in the area. The opening for the Russian groups came in 2002, following the arrest of Benjamín Arrellano Félix and other leaders of the Tijuana DTO. The cartel then

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<sup>38</sup>Author interviews in Mexico City, February 2010.

<sup>39</sup>“Mexico: Detailed Assessment Report On Anti-Money Laundering and Combating the Financing of Terrorism,” *op cit.*, p. 28.

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fragmented into far weaker “cartelitos” or “small cartels,” who lacked the operational capability necessary to control their tradition pieces of the pipeline.<sup>40</sup>

The University of Miami’s Bruce Bagley, a well-know drug trafficking expert, wrote in 2005 that:

The linkages or “strategic alliances” between various Russian organized crime groups and major transnational criminal organizations in Latin America and the Caribbean in the early 2000s were already substantial and expanding rapidly. Moreover, it raises the specter that, at least in some key countries in the region (e.g., Mexico, Colombia and Brazil), the alliances between home-grown and Russian criminal organizations may provide domestic criminal and/or guerrilla groups with access to the illicit international markets, money-laundering facilities and illegal arms sources that could convert them into major impediments to economic growth and serious threats to democratic consolidation and long-run stability in the Western Hemisphere.<sup>41</sup>

Regarding Mexico specifically Bagley found that:

a variety of Russian criminal organizations, operating through literally hundreds of small cells, are engaged in a wide range of illegal activities in Mexico. Russian mafia groups such as the Poldolskaya, Mazukinskaya, Tambovskaya and Izamailovskaya, all linked to one of Russia’s major transnational criminal organization — Vory v Zakone (or “ladrones de la ley”) — are among the most active. The Moscow-based Solntsevskaya gang is also reported to be present in Mexico as are other mafia gangs from Chechnya, Georgia, Armenia, Lithuania, Poland, Croatia, Serbia, Hungary, Albania and Romania. Their major activities include drug and arms trafficking, money laundering, prostitution, traffic in women from Eastern and Central Europe and Russia, emigrant smuggling, kidnapping, auto theft, and credit card fraud.<sup>42</sup>

These external influences are seldom factored into the current analysis of border flows for both drugs and money, and are not exclusively tied geographically to the border area. However, they are likely to have enormous implications in several important areas, with unintended consequences that will not be discernible for some time.

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<sup>40</sup>Susana Hayward, “Russian Mafia Worms Way Into Mexican Drug Cartels,” Miami Herald, Aug. 11, 2003.

<sup>41</sup>Bruce Bagley, “Globalization, Ungoverned Spaces and Transnational Organized Crime in the Western Hemisphere: The Russian Mafia,” paper prepared for International Studies Association, Honolulu, Hawaii, March 2, 2005.

<sup>42</sup>Bagley, *op cit*.

One of the impacts that is already being seen is that less money derived from drug proceeds are being laundered through the Mexican financial system, where such activity is cumbersome, vulnerable and expensive. Now the dollars can simply flow out through the Russian networks that route the money from Mexico to the Caribbean, Europe and Russia. This will make the money ever harder to trace.

Another, as Bagley notes, is to greatly increase the access of the cartels to weapons and money laundering facilities on the world market. This is particularly useful to the Mexican cartels as they wage war against each other and against the Mexican state. While there is only anecdotal evidence at this time, it seems reasonable to think that sophisticated weapons from Russia and the former Soviet bloc will also make the Mexican cartels more lethal.

A third consequence could be an increased presence of Russian organized crime in the United States, as they take advantage of the same routes as cartel operatives to enter the United States. Given the proximity to the border of many of the Russian mafia cells and the vast resources at their command, it would be a logical step in their expansion.

## The New Electronic Age

While the involvement of Russian mafia in money laundering for other criminal organizations is relatively new in Mexico, it is an activity that has been ongoing since the fall of the Berlin Wall. The China trade model follow established methods of over invoicing and under invoicing for laundering purposes, similar to other schemes seen elsewhere. But there is also a series of new challenges posed by the rise of the Internet and electronic cash that have no historic precedent.

U.S. officials stressed the growth of whole new methods of money laundering by drug cartels whose contours are only vaguely understood and, if understood, are virtually impossible to combat because the regulatory and legal framework does not exist to criminalize the activities.

Among those methods identified in author interviews and law enforcement literature as most troublesome are:

- Open System prepaid cards, which are cards that allow their holders to access global credit and debit payment networks. Officials say the regulations governing these prepaid cards are unclear and poorly defined, often allowing the cardholder to use the product without forming a traditional account relationship with the depository institution. This allows the users of the cards to hide their identities and the proceeds of their money. As one law enforcement study noted, “this lack of accountholder relationship could enable the cardholder to anonymously transfer unlimited amounts of money across global payment networks.”<sup>43</sup>

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<sup>43</sup>“National Drug Threat Assessment 2009,” *op cit.*, p. 50.

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- Digital currencies, which can be used by traffickers to anonymously fund digital currency accounts and send those funds, often in unlimited amounts, to other digital currency accounts worldwide, bypassing international regulatory oversight.<sup>44</sup>
- Mobile payments through cell phones that provide traffickers with remote access to existing payment mechanisms such as bank and credit card accounts and prepaid cards.
- The more than 200 systems like PayPal that allow payment to be made through secure servers over the Internet. While PayPal wins high praise for its cooperation with law enforcement and strict monitoring of suspicious transactions, most of the hundreds of other similar services operate in a much more opaque manner, meaning that unlimited amounts of money can flow from one account to another with no regulation or oversight.<sup>45</sup>
- Online role-playing games or virtual worlds, where in-game currencies can be bought and exchanged for real world currencies. This can allow drug traffickers to “legitimize their income through accounts established online game companies in various ways, such as accepting virtual money in exchange for illicit drugs or buying and selling game items between multiple accounts controlled by them or their associates in a cyber version of trade-based money laundering.”<sup>46</sup>

What law enforcement officials say is most frustrating about these new methodologies is that they are almost totally beyond the reach of traditional anti-money laundering measures. Not only are there few laws and regulations that would make money laundering by those methods prosecutable, there is no need for any of the activity in the cyber world to pass through the United States, meaning that even if there were ways to monitor the new methods, there would be little U.S. officials could do.

In addition, while understanding in some cases how they work, they acknowledge they have no idea of the scope of the money being shipped through these electronic methods. While they believe there are billions of dollars, there are no quantifiable ways of measuring the flow of something one cannot see or trace.

“Drug traffickers have always been several steps ahead of law enforcement in acquiring and using technology,” one U.S. official said. “They can buy off the shelf and hire the best help. We have procurement processes we have to go through and very limited personnel that can deal with this. So we really have no idea what they are doing on the cyber front. And that is what should scare us.”<sup>47</sup>

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<sup>44</sup>“National Drug Threat Assessment 2009,” *op cit.*, p. 51.

<sup>45</sup>Presentation of Tom Kellerman, vice president of security awareness, Core Security Technologies, “Criminal Networks, Smuggling and WMD Conference,” sponsored by the Terrorism, Transnational Crime and Corruption Center and Defense Threat Reduction Agency, George Mason University, Feb. 25, 2010.

<sup>46</sup>“National Drug Threat Assessment 2009,” *op cit.*, p. 53; author interviews with U.S. officials.

<sup>47</sup>Author interview, February 2010.

## FACING THE THREAT

The multiple and constantly evolving options available to drug trafficking and transnational criminal organizations to move and hide their funds highlights the extreme difficulty in combating the flow of illicit funds. As with the movement of drugs, people or weapons, the specific routing and methodology of movement of the commodity can be changed, concentrated or diversified as needed.

On the U.S. side of the border, combating the versatile organizations with rapidly shifting methods are primarily state and law enforcement officials. While receiving some federal aid and training, the local law enforcement units are often operating on their own, with little communication or information sharing with other units. On a federal level, resources and talent in the Treasury Department, particularly FinCen and OFAC, have been taken from the tracking of drug money to trying to track terror finance.

In the intelligence community the same trend has prevailed. Only the DEA has managed to keep a sustained focus on drug trafficking organizations, and is now in ongoing turf battles with the Department of Homeland Security (DHS) and other parts of the government. While the trend has reversed slightly in recent months, money movements of organized criminal organizations, unless they are directly linked to terrorism (and more and more are), have been a far lower priority than prior to 9/11.<sup>48</sup>

There are some important signs this imbalance is being corrected. In January the Obama administration issued the first National Intelligence Estimate (NIE) on Organized Crime. The all-agency report remains largely classified but, given that it is the first NIE to focus on organized crime since 1995, it is an important step in recognizing the need to broaden the national security focus beyond radical Islamist terrorism.

On a smaller scale, the U.S. Embassy in Mexico City is coordinating a multi-agency study of drug money movements in an attempt to create a baseline study that will help determine reasonable parameters of phenomena. Again, this will be the first study of its kind in more than a decade and shows a growing recognition of the need for a far broader understanding of the problem in order to develop more effective policies.<sup>49</sup>

On the Mexican side, significant strides have been made in creating the legal framework that will allow the Mexican government to more aggressively pursue the illicit proceeds of the drug gangs, but much of the implementing legislation remains to be written, and the governmental and judicial infrastructure is lacking.

The primary tools are preventative detention (*arraigo*) and asset forfeiture (*extinción de dominio*), which were part of a broad package of constitutional reforms that has passed both houses of the Mexican Congress in 2008. The reforms, after passing the

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<sup>48</sup>Author interviews with numerous U.S. money laundering officials.

<sup>49</sup>Author interviews in Mexico City, Feb. 8, 2010.

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needed 16 of 31 Mexican state legislatures, were signed into law by president Calderón on June 17, 2008, giving the president a significant political victory. The reforms, which offer sweeping judicial reforms and anti-corruption measures, were hailed by Calderón as historic, saying: “What is at stake is not the liberty, security or integrity of the government, but above all the security and integrity of the governed.”<sup>50</sup>

Previously, Mexico did not have a civil forfeiture regime and could seize assets only upon a final criminal conviction; it could also seize assets administratively if they were deemed to be “abandoned” or unclaimed.<sup>51</sup> Under the new laws, the right to seize assets before trial solely in organized crime cases gives law enforcement officials the ability to seize any proceeds or property that are the result of, product of, or used in organized crime cases.<sup>52</sup>

Funding for Mexico’s Financial Intelligence Unit (Unidad de Inteligencia Financiera — UIF) has been far from adequate. In 2006, the UIF received just 0.3 percent, or \$7.1 million, of the budget allotted to the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público — SHCP), less than the ministry’s public relations department.

There are indications the situation may be changing. Under the Mérida Initiative the UIF is to receive \$5 million in IT assistance and FinCEN has begun a more intensive relationship with the UIF to modernize and improve its capabilities. Personnel to monitor cash flows are being exchanged in numerous entities, with FinCen and the UIF placing people in each other’s headquarters to enhance cooperation.

But there is a significant distance to travel. The number of actual cases investigated remains very low and the ability to share information across institutional lines, particularly the UIF and PGR is minimal. The IMF report noted that the UIF and PGR often fail to communicate on cases and the UIF cannot automatically obtain information on its investigations from prosecutors. While UIF personnel can request information, the PRG does not have to respond and often does not.

The IMF report noted that the “insufficient resources allocated to investigation units of the Deputy Attorney General’s Office for the Investigation of Organized Crime (SIEDO) have impeded Mexico’s capacity to conduct investigations and prosecutions of ML offenses in an effective manner.”<sup>53</sup>

From 2005–2009, according to UIF statistics, there were 248,625 “unusual” financial activities reported, meaning activities of more than \$10,000 that can not be accounted for by normal, declared economic activities. Of these, only 741 were

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<sup>50</sup>Manuel Roig-Franzia, “Mexico Revises Its Justice System,” *The Washington Post*, June 18, 2007, A07.

<sup>51</sup>U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, 2008 *International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes*, March 2008, p. 330.

<sup>52</sup>Interview with César Camacho, chairman of the justice committee of the chamber of deputies, member of the PRI, and the lead author of the legislation.

<sup>53</sup>“Mexico: Detailed Assessment Report On Anti-Money Laundering and Combating the Financing of Terrorism,” *op cit.*, p. 30.

deemed to be “worrisome” and meriting further investigation.<sup>54</sup> As noted earlier, this has led to only a handful of successful prosecutions.

## THE ROAD AHEAD

It is not realistic to think in terms of eliminating or completely blocking bulk cash shipments and other forms of money laundering. Rather, policy options must examine ways of raising the cost of doing business to the cartels and other criminal organizations and creative ways of targeting their most successful types of operations. This requires an understanding that if one method is successfully tackled the cartels will already have several new ones operational.

This is particularly true in the case of new cyber methods of moving and laundering large sums of money through methods previously unknown to or outside the reach of law enforcement. Entirely new methods will likely require entirely new counter-measures. This will require understanding that does not currently exist, training, regulatory and legal remedies that balance personal freedoms with the dangers of multi-billion transnational criminal enterprises and host of other issues that are now only in the preliminary discussion phase.

There are daunting challenges in the rapidly evolving world of illicit money movements and it will take significant time to understand and disrupt the new cyber challenges. The amply-demonstrated abilities of the DTOs to adjust their strategies to law enforcement actions means that these new challenges must be addressed as soon as possible. There is virtually no regulatory framework to deal with these new issues, and, in order to be even moderately effective the framework must be multi-jurisdictional and enforceable. If the first step to dealing with a problem is to identify it, the U.S. law enforcement has barely taken the first step.

However, this paper’s recommendations will focus on the immediate challenges of disrupting the flows of bulk cash shipments, because successfully doing that will impair the cartels’ ability to maintain the level of violence and corruption in Mexico.

Key to any success is the effective use of human intelligence and financial intelligence, meaning the ability to sift through significant amounts of data for the anomalies that indicate illicit gain. The danger of over-relying on data extraction at the expense of human intelligence is the sheer volume of data makes it impossible to make significant determinations in a timely fashion. Human intelligence is also the key to understanding the new methodologies and the potential vulnerabilities in those systems.

Of primary importance (and one of the keys to the more successful targeting the FARC and other Colombian drug trafficking organizations) is the creation of vetted units on both sides of the border that can communicate with each other in real time.

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<sup>54</sup>“Inteligencia Financiera en Mexico,” Unidad de Inteligencia Financiera, Secretaría de Hacienda y Crédito Público Informe 2009. For a broader interpretation of this data see: José de Jesús González, “El Lavado de Dinero En Mexico: Escenarios, Marco Legal y Propuestas Legislativas,” Centro de Estudios Sociales y de Opinión Pública,” April 2009.

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Only with the ability to compare and share information can the financial side begin to be addressed.

The Mexican experience in this is not good, with supposedly vetted units often turning into particularly sophisticated drug trafficking organizations. The premier example of the recruitment of elite military units by the cartels is the formation of the Zetas by the Osiel Cárdenas organization. The original 30 Zetas deserted en masse from the elite, U.S.-trained Airborne Special Forces Group (Grupo Aeromóvil de Fuerzas Especiales, known by their Spanish acronym GAFES) to the Gulf cartel in 2000. Leaders of Zetas, among the most feared of cartel enforcers, have now taken operational control of some fragments of different drug trafficking organizations. The total number of trained Zetas has grown to several hundred.<sup>55</sup>

The DEA (and recently in Iraq, SOCOM in the Pentagon) have worked, with some success, to track financial structures of criminal and terrorist groups. They have done this by maintaining a concerted focus on finances, including successfully exploiting “pocket litter,” telecommunications, and exploiting human intelligence. These lessons need to be studied and applied to the U.S.-Mexico border situation.

On the U.S. side, it is imperative that local and state law enforcement forces be given the training and tools to follow the money. Because the movement of money is often a multi-jurisdictional challenge, coordination among these groups across state lines and with the federal government is imperative. Most border police forces do not have the resources to do more than try to keep from being overrun by the flow of drugs, guns and illegal immigrants. Tracing finances is often only done when cash is seized coincidentally as part of an operation. There is not the training or the personnel to do more on the financial front.

Coordination among the federal government is not a small task. The DEA, FBI, FinCEN, DOD, intelligence community and DHS (ICE, CBP and other offices) all have equities in tracking illicit finances, particularly if a designated terrorist entity is involved. This comes into play in the Mexico situation because the Mexican cartels deal directly and indirectly with two designated terrorist organizations, the FARC and the United Self Defense of Colombia (AUC). The territorial disputes, lack of clear jurisdictional guidelines, and inter-agency rivalries make intra-governmental and inter-governmental coordination a daunting task.

On the Mexican side, the endemic corruption, the deep roots already laid down by the drug trafficking organizations, lack of technical training in police and military units and the lack of vetted units all make combating the financial flows particularly difficult. In addition, as describe above, the illicit money seeps into virtually every part of the Mexican national and local state structures, making executing existing laws a daunting task and the effective implementation of the new constitutional reforms on confiscation of properties and other important aspects even more challenging.

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<sup>55</sup>For details, see George W. Grayson, “Los Zetas: The Ruthless Army Spawned by a Mexican Drug Cartel,” Foreign Policy Research Institute, April 30, 2008; and Alfredo Corchado, “The Mexican Drug Cartel Enforcers Known as Zetas Are Growing in Strength,” *The Dallas Morning News*, September 29, 2006.

The entire process is further hampered by the lack of coordination among the UIF, prosecutors and law enforcement investigators. While information on transactions or suspicious activities can be requested by the UIF, it cannot be required. Requests must still be hand delivered and there is no mechanism to allow the immediate sharing of information that could lead to action.

In order to significantly increase the cost to the drug cartels of moving bulk cash across the U.S. -Mexico border both nations will need to take several steps together. The opportunity to take these steps in coordination with Central American nations exists because of the joint participation in the Mérida Initiative. These are:

1. Make combating the illicit financial flows of central part of the counter-drug fight against organized crime on both sides of the border;
2. Create vetted units where language is not an obstacle and where information can be shared freely. This would allow law enforcement to jointly exploit what each side knows about personnel, routes and methods and coordinate activities in real time;
3. Substantially increase the financial and technical resources available to trace financial networks. This is particularly true in Mexico and at the state and local levels in the United States. This includes modernizing the way the UIF and other organizations in Mexico exchange information, access information and deal with law enforcement;
4. Develop human intelligence within the drug trafficking organizations specifically targeted at the financial structure with the goal of both identifying routes, but also key facilitators and exploitable weaknesses along the financial pipeline and anticipating future vulnerabilities;
5. Develop joint regulations on wire and other unrestricted money transfer systems, recognizing that such services are often an important financial lifeline to significant numbers of people, particularly in rural areas. Simply cutting the services or making them unviable would create significant hardship and generate sympathy for the drug traffickers;
6. Monitor and trace the purchase of land, particularly near the border, in order to anticipate where the cartels are likely to be able to exert significant pressure.

All of these steps would increase the cost of doing business for the organized criminal organizations. The more money they have to spend to move money, the less they have for other activities. Money that is seized deprives the criminal organizations of the final payoff for their activities, and hurts them more than interdicting the drugs or other products. Targeting cash remains one of the most effective ways of significantly hurting criminal organizations, therefore creative and flexible approaches to doing so are imperative.

# U.S. FIREARMS TRAFFICKING TO MEXICO: NEW DATA AND INSIGHTS ILLUMINATE KEY TRENDS AND CHALLENGES

Colby Goodman and Michel Marizco

## INTRODUCTION

During a routine inspection of a U.S. gun store in Houston, Texas, in January, 2007, an industry operations officer from the U.S. Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) uncovered a suspicious trend.<sup>1</sup> Numerous individuals had purchased large quantities of military-style firearms<sup>2</sup> in a relatively short period of time. ATF later determined that 23 buyers had purchased 339 firearms — mostly AR-15 semi-automatic rifles, FN Herstal 5.7mm rifles and pistols, and Beretta pistols — worth \$366,450 in a 15-month period at Carter's County gun store. Mexican authorities also had recovered 88 of these firearms in Mexico; four of the firearms were found in Guatemala.<sup>3</sup> One or more of these firearms had been found at various crime scenes in Mexico where police had been murdered, judicial personnel had been executed, the military had received gunfire, or a businessman had been kidnapped and murdered.<sup>4</sup> Many, if not all, of the assailants were members of a Mexican drug trafficking organization (DTO).<sup>5</sup> Mexican authorities also found several more of these U.S.-origin firearms during narcotics related searches and at various

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<sup>1</sup>United States of America vs. Juan Pablo Gutierrez, Criminal Complaint, Case Number H-08-695m, United States District Court Southern District of Texas, Filed on October 2, 2008, accessed document through the Public Access to Court Electronic Records (PACER) service in April 2010.

<sup>2</sup>By firearms, the authors mean any arm that is designed to expel a projectile by the action of an explosive such as a rifle, handgun, or machine gun or any arm that is a destructive device such as hand grenades and rocket-propelled grenades, which is similar to the definition of firearms in the U.S. Gun Control Act of 1968.

<sup>3</sup>United States of America vs. Juan Pablo Gutierrez. Statement of Kenneth E. Melson, Deputy Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), before the U.S. House Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies, March 4, 2010, online at <http://www.atf.gov/press/releases/2010/03/030410-testimony-atf-dir-melson-fy11-appropriations.html>.

<sup>4</sup>*Ibid.* United States of America vs. John Phillip Hernandez, Criminal Complaint, Case Number H-08-317M, United States District Court Southern District of Texas, Filed on April 24, 2008, accessed document through the Public Access to Court Electronic Records (PACER) service in April 2010.

<sup>5</sup>United States of America vs. Juan Pablo Gutierrez and United States of American vs. John Phillip Hernandez, Criminal Complaint.

vehicle inspection points.<sup>6</sup> In total, 18 Mexican law enforcement officers and civilians died using firearms purchased from this U.S. gun store.<sup>7</sup>

While the above example is disturbing, it provides only a small glimpse into a much larger problem. Mexican DTOs continue to use firearms, including many U.S. firearms, in similar and more lethal ways on a regular basis. Since President Felipe Calderon took office in December 2006, there have been an estimated 28,000 drug-related killings, and most of these deaths, including extremely violent ones, were in the last two years.<sup>8</sup> According to Mexican official numbers, during the same period “a total of 915 municipal police, 698 state police and 463 federal agents have been killed at the hands of criminal gangs.”<sup>9</sup> These deaths represent only the most immediate effects of seven years of combat between the rival DTOs and with the Mexican government.

Despite recent efforts to rid government agencies of corrupt officials linked to DTOs, criminal organizations continue to use firearm violence to either neutralize or force government officials to support their illegal enterprise. As a result, the Mexican public increasingly lacks confidence in their government. Additionally, while the flow of firearms and ammunition to organized crime groups in Mexico does not on its own cause violence, it can contribute to a group’s decision to attack a rival, increase the lethality of such an attack, result in the death of innocent by-standers, or pose a serious challenge to the government’s ability to curb such extreme violence.<sup>10</sup>

The exploding violence in Mexico has also raised concerns about violence “spilling over” into the United States. To date, this has not been the case. The kinds of shoot-outs that have become common place in northern Mexico have not materialized on the United States side of the border. There are exceptions, including two incidents in which gunfire in Ciudad Juarez resulted in public buildings being struck by bullets across the border in El Paso, but these have been the exception rather than the rule thus far.

<sup>6</sup>*Ibid.*

<sup>7</sup>Statement of Kenneth E. Melson, March 4, 2010.

<sup>8</sup>Arthur Rice, “Drug war death toll in Mexico since 2006 exceeds 28,000, officials say,” CNN, August 4, 2010, online at <http://edition.cnn.com/2010/WORLD/americas/08/03/mexico.drug.deaths/#fbid=xmlBaZOftn&wom=true>. Luis Astorga and David A. Shirk, *Drug Trafficking Organizations and Counter-Drug Strategies in the U.S.-Mexico Context*, Woodrow Wilson International Center for Scholars, Mexico Institute, Working Paper Series on U.S.-Mexico Cooperation, April 2010, page 3, online at <http://wilsoncenter.org/topics/pubs/Drug%20Trafficking%20Organizations.%20Astorga%20and%20Shirk.pdf>.

<sup>9</sup>Tim Johnson, “As death toll rises, Mexico rethinks drug war strategy,” McClathy Newspapers, August 13, 2010, online at <http://www.kansascity.com/2010/08/13/2149024/as-death-toll-rises-mexico-rethinks.html>.

<sup>10</sup>As an example, the Liberian armed group Liberians United for Reconciliation and Democracy (LURD) had run out of ammunition during the Liberian conflict between 1999 and 2003. As soon as LURD received a huge shipment of arms and ammunition, they attacked the Liberian government forces. See Lisa Misol, “Weapons Sanctions, Military Supplies, and Human Suffering: Illegal Flows to Liberia and the June–July 2003 Shelling of Monrovia,” A Human Rights Watch Briefing Paper, November 3, 2003, online at <http://www.hrw.org/en/news/2003/11/05/liberia-guinea-flouts-arms-embargo>.

## U.S. FIREARMS TRAFFICKING TO MEXICO: NEW DATA AND INSIGHTS ILLUMINATE KEY TRENDS AND CHALLENGES

As DTOs have expanded their use of firearms, including more military-type of firearms, the U.S. and Mexican governments have increased collaboration efforts as well as independent work to tackle U.S. firearms trafficking to Mexico. For example, the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) launched Operation Armas Cruzadas in 2008 as a "bilateral law enforcement and intelligence-sharing operation between U.S. and Mexican law enforcement agencies" to combat weapons smuggling networks.<sup>11</sup> ICE also now leads five Border Enforcement Security Task Force (BEST) teams located in U.S. states along the southwest border and one team in Mexico City.<sup>12</sup> BEST teams include officials from U.S. Customs and Border Protection (CBP), ATF, Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), U.S. Attorney's Office, and Mexican federal police (Secretaria de Seguridad Publica) to coordinate approaches to firearms trafficking and other border security issues.<sup>13</sup> In Fiscal Year (FY) 2009, the U.S. Congress also increased by \$29 million funding for Project Gunrunner, an ATF program started in 2005 to address U.S. firearms trafficking to Mexico.<sup>14</sup> By the end of FY 2009, ATF had referred 497 cases to the Justice Department for possible prosecution for firearms trafficking violations to Mexico. These cases were the result of Project Gunrunner.<sup>15</sup>

The Mexican government has also stepped up its efforts to seize firearms from Mexican DTOs and submit these firearms to ATF for tracing. According to ATF, firearms tracing is one of the most important tools they have to curb U.S. firearms trafficking to Mexico; if successfully traced, it helps ATF link suspects to trafficked weapons, identify potential traffickers, and detect trafficking patterns.<sup>16</sup> In late October 2009, the Mexican military submitted an extensive list of firearms seized over the last few years to ATF.<sup>17</sup> This represented the largest number of trace requests submitted to the U.S. government to date and indicated a willingness amongst Mexican authorities to submit more trace requests to ATF. Additionally, both the

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<sup>11</sup>U.S. Immigration and Customs Enforcement (ICE), Fact Sheet on Operation Armas Cruzadas, November 3, 2009, online at [http://www.ice.gov/pi/news/factsheets/armas\\_cruzadas.htm](http://www.ice.gov/pi/news/factsheets/armas_cruzadas.htm).

<sup>12</sup>U.S. Immigration and Customs Enforcement (ICE), Fact Sheet on Border Enforcement Security Task Force (BEST), August 5, 2010, online at [http://www.ice.gov/pi/news/factsheets/080226best\\_fact\\_sheet.htm](http://www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm).

<sup>13</sup>*Ibid.*

<sup>14</sup>Vivian S. Chu and William J. Krouse, "Gun Trafficking and the Southwest Border," Congressional Research Service Report, R40733, September 21, 2009, page 14, online at <http://www.wilsoncenter.org/news/docs/CRS%20Gun%20Trafficking%20and%20the%20Southwet%20Border.pdf>.

<sup>15</sup>Statement of Kenneth E. Melson, Deputy Director of ATF, March 4, 2010.

<sup>16</sup>ATF Information on Project Gunrunner, ATF, online at <http://www.atf.gov/firearms/programs/project-gunrunner/>. Author phone conversation with ATF agent based in El Paso, Texas in March 2010. Once a firearm is seized or recovered in Mexico and submitted to ATF for a trace, ATF attempts to trace the firearm from its manufacturer or importer to the first retail purchase in the United States. ATF does not necessarily need to trace the firearm to the first purchase in the United States to determine the origin of the firearm.

<sup>17</sup>Author interview with ATF official in Washington, DC in August 2009.

Mexican and the U.S. governments have added staff to work with their counterparts in each country.

With information gleaned from increased Mexican firearm seizures and U.S. prosecutions, it is now possible to provide a better picture of some of the key questions about U.S. firearms trafficking to Mexico as well as some of the key trends and challenges. In May 2010, for example, the Mexican government, which has received training from ATF to better identify firearms, said that of the 75,000 firearms it seized in the last three years about 80 percent, or 60,000 firearms, came from the United States.<sup>18</sup> Based on information from U.S. prosecutions, at least an estimated 4,976 U.S.-origin firearms were trafficked to Mexico during FY 2009, up more than 2,000 firearms from similar information for FY 2007.<sup>19</sup> The top two firearms purchased in the United States and recovered in Mexico over the past three years were in order AK-47 type semi-automatic rifles and AR-15 semi-automatic rifle clones.<sup>20</sup> The Romarms (Romanian manufactured) AK-47 rifle and the Bushmaster AR-15 rifle clone have been particularly popular.<sup>21</sup> According to several ATF officials, individuals or groups regularly use straw purchasing as part of a scheme to traffic U.S. firearms to Mexico.<sup>22</sup> Straw purchasers are individuals who say they are purchasing a firearm for themselves but the real purchaser is someone else. While new data continue to show Texas, Arizona, and California as major source states for firearms recovered in Mexico, ATF in California says if the analysis is narrowed to firearms purchased in the United States in the last three years, California is not as much of a major source.<sup>23</sup>

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<sup>18</sup>Mary Beth Sheridan, "Mexico's Calderon tells Congress he needs U.S. help in fighting drug wars," *The Washington Post*, May 21, 2010, online at <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/20/AR2010052002911.html>. Kara Rowland, "Calderon Blames U.S. guns for Violence," *The Washington Times*, May 21, 2010, online at <http://www.washingtontimes.com/news/2010/may/21/calderon-faults-us-guns-for-mexico-violence/>.

<sup>19</sup>Author interview with ATF staff in Washington, DC in February 2010.

<sup>20</sup>Author communication with ATF official in August 2010. ATF analysis was presented at the International Terrorism Conference in Anaheim, CA. Because many U.S. states do not require private firearm sellers to keep records on whom they sold a firearm to, these data are based more on U.S. firearms sales from U.S. gun stores or licensed firearms dealers. According to California state law, all sales and transfers of firearms must be through a licensed firearm dealer, which is required to keep records on firearms sales among other requirements.

<sup>21</sup>Author communication with ATF official in August 2010.

<sup>22</sup>Author interview with ICE and ATF agents in Arizona, California, and Washington, DC between December, 2009 and May 2010. The definition of an international arms broker is an individual or company that carry out activities to arrange, mediate, or facilitate an international arms transaction between a buyer and seller in return for a fee or a reward or material benefit. Authors accessed information on individual U.S. federal prosecutions related to firearms trafficking to Mexico using Public Access to Court Electronic Records (PACER).

<sup>23</sup>Author phone conversation with ATF official in August 2010. Author phone conversation with retired ATF official based in Washington, DC in August 2010. Amy Isackson, "Recent San Diego Gun Smuggling Arrest Illustrates Well-Worn Route," March 4, 2010, KPBS, online at <http://www.kpbs.org/news/2010/mar/04/recent-san-diego-gun-smuggling-arrest-illustrates-/>.

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This report seeks to answer the following questions: 1) what are the main types of firearms DTOs are using, including those trafficked to Mexico from the United States, and how do these firearms compare with the firepower of Mexican authorities; 2) how are DTOs using these firearms; 3) what are the major methods firearms traffickers are using to buy these weapons and transport them to Mexico; 4) have there been any successes in curbing such firearms trafficking; 5) what are the remaining challenges; and, 6) what can be done to improve efforts to curb U.S. firearms trafficking to Mexico? As there has also been confusion regarding related statistics, the authors have elaborated on what the data show and what they do not show.

In order to answer these questions, the authors conducted field research trips to Phoenix, Tucson, El Paso, and San Diego in the United States and to Ciudad Juarez, Hermosillo, Nogales, and Tijuana in Mexico. During these research trips in the United States, the authors interviewed U.S. government officials from various agencies including the ATF,<sup>24</sup> ICE, CBP, FBI, as well as state, county, and local law enforcement in the United States. In Mexico, the authors interviewed officials from Mexican customs, federal, local, and municipal police, the Attorney General's Office (PGR), the Army, business and academic leaders, and the media, among others. Outside of the research trips, the authors communicated with many knowledgeable Mexican and U.S. government officials and staff from non-governmental organizations and academia.

## BACKGROUND

Traditionally, Mexican DTOs used firearms to establish and maintain dominance over trafficking routes, access points into the United States, and territory (known as “plazas” in Spanish), usually by wresting rival drug syndicates away and establishing the environment necessary to maintain a reliable trafficking enterprise. Much of this was performed through specific assassinations, focused attacks that allowed for the establishment of regional control. Throughout much of the late 1990s and early 2000s, a relative peace had settled over the plazas, even in traditionally violent cities like Tijuana. However, as competition among DTOs increased and the Mexican government enhanced its efforts to confront DTOs the relative equilibrium began to breakdown.

While DTOs still use firearms to establish control over drug trafficking routes leading to the United States, in the last few years they more regularly use firearms in open combat with rival DTOs, Mexican authorities, and the public. Such open confrontations with the Mexican state indicate a move “into a sphere that is typically inhabited by groups with a much more overt political stance, such as terrorists,

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<sup>24</sup>The authors would like to thank the ATF officials they interviewed for providing key statistical data for the report and for their general openness to share information and help us understand the dynamics of the U.S. firearms trafficking to Mexico.

guerrillas or paramilitaries.”<sup>25</sup> Mexican DTOs are also demanding more sophisticated firearms and larger quantities of arms and ammunition. The resulting murder rate is now seven times what it was at the beginning of the decade, and Mexico’s democratic governance is at serious risk.

Once rare, assassinations of high level Mexican law enforcement figures including officials as high as directors of federal agencies and politicians now occur regularly in Mexico. In May 2007, for example, Nemesio Lugo Felix, director of Mexico’s National Center for Information, Analysis and Planning in order to Fight Crime (CENAPI) was murdered by a man who approached his SUV carrying a pistol in Mexico City and shot him in the face.<sup>26</sup> Nemesio Lugo had worked closely with U.S. intelligence officials in the DEA and the U.S. Department of State and was highly regarded as an effective director of intelligence working against organized crime syndicates.<sup>27</sup> No one was ever arrested for his murder. A year later, Edgar Millan Gomez, acting director of the Federal Preventive Police, was assassinated in his own home by a man wielding two 9mm pistols.<sup>28</sup> Holding a press conference in Culiacán one week before his death, Millan had announced the arrests of 12 hit men working for the Sinaloa Cartel. That same day, one of the directors of a federal organized crime unit, Roberto Velasco, was shot and killed in Mexico City. The following day, Jose Aristeo, chief of staff for the Federal Preventive Police, was shot and killed in the same city.<sup>29</sup>

While those four men are a good indication of the high-level Mexican government officials targeted by DTOs, DTOs also target other Mexican authorities and recently U.S. officials in Mexico. For example, in Ciudad Juárez, it is believed gunmen used a .50 BMG caliber rifle to shoot Francisco Ledesma Salazar, the head of local police operations.<sup>30</sup> In this particular case, a Juárez cartel associate purchased the firearm in Phoenix, Arizona. Law enforcement, particularly local police, is still amongst the most targeted by the DTOs. In 2008, more than 530 police officers were murdered throughout Mexico; from high-level public security officials in

<sup>25</sup>John Bailey and Matthew M. Taylor, “Evade, Corrupt, or Confront? Organized Crime and the State in Brazil and Mexico,” page 12, online at <http://hup.sub.uni-hamburg.de/giga/jpla/article/view/38/38>.

<sup>26</sup>Gustavo Castillo Garcia, “Delincuencia organizada, vinculada al asesinato de Nemesio Lugo Félix,” *La Jornada*, June 16, 2007, online at <http://www.jornada.unam.mx/2007/06/16/index.php?section=politica&article=016n2pol>.

<sup>27</sup>U.S. Embassy in Mexico, “Ambassador Garza Expresses his Condolences to the Family of Jose Nemesio Lugo Felix,” News release, May 14, 2007, online at <http://www.usembassy-mexico.gov/eng/releases/ep070514Lugo.html>.

<sup>28</sup>James C. McKinley, “Gunmen Kill Chief of Mexico’s Police,” *The New York Times*, May 9, 2008, online at <http://www.nytimes.com/2008/05/09/world/americas/09mexico.html>.

<sup>29</sup>Hector Tobar, “Ranking Security Official Slain in Mexico,” *Los Angeles Times*, May 9, 2008, online at <http://articles.latimes.com/2008/may/09/world/fg-mexico9/2>.

<sup>30</sup>Drew Griffin and John Murgatroyd, “Smugglers’ deadly cargo, Cop-killing guns,” *CNN.com*, March 26, 2008, online at <http://www.cnn.com/2008/WORLD/americas/03/26/gun.smuggling/index.html>.

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Mexico City to street cops along the country's northern border.<sup>31</sup> In March 2010, a U.S. Consulate employee, her husband, and the husband of another employee were also murdered in Ciudad Juárez, possibly signaling an escalation of the violence in that city against the U.S. government.<sup>32</sup>

Although DTOs have engaged in limited attacks or confrontations with the Mexican military, the military's confrontations with DTOs have resulted in relatively few soldier deaths compared to police officer deaths. Between December 1, 2006 and February 19, 2009, 79 military officers and soldiers died and an additional 173 were wounded while combating the DTOs.<sup>33</sup> In a brazen attack on the military in Tijuana in October 2008, for example, a Mexican Special Forces soldier, Angel Guadalupe Aguilar Villatoro, was shot in the head as his unit drove into a neighborhood where a drug lord owned a home. After a two-hour standoff with Mexican Special Forces, police found a Barrett .50 BMG caliber sniper rifle, a .223 caliber assault rifle, and three .308 caliber rifles.<sup>34</sup> U.S. District Court documents show that the firearms were purchased in Las Vegas, Nevada by a man named Juan Valdez.<sup>35</sup>

DTOs are also using firearms to attack and intimidate politicians, journalists, businesses, and the general public. In June 2010, a leading Mexican gubernatorial candidate, Rodolfo Torre Cantu, was killed by gunfire in Tamaulipas, just days before the July 4, 2010 elections.<sup>36</sup> In late 2008, Armando Rodriguez, a crime reporter for *El Diario de Juárez*, was shot in the head with a 9mm as he drove his daughter to school.<sup>37</sup> Rodriguez had reported extensively on the drug ties of the family members of state attorney general, Patricia Gonzalez. Between 1999 and 2009, 32 reporters and editors were killed in Mexico, and an additional nine disappeared, never to be found.<sup>38</sup> The high number of journalist murders makes Mexico among the deadliest countries in the world in which to work as a journalist and consequently many media companies now refuse to cover organized crime or corruption.

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<sup>31</sup>Lizbeth Diaz, "Mexico drug gangs threaten cops on radio, kill them" Reuters, February 6, 2009.

<sup>32</sup>Edwin Chen and Carlos Manuel Rodriguez, "Killings of 3 Connected to U.S. Consulate Bring Warning" *BusinessWeek*, March 15, 2010.

<sup>33</sup>Roderic Ai Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," Woodrow Wilson International Center for Scholars, Mexico Institute, and Trans-Border Institute at the University of San Diego, "Working Paper Series on U.S.-Mexico Cooperation," May 2010, online at <http://www.wilsoncenter.org/topics/pubs/Armed%20Forces%20and%20Drugs.%20Camp.pdf>.

<sup>34</sup>Zeta Online, "CAF asesina a militares," online at <http://www.zetatijuana.com/html/Edicion1803/Principal.html>.

<sup>35</sup>United States of America vs. Uvaldo Salazar-Lopez, Criminal Complaint, U.S. District Court of Nevada, Case 2:09-mj-00002-LRL-LRL, May 1, 2009, accessed through PACER online.

<sup>36</sup>Naima Jabali-Nash, "Rodolfo Torre Cantu Assassinated; Drug Cartels Suspected, Say Reports," CBS News, June 28, 2010, online at [http://www.cbsnews.com/8301-504083\\_162-20009074-504083.html](http://www.cbsnews.com/8301-504083_162-20009074-504083.html).

<sup>37</sup>USA Today, "Crime reporter killed in Mexico," November 13, 2008, online at [http://www.usatoday.com/news/world/2008-11-13-mexico-crime-reporter\\_N.htm](http://www.usatoday.com/news/world/2008-11-13-mexico-crime-reporter_N.htm).

<sup>38</sup>Committee to Protect Journalists, "Attacks on the Press: Mexico," accessed online in May 2010 at <http://cpj.org/2010/02/attacks-on-the-press-2009-mexico.php>.

The general public is also getting caught in the escalating conflict in various ways. In late 2006, for example, in the Sinaloa village of Zazalpa, 60 drug traffickers looking for a rival DTO gathered all the residents and destroyed the town, raking buildings with U.S.-purchased AR-15 fire.<sup>39</sup> According to Mexican President Calderon, the DTOs are also “imposing fees like taxes in areas they dominate and trying to impose their own laws by force of arms.”<sup>40</sup> In February 2010, U.S. and Mexican citizens waiting to cross into Mexico from Nogales, Arizona, were trapped in a firefight that erupted in the plaza on the Mexican side. In the spring of 2008, tourists returning through the Lukeville port of entry were also trapped in line waiting to cross when a gunfight ensued. In that same year, a woman from Nogales, Arizona, was murdered at a fake checkpoint on a federal interstate in Sonora. Authorities said she was shot with AK-47 gunfire.<sup>41</sup> A Mexican government official familiar with the murder said three .50 BMG caliber rifle shells were found at the scene.<sup>42</sup> A Phoenix businessman who led hunting expeditions in Sonora, Mexico, was also found shot dead with an AK-47 in May 2010.<sup>43</sup> The escalating crime and murder rates in Ciudad Juarez have also sparked an exodus from that city with some groups estimating that 60,000 have fled in the past few years to other parts of Mexico or the United States.<sup>44</sup>

## U.S. AND MEXICAN GOVERNMENT ACTIONS

In light of the widespread use of firearms by DTOs, the U.S. and Mexican governments have significantly increased their efforts both independently and collectively to curb Mexican DTO’s access to firearms and ammunition in the last few years. While much still needs to be done, both governments have had some tangible results.<sup>45</sup> Mexico has, by far, the most firearm seizures per year when compared to the United States; although, the U.S. government, particularly ATF, has seized thousands of firearms intended for trafficking to Mexico. It appears Mexico is seizing most of

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<sup>39</sup>U.S. guns pour into Mexico, Arizona Republic, January 16, 2007.

<sup>40</sup>BBC News, “Calderon: Mexico drug gangs seeking to replace state,” August 5, 2010, online at <http://www.bbc.co.uk/news/world-latin-america-10877156>.

<sup>41</sup>Juan Carlos Ruiz Olvera, “Un reten de sicarios mata a una mujer en Sonora “Es inaceptable la situación es en extremo delicada” dice Bours,” Dossier Politico, August 11, 2008, <http://www.dossierpolitico.com/vernoticiasanteriores.php?artid=40767&relacion=dossierpolitico>.

<sup>42</sup>Author interview with CISEN agent on September 25, 2008.

<sup>43</sup>El Imparcial.com, “Hallan en Santa Ana a desaparecido de EU, May 9, 2010, online at <http://www.elimparcial.com/EdicionImpresa/ejemplaresanteriores/BusquedaEjemplares.asp?numnota=837791&fecha=9/5/2010>.

<sup>44</sup>Alfredo Corchado, “Families, businesses flee Juárez for U.S. pastures,” The Dallas Morning News, March 7, 2010, <http://www.dallasnews.com/sharedcontent/dws/news/world/mexico/stories/030710dnintexodus.3eab4f7.html>.

<sup>45</sup>It remains difficult to assess the impact of these tangible results because there are no good estimates on how many firearms Mexican DTOs have in their arsenal or the total number of firearms crossing the U.S.-Mexico border per year.

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the firearms from house or site raids and vehicle inspections inside Mexico. In the last couple of years, there has also been a large increase in the number of Mexican firearm trace requests to ATF, and Mexico is providing other important information on Mexican prosecutions of firearms traffickers. The United States has convicted hundreds of individuals on charges related to firearms trafficking to Mexico, which increases the risks and costs for would-be traffickers. The United States has also been providing technology, training, and equipment that will assist Mexico's efforts to identify and trace firearms, and/or prosecute firearms traffickers.

### MEXICAN GOVERNMENT ACTIONS

The Mexican government has significantly increased the number of firearms it has seized per year since the start of the Calderon Administration (see Figure 1). According to the latest figures from Mexico, the Mexican government confiscated 32,332 firearms in 2009, an increase of more than 22,770 firearms over 2007 seizures.<sup>46</sup> The authors were unable to find reliable numbers for total firearms seizures for 2006, which is why it was excluded from the graph below. Nevertheless, Mexico has seized more than 85,000 total firearms from the start of the Calderon Administration in December 2006 to August 2010, including 50,000 AK-47 and AR-15 rifles.<sup>47</sup> An estimated 5 million rounds of ammunition has been confiscated from December 2006 to May 2010.<sup>48</sup>

Although Mexican authorities seize firearms unrelated to DTOs such as through common crime, it appears they seize the largest quantity of firearms per year from DTO members in two ways: from raids on houses or sites believed to be associated with Mexican DTOs and from vehicle inspection points inside Mexico.<sup>49</sup> Mexican Customs officials monitor passage of goods through the port of entry, and a secondary

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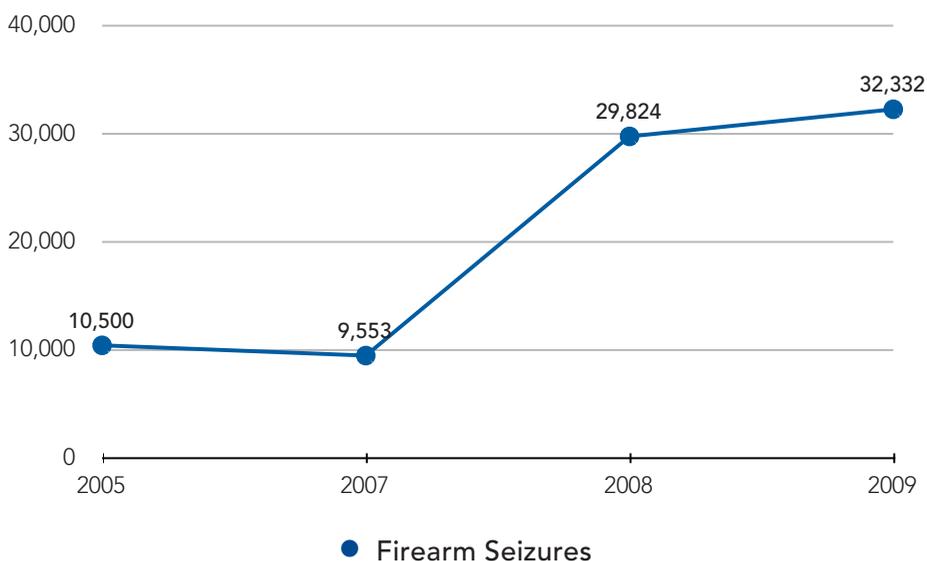
<sup>46</sup>Author interview with Mexican government officials in Washington, DC in May 2010. U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking. Government Accountability Office (GAO), "U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges," GAO-09-709, June 2009, page 66, online at <http://www.gao.gov/new.items/d09709.pdf>. The authors chose these numbers because they represent the best calculations among various Mexican government reports when comparing these figures to ATF information about firearms recovered in Mexico in the same years. Over the past year, Mexican authorities have provided several different numbers for total annual firearm seizures. For example, some Mexican authorities reported to the authors that the government seized 21,041 firearms in 2008 while CENAPI, under PGR, said they seized 29,824 firearms in 2008, see GAO reference above.

<sup>47</sup>Tom Ramstack, "Mexican President Calls on U.S. to Close Border to Illegal Arms," AHN News, August 9, 2010, online at <http://www.allheadlinenews.com/articles/7019538251?Mexican%20President%20Calls%20on%20U.S.%20to%20Close%20the%20Border%20to%20Illegal%20Arms>. Author interview with Mexican government officials in Washington, DC in May 2010. U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking. Milenio, "Incautó el Ejército más de 55 mil armas con Calderón," May 13, 2010, online at <http://www.milenio.com/node/442669>.

<sup>48</sup>Author interview with Mexican government officials in Washington, DC in May 2010.

<sup>49</sup>Author phone conversation with ATF official in August 2010.

FIGURE 1: FIREARM SEIZURES BY MEXICO PER YEAR



Customs unit, or a military unit, establishes a second post at the 21<sup>st</sup> kilometer south of every major Mexican border city.<sup>50</sup> In an example of a site raid in May 2010, the Mexican military found an estimated 140 semiautomatic rifles and 10,000 rounds of ammunition at a Zeta training camp in Nuevo León, Mexico.<sup>51</sup> Mexican officials at the border between El Paso, Texas and Ciudad Juárez, Mexico, said they confiscate only a small number of firearms and ammunition.<sup>52</sup> Mexican authorities also seize firearms after shoot-outs between opposing DTOs and between DTO members and Mexican authorities.

A Government Accountability Office (GAO) report found that eight Mexican states — Baja California, Chihuahua, Guanajuato, Jalisco, Michoacán, Oaxaca, Tamaulipas, and Mexico City — ranked highest in order for Mexican firearms

<sup>50</sup>Author interview with Mexican official in Nogales, Mexico, in March 2010. As an example of a firearms seizure at vehicle inspection point inside Mexico, Mexican authorities seized 30,000 rounds of ammunition from a civilian bus heading into Mexico at a vehicle checkpoint several miles from the Nogales border inside Mexico in March 2010.

<sup>51</sup>Michel Isikoff, “Is the Flow of U.S. Weapons to Mexican Drug Cartels Increasing Under Obama?,” *Newsweek*, accessed online in May 2010 at <http://blog.newsweek.com/blogs/declassified/archive/2010/05/17/is-the-flow-of-u-s-weapons-to-mexican-drug-cartels-increasing-under-obama.aspx>. In another example, the Mexican military seized “a rocket launcher, 10 rifles, a grenade launcher attachment, five grenades, 55 magazines, three machine gun belts, two thousand 769 cartridges” (translated text) at a house during Operation Conjunto Culiacan-Navolato Guamuchil in January 2010, according to *Noroeste.com*, “Incautan un arsenal, vehículos y droga,” January 18, 2010, online at <http://www.noroeste.com.mx/publicaciones.php?id=548833>.

<sup>52</sup>Author interview with Mexican Customs officials in Ciudad Juárez in January 2010.

## U.S. FIREARMS TRAFFICKING TO MEXICO: NEW DATA AND INSIGHTS ILLUMINATE KEY TRENDS AND CHALLENGES

seizures in 2008.<sup>53</sup> Tijuana and Ciudad Juarez were among the top six Mexican cities where U.S. firearms had been recovered in 2008.<sup>54</sup>

Recognizing that submitting firearm trace requests to the United States is key to combating U.S. firearms trafficking, the Mexican authorities have also significantly increased the number of firearm trace requests to ATF. In late October 2009, for example, the Mexican military submitted an extensive list of firearms seized over the past few years to ATF for tracing.<sup>55</sup> While ATF was not able to use many of the firearms because it either already had information on the firearm or there were duplicates in the list, among other challenges, the list provided ATF with new data on tens of thousands of firearms recovered in Mexico. As of May 2010, ATF said they had inputted data on a total of 69,808 firearms recovered in Mexico from 2007 to 2009.<sup>56</sup> See Figure 2 for a comparison of the number of firearms ATF had information on in June 2009 with what ATF had information on in May 2010 from 2007 to 2009 per year.<sup>57</sup> Although ATF received the list in late 2009, the numbers rose for more than one year because ATF calculates the total number of firearms recovered in Mexico based on the year they were seized.<sup>58</sup> ATF also said Mexico has already provided them with tens of thousands of firearm trace requests in 2010.<sup>59</sup>

Mexico is also providing information to the U.S. government on its own firearms trafficking investigations and prosecutions and additional, related cooperation is planned for the near future. See Figure 3 for an example of one way Mexico is providing information to ATF on its firearms seizures.<sup>60</sup> For Figure 3, it is likely many of the firearms confiscated for the Mexican crime of “illegal firearms possession” were connected to house or vehicle seizures of DTO members. In May 2010,

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<sup>53</sup>Government Accountability Office (GAO), “U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges,” page 65.

<sup>54</sup>U.S. Department of Justice, “Interim Review of ATF’s Project Gunrunner,” Office of the Inspector General, Evaluation and Inspections Division, September 2009, page 16, online at <http://www.justice.gov/oig/reports/ATF/e0906.pdf>.

<sup>55</sup>Author communication with ATF officials in May 2010. Author phone conversation with retired ATF agent with responsibilities for combating U.S. firearms trafficking to Mexico in August 2010. See below sections for more detail on challenges ATF faces in tracing firearms from Mexico.

<sup>56</sup>Author phone conversation with ATF official based in Washington, DC in May 2010. Claire Ribando Seelke and Kristin M. Finklea, “U.S.-Mexico Security Cooperation: The Mérida Initiative and Beyond,” Congressional Research Service (CRS), R41349, July 29, 2010, page 34, online at <http://www.wilsoncenter.org/topics/docs/CRS%20Report%20US%20Mexico%20Security%20Cooperation%20July%2029%202010.pdf>.

<sup>57</sup>New data provided to authors by ATF on June 1, 2010 based on a ATF query of the Firearms Tracing System in May 2010. Old data based on information contained in GAO report (<http://www.gao.gov/new.items/d09709.pdf>). There are two plausible reasons as to why ATF has more total annual firearm seizures for some years than Mexico does. One, different Mexican authorities may have different amounts for total annual firearm seizures. Two, ATF agents in Mexico are increasingly submitting firearm trace requests themselves and Mexico may not include all of the firearms ATF traces in its annual firearm seizure number.

<sup>58</sup>Author interview with ATF official in May 2010.

<sup>59</sup>Author communication with ATF official in March 2010.

<sup>60</sup>Author phone conversation with ATF official based in Washington, DC, in May 2010.

FIGURE 2: COMPARISON OF INFORMATION ON FIREARMS RECOVERED IN MEXICO PER YEAR

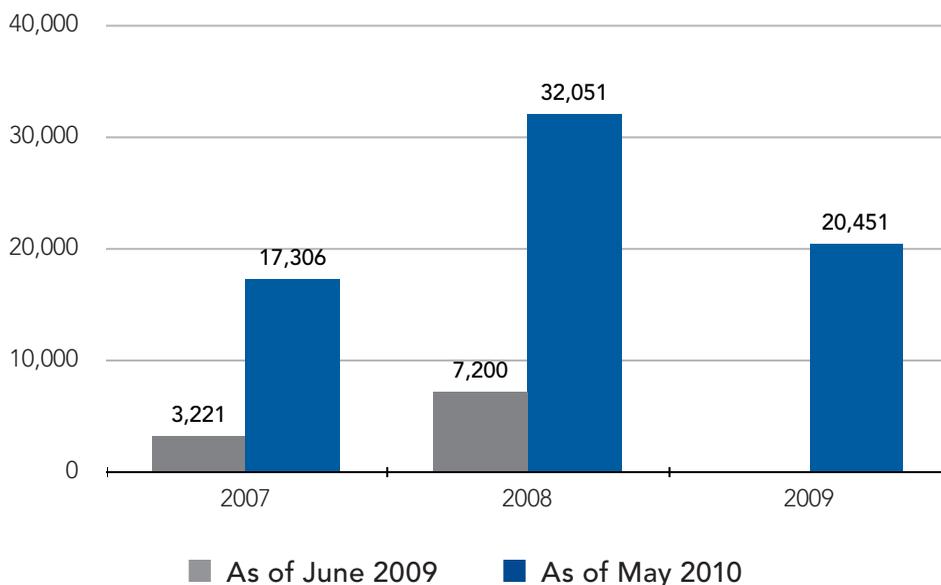


FIGURE 3: TOP SEVEN MEXICAN CRIMES ASSOCIATED WITH FIREARMS RECOVERED IN MEXICO IN 2009 AND SENT TO ATF

Crime under Mexican Law	Amount of Firearms
Illegal possession of weapon	12,264
Trafficking a weapon	4,428
Carrying a prohibited weapon	339
Related to dangerous drugs	311
Firing a weapon	298
Weapon used in a homicide	99
Weapon used in kidnapping	82

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the U.S. Embassy in Mexico reported that Mexico is also sharing “data and information in preliminary investigations, investigations into straw purchasers, prosecutions, and other judicial proceedings with U.S. authorities.”<sup>61</sup> PGR personnel now work with ATF directly in Phoenix, Arizona, and they have sent a PGR specialist to work with U.S. authorities at the El Paso Intelligence Center (EPIC) in El Paso, Texas. Both governments also have a plan in place to enhance judicial cooperation, intelligence sharing, and the detection of firearms movement between the two.<sup>62</sup> For the future, the United States and Mexico will reportedly establish a working group to increase the number of firearms trafficking prosecutions on each side of the border and create a unit to help link firearms to drug cartels for prosecution.<sup>63</sup> Mexico also plans to develop a list of individuals who have a history of obtaining firearms in Mexico to share with the U.S. government.

### U.S. GOVERNMENT ACTIONS

The U.S. government, primarily through ATF, ICE, and CBP, has increasingly been engaged in combating U.S. firearms trafficking to Mexico by, for example, pursuing investigations and prosecutions of firearms traffickers in the United States, seizing firearms in the United States illegally headed for Mexico, and assisting Mexico with technology, equipment, and training. According to ATF in March 2010, “between fiscal year 2005 and fiscal year 2009, ATF recommended 984 cases involving 2,034 defendants for prosecution” associated with its Project Gunrunner.<sup>64</sup> Four hundred and ninety-seven (497) of the 984 cases included charges specifically related to firearms trafficking.<sup>65</sup> Amongst the 497 cases there were 852 defendants, of whom 811 have been indicted and 533 convicted with an average 45.5 months of incarceration.<sup>66</sup> From the inception of ICE’s Operation Armas Cruzadas in 2008 until October 2009 “257 individuals [have been arrested] on criminal charges, resulting in 147 criminal indictments and 96 convictions.”<sup>67</sup> As of May 2010, the number of individuals arrested since the Operation began rose to 749.<sup>68</sup>

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<sup>61</sup>U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

<sup>62</sup>U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

<sup>63</sup>According to a U.S. Embassy in Mexico fact sheet, “ATF is currently assisting the PGR in prosecuting two firearms trafficking cases and has identified five additional trafficking cases for PGR review.” [http://mexico.usembassy.gov/eng/Mérida/eMérida\\_factsheet\\_armstrafficking.html](http://mexico.usembassy.gov/eng/Mérida/eMérida_factsheet_armstrafficking.html)

<sup>64</sup>Statement of Kenneth E. Melson, Deputy Director of ATF, March 4, 2010.

<sup>65</sup>*Ibid.*

<sup>66</sup>Data provided to the authors on June 1, 2010, by ATF official in Washington, DC.

<sup>67</sup>It is unclear how many of these individuals were charged with crimes specifically related to firearms trafficking to Mexico as specified in the ATF cases. Statement of Janice Ayala, Deputy Assistant Director, Office of Investigation, U.S. Immigration and Customs Enforcement, U.S. House of Representatives Committee on Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism, October 22, 2009, page 6, <http://www.ice.gov/doclib/pi/news/testimonies/091022ayala.pdf>.

<sup>68</sup>Statement of Janice Ayala, Deputy Assistant Director Office of Investigation, U.S. Immigration and Customs Enforcement, U.S. Senate Caucus on International Narcotics Control, May 5, 2010, page 14, online at <http://www.ice.gov/doclib/pi/news/testimonies/100505ayala.pdf>.

From April 28 to August 28, 2009, ATF redeployed 100 ATF staff from around the country to the ATF Houston field office to help address U.S. firearms trafficking to Mexico, which resulted in some success.<sup>69</sup> Prior to the start of Operation Gunrunner Impact Team (GRIT), also part of Project Gunrunner, the ATF Houston Field Division Office had over 700 investigation leads obtained through U.S. and Mexican firearm trace results.<sup>70</sup> Once the 100 ATF agents, including special agents, industry operations investigators, and support staff, were redeployed, the staff helped follow up on over 1,100 investigative leads;<sup>71</sup> ATF also discovered 400 additional leads after GRIT began.<sup>72</sup>

Based on those leads, ATF staff opened 276 criminal cases, 81 cases more than ATF opened related to Project Gunrunner in the Houston division for the whole year of 2008 (see Figure 4).<sup>73</sup> ATF industry operations investigators also inspected nearly 1,100 gun shops in the area, up from 855 inspections for the Houston area for all of 2008. As a result, ATF revoked the license of one gun dealer and issued 77 warning letters to other firearms dealers. In addition, ATF seized 443 firearms, 141,442 rounds of ammunition, three explosive devices, and various amounts of illegal narcotics and cash during the GRIT operation. For all of FY 2009, ATF revoked the license of 11 U.S. gun stores along the U.S. southwest border.<sup>74</sup> ATF is also planning another GRIT operation in 2010.<sup>75</sup>

In the last few years, the U.S. government has also been seizing more U.S. firearms intended for illegal transfer to Mexico. In the last six months of FY 2009, for example, ICE and CBP staff reportedly seized nearly 600 illegal weapons (including ammunition magazines, rounds of ammunition, components including primers and shell casings, silencers, night vision devices, and firearms), which is 50 percent higher than the last six months of FY 2008.<sup>76</sup> From March 25, 2009 through March 12, 2010, ICE's Operation Armas Cruzadas seized 125 firearms and 13,386 rounds of ammunition.<sup>77</sup> Since its creation in 2008, the U.S. Department of Homeland

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<sup>69</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Gun Runner Impact Team (GRIT), Houston Field Division, April 28–August 28, 2009, Powerpoint Overview of Successes, online at <http://www.atf.gov/press/releases/2009/10/100109-doj-gunrunner-success-stats.pdf>.

<sup>70</sup>*Ibid.*

<sup>71</sup>*Ibid.*

<sup>72</sup>*Ibid.*

<sup>73</sup>*Ibid.*

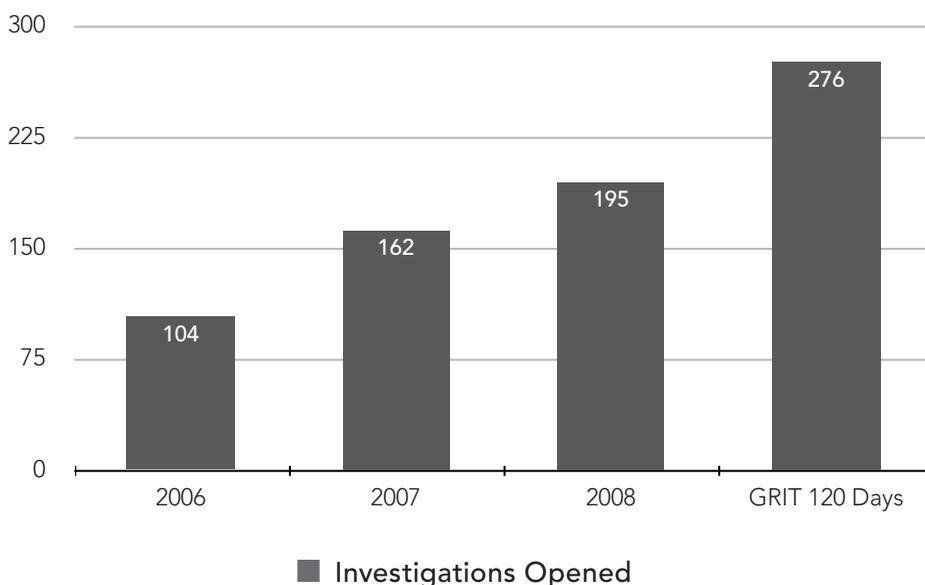
<sup>74</sup>U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

<sup>75</sup>U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

<sup>76</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Border contraband seizures soar as DHS, ATF hold summit in San Diego, News Release, November 3, 2009, online at <http://www.atf.gov/press/releases/2009/11/110309-atf-dhs-contraband-seizures.pdf>.

<sup>77</sup>Statement of John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, regarding a Hearing on “Update on Southwest Border; The Challenges that DHS Continues to Face,” before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Homeland Security, April 14, 2010, online at [http://www.dhs.gov/ynews/testimony/testimony\\_1274112299629.shtm](http://www.dhs.gov/ynews/testimony/testimony_1274112299629.shtm).

FIGURE 4: NUMBER OF INVESTIGATIONS OPENED BY THE ATF HOUSTON, TEXAS DIVISION



Security said Armas Curzadas has resulted in the seizure of 3,877 weapons and 396,414 rounds of ammunition.<sup>78</sup> In 2009, ATF seized 2,630 firearms and 267,963 rounds of ammunition specifically related to investigations on U.S. firearms trafficking to Mexico.<sup>79</sup> For FY 2009, ATF took into custody a total of 16,383 firearms, some of which could have had been headed for Mexico.<sup>80</sup> From the start of Project Gunrunner in FY 2005 until the end of FY 2009, ATF seized 6,688 firearms associated with Project Gunrunner prosecutions.<sup>81</sup>

Although some firearms are seized at the U.S.–Mexican border, most of the annual seizures of firearms intended for Mexico are happening away from the border.<sup>82</sup> According to ATF officials and a review of dozens of U.S. prosecutions, firearms are often taken from homes, vehicles, and people away from the border.<sup>83</sup> CBP reportedly seized only 70 firearms heading to Mexico in FY 2008, some of which may not have been intended for trafficking to Mexico.<sup>84</sup> According to CBP in El Paso, Texas

<sup>78</sup>Statement of Janice Ayala, U.S. Immigration and Customs Enforcement, May 5, 2010, page 14.

<sup>79</sup>Author communication with ATF official in Washington, DC, in May 2010.

<sup>80</sup>Author communication with ATF official in August 2010.

<sup>81</sup>Statement of Kenneth E. Melson, Deputy Director of ATF, March 4, 2010.

<sup>82</sup>Author communication with ATF official in January 2010.

<sup>83</sup>Author communication with ATF official from March to May 2010.

<sup>84</sup>Government Accountability Office (GAO), “U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges,” page 34.

some of their southbound firearm seizures are related to random or target inspections at the U.S.-Mexican border. ATF officials say CBP has also seized U.S. firearms illegally heading south because ATF tipped off CBP to inspect a certain vehicle heading for the border.<sup>85</sup>

To assist Mexican authorities with firearms tracing and related investigations, ATF and ICE have recently added and plan to add more officials to U.S. consulates in Mexico (see Figure 5 for ATF) and have provided Mexican officials with training and support on electronic firearms tracing or eTrace.<sup>86</sup> In late December 2009, ATF started the initial rollout of a bilingual (Spanish and English) version of eTrace with limited deployment to Mexico and other Central American countries for testing.<sup>87</sup> Through eTrace, Mexican officials can submit a firearm trace request to ATF electronically and with greater accuracy than the older paper-based tracing system.<sup>88</sup> If ATF is able to trace the firearm to the name of the person that first purchased the firearm, Mexican government officials can also use this information to build leads on firearms trafficking investigations in Mexico.<sup>89</sup> From FY 2007 to 2008, ATF personnel trained 375 Mexican law enforcement officials on eTrace.<sup>90</sup> Once eTrace is expanded to all 32 PGR branch offices throughout Mexico, as planned, ATF expects to provide more training to Mexican authorities.<sup>91</sup> ATF and ICE officials have also been tracing some firearms seized in Mexico themselves, particularly in cities close to the U.S.-Mexico border.<sup>92</sup>

The U.S. government has also provided and plans to provide training, technology, and equipment to assist the Mexican government with prosecuting firearms traffickers

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<sup>85</sup>Author interview with CBP officials in El Paso, Texas in January 2010. Author communication with ATF official in January 2010.

<sup>86</sup>Author interview with ATF official based in Washington, DC in May 2010. U.S. Department of Justice, "Interim Review of ATF's Project Gunrunner," September 2009, page 5. Author interview with ATF officials in Washington, DC in April 2010. Author interview with ICE official in Arizona in December 2009. ICE has officials in Mexico City and is planning or has already added officials to the U.S. Consulate in Hermosillo, Mexico.

<sup>87</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives, "ATF Deploys Spanish eTrace to Mexico, Guatemala and Costa Rica," December 30, 2009, online at <http://www.atf.gov/press/releases/2009/12/123009-atf-deploys-spanish-etrace.html>.

<sup>88</sup>One of the reasons the trace requests are more accurate under eTrace is because of the pull-down menus. Pull-down menus such as on the make and model of the firearm give suggestions on what types of information is needed. Author communication with ATF official in April 2010.

<sup>89</sup>Author interview with ATF official in Washington, DC in April 2010. If a trace is successful, Mexican authorities receive information from ATF such as when the firearm was purchased, the name of the person that purchased the firearm, and the total number of firearms the person may have purchased.

<sup>90</sup>Government Accountability Office (GAO), "U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges," page 45.

<sup>91</sup>Author interview with ATF official in Washington, DC in May 2010.

<sup>92</sup>When ATF officials hear about a major shootout in Mexico, they have approached Mexican officials to inspect and trace the firearm themselves. In Ciudad Juarez alone, one ATF agent has traced around 2,000 firearms in the last five years. Author interview with ATF official in Ciudad Juarez in January 2010.

FIGURE 5: STATUS OF ATF OFFICIALS STATIONED IN MEXICO

Total ATF Officials			Total ATF Officials		
Location	Currently	Planned	Location	Currently	Planned
Ciudad Juarez	2		Mexico City	10	14
Guadalajara		2	Monterrey	2	
Hermosillo		2	Nogales		2
Matamoros		2	Nuevo Laredo		2
Merida		2	Tijuana	2	

and identifying firearms. For instance, the United States recently delivered four Integrated Ballistics Identification Systems (IBIS) to Mexican authorities for use in their crime labs; Mexico will receive two more in the near future.<sup>93</sup> IBIS is a “computerized digital imaging system which captures digital photographs of fired bullets and cartridge cases. These images are stored in a database and are electronically compared to one another.”<sup>94</sup> Law enforcement personnel can use this information to help determine the specific firearm used in a crime. ATF is also considering providing Mexican authorities with access to the related National Integrated Ballistic Information Network (NIBIN), which would allow U.S. and Mexican authorities to see, for example, that the same firearm used in Mexico was used in the United States and vice versa.<sup>95</sup> CBP also trained 14 Mexican Customs officials on how to use dogs to detect drugs, firearms, ammunition, and cash in April 2010.<sup>96</sup> For a complete list of all the specific ways in which the U.S. government is providing training and equipment to the Mexican government related to firearms trafficking, see the U.S. Department of State’s fact sheet entitled “Combating Arms Trafficking.”<sup>97</sup>

<sup>93</sup>U.S. Department of State, “United States–Mexico Partnership: Anti–Arms Trafficking and Anti–Money Laundering,” Office of the Spokesperson, March 23, 2010, online at <http://www.state.gov/r/pa/prs/ps/2010/03/138924.htm>. U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

<sup>94</sup>Michigan State Police, “Firearms, Tools, Toolmarks, Serial Restoration,” accessed online in May 2010 at [http://www.michigan.gov/msp/0,1607,7-123-1593\\_3800-15966--,00.html](http://www.michigan.gov/msp/0,1607,7-123-1593_3800-15966--,00.html).

<sup>95</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), “National Integrated Ballistic Information Network (NIBIN),” Fact Sheet, February 2010, online at <http://www.atf.gov/publications/factsheets/factsheet-nibin.html>.

<sup>96</sup>U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

<sup>97</sup>U.S. Embassy in Mexico, Mérida Initiative at a Glance, Fact Sheet on Combating Arms Trafficking.

## TRENDS IN U.S. FIREARMS TRAFFICKING AND USE

With increased bi-national cooperation and independent action in each country to combat U.S. firearms trafficking, it is now possible to provide a clearer picture of some of the key related issues. For instance, based on increased firearm trace requests to ATF and U.S. prosecutions, among other information, one can gain a better sense of the average number of U.S. firearms crossing the border per year. Such information as well as interviews with government officials also provides insights into the types of U.S. firearms Mexican DTOs are acquiring and the common schemes used to purchase and transport firearms to Mexico. But there are limits to the data as well. ATF has only been able to trace a relatively small number of the U.S.-origin firearms recovered in Mexico to the first purchaser. In 2009, for example, of the estimated 20,451 (see Figure 2) firearms recovered, ATF was only able to trace 4,999 firearms to the first purchaser.<sup>98</sup> As a result, some of the findings on types of U.S. firearms seized in Mexico, where the firearms are being purchased in the United States, and the time it takes from when a firearm is purchased in the United States until it is seized in Mexico, also known as time-to-crime, are somewhat limited.

### Magnitude of U.S. Firearms Trafficking

According to information provided by the Mexican government, which has received training from ATF on identifying firearms, U.S.-origin firearms account for the vast majority of firearms seized in Mexico over the last few years. In May 2010, for example, President Calderon said that of the 75,000 firearms Mexico has seized in the last three years an estimated 80 percent or 60,000 firearms came from the United States.<sup>99</sup> Because of the large increase in Mexican firearm trace requests to the U.S. government in the last couple of years (see Figure 2) ATF is now in a position to come close to verifying the total amount of U.S.-origin firearms recovered in Mexico over the last three years.<sup>100</sup> However, ATF has yet to publish such information even though it has released similar information to the public in the past.<sup>101</sup>

<sup>98</sup>Author phone conversation with ATF official based in Washington, DC in May 2010. While ATF was not able to trace many of the firearms to the first purchaser, ATF can and has determined that many of the firearms recovered in Mexico came from the United States. ATF does not need to trace the firearm to the first purchaser in the United States to determine whether it came from the United States. That information can be determined by inspecting the firearm and checking with the manufacturer or distributor among other methods.

<sup>99</sup>Mary Beth Sheridan, "Mexico's Calderon tells Congress he needs U.S. help in fighting drug wars," *The Washington Post*, May 21, 2010, online at <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/20/AR2010052002911.html>. Kara Rowland, "Calderon Blames U.S. guns for Violence," *The Washington Times*, May 21, 2010.

<sup>100</sup>As of May 2010, ATF had information on a total of 69,808 firearms recovered in Mexico from 2007 to 2009 (see Figure 2). Although ATF was not able to trace many of these firearms to the first purchaser in the United States, it is able to determine whether the firearm originated in the United States by knowing the make, model, and serial number, the import number, or through several other methods.

<sup>101</sup>On page 15 of the GAO report entitled "U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges," ATF had provided detailed numbers of U.S.-origin firearms of the total amount of firearms it had information on from Mexico for public distribution.

## U.S. FIREARMS TRAFFICKING TO MEXICO: NEW DATA AND INSIGHTS ILLUMINATE KEY TRENDS AND CHALLENGES

Although the above information is important for understanding the total amount of U.S.-origin firearms seized in Mexico, it does not provide a clear sense of the number of firearms regularly and illegally crossing the U.S.-Mexico border.<sup>102</sup> Data on U.S. prosecutions shines some light on this issue. According to ATF congressional testimony in March 2010, individuals illegally transferred an estimated 14,923 U.S. firearms to Mexico from FY 2005 to FY 2009.<sup>103</sup> In FY 2009 alone, an estimated 4,976 U.S. firearms were trafficked to Mexico, up more than 2,000 firearms from FY 2007.<sup>104</sup> A Violence Policy Center (VPC) study that reviewed just 21 indictments alleging illegal firearm trafficking filed in U.S. federal courts from February 2006 to 2009 showed that defendants also participated in trafficking 70,709 rounds of ammunition to Mexico.<sup>105</sup> It is likely these annual trafficking numbers only represent a small percentage of the total amount of trafficking per year. These numbers, for example, are only based on U.S. prosecutions and do not include thousands of U.S. firearms seized in Mexico per year that are not part of U.S. prosecutions.<sup>106</sup>

As ATF does not regularly attempt to trace rounds of ammunition, it is much more difficult to assess the annual trafficking of ammunition to Mexico. Hundreds of thousands of rounds of ammunition intended for Mexico and seized each year in the United States, suggests it is a significant problem. In addition, several U.S. law enforcement authorities in El Paso, Texas, say DTOs regularly use large amounts of ammunition in their firearm attacks.<sup>107</sup> It also appears the quantity of rounds of ammunition owned by some DTOs has helped them win some firefights with Mexican authorities. For instance, in May 2008 seven Mexican federal police officers were gunned down trying to raid a home in Culiacán, Mexico.<sup>14</sup> The traffickers inside the house responded to the Mexican federal police officers' raid with AK-47s and overpowered the federal police after a period of time because the police ran out of ammunition.<sup>15</sup>

## TYPES OF FIREARMS RECOVERED IN MEXICO

While there is a wide range of U.S.-origin firearms being seized in Mexico, from U.S.-made hand grenades to 12-gauge shotguns, semiautomatic assault rifles are

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<sup>102</sup>The average time-to-crime for all U.S. firearms recovered in Mexico in 2009 and traced to the first purchaser was 15.7 years. Author phone conversation with BATFE official based in Washington, DC, in May 2010.

<sup>103</sup>Statement of Kenneth E. Melson, ATF, March 4, 2010.

<sup>104</sup>Author interview with ATF staff in Washington, DC in February 2010.

<sup>105</sup>Violence Policy Center, "Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents," April 2009, page 7, <http://www.vpc.org/studies/indicted.pdf>.

<sup>106</sup>One of the reasons ATF has not been able to use information on seized firearms in Mexico to bring charges against individuals in the United States for trafficking is ATF is only able to trace a low amount of firearms to the first purchaser. See subsection entitled "Top Source States and Entities" and the section entitled "U.S. and Mexican Government Challenges" for a more detailed explanation.

<sup>107</sup>Author interview with U.S. law enforcement officials, including FBI and the High Intensity Drug Trafficking Areas (HIDTA), in El Paso, Texas, in January 2010.

the most sought after and widely used by Mexican DTOs.<sup>108</sup> These military-style firearms are far superior to the typical firearms used by local and municipal police in Mexico and make confrontations with DTO members a much more risky endeavor. According to analysis presented by an ATF Agent in August 2010, the top two firearms recovered in Mexico that had been purchased in the United States in the past three years were in order AK-47 type semi-automatic rifles (7.62x39mm caliber) and AR-15 semi-automatic rifle clones (.223 caliber).<sup>109</sup> The Romarms (Romanian-manufactured) AK-47 rifle and the Bushmaster AR-15 rifle clone have been particularly popular.<sup>110</sup> While these firearms were likely purchased in the United States in a semiautomatic configuration before being seized in Mexico, many of them were converted to fire as select-fire machine guns.<sup>111</sup> Mexico seized a combined total of more than 4,400 firearms of .762 and .223 caliber in 2009.<sup>112</sup> The AK-47 and AR-15 respectively are common types of firearms for these calibers.

Known as the “cuerno de chivo,” or “the goat’s horn,” for the banana clip it uses, Mexican authorities also say various types of AK-47s are frequently seized from DTOs by Mexican military and police forces. Jesse, a former Sinaloa Cartel trafficker, told the authors that AK-47s are highly valued, especially those fitted with an “underfolder, instead of it being fitted with a standard buttstock, hence making them shorter, more concealable, and highly requested by DTOs.”<sup>113</sup> Many of the Romanian-manufactured AK-47s that found their way to Mexico have been imported into the United States from Europe as a whole firearm or in parts as a kit despite a U.S. ban on the importation of semi-automatic assault rifles.<sup>114</sup> Other types of AK-47s were also recovered in 2009. For example, Mexico seized 281 Chinese Norinco AK-47s from January 1, to June 30, 2009, based on an ATF trace analysis in July 2009.<sup>115</sup> In addition, DTOs are increasingly obtaining 7.62x39mm caliber drum magazines with 50, 75, or 100 rounds of ammunition for AK-47s

<sup>108</sup>Author communication with ATF official in August 2010.

<sup>109</sup>Author communication with ATF official in August 2010. ATF analysis was presented at the International Terrorism Conference in Anaheim, CA. Because many U.S. states do not require private firearm sellers to keep records on whom they sold a firearm to, this data is based more on U.S. firearms sales from U.S. gun stores or licensed firearms dealers. According to California state law, all sales and transfers of firearms must be through a licensed firearm dealer, which is required to keep records on firearms sales among other requirements.

<sup>110</sup>Author communication with ATF official in August 2010.

<sup>111</sup>Author communication with ATF official in August 2010.

<sup>112</sup>Author phone conversation with ATF official based in Washington, DC in May 2010.

<sup>113</sup>Author Interview, March 2, 2010, Phoenix, Arizona.

<sup>114</sup>Author communication with ATF official in August 2010. Author phone conversation with staff from Violence Policy Center in May 2010.

<sup>115</sup>Author phone conversation with Violence Policy Center (VPC) in March 2010. VPC based this information on data ATF provided to the U.S. Congress in July 2009 on the manufacturer, type, and caliber of U.S. firearms recovered in Mexico from January 1, 2009 to June 30, 2009.

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from the United States, and the PGR has seen many of these drums associated with court cases in Tijuana.<sup>8</sup>

Mexican authorities have also seized a wide range of other types and calibers of firearms sold in the United States, some just as powerful, or more, than the AK-47s and AR-15s. According to ATF, the top four most frequent types of firearms recovered in Mexico in 2009 were in order from the most to the least rifles, pistols, shotguns, and revolvers (see Figure 6). In particular, ATF officials have said DTOs continue to seek .50 BMG caliber rifles, which are especially lethal because they can strike accurately from more than a mile away and penetrate light armor.<sup>116</sup> A VPC study, for example, found that 11 .50 BMG caliber rifles were involved in 21 firearm trafficking prosecutions filed from February 2006 to 2009.<sup>117</sup> In Sonora, Jesus Angel, a former drug trafficker for the Juarez Cartel turned U.S. informant describes one of the ways the Sinaloa Cartel uses .50 caliber rifles. “They have four of them positioned at different ranches along the highway, you understand. They were brought in to protect this terrain from outsiders after the convoy attacks.”<sup>118</sup> DTOs have also used .50 BMG caliber rifles to assassinate Mexican police and other government officials traveling in armored vehicles.<sup>119</sup> A total of 88 FN Five-sevenN 5.7mm pistols, called the “matapolicias” or the police killer, were also involved in 21 U.S. prosecutions between February 2006 and 2009. The FN Five-sevenN 5.7mm pistols can fire armor-piercing ammunition capable of defeating Kevlar body armor.<sup>120</sup>

Although hand grenades and rocket-propelled grenades (RPG) are reaching Mexico from Central America, some of the hand grenades Mexico has seized in the last few years have been manufactured in the United States.<sup>121</sup> It is also possible some of the 42 destructive devices could be U.S. manufactured hand grenades. In July 2010, the Washington Post indicated DTOs were using U.S. manufactured hand grenades in Mexico for attacks almost on a weekly basis.<sup>122</sup> Mexican authorities have reportedly seized more than 5,800 live hand grenades in Mexico since 2007. Many of the U.S.-manufactured hand grenades were reportedly sent by the United States

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<sup>116</sup>Violence Policy Center, “Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents,” April 2009, page iii. Author communication with ATF official in January 2010.

<sup>117</sup><http://www.vpc.org/studies/indicted.pdf>, page 6.

<sup>118</sup>Author interview with Jesus Angel on April 19, 2010.

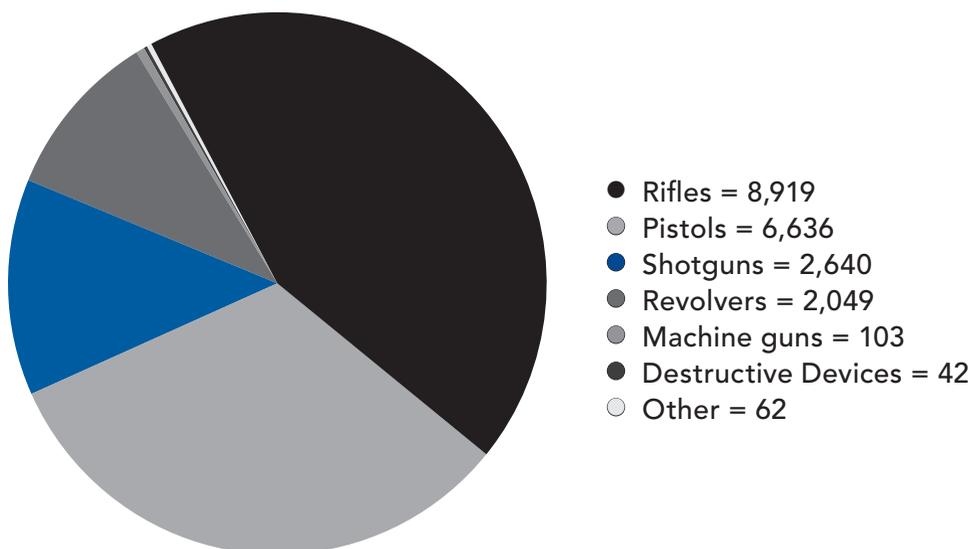
<sup>119</sup>Violence Policy Center, “Iron River: Gun Violence & Illegal Firearms Trafficking on the U.S.-Mexican Border,” April 2009, page 20, online at <http://www.vpc.org/studies/ironriver.pdf>.

<sup>120</sup>Violence Policy Center, “Indicted: Types of Firearms and Methods of Gun Trafficking from the United States to Mexico as Revealed in U.S. Court Documents,” April 2009, page, 4.

<sup>121</sup>Regarding RPGs and hand grenades reaching Mexico from Central America, author interview with ATF official in Washington, DC in October, 2009.

<sup>122</sup>Nick Miroff and William Booth, “Mexican drug cartels’ newest weapon: Cold War-era grenades made in U.S.,” The Washington Post, July 17, 2010, online at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/16/AR2010071606252.html>.

FIGURE 6: ATF DATA ON FIREARMS RECOVERED IN MEXICO IN 2009 BY TYPE



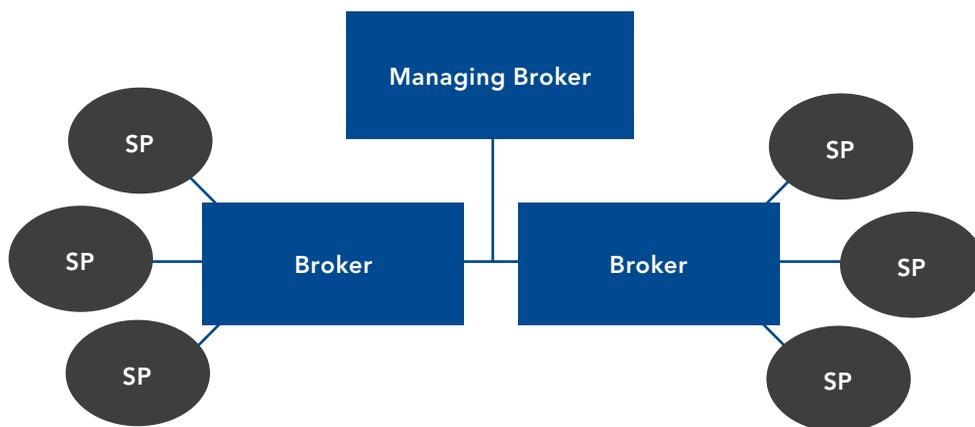
to El Salvador, Guatemala, Honduras, and Nicaragua more than 20 years ago.<sup>123</sup>

Compared to DTOs, most of Mexico's local and state police forces, which make up 90 percent of the country's law enforcement personnel, have far less sophisticated types of firearms and limited levels of training on the use of firearms. City police, for example, typically the first to encounter drug traffickers, are armed with old revolvers, few rounds of ammunition, little training, and no bulletproof vests. This situation is similar to municipal police officers. In the border city of Agua Prieta, Sonora, officers travel alone or in pairs in Ford F-150 police trucks or sedans, often with no body armor and only a pistol for protection. This lack of firepower comes despite its former police chief's public murder in 2007 among other problems in the area.<sup>17</sup> The Tijuana police chief, Julian Leyzaola, who acquired scores of AR-15s to help his police force combat DTOs last year, says many police officers also receive little in the way of training in firearms.<sup>124</sup> He tells a story of watching one officer in Tijuana practicing on a firing range with a pistol before he started to train them. "It was a little worrisome. He seemed to hit everything except the target," he said.

<sup>123</sup>*Ibid.*

<sup>124</sup>Author interview, April 22, 2010, Nogales, Sonora. Author interview with Tijuana Police Department official in January 2010.

FIGURE 7: FIREARM BUYING SCHEME



### Firearms Buying Schemes

According to officials from ICE and ATF, individuals and groups seeking to traffic U.S. firearms to Mexico use several different schemes to purchase and transport U.S. firearms to Mexico. In a large majority of cases, several straw purchasers and one or more intermediaries or brokers<sup>125</sup> are used to traffic the firearms to Mexico.<sup>126</sup> The straw purchasers are eligible to purchase firearms in the United States while the brokers are usually legally prohibited from purchasing firearms because they are convicted felons, not U.S. citizens or residents, or for other reasons.<sup>127</sup> Sometimes taking orders from a person in Mexico, the U.S.-based broker may hire three or more straw purchasers, often young women, to buy a few firearms each at various locations.<sup>128</sup> In a more complex scheme intended to better hide trafficker's identity and avoid prosecution, a managing broker hires additional brokers, and these brokers then hire the straw purchasers.<sup>129</sup> See Figure 7 for a visual representation of the more complex scheme; SP stands for straw purchaser.

For example, according to the indictment in a case investigated by ICE in Tucson, Arizona starting in the spring of 2008 Saul Rodriguez, on orders from his uncle in Mexico, Olegario Gutierrez-Martinez, asked Aaron Weeks based in Tucson to arrange for the purchase of several semi-automatic assault rifles in the United States and transport

<sup>125</sup>International arms broker: Individuals or companies that carry out activities to arrange, mediate, or facilitate an international arms transaction between a buyer and seller in return for a fee or a reward or material benefit.

<sup>126</sup>Author interview with ICE and ATF agents between December 2009 and January 2010.

<sup>127</sup>Author interview with ICE agent in Phoenix, Arizona in December 2009.

<sup>128</sup>Author interview with ICE and ATF agents between December 2009 and January 2010.

<sup>129</sup>Author interview with ICE and ATF agents between December 2009 and January 2010.

them to Mexico in return for a profit.<sup>130</sup> Acting as a broker, Weeks then hired nine individuals to pose as straw purchasers and buy various types of AK-47s and AR-15s at different gun shops and pawn shops in Tucson.<sup>131</sup> Soon after the U.S. firearms were purchased, Weeks took possession of a few of the firearms and transported them through the Nogales port of entry and into Mexico.<sup>132</sup> On July 30, 2008, CBP stopped Week's vehicle and found five semi-automatic AR-15 firearms and 150 rounds of ammunition in five magazines zip-tied to the bottom of Week's vehicle.<sup>133</sup> According to the U.S. federal court indictment in May 2009, Weeks and 12 other individuals were charged with smuggling firearms and making false statements when purchasing a firearm, among charges.<sup>134</sup> Gutierrez-Martinez appears to still be at-large.<sup>135</sup>

Perhaps not surprisingly, some brokers arranging firearms trafficking to Mexico are also involved in other illegal activities. According to ATF, ICE, and DEA officials based along the U.S.-Mexican border, there are cases in which individuals involved in distributing illegal narcotics in the United States are also engaged in trafficking U.S. firearms to Mexico.<sup>136</sup> In October 2009, for instance, the U.S. Department of Justice announced the arrest, with the help of Mexican authorities, of 303 people in 19 U.S. states associated with the La Familia Michoacana Cartel; some of those arrested allegedly shipped hundreds of firearms purchased in the United States to Mexico.<sup>137</sup> U.S.-based gangs are also connected with arranging and moving U.S. firearms into Mexico illegally. According to ATF statistics on U.S. prosecutions of individuals charged with firearms trafficking to Mexico from FY 2005 to FY 2009, 159 out of a total 497 cases involved gang-related trafficking of over 3,665 firearms.<sup>138</sup> U.S. authorities have also stated that in cases where brokers are involved in distributing illegal drugs in the United States or are part of a U.S.-based gang, straw purchasers are often the girlfriends or drug purchasers.<sup>139</sup>

While many U.S. citizens previously unconnected to Mexican DTOs have been lured into firearms trafficking as straw purchasers, it appears there are other

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<sup>130</sup>United States of America vs. Aaron Loren Weeks, Third Superseding Indictment, U.S. District Court of Arizona, CR08-1197-PHX-MHN, May 26, 2009, accessed through PACER online.

<sup>131</sup>U.S. vs. Aaron Loren Weeks, Third Superseding Indictment.

<sup>132</sup>U.S. vs. Aaron Loren Weeks, Third Superseding Indictment.

<sup>133</sup>U.S. vs. Aaron Loren Weeks, Third Superseding Indictment.

<sup>134</sup>U.S. vs. Aaron Loren Weeks. Third Superseding Indictment

<sup>135</sup>Google search of Gutierrez-Martinez's name and found no accounts of an arrest.

<sup>136</sup>Author interview with U.S. federal law enforcement officials from DEA, ICE, and ATF from December 2009 to February 2010.

<sup>137</sup>U.S. Department of Justice, "More Than 300 Alleged La Familia Cartel Members And Associates Arrested In Two-Day Nationwide Takedown," News Release, October 22, 2009, online at <http://www.atf.gov/press/releases/2009/10/102209-doj-over-300-la-familia-cartel-arrests.html>. Here is another somewhat similar case: <http://www.atf.gov/press/releases/2009/08/080309-dal-fifteen-defendants-sentenced.html>.

<sup>138</sup>Statement of Kenneth Melson, ATF, March 4, 2010.

<sup>139</sup>Author interview with ICE agent in Phoenix, Arizona in December 2009.

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U.S. citizens and residents acting as brokers and transporters, both for monetary reasons.<sup>140</sup> Related U.S. prosecutions show that straw purchasers can make from \$100 to \$500 per firearm depending on the firearm model and particular trafficking scheme.<sup>141</sup> A former drug trafficker turned U.S. informant indicated that one can sell an AK-47 in Mexico for three to four times its purchase price in the United States along the southwest border.<sup>142</sup> If one sells the same AK-47 farther from the border, say in Oaxaca, the firearm can be sold between \$2,000 and \$4,000 above the purchase price.<sup>143</sup> According to Abram Sprenger, a U.S. citizen from Oklahoma stopped by CBP in March 2009 on the U.S.–Mexican border, he was paid \$4,500 to transport dozens of firearms and some ammunition from the United States to Oaxaca, Mexico.<sup>144</sup>

### Top Firearm Sources in United States

New data on firearms recovered in Mexico from 2007 to 2009 confirms the GAO's previous report that Texas, California, and Arizona respectively are the top three U.S. states where U.S. firearms are purchased and later trafficked to Mexico (see Figure 9). It, however, is important to note that these data do not show when the firearm was purchased in the United States. As the average time-to-crime was 15.7 years for U.S. firearms recovered in Mexico and traced to the first purchaser in 2009, it is possible there are significant differences in which U.S. states account for the most firearm purchases in the last three to five years.<sup>145</sup> Despite California being a top source state in Figure 8, for example, ATF in California has said California is not among the top three U.S. source states if one limits the analysis by firearms purchased in the United States in the last three years.<sup>146</sup> ATF in California also reports that most of their investigations in the last few years involve individuals

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<sup>140</sup>Author communication with ATF official from January to May 2010.

<sup>141</sup>Author communication with ATF official in January 2010. Statement of Kenneth Melson, ATF, March 4, 2010.

<sup>142</sup>Author Interview, March 2, 2010, Phoenix, Arizona.

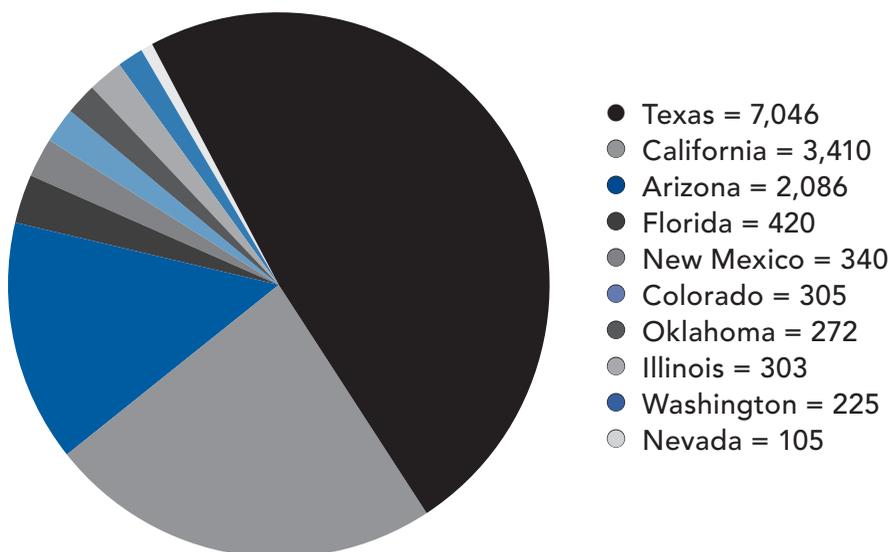
<sup>143</sup>*Ibid.*

<sup>144</sup>Customs Border Patrol, "CBP Officers Seize Cache of Weapons, Arrest 1 at Laredo Port of entry," March 3, 2009, online at [http://www.cbp.gov/xp/cgov/PrintMe.xml?xml=\\$/content/newsroom/press\\_releases/2009/march/03032009\\_7.ctt&location=/newsroom/news\\_releases/archives/2009\\_news\\_releases/march\\_2009/03032009\\_7.xml](http://www.cbp.gov/xp/cgov/PrintMe.xml?xml=$/content/newsroom/press_releases/2009/march/03032009_7.ctt&location=/newsroom/news_releases/archives/2009_news_releases/march_2009/03032009_7.xml)

<sup>145</sup>According to ATF in May 2010, of the 20,451 firearms recovered in Mexico in 2009 and for which they had identifying information, they were able to trace 4,999 to the first purchaser. Of the 4,999, 156 firearms were recovered in Mexico three months after they were purchased in the United States, 112 firearms three to seven months, 141 firearms seven months to a year, 223 firearms one to two years, 270 firearms two to three years, and 3,968 firearms three years and over. Author phone conversation with ATF official based in Washington, DC in May 2010.

<sup>146</sup>Author communication with ATF official in August 2010. Author phone conversation with retired ATF official based in Washington, DC in August 2010. Amy Isackson, "Recent San Diego Gun Smuggling Arrest Illustrates Well-Worn Route," March 4, 2010, KPBS, online at <http://www.kpbs.org/news/2010/mar/04/recent-san-diego-gun-smuggling-arrest-illustrates-/>.

FIGURE 8: TOP 10 U.S. SOURCE STATES 2007–2009



transporting firearms through California to Mexico instead of purchasing the firearms in California.<sup>147</sup> For instance, ATF investigated a case in 2009 where a resident of California was involved in a trafficking scheme in which he traveled to Nevada to help purchase over 20 firearms, including a Bushmaster “BA50” 50-caliber rifle. He then brought these weapons back to California and smuggled them into Mexico.<sup>148</sup> This shift in purchasing patterns for firearms trafficked to Mexico appears to be the result of stiffer laws on buying firearms in California.<sup>149</sup>

ATF officials also say firearms traffickers continue to purchase firearms at gun shows and other secondary sources, which require fewer checks on a person’s identity and criminal history, as well as at U.S. gun stores. In Arizona, for example, traffickers are increasingly buying their firearms at U.S. gun shops and pawn shops, according to ATF and ICE officials.<sup>150</sup> These officials attribute this trend to continued efforts to watch for illegal activity at U.S. gun shows in Arizona.<sup>151</sup> U.S. officials also believe U.S. gun shops are a logical option for illegally trafficking

<sup>147</sup>Author communication with ATF official from January to May 2010. Amy Isackson, “Recent San Diego Gun Smuggling Arrest Illustrates Well-Worn Route,” March 4, 2010.

<sup>148</sup>United States of America vs. Jonnatan Weiss, Criminal Complaint, Magistrate Number 2:09-mj-00465-PAL, United States District Court of Nevada, Filed on June 15, 2009, accessed document through the Public Access to Court Electronic Records (PACER) service in April 2010.

<sup>149</sup>Author communication with ATF official from January to May 2010.

<sup>150</sup>Author interview with ICE and ATF agents based in Arizona in January 2010.

<sup>151</sup>Author interview with ICE and ATF agents based in Arizona in January 2010.

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because these shops have large quantities of firearms and ammunition.<sup>152</sup> While there are only a few known cases involving individuals working at U.S. gun shops engaged in activities supporting U.S. firearms trafficking to Mexico,<sup>153</sup> their potential collusion with firearms traffickers poses an enormous risk.<sup>154</sup> In Phoenix, Arizona, for instance, U.S. authorities in May 2008 arrested the owner of the X-Caliber gun store, George Iknadosian, who allegedly worked with others to traffic more than 650 AK-47 rifles to Mexican DTOs.<sup>155</sup> Some of the firearms purchased at X-Caliber were reportedly used to kill dozens of people in Mexico.<sup>156</sup>

### Transportation Routes and Techniques

According to U.S. authorities, it appears there has been little change in the main routes used by traffickers to transport firearms purchased in the United States across the border into Mexico. In September 2009, for instance, the U.S. Department of Justice's Inspector General included the most recent official map of trafficking routes in an interim review of ATF's Project Gunrunner. The map indicated that the three main trafficking corridors are: "(1) the "Houston Corridor," running from Houston, San Antonio, and Laredo, Texas, and crossing the border into Nuevo Laredo, Reynosa, and Matamoros; (2) the "El Paso Corridor," running from El Paso, Texas, across the border at Ciudad Juarez; and (3) the "Tucson Corridor," running from Tucson, Arizona, across the border at Nogales.<sup>157</sup> ATF officials, however, are increasingly concerned that an additional corridor could be from Florida to Guatemala to Mexico.<sup>158</sup> ATF officials say that once the firearms reach Mexico, they mostly follow major transportation routes through Mexico.<sup>159</sup>

By far, the most common method of transporting the firearms across the U.S.-Mexican border is by vehicle using U.S. highways.<sup>160</sup> While U.S. authorities sometimes catch individuals with dozens of firearms, most are carrying smaller numbers

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<sup>152</sup>Author interview with ICE and ATF agents based in Arizona in January 2010.

<sup>153</sup>Government Accountability Office (GAO), "U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges," GAO-09-709, June 2009.

<sup>154</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," June, 2000, [http://www.mayorsagainstilllegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstilllegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>155</sup>Brian Ross, Richard Esposito, and Joseph Ree, "ATF: Phoenix Gun Dealer Supplied Mexican Drug Cartels," ABC News, May 6, 2008, online at <http://abcnews.go.com/print?id=4796380>.

<sup>156</sup>*Ibid.*

<sup>157</sup>U.S. Department of Justice, "Interim Review of ATF's Project Gunrunner," September 2009, page 11–12.

<sup>158</sup>Author interview with ATF official in Washington, DC in April 2010.

<sup>159</sup>Author communication with ATF official in January 2010.

<sup>160</sup>Government Accountability Office (GAO), "U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges," June 2009, page 22.

of firearms in order to avoid detection. ATF officials have said a good time to catch firearm smugglers is right after a U.S. gun show in Arizona or Texas.<sup>161</sup> A source within the Mexican Center for Research and National Security (CISEN) said most weapons now cross through remote Arizona ports of entry, such as Lukeville and Sasabe.<sup>162</sup> These two ports see very little traffic compared to nearby Nogales or Tijuana and, more importantly, there is no checkpoint infrastructure beyond that of Mexican Customs at the port of entry.<sup>163</sup>

Both U.S. and Mexican citizens are also engaged in smuggling firearms with commercial and non-commercial vehicles, and they use various techniques to do so.<sup>164</sup> Using cars, trucks, vans, or buses, traffickers employ techniques such as zip-tying the firearms to a hidden compartment of the vehicle, or they stuff the firearms under a truck bed liner or in a fuel tank.<sup>165</sup> In other cases, the transporters have no fear of capture. For example, traffickers had about 30,000 rounds of ammunition sitting near the front seat of a civilian passenger bus when Mexican authorities caught them at an inspection point several miles inside Mexico from the Arizona border in March 2010.<sup>166</sup>

A U.S. federal drug enforcement informant told the authors about another method traffickers have used: detergent boxes. “What you do is you cut open the bottom of the box, you know, and you pack in whatever weapon you’re going to carry, and you just glue that slice back in. The Mexican Customs don’t care as long as you’re not bringing in more than three boxes of detergent on a trip,” the informant said.<sup>167</sup>

ICE officials in Arizona have also said firearms traffickers are increasingly using sophisticated and unsophisticated tunnels under the U.S.-Mexican border to smuggle firearms, which they say is an indicator of traffickers feeling some enforcement pressure from U.S. authorities.<sup>168</sup> An estimated 62 tunnels have been found along the border in Arizona and near San Diego, California since September 11, 2001.<sup>169</sup> ICE officials have also said firearms traffickers sometimes just throw firearms over the border fence, to be picked up by a cohort on the other side.<sup>170</sup>

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<sup>161</sup>Author communication with ATF official in May 2010.

<sup>162</sup>Author interview with CISEN official in Sonora, Mexico in March 11, 2010.

<sup>163</sup>*Ibid.*

<sup>164</sup>Author interview with ATF and CBP officials in based on a review of U.S. prosecutions against firearms traffickers to Mexico.

<sup>165</sup>*Ibid.*

<sup>166</sup>Author interview with CISEN official in Sonora, Mexico in March 11, 2010

<sup>167</sup>Interview, Jesus Angel, April 19, 2010.

<sup>168</sup>Author interview with ICE official in Arizona in January 2010.

<sup>169</sup>Alexis Madrigal, “Bots vs. Smugglers: Drug Tunnel Smackdown,” WIREd, May 16, 2009, online at <http://www.wired.com/wiredscience/2009/05/tunnelbots/#ixzz0oDjVTRDn>

<sup>170</sup>Author interview with ICE official in Arizona in January 2010.

## U.S. AND MEXICAN GOVERNMENT CHALLENGES

Despite increased efforts by the U.S. and Mexican governments to combat firearms trafficking, both countries continue to face significant challenges in bringing the phenomenon under control. One major challenge is the incompleteness and timeliness of some of Mexico's firearm trace requests to ATF. ATF also lacks sufficient resources and abilities to more effectively investigate leads from U.S. and Mexican firearm trace data and other sources. Even when ATF and ICE have developed cases against individuals engaged in firearms trafficking to Mexico, some ATF officials say there are limitations on where they can refer prosecutions. Relatively weak U.S. firearm laws and a few U.S. government practices also limit U.S. authorities from getting important tips on potential firearms traffickers and curtail their abilities to hold accountable individuals and gun stores that act irresponsibly. In addition, there are few restrictions on purchasing large quantities of ammunition. Although several CBP officials have said they would like to increase vehicle inspections going south, for the most part, it appears CBP has neither the staff, means, or the infrastructure to conduct effective southbound vehicle inspections at most of the U.S. ports of exit along the U.S.-Mexico border.

While Mexico has significantly increased its firearm trace requests to ATF in the last few years, there continue to be major challenges with incomplete trace requests. As mentioned earlier, of the estimated 20,451 firearms recovered in Mexico in 2009, ATF was only able to trace 4,999 firearms to the first purchaser.<sup>171</sup> According to ATF, one major reason is that Mexican authorities often leave out the import stamp number for AK-47 variants.<sup>172</sup> Since many AK-47s sold in the United States are imported from other countries, ATF needs that number to determine where the firearm was first sold in the United States. ATF officials face difficulties with AK-47 part kits imported to the United States as well as because there are no markings on the parts that indicate they have been imported into the United States.<sup>173</sup> Firearms traffickers are also increasingly obliterating the serial numbers on the firearms.<sup>174</sup>

ATF officials say there is also a strong need to submit more timely trace requests.<sup>175</sup> For instance, it takes on average one year from the time a firearm is seized in Mexico

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<sup>171</sup>Author phone conversation with ATF official based in Washington, DC in May 2010. ATF does not need to trace the firearm to the first purchaser in the United States to determine whether it came from the United States. That information can be determined by inspecting the firearm and checking with the manufacturer or distributor among other methods.

<sup>172</sup>According to an ATF official, one of the reasons why Mexican authorities don't include the import number is that they are not required to include it on judicial case files. Author communication with ATF officials from February to April 2010.

<sup>173</sup>Author communication with ATF official in August 2010.

<sup>174</sup>Author interview with ATF and ICE officials from December 2009 to January 2010.

<sup>175</sup>Author interview and phone conversation with ATF officials from January to April 2010.

to the time PGR officials in Mexico City submit the firearm trace request to ATF.<sup>176</sup> This lag time makes it much harder for ATF to catch traffickers because the first firearm buyer in the United States, or the straw purchaser, may not remember the name of the person to which he or she sold the firearm, among other challenges.<sup>177</sup> It appears one major reason why it takes so long to submit the requests is that all Mexican firearm trace requests are submitted by the PGR in Mexico City, which has a limited number of staff working on eTrace, instead of having federal field staff throughout Mexico submit the requests to ATF directly.<sup>178</sup>

When U.S. officials ask Mexican authorities to inspect and trace a firearm used in a crime in Mexico, the U.S. officials also sometimes run into problems.<sup>179</sup> In some cities such as Tijuana, where U.S. law enforcement has a fairly strong relationship with Mexican law enforcement and the military, ATF receives regular access to the firearms.<sup>180</sup> As a result, ATF has been able to trace a firearm within a few days after Mexican authorities seize it.<sup>181</sup> In other Mexican states such as Sinaloa, where ATF has little presence and corruption is a larger problem, ATF is relatively restricted from accessing the firearms.<sup>182</sup> ATF agents working with Mexican authorities say the key to getting access to firearms is a physical presence in the Mexican city and building personal relationships with the respective Mexican officials.<sup>183</sup> These same ATF agents say it would also help if Mexico City provided clear support for ATF to physically inspect the firearms.<sup>184</sup> In some cases, Mexican law enforcement has to seek approval for each firearm by a Mexican judge in order for ATF to inspect the firearm.<sup>185</sup>

Thanks to some increased funding from the U.S. Congress in the last few years, ATF has received some additional staff to follow up on firearms trace requests and address U.S. firearms trafficking to Mexico in general. Starting in FY 2007, ATF had around 100 special agents and 25 industry operations investigators working for Project Gunrunner.<sup>186</sup> According to ATF, as of mid-February 2010 they have about 190 special agents, 145 Industry Operations Investigators, and 25 support staff

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<sup>176</sup>Author communication with ATF official in April 2010.

<sup>177</sup>Author interview with various ATF officials in Washington, DC from February to April 2010.

<sup>178</sup>Author communication with ATF officials in April 2010.

<sup>179</sup>Author communication with ATF officials in March and April 2010.

<sup>180</sup>Author communication with ATF official in January 2010. Author interview with Mexican General based in Tijuana in January 2010.

<sup>181</sup>Author communication with ATF official in April 2010.

<sup>182</sup>Author phone conversation with ATF official based in Texas in March 2010.

<sup>183</sup>Author interview with a couple of ATF officials in Washington, DC in April 2010. Author phone conversation with ATF official in April 2010.

<sup>184</sup>Author phone conversation with ATF official in March 2010.

<sup>185</sup>Author phone conversation with ATF official in March 2010.

<sup>186</sup>Vivian S. Chu and William J. Krouse, "Gun Trafficking and the Southwest Border," Congressional Research Service Report, September 21, 2009, page 13.

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working on Project Gunrunner in states along the southwest border.<sup>187</sup> While this staff increase appears to have helped with firearms seizures and prosecutions, ATF officials stationed along the U.S. southwest border say they still do not have enough staff to investigate many leads.<sup>188</sup> ATF agents attribute the lack of resources to the fact that ATF started with an extremely low staff level when the U.S. Congress started to increase resources for them.<sup>189</sup> Although ATF plans to add staff at the U.S. consulates in Hermosillo, Guadalajara, Matamoros, Mérida, Nogales, and Nuevo Laredo, Mexico, by the end of 2010, which are key to improving Mexico's firearm trace requests, this plan requires additional funding from the U.S. Congress. And, the funding was not included in the supplementary appropriations approved by the U.S. Congress in August 2010 for border-related efforts.<sup>190</sup>

When ATF investigates a case they also face several challenges with U.S. courts accepting the case and successfully prosecuting it. As with other crimes, such as drug smuggling or seizures, U.S. attorneys sometimes place minimum requirements on the types of cases they will accept for prosecution related to firearms trafficking.<sup>191</sup> While U.S. federal attorneys told the authors they will look at any firearms trafficking case given to them, some ATF agents have said U.S. attorneys often will not prioritize a case if it involves less than 10 to 20 firearms trafficked and no one was killed or injured from one of the firearms.<sup>192</sup> As a result, some ATF agents believe they must wait until a known firearms trafficker moves 10 or more firearms and someone is killed with one of those firearms before they can pursue a case.<sup>193</sup> In some cases, U.S. federal authorities have referred firearms trafficking cases to U.S. state courts, but it is uncommon to do so because the most common crime, lying on Federal Form 4473 or straw purchasing, is often only a federal crime with no comparable state law.<sup>194</sup> In one unique case, the Arizona Attorney General brought charges against the X-Caliber gun store owner, mentioned above, based on Arizona state law regarding "fraudulent schemes" for lying on Federal Form 4473. The Arizona county judge presiding over the case, however, ruled that the Attorney General could not prove that the firearms purchased went to a prohibited person and threw out the case.<sup>195</sup>

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<sup>187</sup>Statement of Kenneth E. Melson, ATF, March 4, 2010..

<sup>188</sup>Author interview with ATF agents from December, 2009 to January 2010.

<sup>189</sup>Author interview with ATF officials in from October, 2009 to January 2010.

<sup>190</sup>Author interview with ATF official in Washington, DC, in May 2010.

<sup>191</sup>Author interview with ATF officials in from January to May 2010.

<sup>192</sup>Author interview with ATF official in May 2010 and in January 2010. Author interview with U.S. Attorney from the Southern District of California in January 2010.

<sup>193</sup>Author interview with ATF official in Washington, DC, in May 2010.

<sup>194</sup>Author interview with ATF officials in Washington, DC.

<sup>195</sup>State of Arizona vs. George Iknadosian, Honorable Robert L. Gottsfield, Superior Court of Arizona Maricopa County, CR2008-006471-001 DT, March 18, 2009, online at <http://webcache.googleusercontent.com/search?q=cache:6Q6bEKRmhOkJ:www.courtminutes.maricopa.gov/docs/Criminal/032009/m3628712.pdf+Maricopa+County+Superior+Court+Judge+Robert+Gottsfield+iknadosian&cd=13&hl=en&ct=clnk&gl=us&client=firefox-a>.

While there are several relatively weak U.S. gun laws and a few government practices that limit U.S. efforts to curtail firearms trafficking to Mexico, the authors found a few especially challenging. Since 1993, the U.S. government has required U.S. gun stores to notify state or local law enforcement whenever a gun store sells “more than one handgun to any non-licensee within five consecutive business days.”<sup>196</sup> Outside of situations in which ATF or ICE officials inspect a gun store or when a gun store tips off U.S. authorities, however, in most states authorities are not notified if an individual is buying dozens of military-style assault rifles in a short period of time, which is a key indicator of potential firearms trafficking. U.S. authorities are also only allowed to inspect a gun store unrelated to a specific warrant once a year, and many gun stores located along the U.S. southwest border are not inspected on an annual basis.<sup>197</sup> Also, if ATF finds that the gun store has violated the law, the crime is often a misdemeanor instead of felony, and ATF rarely revokes the license of a gun store for violating the law.<sup>198</sup>

Unlike sales at gun stores, in many states private individuals are not required to conduct a background check or keep records when they sell or transfer a firearm to another person.<sup>199</sup> These two loopholes continue to make it much easier for prohibited persons to purchase firearms and much harder for U.S. authorities to successfully trace how a firearm illegally reached Mexico. In addition, because rounds of ammunition, unlike firearms can only be used once and have a relatively shorter life span, DTOs engaging in fighting are often in constant need of more rounds. As such, ammunition poses just as much or more of a threat to Mexican authorities and civilians. Yet, many U.S. states do not require U.S. gun stores to run a background check or check IDs on individuals buying ammunition and maintain records on ammunition sales.<sup>200</sup>

Because it is difficult for federal and local authorities to search vehicles for illegally possessed firearms in the United States, ATF officials have said they sometimes prefer to call ahead to CBP and ask them to inspect a vehicle ATF suspects is smuggling firearms across the U.S.-Mexican border.<sup>201</sup> However, sometimes CBP is not able to identify the vehicle before it crosses the border because some U.S. ports of exit do not have license plate readers or they are using license plate readers that sometimes confuse “8s” with

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<sup>196</sup>Vivian S. Chu and William J. Krouse, “Gun Trafficking and the Southwest Border,” Congressional Research Service Report, September 21, 2009, page 11.

<sup>197</sup>Violence Policy Center, “Iron River: Gun Violence & Illegal Firearms Trafficking on the U.S.-Mexican Border,” April 2009, page 23.

<sup>198</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” June 2000, pages xi and xii.

<sup>199</sup>Vivian S. Chu and William J. Krouse, “Gun Trafficking and the Southwest Border,” Congressional Research Service Report, September 21, 2009, page 11.

<sup>200</sup>Legal Community Against Violence (LCAV), Ammunition Regulation, February 2008, online at [http://www.lcav.org/content/ammunition\\_regulation.pdf](http://www.lcav.org/content/ammunition_regulation.pdf).

<sup>201</sup>Author communication with ATF agent in from January 2010 to May 2010.

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“Bs.”<sup>202</sup> CBP officials may also attempt to stop a vehicle heading south by just standing in front of the cars, which could be dangerous if a vehicle decided to speed through the border check point.<sup>203</sup> Compared with vehicles going north or into the United States from Mexico, U.S. authorities also conduct relatively few checks on vehicles going south.<sup>204</sup>

### CONCLUSION AND RECOMMENDATIONS

The Mexican and United States governments are facing growing and menacing problems because of increased access to high powered weapons by Mexican DTOs. Since President Felipe Calderon took office in December 2006, there have been an estimated 28,000 drug-related killings, and most of these deaths, including extremely violent ones, were in the last two years.<sup>205</sup> According to Mexican official numbers, during the same period “a total of 915 municipal police, 698 state police and 463 federal agents have been killed at the hands of criminal gangs.”<sup>206</sup>

Despite increased efforts by both governments to reduce Mexican DTOs access to large volumes of firearms and rounds of ammunition, the DTOs continue to obtain and use such firearms and ammunition from the United States and elsewhere to attack Mexican police, justice officials, and recently officials from the U.S. Department of State. In some cases, the large volume of ammunition or the military-style firearms used by the DTOs enabled them to overpower Mexican federal or local police or assassinate Mexican officials. DTOs are also increasingly using firearms to attack or kidnap journalists, politicians, and businesses and levy “taxes” on the public. As a result of all of these actions, the Mexican government’s efforts to provide public security to its citizens is seriously eroding, putting Mexican citizens at significant risk both from targeted attacks and as collateral damage. DTO actions are also contributing to major migration away from the violence and, in some cases, towards the United States.

New information shows that a significant amount of military-style assault rifles, other types of rifles and pistols come directly from the United States and are being used by Mexican DTOs. According to the Mexican government in May 2010, an

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<sup>202</sup> Author communication with ATF agent from January 2010 to May 2010.

<sup>203</sup> Author interview with CBP officials in El Paso, Texas, in January 2010.

<sup>204</sup> Author interview with CBP officials in El Paso, Texas, in January 2010. Government Accountability Office (GAO), “U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges,” page 35.

<sup>205</sup> Arthur Rice, “Drug war death toll in Mexico since 2006 exceeds 28,000, officials say,” CNN, August 4, 2010, online at <http://edition.cnn.com/2010/WORLD/americas/08/03/mexico.drug.deaths/#fbid=xmlBaZOfuTn&wom=true>. Luis Astorga and David A. Shirk, *Drug Trafficking Organizations and Counter-Drug Strategies in the U.S.-Mexico Context*, Woodrow Wilson International Center for Scholars, Mexico Institute, “Working Paper Series on U.S.-Mexico Cooperation,” April 2010, page 3, online at <http://wilsoncenter.org/topics/pubs/Drug%20Trafficking%20Organizations.%20Astorga%20and%20Shirk.pdf>.

<sup>206</sup> Tim Johnson, “As death toll rises, Mexico rethinks drug war strategy,” *McClatchy Newspapers*, August 13, 2010, online at <http://www.kansascity.com/2010/08/13/2149024/as-death-toll-rises-mexico-rethinks.html>.

estimated 60,000 U.S.-origin firearms were seized in Mexico from 2007 to 2009.<sup>207</sup> A review of U.S. prosecutions associated with ATF's Project Gunrunner concludes that an estimated 14,923 firearms were trafficked to Mexico from FY 2005 to FY 2009; 4,976 of these firearms were from FY 2009 alone.<sup>208</sup> And, these numbers don't include the thousands of firearms and hundreds of thousands of rounds of ammunition headed for Mexico that U.S. authorities have seized. The price differential between U.S.-origin AK-47 semi-automatic rifles sold just across the U.S.-Mexican border (\$1,200 to \$1,600) and U.S.-origin AK-47s sold in southern Mexico (\$2,000 to \$4,000) is another indicator of the demand for U.S. firearms in Mexico and the lack of quality assault rifles from Central America. Information provided to ATF by Mexico also shows that U.S.-origin firearms are regularly used by DTOs to commit crimes in Mexico.

The top two U.S. firearms recovered in Mexico that had been purchased in the United States in the past three years were AK-47 type semi-automatic rifles and AR-15 semi-automatic rifle clones.<sup>209</sup> ATF officials say many of the Romanian manufactured AK-47s are imported to the United States as a whole firearm or as a parts kit from Europe despite a U.S. ban on the importation of semi-automatic assault rifles.<sup>210</sup> ATF officials and a review of U.S. prosecutions also indicate that DTOs are increasingly seeking, receiving, and using U.S.-origin .50 BMG caliber rifles and 5.7mm pistols and rifles and AK-47 drum magazines with 50, 75, to 100 rounds of ammunition.

Given the Calderon administration's commitment to confront the DTOs, both the U.S. and Mexican governments are working in unprecedented ways to address U.S. firearms trafficking to Mexico. Nevertheless, to get this troubling phenomenon under control the U.S. government should consider taking several additional steps. First, the U.S. Congress could more significantly ramp up funding for ATF programs that have demonstrated a positive impact on prosecutions and seizures, including adding ATF staff along the southwest U.S. border and in Mexico where U.S. firearms are being seized. As demonstrated by ATF's GRIT operation in Houston, Texas, in 2009, an influx of 100 ATF agents into an area of heavy U.S. firearms trafficking resulted in a large increase in U.S. prosecutions, as well as, firearms and ammunition seizures. Additionally, since the Mexican government is seizing a large amount of firearms in the Mexican states of Michoacan, Sinaloa, Tamaulipas, and Jalisco, it would seem logical to increase funding for ATF to add agents to U.S. consulates in Guadalajara (for Jalisco and Michoacan), Hermosillo (for Sinaloa),

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<sup>207</sup>Kara Rowland, "Calderon Blames U.S. guns for Violence," *The Washington Times*, May 21, 2010.

<sup>208</sup>Statement of Kenneth E. Melson, ATF, March 4, 2010.

<sup>209</sup>Author communication ATF official in August 2010. ATF analysis was presented at the International Terrorism Conference in Anaheim, CA.

<sup>210</sup>Author communication with ATF official in January 2010. Author phone conversation with staff from Violence Policy Center in May 2010.

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and Nuevo Laredo and Reynosa (for Tamaulipas). Although the authors did not fully research ICE's staffing needs, they have contributed numerous U.S.-related prosecutions and should also be considered for additional funding.

To better address some of the challenges ATF and ICE have faced in referring firearms trafficking cases for U.S. prosecution, there are a few options. Similar to the Arizona state attorney's experience, other state attorneys general could bring charges against individuals engaged in straw purchasing based on state laws related to "fraudulent schemes." ATF and ICE, however, will need to avoid the problems ATF encountered with the X-Caliber case. States should also consider adding a law on straw purchasing as Colorado has done or adding a separate state form similar to the federal form 4473 for individuals to fill out when purchasing a firearm as California has done. New congressional funding to add 30 U.S. attorneys to support cases on firearms and cash smuggling along the U.S. southwest border should also help.<sup>211</sup> In partnership with the gun industry trade association, the National Shooting Sports Foundation, ATF developed a campaign entitled "Don't Lie for the Other Guy" designed to reduce firearm straw purchasing by educating gun dealers, U.S. citizens, and residents of the illegality of such practices and started implementing it in some but not all key U.S. cities along the southwest border in 2008.<sup>212</sup> The campaign educates people by putting signs in U.S. gun stores, billboards along the highway, and at bus stops.<sup>213</sup> Although there doesn't seem to be any evaluation of the program, it appears the campaign could help to reduce straw purchasing if the threat of sanctions is real. Having more ATF staff working to enforce this law and perhaps increasing the penalties for a straw purchase could make it more effective. Also, U.S. authorities could add a phrase to form 4473 about the illegality of transferring firearms to Mexico unless one obtains a license, to improve U.S. prosecutions on cases related to smuggling of firearms into Mexico.<sup>214</sup>

The U.S. government should also consider changes in federal law related to firearms purchasing and some federal enforcement practices. Similar to when individuals buy multiple handguns, for example, a federal or state law could be created so that U.S. authorities would be notified when individuals buy a certain amount of military-style firearms in a short period of time. As the example in the introduction

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<sup>211</sup>U.S. Department of Justice, "New Congressional Funding to Enhance Department of Justice Southwest Border Strategy," August 12, 2010, online at <http://www.atf.gov/press/releases/2010/08/081210-doj-new-congressional-funding-for-southwest-border.html>.

<sup>212</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Don't Lie for the Other Guy Campaign," Fact Sheet, June 2008, <http://www.atf.gov/publications/factsheets/factsheet-dont-lie-campaign.html>.  
<http://www.dontlie.org/tour.cfm>

<sup>213</sup>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Don't Lie for the Other Guy Campaign," Fact Sheet, June 2008.

<sup>214</sup>U.S. authorities in Arizona have encountered difficulties with prosecutions related to smuggling as the law requires individuals to know that they are breaking the law when they transport firearms from the United States to Mexico without first obtaining a license from the U.S. government.

shows, this information is key to helping stop firearms trafficking to Mexico. With added staff, ATF could also increase their annual inspections of U.S. gun stores along the southwest border and be more aggressive in revoking the license of U.S. gun stores that repeatedly violate U.S. law. Adding a way for ATF to fine U.S. gun stores for violations, much as the U.S. government has fined U.S. arms manufacturers that violate U.S. arms export control laws, could be an effective intermediate method to help curb illegal activities. Since the U.S. government already bans the importation of semi-automatic assault rifles into the United States and many assault rifles that reach Mexican DTOs come from U.S. imports, ATF could better enforce this law.

The U.S. government should also ensure some type of import markings are placed on AK-47 semi-automatic rifle part kits imported into the United States. As private sales through gun shows and other means are easy ways for prohibited buyers to obtain firearms, it also remains critical to require private sellers to check the background of the seller and keep records of their sales. To better curb the large volume of ammunition to DTOs, U.S. gun stores and other sellers should also conduct a background check on individuals buying ammunition and keep essential records on those purchases. Similar efforts have been used by authorities in Los Angeles, and it has prevented prohibited buyers from purchasing ammunition.<sup>215</sup>

While the authors believe the most effective way to curb firearms trafficking to Mexico is by focusing on how to prevent and stop illegal firearms buying in the United States, both the U.S. and the Mexican governments could strengthen some of their efforts at the border that would help stem firearms smuggling and not curtail the flow of civilian vehicle traffic significantly. For instance, U.S. authorities at the border could improve their ability to detect and stop vehicles they are aware are attempting to smuggle firearms from the United States to Mexico, including increasing the number of quality license plate readers for southbound operations at the border.<sup>216</sup> Building some infrastructure at U.S. southbound areas would also help prevent vehicles from escaping inspection by speeding across the border and protect CBP and ICE staff. Both the U.S. and Mexican governments could also engage in random inspections of vehicles at times when the likelihood of firearms smuggling may be high. For example, it is more likely that one would find a few cars attempting to smuggle firearms into Mexico several hours after a U.S. gun show in U.S. cities along the U.S.-Mexico border.

Lastly, the Mexican government should consider improving some of its efforts related to tracing firearms. In order to speed up the time between when a firearm is seized in Mexico and when it is submitted for tracing to ATF, the PGR could more

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<sup>215</sup>Legal Community Against Violence (LCAV), *Ammunition Regulation*, February, 2008.

<sup>216</sup>Testimony of Allen Gina, Assistant Commissioner, Office of Intelligence and Operations Coordination, U.S. Customs and Border Protection, Department of Homeland Security, before the House Homeland Security Committee, Subcommittee on Border, Maritime and Global Terrorism and the House Foreign Affairs Committee, Subcommittee on Western Hemisphere, May 27, 2010, online at [http://www.cbp.gov/xp/cgov/newsroom/congressional\\_test/gina\\_mexico.xml](http://www.cbp.gov/xp/cgov/newsroom/congressional_test/gina_mexico.xml).

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quickly move ahead with plans to provide field staff in all Mexican states with the capacity to independently submit an electronic trace request to ATF. This action would be key for ATF to track down criminal suspects in the United States and thwart future firearm trafficking to Mexico. Once PGR's plan is approved, it would help if ATF provided PGR officials in Mexican states with Spanish eTrace, training on identifying firearms and filling out the eTrace forms, and eventually and potentially full access to ballistics information through NIBIN. The PGR should also create a formal policy that allows ATF to physically inspect firearms housed seized and stored in Mexico along with Mexican authorities to speed up the tracing and assist with U.S. criminal prosecutions in the United States. Although it appears the Mexican government is prosecuting many individuals related to firearms trafficking in Mexico, this could be researched further and perhaps improved.

The U.S. government continues to have a unique opportunity to assist the Calderon administration to weaken Mexican DTOs before the situation worsens. Helping curb DTOs' easy access to large quantities of sophisticated firearms and ammunition and thus their ability to overpower Mexican authorities is one critical way the U.S. government can address a serious threat to Mexico and increasingly to the United States.



# JUSTICE REFORM IN MEXICO: CHANGE & CHALLENGES IN THE JUDICIAL SECTOR\*

David A. Shirk

## OVERVIEW: JUDICIAL REFORM IN MEXICO

As stories of crime and violence play out in the headlines, Mexico is in the midst of a major transformation of its judicial sector. Mexico has been gradually implementing a series of reforms that advocates hope will dramatically improve public security and the administration of justice over the next decade. Central to the process of judicial reform in Mexico is a package of ambitious legislative changes and constitutional amendments passed by the Mexican Congress in 2008, and to be implemented throughout the country by 2016. Together, these reforms touch virtually all aspects of the judicial sector, including police, prosecutors, public defenders, the courts, and the penitentiary system. The reforms include significant changes in Mexican criminal procedure, new measures to promote greater access to justice (for both criminal defendants and crime victims), new functions for law enforcement and public security agencies in the administration of justice, and tougher measures for combating organized crime.

Advocates of the reforms hope that they will help Mexico to achieve a more democratic rule of law by introducing greater transparency, accountability, and due process to Mexico's judicial sector. However, critics note that the reforms attempt to achieve too much in too little time, contain blatantly contradictory features, and fail to address persistent problems of institutionalized corruption. Meanwhile, although there has been substantial attention to Mexico's judicial sector reforms among Mexican scholars and legal experts, there has been remarkably little effort to outline these initiatives for a U.S. audience. As U.S. policy makers and experts contemplate renewed efforts to strengthen Mexican judicial sector institutions, there is great urgency to understand what progress has been made so far in Mexican judicial sector reform and what issues remain. This paper helps to fill the gap in our current understanding of these problems by explaining Mexico's justice sector challenges, the specific changes proposed under the 2008 reform package, and the challenges that lie in store for Mexico as it implements judicial sector reforms over the next decade.

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## MEXICO'S PUBLIC SECURITY CRISIS, DEMOCRATIC GOVERNANCE, AND THE RULE OF LAW

The Mexican criminal justice system has clearly faced critical challenges over the few last decades. While images of violence, lawlessness, and official corruption are often greatly exaggerated in stereotypes and media portrayals, Mexico has indeed experienced exceptionally high levels of criminal impunity and weak protections for the rights of accused criminals. A series of economic crises beginning in the mid-1970s contributed to elevated levels of violent crime — particularly robbery, property crime, and assault — which continued with the economic restructuring and currency devaluations in the 1980s and 1990s.<sup>1</sup> These problems of “common crime” were accompanied by the corrupting effects and violent behavior of organized crime syndicates during this same period. Over the last decade, the problem of high-profile crime and violence reached new extremes, as exemplified by the more than 20,000 drug-related homicides from 2001–2009 (not including the nearly 3,800 from January to mid-May 2010), many of which have reached new levels of brutality and malice.<sup>2</sup> In recent years, especially, organized crime has had broader effects as drug trafficking organizations (DTOs) have diversified their activities to include arms smuggling, money laundering, kidnapping, bank robbery, and other forms of organized criminal activity.

In the face of these challenges, Mexico's criminal justice system has exhibited significant dysfunctions, contributing to extraordinarily high levels of criminal impunity. This, in turn, has led to low public confidence in the judicial sector. In a 2007 Gallup poll, only 37% of Mexicans responded positively to the question, “do you have confidence in Mexico's judicial system?,” while 58% said “no” and 4% “don't know.”<sup>3</sup> According to Mitofsky, a polling firm, police are ranked among the least respected Mexican institutions; just one in ten Mexicans has some or much confidence in police agencies.<sup>4</sup> Mexican citizens distrust law enforcement officials not only because of the perception that authorities are unable to solve crimes, but because of the perception (and reality) that there is widespread corruption and criminal activity on

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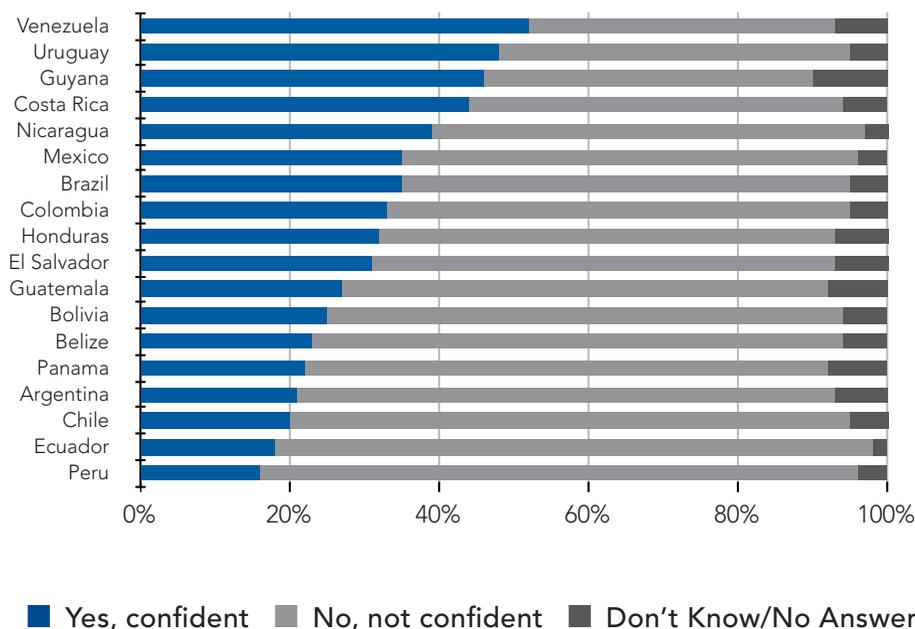
<sup>1</sup>An estimated one out of ten adults was a victim of a crime in Mexico in 2008, according to an annual crime victimization survey conducted by the Citizens' Institute for the Study of Insecurity (Instituto Ciudadano de Estudios Sobre la Inseguridad, ICESI). One major exception to the rising tide of crime in Mexico is found in homicide rates, which have generally declined since the mid-20th century, despite rising levels of violent crime. Donnelly and Shirk (2009), ICESI (2009).

<sup>2</sup>Flores Pérez (2010), Shirk (2010).

<sup>3</sup>Ray (2008).

<sup>4</sup>To be sure, the only institutional actors in Mexico less well respected than police are unions, legislators, and political parties. Consulta Mitofsky (2010).

FIGURE 1: LATIN AMERICAN CONFIDENCE IN JUDICIAL INSTITUTIONS



the part of justice system operatives, most notably police.<sup>5</sup> As a result, victimization surveys suggest, 25% or fewer crimes are even reported, making the true incidence of crime a “black statistic” (*cifra negra*).<sup>6</sup>

Much of the problem has to do with the fact that Mexico’s new democracy is still in the process of developing a “democratic” police force and a professional, independent judiciary. Historically, Mexican law enforcement agencies were an extension of autocratic or semi-authoritarian systems of control, and have long exhibited significant problems of institutional corruption. Police organizations were generally

<sup>5</sup>Indeed, according to a recent survey conducted by the *Justice in Mexico Project*, police themselves perceive a high degree of corruption on the force. Out of more than 5,400 municipal police officers surveyed, roughly a third described severe problems of corruption; 40% showed little trust in their superiors; and 68% said that corruption is concentrated at high levels within their department. Only about half (52%) felt that there are adequate mechanisms for investigating corruption. 32% indicated that the problem most concerning to citizens is drug trafficking; 29% indicated that the problem most difficult for local police to solve is drug trafficking; and 45% said that the illicit criminal activity in which local police are most likely to be involved is drug trafficking. Moloeznik, et al. (2009).

<sup>6</sup>ICESI victimization surveys suggest that no more than a quarter of all crimes (roughly 22% in 2008) are actually reported. 39% of those who don’t report crimes indicate that it is a waste of time; the next largest proportion (16%) indicate that they do not trust the authorities, and 10% say that the process of reporting a crime is too cumbersome. A third (33%) of those who reported a crime said that there was no result from reporting the crime. See [www.icesi.com.mx](http://www.icesi.com.mx)

able to impose order, but were also used as instruments of patronage and political coercion.<sup>7</sup> Mexico's transformation from a virtual one-party state into a multi-party democracy has brought significant changes with regard to the expectations for the nation's public security apparatus, making the use of traditional coercive tactics and accommodation of organized crime unacceptable. Partly as a result of their evolving role, police organizations not only lack the capacity to adequately enforce the law, but the degree of accountability that promotes greater effectiveness, professionalism, integrity, and adherence to due process.<sup>8</sup> In other words, police reform has not kept pace with Mexico's democratic regime change.

Meanwhile, by many accounts, the administration of justice through Mexico's court system has also proved woefully inadequate. As is common to other parts of Latin America, the problems faced by Mexican judiciary are largely attributable to the historical neglect if not outright subversion of the institution in the political system. Due to several factors that hindered democratic development in the 19<sup>th</sup> and 20<sup>th</sup> centuries, Mexico's judiciary has been far weaker than the legislature and (especially) the executive branch.<sup>9</sup> In Mexico and most Latin American countries, large majorities express a lack of confidence in judicial sector institutions (Figure 1).<sup>10</sup> In Mexico, these concerns owe partly to persistent and deeply engrained problems in the functioning of courts and penal institutions, which suffer from significant resource limitations and case backlogs. As a result, only about one in five reported crimes are fully investigated, and an even smaller fraction of these result in trial and sentencing. The net result is widespread criminal impunity, with perhaps one or two out of every 100 crimes resulting in a sentence (See Figure 2).<sup>11</sup> For the victims of crimes in Mexico, there is rarely any justice.

Yet, there are also problems of access to justice for those accused of a crime. Those few cases in which a suspect is detained and brought to trial are hampered

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<sup>7</sup>Vanderwood (1970), Vanderwood (1992), Arteaga Botello and López Rivera (1998), Yáñez R (1999), Davis (2006), Davis (2008), Uildriks (2009).

<sup>8</sup>Varenik (2003).

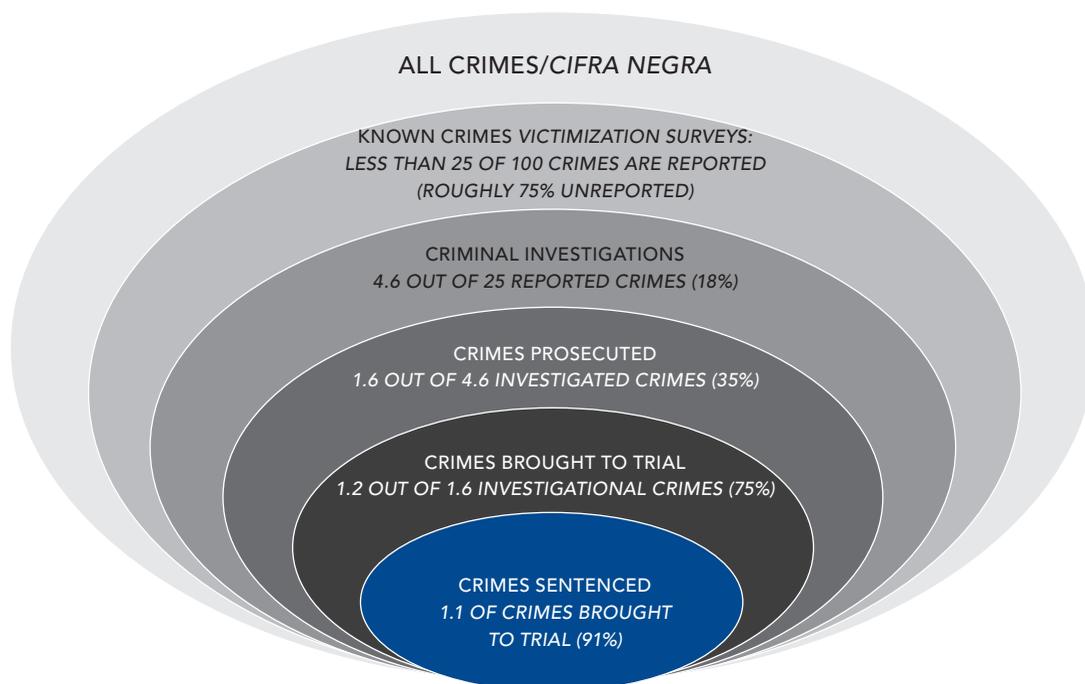
<sup>9</sup>Post-independence political instability in the 19th century, the 34-year dictatorship of General Porfirio Díaz (1876–1910), and severely restricted terms of democratic competition during 71 years of uninterrupted rule by the Institutional Revolutionary Party (PRI) significantly impeded the development of judicial independence in Mexico. Under the PRI, for example, judicial appointments depended heavily on loyalty to the ruling party and judicial decisions only rarely contradicted the elected branches of government controlled by the party. Zamora, et al. (2005), Schatz, et al. (2007).

<sup>10</sup>After decades of irrelevance in Latin America, courts have played an increasingly important role in addressing issues of transitional justice, in constitutional deliberations, and in reforms to the administration of justice throughout the region. A central theme throughout much of the new literature on the judiciary in Latin America is the link between democracy and the rule of law, particularly the role of the courts in protecting a democratic society against abuses of authority in a context of political uncertainty. Fix-Zamudio (1986), Melgar Adalid (1995), Domingo (1996), Fix-Zamudio and Cossío Díaz (1996), Jarquín and Carillo Florez (1998), Prillaman (2000), Domingo and Sieder (2001), Ungar (2001), Biggar (2003), Magaloni (2003), Domingo (2004), Hilbink (2007).

<sup>11</sup>Zepeda Lecuona (2004).

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FIGURE 2: THE LIFECYCLE OF A CRIME IN MEXICO



Source: Guillermo Zepeda Lecuona, “Criminal Investigation and Subversion of Justice System Principles,” in *Reforming the Administration of Justice in Mexico*, 2007. Numbers rounded to nearest tenth.

by lengthy, inefficient criminal proceedings that often lack an adherence to due process.<sup>12</sup> Police investigators are often poorly trained and inadequately equipped to employ modern investigative and forensic techniques in the course of a criminal proceeding. State and federal investigative police agencies exhibit disturbing patterns of corruption and abuse, including the use of bribery and torture, according to surveys of prison inmates.<sup>13</sup> Meanwhile, during the course of criminal proceedings, defendants are frequently held in “pre-trial detention,” with very limited access to bail even when the offense is relatively minor.<sup>14</sup> During pre-trial detention and despite the “presumption of innocence,” the accused are frequently mixed with the general prison population while they await trial and sentencing. Because of lengthy

<sup>12</sup>Human Rights First (2001).

<sup>13</sup>As discussed below, municipal police do not conduct investigations. However, patterns of corruption and abuse associated with police investigations collected at the federal and state level are indicated by prisoner responses to survey questions regarding the use of bribery and physical coercion in the criminal justice system. Azaola and Bergman (2007).

<sup>14</sup>International Rehabilitation Council for Torture Victims (IRCT) (2006), Lara Klahr (2008), Human Rights Watch (2009), Luhnow (2009).

delays in criminal proceedings, many defendants languish in jail for months or years without a sentence.<sup>15</sup>

Once a suspect has been identified, however, a guilty verdict is highly likely, particularly when a suspect is poor and the crime is petty. Indeed, although the probability of being arrested, investigated, and prosecuted for a crime is extremely low, as many as 85% of crime suspects arrested are found guilty.<sup>16</sup> Recent studies suggest that nearly half of all prisoners in Mexico City were convicted for property crimes valued at less than 20 dollars.<sup>17</sup> According to critics of Mexico's criminal justice system, these patterns are attributable to the lack of an adequate defense, and the fact that there is ready acceptance of the prosecutor's pre-trial investigations as evidence at trial. Also, in this context, a suspect's guilty plea is often the sole cause for indictment and conviction, and a disturbingly high proportion of torture cases in Mexico involves forced confessions.<sup>18</sup> Meanwhile, armed with superior resources, access to evidence, and procedural advantages, public prosecutors are often able to easily overpower the meager legal defense available to most accused criminals. Additionally, faced with overwhelming caseloads, the judge that rules on preliminary hearings is the same judge at trial and sentencing, and frequently delegates matters — including court appearances — to courtroom clerks. As a result, many inmates report that they never even had a chance to appear before the judge who sentenced them.

Once in prison — whether for pre-trial detention or final sentencing — inmates typically encounter severely overcrowded facilities, inadequate access to basic amenities, corrupt and abusive prison guards, violence and intimidation from other inmates, and ongoing criminal behavior (including rampant drug use).<sup>19</sup> According to official statistics, on average Mexican prisons are overcrowded by more than 30% above capacity in 2009, and with continuously growing populations. Prisons in the Federal District and Mexico State, the two entities with the largest prison populations operated at 212% and 183% capacity, respectively. According to a survey conducted in those same states by Bergman and Azaola (2009), conditions inside

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<sup>15</sup>Luhnnow (2009).

<sup>16</sup>The fact that a preponderance of those found guilty are poor people charged with petty offenses suggests that some who can afford to do so may “buy” their way out of criminal charges. *Ibid.*

<sup>17</sup>Tobar (2008).

<sup>18</sup>According to the International Rehabilitation Council for Torture Victims (IRCT), a “majority of torture reports and other human rights violations continue to occur in the context of the administration of justice, particularly during the investigative and prosecutorial phases of criminal proceedings. Furthermore, there is a growing number of torture complaints of political detainees against the security forces.” Indeed, according to Mexico's human rights ombudsman, as many as 90% of reported torture cases are the result of the forced confessions of prisoners. Hernández Forcada and Lugo Garfias (2004), p. 139; International Rehabilitation Council for Torture Victims (IRCT) (2006), p. 8.

<sup>19</sup>Regarding drug use, Azaola and Bergman (2009) cite evidence that many inmates entered prison without prior drug use, but developed an addiction once in prison. This implies added social costs, Azaola and Bergman argue, since addicted prisoners are more likely to become connected to other delinquents and develop full-fledged criminal careers. Azaola Garrido (1990), H. Bringas and Roldán Quiñones (1998).

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prisons are very bad and getting worse; in 2009, over 70% of inmates reported that they did not have enough food, a dramatic increase from previous years.<sup>20</sup> In recent years, these conditions have contributed to serious problems of rioting and escapes that have plagued Mexican prisons.<sup>21</sup> More important, these conditions illustrate the inadequacy of Mexico's current penal system — and perhaps the use of incarceration, in general — as a means of promoting the rehabilitation of convicted criminals.<sup>22</sup>

In short, the overall picture is one where the “un-rule of law” prevails and there is a severe lack of access to justice, particularly for the indigent.<sup>23</sup> For Mexico and other Latin American countries that have undergone democratic transitions in recent decades, achieving the rule of law presents a major test of regime performance, since perceptions of the judicial system appear to be positively correlated with support for democratic governance.<sup>24</sup> In Mexico, concerns about the country's on-going public security crisis have led authorities to introduce major changes with the goal of modernizing the nation's law enforcement agencies and empowering the judiciary. Whether they are successful may have important implications for overall support for democratic governance, and significantly shape the decisions of the Mexican electorate in the coming years. To better evaluate the challenges that reformers face, the contours of the country's criminal justice system and the nature of recent reform initiatives are considered in more detail below.

### WHAT KIND OF REFORM? ORAL TRIALS, DUE PROCESS, AND MORE

The legal foundations of the Mexican criminal justice system are found in the country's post-independence constitutions, as well as both federal and state administrative laws, criminal codes, and criminal procedure laws (See Table 1).

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<sup>20</sup>The Federal District and the State of Mexico account for a combined total of about 28% of Mexico's entire prison population. Azaola and Bergman (2009).

<sup>21</sup>Twenty died and dozens were wounded in an August 2009 prison riot in which police later confiscated numerous makeshift weapons, guns, and a fragmentation grenade. Justice in Mexico Project (2009). <http://www.justiceinmexico.org/news/pdf/justiceinmexico-august2009news-report082109.pdf>. (Accessed March 1, 2010).

<sup>22</sup>Mexico is not alone in this regard. A veritable “boom” in incarcerations in the United States has increasingly raised serious questions about the effectiveness of supposedly “modern” prison facilities with regard to either the prevention of crimes or the rehabilitation of those who commit them. Even worse, prisons appear to perpetuate and intensify social inequalities. Writing in 2009, Raphael and Stoll point out that, in the United States, “less-educated minority men are considerably more likely to be incarcerated currently than at any time in the past.” Raphael and Stoll (2009).

<sup>23</sup>Méndez, et al. (1999) Bailey and Godson (2000), Bailey and Chabat (2001), Cumaraswamy (2002), Zepeda Lecuona (2004), Davis (2006), Cornelius and Shirk (2007), Donnelly and Shirk (2009).

<sup>24</sup>There is a correlation coefficient of .5026 between country evaluations of democratic governance reported in the 2008 Latinobarómetro and perceptions of judicial system performance reported in the 2007 Gallup poll. This is suggestive of a relationship between citizen perceptions of democracy and the effectiveness of judicial institutions.

TABLE 1: LEGAL FOUNDATIONS OF THE MEXICAN CRIMINAL JUSTICE SYSTEM

Source	Origins and Evolution	Key Provisions
<p>Mexican Constitution (Constitución de la República Mexicana)</p>	<ul style="list-style-type: none"> <li>• 1917: reformulation of the Liberal, rights-based 1857 Constitution, with the incorporation of key Mexican revolutionary principles promoting social justice, municipal autonomy, and prohibitions on re-election</li> </ul>	<ul style="list-style-type: none"> <li>• Articles 14, 16, and 18–23: individual guarantees</li> <li>• Articles 94–107: role and function of the federal judiciary</li> <li>• Article 102: role of the federal attorney general, or Ministerio Público Federal)</li> <li>• Article 122: the role of the public prosecutor in the Federal District.</li> <li>• Article 103, 107: the right to a legal injunction (amparo)</li> </ul>
<p>Organic Law of the Federal Judicial Power (Ley Orgánica del Poder Judicial de la Federación, LOPJF)</p>	<ul style="list-style-type: none"> <li>• 1908, 1917, 1928, 1934, and 1935: LOPJF contained modifications to role of public prosecutor.</li> <li>• 1995: new LOPJF with provisions for judicial review and vetting of judiciary, and last modified in January 2009</li> </ul>	<ul style="list-style-type: none"> <li>• Eleven separate titles and 251 articles establish the general regulations for federal court system including the Supreme Court, Federal Juridical Counsel, Circuit Courts, District Courts, and Federal Electoral Tribunal</li> <li>• Rules on jurisdiction and transfer cases from lower courts (atracción), professional advancement, and use of juries.</li> </ul>
<p>Organic Law of the Federal Attorney General (Ley Orgánica de la Procuraduría General de la República, LOPGR)</p>	<ul style="list-style-type: none"> <li>• 1908 and 1919: Organic laws established to regulate Federal Public Prosecutor</li> <li>• 1917: Article 21 of Constitution outlines functions of public prosecutors</li> <li>• 1983: LOPGR establishes Federal Attorney General's office</li> </ul>	<ul style="list-style-type: none"> <li>• Series of regulatory laws and modifications to the LOMPF in 1941 and 1955 and the LOPGR in 1984, 1985, 1987, 1988, 1993, and 1996 progressively strengthened prosecutorial autonomy and restructured federal law enforcement agencies in Mexico.</li> </ul>

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**TABLE 1: LEGAL FOUNDATIONS OF THE MEXICAN CRIMINAL JUSTICE SYSTEM (CONTINUED)**

Source	Origins and Evolution	Key Provisions
Federal Criminal Code (Código Penal Federal, CPF)	<ul style="list-style-type: none"> <li>• 1835: first Mexican criminal code adopted in Veracruz;</li> <li>• 1860s: Emperor Maximilian adopts French criminal code; 1871: Juárez adopts CPF (following Spanish model)</li> <li>• 1931: Post-revolutionary government adopts new CPF</li> <li>• 2008: Judicial reform significantly modifies CPF</li> </ul>	<ul style="list-style-type: none"> <li>• Volume I of the CPF outlines general principles of criminal law (what constitutes a crime, types of criminal offenders, and principles of punishment).</li> <li>• Volume II of the CPF deals with specific crimes and their punishments.</li> </ul>
Federal Code of Criminal Procedure (Código Federal de Procedimientos Penales, CFPP)	<ul style="list-style-type: none"> <li>• 1934: post-revolutionary government enacts new CFPP</li> <li>• 2009: Most recent modification to CFPP</li> <li>• Further modifications are pending review by the Mexican Supreme Court to adapt federal criminal procedure to the 2008 judicial reforms.</li> </ul>	<ul style="list-style-type: none"> <li>• Thirteen titles and 576 articles regarding jurisdiction; search and seizure; court appearances; pre-trial proceedings; criminal actions; probable responsibility; presentation of evidence; concluding arguments; acquittals and judgments; post-trial phase; rehabilitation; special cases (mental illness, juvenile offenders, drug addiction).</li> </ul>
State Organic Laws, Criminal Codes, and Criminal Procedural Codes	<ul style="list-style-type: none"> <li>• 31 state codes</li> <li>• Federal District codes</li> </ul>	<ul style="list-style-type: none"> <li>• While there is considerable variation, state laws and codes generally adhere to standards established at the federal level.</li> </ul>

According to Zamora, et. al., (2005), the first Mexican criminal code was introduced by the State of Veracruz in 1835. During the government of Emperor Maximilian (1864–67), Mexico briefly adopted the French criminal code. Later, following the example of Spain, Mexico adopted the 1871 Federal Criminal Code (Código Penal Federal, CPF) under President Benito Juárez. Generally speaking, these foundations placed Mexico within the civil law tradition, which typically relies on an inquisitorial model of criminal procedure where an instructional judge actively leads the investigation and process of determining a suspect’s guilt or innocence. It is important to note that there is enormous variation in the application of inquisitorial criminal procedures. Indeed, Mexico has developed a highly unique legal tradition that mixes elements of different systems and includes several unique features, such as a special writ of protection or injunction (*juicio de amparo*).<sup>25</sup>

The advent of a new revolutionary constitution in 1917 brought further adaptations of Mexico’s criminal justice system, and new efforts to reform the country’s criminal codes over the next decade and a half.<sup>26</sup> First, the new constitution eliminated the Ministry of Justice and, importantly, the figure of the instructional judge; as discussed below in more detail, this placed prosecutors in a more central role in the investigation and prosecution of crimes, a move that set Mexico significantly apart from other inquisitorial systems. Second, a new criminal code — outlining both the principles of Mexican criminal law, and specific crimes and punishments — was finally enacted in 1931, and has remained the primary basis of Mexican criminal law throughout most of the post-revolutionary period. The formal procedures associated with the Federal Criminal Code (Código Federal Penal, CFP) are contained in the Federal Code of Criminal Procedure (Código Federal de Procedimientos Penales, CFPP) generated in 1934. The CFP and CFPP generally set the example for state-level criminal codes and procedures, though there is significant variation across different states (particularly with regard to criminal codes).

Over the last two decades, a series of reforms to the above structures have been implemented in Mexico, with substantial implications for the criminal justice system and democratic governance overall. The 1980s brought the dismantling of the nation’s federal police agency, as well as new structures for coordinating national

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<sup>25</sup>A *juicio de amparo*, also simply referred to as an *amparo*, is literally a legal “writ of protection” that provides an injunction blocking government actions that would encroach on an individual’s constitutional rights. An *amparo* grants individuals certain rights, including: (1) defending liberty, life and personal dignity; (2) defending individual rights against unconstitutional laws; (3) examining the legality of judicial decisions; (4) protecting against governmental actions; and (5) protecting against actions by *ejidos* (communal farms). A court’s decision to grant an *amparo* effectively places an injunction for a given party to cease and desist an offending action. This injunction is only binding for the parties involved in that particular case case (i.e., *inter partes* effects).

<sup>26</sup>Speckman Guerra (2007).

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security policy, under President Miguel de la Madrid (1982–88).<sup>27</sup> In December 1994, under President Ernesto Zedillo (1994–2000), the federal government restructured the national public security system and reformed the judiciary to promote higher professional standards,<sup>28</sup> stronger powers of judicial review,<sup>29</sup> new standards for judicial precedent,<sup>30</sup> and greater judicial independence.<sup>31</sup> In November 1996, the Zedillo administration also introduced the Federal Organized Crime Law (Ley Federal de Delincuencia Organizada, LFDO) to address the expanded power and proliferation of organized crime syndicates in recent decades.

Arguably, the most substantial efforts to promote judicial sector reform began during the administration of Vicente Fox (2000–2006), the first president originating from the National Action Party (Partido Acción Nacional, PAN), a socially conservative, pro-business party founded in 1939. In April 2004, the Fox administration

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<sup>27</sup>The Federal Security Directorate (*Dirección Federal de Seguridad*, DFS) oversaw domestic security matters from 1947 to 1985, and served as a primary instrument of social and political control for the federal government. The dissolution of the DFS, due to problems of rampant corruption, led to the creation and destruction of a series of new federal law enforcement agencies over the next two decades. The DFS was replaced by the (*Centro de Investigación y Seguridad Nacional*, CISEN). Later, indications of widespread corruption in another federal police agency, the Federal Judicial Police (*Policía Federal Judicial*, PFJ), led to its replacement by the Federal Investigative Agency (*Agencia Federal de Investigación*, AFI) by presidential decree in 2001, ostensibly to develop capabilities similar to the U.S. Federal Bureau of Investigation. However, in December 2005, the PGR announced that nearly one-fifth of AFI officers were under investigation for suspected involvement in organized crime; as discussed below, the agency was dissolved in 2009. Justice in Mexico Project, *Justice in Mexico News Report*, June 2009. <http://www.justicemexico.org/news/pdf/justicemexico-june2009news-report062309.pdf> (Accessed February 22, 2010).

<sup>28</sup>The reforms introduced in December 1994 created a new oversight mechanism, known as the Federal Judicial Council (Consejo de la Judicatura Federal, CJF), for vetting or evaluating the professional qualifications of judges prior to appointment. The CJF is a mixed body comprising seven individuals, including the Chief Justice of the Supreme Court, one other appointed judge, two district magistrates, two members chosen by the Senate, and one member appointed by the Mexican president. These members serve four-year, non-renewable terms. The creation of such councils is a regional phenomenon developed in Latin America during the 1990s. Ungar (2001).

<sup>29</sup>The reforms also expanded the Supreme Court's powers of judicial review by introducing "motions of unconstitutionality" (*acciones de inconstitucionalidad*). This innovation allowed key institutional actors — the executive branch, political parties, and a designated proportion of representatives from the Senate, the Chamber of Deputies, and the Mexico City legislature — to challenge the constitutionality of legislation or other government actions.

<sup>30</sup>While *amparo* decisions have *inter partes* effects, universally binding precedents (*erga omnes* effects) can only be established after the Supreme Court or collegiate circuit courts make five consecutive and identical majority rulings on the same topic in *amparo* cases, provided that the collegiate court decisions are not contradicted by the Supreme Court. In such cases, this establishes a legal precedent known as a *jurisprudencia*, in reference to the published summaries that compile and document modifications in Mexican law. In effect, precedents through *jurisprudencia* establish a very limited form of *stare decisis* in the Mexican legal system. Still, generally speaking, while decisions made by judges in other cases can be (and often are) informally consulted and found to be persuasive in determining the outcome in a case, they do not set binding precedents.

<sup>31</sup>Recent decisions (such as the court's June 2007 verdict on the *Televisa Law*) signal a growing sense of autonomy on the part of the Mexican Supreme Court, which may constitute the beginning of a new era of judicial independence and activism in Mexico. Ultimately, though, the political factors that motivated the 1994 reform are the subject of some scholarly debate, with some scholars describing the reforms as an "insurance policy" for the PRI in anticipation of its electoral decline. See: Beer (2006), Bégné Guerra (1995), Domingo (2000), Inclán Oseguera (2004), Finkel (2008), Inclán Oseguera (2009).

proposed a series of constitutional and legislative changes to modernize Mexico's criminal justice system.<sup>32</sup> The 2004 proposal pressed for a comprehensive reform of including, among other major changes, a shift from Mexico's unique variation of the inquisitorial system toward a more adversarial model. Although the Fox administration was able to pass significant reforms to the juvenile justice system in 2003, the 2004 justice reform package met significant resistance and ultimately stalled in the legislature.<sup>33</sup> Despite failing to win congressional approval, the Fox administration's proposal triggered a national debate on the merits of a major judicial reform, and also signaled federal approval to Mexican states working to implement similar reforms at the sub-national level.<sup>34</sup> The states of Nuevo León, Chihuahua, and Oaxaca were among the earliest adopters of new adversarial procedures and other innovations.<sup>35</sup>

While few concrete process indicators are available to gauge their impacts, the perception that these state-level reforms contributed to greater judicial efficiency and transparency helped build support for the adoption of federal level judicial reforms by the Mexican Congress in March 2008, during the current administration of PAN President Felipe Calderón (2006–2012). The reforms benefited from widespread support among jurists, academics, and human rights advocates favoring a greater emphasis on due process protections.<sup>36</sup> The reforms also gained broad political support in part because of elevated levels of violence from organized crime, which took sharp upswings in 2007 and 2008.

The 2008 reforms comprise four main elements: 1) changes to criminal procedure through the introduction of new oral, adversarial procedures, alternative sentencing, and alternative dispute resolution (ADR) mechanisms; 2) a greater emphasis on the rights of the accused (i.e., the presumption of innocence, due process, and an adequate legal defense); 3) modifications to police agencies and their role in criminal investigations; and 4) tougher measures for combating organized crime. Each of these elements is explored in more detail below.

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<sup>32</sup>For a more complete discussion of the 2004 judicial reform package proposed by the Fox administration, see Shirk and Ríos Cázares (2007).

<sup>33</sup>In 2003, there were several significant modifications to the Federal Juvenile Delinquency Law (*Ley para el Tratamiento de Menores Infractores*, LTMI).

<sup>34</sup>In 2005, the Justice in Mexico Project sponsored a briefing of the Mexican Senate to outline the arguments for and against the Fox reforms. The technical analysis generated by the project was then disseminated to inform debates occurring at the state and local level. Gonzalez Placencia, et al. (2005).

<sup>35</sup>Mangis and Szmania (2008), Márquez-Carrasquillo and Shirk (2008).

<sup>36</sup>Soon after the reforms were passed, Mexico's National Human Rights Commission indicated the reforms were intended to "adjust the system to the principles of a democratic rule of law, such as guaranteeing the rights of victims and the accused and the impartiality of trials, to develop more effective practices against organized crime and in the functioning of prisons, as well as linking the National Public Security System to the protection of human rights, and obliging authorities at all three levels of government to coordinate broadly and truly share information on criminality and police personnel; to regulate the vetting, training and tenure of personnel, to certify competency, and open spaces for social participation in evaluation [of the system]." Comisión Nacional de Derechos Humanos (2008). Author's translation.

## 1) “Oral Trials”: Changes in Mexican Criminal Procedure

Arguably, the most heralded aspect of the 2008 reforms is the introduction of “oral trials,” with live public proceedings to be held in open court. However, popular emphasis on the novelty of “oral” trial procedures is somewhat misleading for two reasons.<sup>37</sup> First, Mexican criminal courts have traditionally relied on the use of oral testimony, presentation of evidence, and argumentation, in at least some fashion.<sup>38</sup> Therefore, a more appropriate aspect of the reform to emphasize is the larger transition from Mexico’s unique inquisitorial model of criminal procedure to an adversarial model that draws elements from the United States, Germany, Chile, and other countries. A second reason that the emphasis on “orality” is somewhat over-played is that, with the transition to adversarial trial proceedings, live oral trials will be used in only a small fraction of the criminal cases managed by Mexican courts. This is because the reform involves other changes, notably alternative sentencing mechanisms and plea-bargaining (*juicio abreviado*). These procedural options will hopefully reduce the overall number of cases handled in court, and thereby relieve congestion in the criminal justice system. With sentences that contemplate alternatives to prison (such as mediation, community service, reparations to victims, etc.), the reforms are intended to achieve greater efficiency and restorative justice (*justicia restaurativa*).

It should be pointed out that, contrary to conventional wisdom, Mexico does not have a true inquisitorial system, in which the judge plays a leading role as the “inquisitor” overseeing the investigation and prosecution of a criminal case. Rather, Mexico has its own unique adaptation on that system, which evolved on its own trajectory after independence.<sup>39</sup> As illustrated in Figure 3, a criminal proceeding in Mexico begins when a criminal act is reported to the public prosecutor (*ministerio público*) in one of three ways: a) police must report all crimes they observe through investigation or in flagrante, b) a victim or a third party plaintiff (*ofendido*), may file a report (*denuncia*), or c) the victim may present a “private criminal charge,” or a *querrela*, in which the victim himself or herself stands as the accuser (*querellante*) of the suspect.<sup>40</sup>

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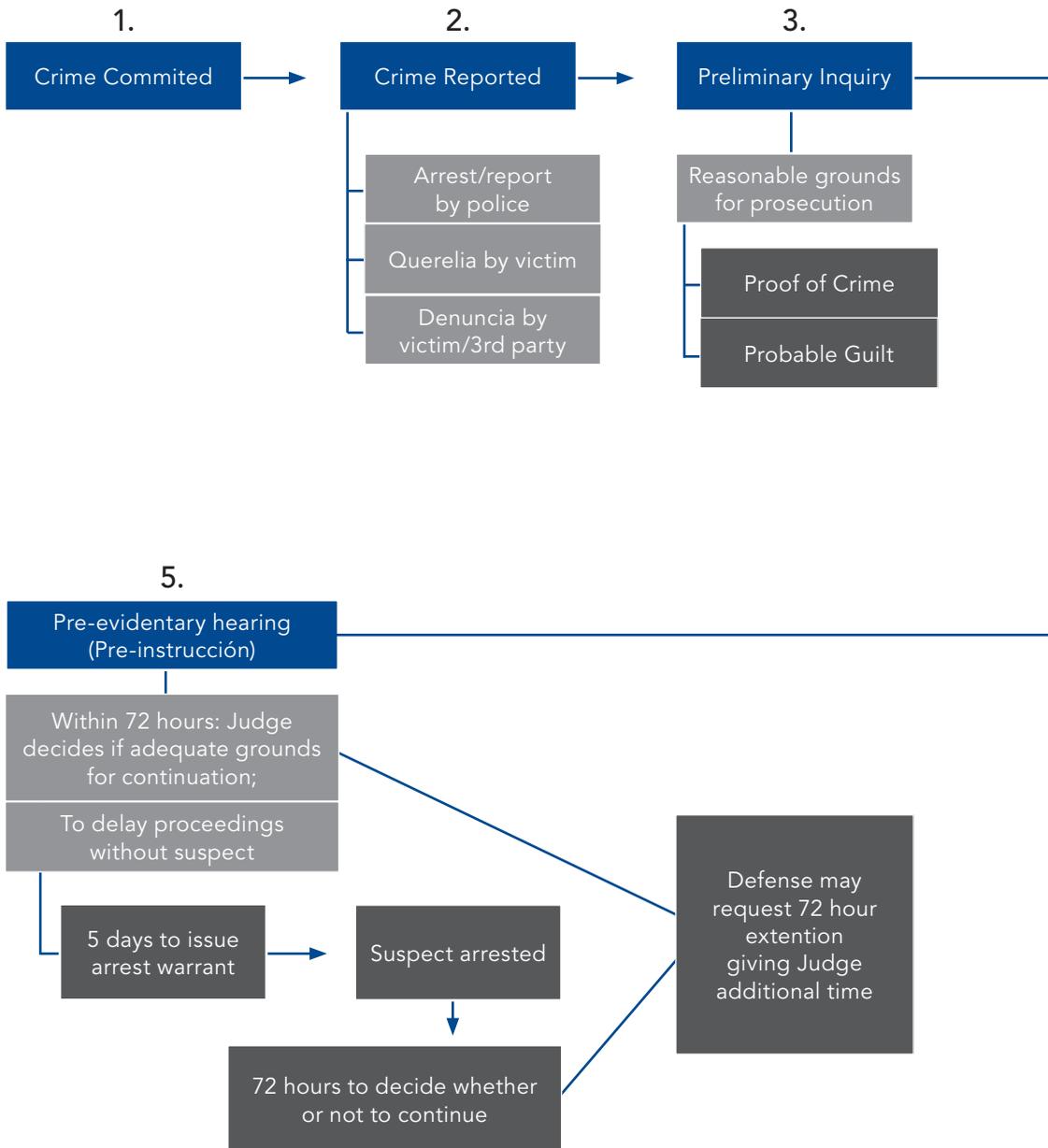
<sup>37</sup>Advocates of judicial reform began to utilize the reference to “oral trials” in a deliberate manner, because the concept provided a simple visual for encapsulating the many changes entailed in the reform.

<sup>38</sup>Contrary to popular opinion, not all aspects of traditional Mexican criminal law are based on written affidavits (*expedientes*). In the evidentiary phase (*instrucción*) within the larger process of a criminal trial (*proceso penal*), judges frequently interview victims, suspects, witnesses, prosecutors, and defense attorneys “orally.” Certain portions of criminal proceedings, particularly at the pre-trial evidentiary (*pre-instrucción*) hearing, occur in live court sessions.

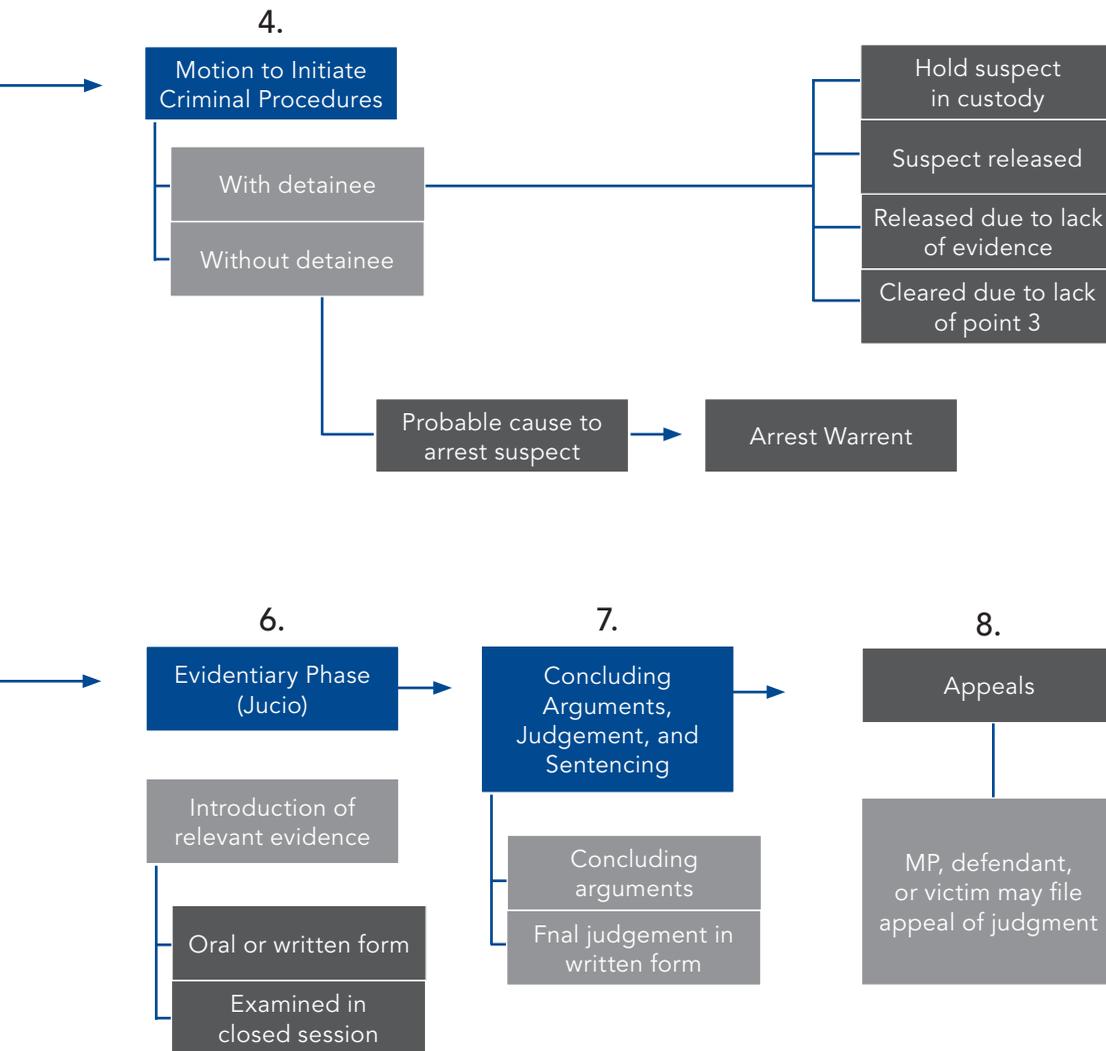
<sup>39</sup>As Hammergren notes, there is a significant degree of variation in the application of the inquisitorial model, also referred as the “Continental” model. Moreover, because they developed their own unique legal traditions after independence, most Latin American legal systems have gaps and idiosyncracies that make them quite distinctive from the inquisitorial model practiced in Europe (and greatly refined in the years after Latin American independence). Hammergren asserts that attempts to “fix” Latin American legal systems should focus on the flaws of those systems, rather than focusing on the differences between the accusatorial and inquisitorial models. Hammergren (1998), Hammergren (2007).

<sup>40</sup>This is not unique to Mexico, since the same methods are found in the inquisitorial systems used in Spain and Latin America.

FIGURE 3: KEY STEPS IN TRADITIONAL CRIMINAL PROCEDURE IN MEXICO



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Source: Prepared with assistance from Nicole Ramos, drawing on the description of Mexican criminal procedure developed by Zamora, et al. (2005), p. 346–7.

The unique features of Mexican criminal procedure become evident after a crime has been reported, because Mexico's system lacks an instructional judge (*juez de instrucción*), who would directly lead the investigation in a "typical" inquisitorial system. Instead, in Mexico, the public prosecutor plays a central role in Mexico's accusatory process, and has a relatively high degree of autonomy.<sup>41</sup> Prosecutorial independence is especially notable during the preliminary inquiry (*averiguación previa*), in which a suspect is investigated and formally indicted for a crime. Indeed, critics charge that the power and autonomy of the public prosecutor at this stage of preliminary inquiry is one of the major contributors to the abuses found in the traditional Mexican system, including forced confessions and mishandling of evidence.<sup>42</sup>

That said, Mexican judges do work closely with the prosecutor to continue to compile evidence and testimony during the preliminary hearing to formally indict the suspect (*pre-instrucción*) and the evidentiary phase (*instrucción*). They also have the authority to seek out evidence on their own, and frequently do so, in the manner of an instructional judge found in other systems. Also, as in other inquisitorial systems, there is some adversarial presentation of arguments during the last phase of the process leading to a final judgment (*juicio*), since the judge receives final arguments (*conclusiones*) from both the prosecution and the defense. In the end, it is left to the judge to make a determination as to the guilt or innocence of the accused and to identify the appropriate sentence (*sentencia*) for the crime.<sup>43</sup> After the verdict has been delivered in the court of first jurisdiction (*primera instancia*), either the prosecutor or the accused may contest this decision at a court of appeals (*segunda instancia*).

While not necessarily attributable to its roots in the inquisitorial model per se, the functioning of Mexican criminal procedure exhibits important liabilities.<sup>44</sup> The fact that much evidence is presented in the form of written affidavits (*actas or actuaciones*)

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<sup>41</sup>This significant departure from traditional inquisitorial systems dates back to reforms initially proposed in the early 20<sup>th</sup> century, under the 1908 Organic Law of the Federal Public Prosecutor (*Ley Orgánica del Ministerio Público Federal y Reglamentación de Sus Funciones*), the 1909 Organic Law of the Federal Judicial Power (*Ley Orgánica del Poder Judicial Federal*), Article 21 of the 1917 Constitution, the 1919 Law of Organization of the Federal Public Prosecutor (*Ley de Organización del Ministerio Público Federal*, LOMPF), and the 1934 Reglementary Law for Article 102 of the Mexican Constitution (*Ley Reglamentaria del Artículo 102 de la Constitución de la República*), and the 1983 Organic Law of the Federal Attorney General (*Ley Orgánica de la Procuraduría General de la República*). Subsequent modifications to the LOMPF in 1941 and 1955 and the LOPGR in 1984, 1985, 1987, 1988, 1993, and 1996 progressively strengthened prosecutorial autonomy and restructured federal law enforcement agencies in Mexico.

<sup>42</sup>Zepeda Lecuona (2004), Zamora, et al. (2005), Naval (2006).

<sup>43</sup>Inquisitorial systems only rarely use juries to determine guilt or innocence; in Mexico the use of juries has been historically limited, primarily in cases involving treason in the early 20<sup>th</sup> century. Zamora, et al. (2005), p. 363.

<sup>44</sup>As Jensen and Heller point out, there is an enormous need for comparative, empirically driven research to evaluate judicial system performance. Indeed, there is surprisingly little research comparing systems derived from the inquisitorial and adversarial models. One notable exception is Fullerton Joireman, who compares judicial systems in Africa on a range of different performance indicators. Her analysis suggests that inquisitorial systems exhibit somewhat worse performance in contexts where bureaucratic structures are inefficient. Fullerton Joireman (2002), Jensen and Heller (2003).

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often contributes to a fairly cumbersome process, particularly where there are significant bureaucratic inefficiencies. As a result, the processing of criminal cases in Mexico often takes place over an unusually lengthy period, with many suspects waiting in jail for years before they are issued a sentence. Moreover, because the evidentiary phase takes place largely outside of public view, this lack of transparency contributes to widespread allegations that Mexican judges are neglectful or even corrupt.<sup>45</sup> Meanwhile, some legal scholars have expressed concerns about the powerful and decisive role of Mexican public prosecutors, and the potential for abuse that this allows. Finally, due to the infrequent release of suspects on their own recognizance or on bail in Mexico, a person accused of a crime is typically held in “preventive prison” (*prisión preventiva*), even for relatively minor crimes. This often leads to the mischaracterization that a suspect is “guilty until proven innocent” in Mexico.<sup>46</sup>

In contrast to the inquisitorial model, the adversarial model — more typically associated with common law systems like the United States or the United Kingdom — involves a different set of procedures and roles for the main protagonists. One of the primary characteristics of adversarial systems is that the judge functions as an impartial mediator between two opposing “adversaries” — the prosecution and the defense — as they present competing evidence and arguments in open court. This lends to certain perceived advantages and disadvantages of adversarial systems. Among the advantages are the checks and balances built in to the criminal proceeding, as well as both efficiency and transparency in the presentation of evidence in court. However, adversarial systems also place at least one of the adversaries in the uncomfortable position of actively advocating for the “wrong” side, and sometimes winning.<sup>47</sup>

Meanwhile, in adversarial systems, the judge is often less directly involved in other phases outside of the trial, such as the preliminary hearing to indict the suspect (the equivalent of Mexico’s *pre-instrucción*), the determination of guilt (which is often left to a jury in a full-blown trial), and the oversight of final sentencing (which is generally administered by parole boards). Also, more commonly in adversarial systems, the final sentence in a criminal case is often the result of a negotiated agreement between the prosecutor and the accused, who accepts a guilty plea in exchange for a lesser sentence (*jucio abreviado*). Finally, in adversarial systems, there is generally a more active role

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<sup>45</sup>One of the most damning and wide ranging indictments of Mexican judicial corruption came in 2002 from a report from the United Nations Special Rapporteur on the Independence of Judges and Lawyers. Cumaraswamy (2002).

<sup>46</sup>As in the United States, Mexican criminal law presumes the innocence of the suspect, even if they are unable to make bail. In practice, though, the proportion of defendants who are released on bail or on their own recognizance in Mexico is very small, given the strong emphasis on establishing probable cause prior to indictment and the large proportion of indigent defendants (who may be considered a flight risk). Thus, the issue of “guilty until innocent” has more to do with the relatively inflexible criteria for pre-trial release in Mexico. Zamora, et al. (2005), p. 358.

<sup>47</sup>According to one recent critique of the use of the adversarial system in the United States, “Meant to facilitate the search for truth, our adversarial justice system often degenerates into a battlefield where winning, rather than doing the right thing, becomes the goal. Mistrust on both sides, egos and personal and agency agendas can get in the way of justice.” Trainum (2010).

of the defense counsel in representing the defendant throughout the criminal proceedings, and in presenting evidence and arguments in court.<sup>48</sup>

Under the reforms approved in 2008, the Mexican federal government, and eventually all state governments, will adopt many aspects of the adversarial model over the coming years. This shift implies many significant changes to the roles of key players and the legal structures that regulate the criminal justice system (See Figure 4). The implications for criminal legal procedure include a more abbreviated and less formalized preliminary investigative phase, and a greater reliance on presentation of testimony and evidence during live, public trials that are recorded for subsequent review or appeal.<sup>49</sup> The reforms also include several additional innovations intended to promote a more efficient division of labor, relieve congestion and case backlogs, and provide greater checks and balances throughout the process. As noted above, these changes will have significant implications for each of the major players in Mexican law enforcement and administration of justice: the defendant, police, judges, prosecutors, defense attorneys, and the victim.

First, in keeping with the design of the adversarial model (See Figure 4), Mexican judges will now play more of a moderating role during the trial phase, while prosecutors and defense counselors present arguments and evidence in live, recorded, oral hearings. An equally important innovation is that the reforms also create special judgeships for different phases of the criminal proceedings, ostensibly promoting an efficient division of labor and fewer conflicts of interest. A due process judge, or *juez de garantía*, will preside over the pre-trial phase (investigation, preliminary hearing, indictment, and plea-bargaining). As discussed in greater detail below, the creation of the new due process judge is primarily intended to ensure due process prior to the trial phase. Meanwhile, a sentencing judge, or *juez de sentencia* (also called the *juez de juicio oral*) will preside over the trial phase (during the presentation of oral arguments) and the final verdict. A sentence implementation judge (*juez de ejecución de sentencia*), will ensure that sentences are properly applied and monitor processes of restorative justice (e.g., repayment of damages).<sup>50</sup>

Meanwhile, the public prosecutor (*ministerio público*) will lose some of the traditional power vested in that office. With the introduction of “probable cause” as a basis for criminal indictment, the preliminary investigation (*averiguación previa*) is no longer as central to the process. This means that the role of the public prosecutor is less decisive in determining the probable guilt of the accused (probable responsible), but also that the public prosecutor has a lower threshold to initiate a charge or

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<sup>48</sup>While inquisitorial systems also have defense counsel for the accused, their interaction with judges and prosecutors tends to focus primarily on assuring adherence to proper criminal procedure.

<sup>49</sup>This moves away from the primarily written presentation of affidavits that are transcribed by the public prosecutor, which are known as *expedientes* or *actuaciones*.

<sup>50</sup>The oral trial judge (*juez de tribunal oral*) will preside over the trial phase of a criminal proceeding, working in an open courtroom, considering evidence presented by the prosecution and the defense, and ultimately making a determination regarding the guilt or innocence of the suspect.

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arrest (Article 19, Paragraph 1). The public prosecutor will still have substantial discretion about whether or not to seek prosecution, under a provision known as “the principle of opportunity” (*principio de oportunidad*) which allows the prosecutor to strategically weigh his or her decision against the resource limitations and priorities of law enforcement.

One possible concern, however, is that prosecutors will neglect to take a case for political, personal, or other reasons. Hence under Article 20, Section C of the Mexican Constitution, the reforms also allow crime victims to file a criminal motion before a judge in certain cases, with the goal of creating pressure on public prosecutors to investigate cases. The reforms also include privacy protections to conceal the identity of the victim, plaintiff, and witnesses, and a system of reparations for harms resulting from the crime. This includes an emphasis on the restitution or restoration of damages (*reparación de daño*), the terms of which can be determined by a judge through mediation or other solutions.

### 2) The Rights of the Accused: Guarantees for the Presumption of Innocence, Due Process, and an Adequate Legal Defense

Also included in the 2008 reforms are stronger constitutional protections for the presumption of innocence, a more substantial role for judges in distinct phases of the criminal proceeding (including the physical presence of a judge during all hearings involving the defendant), specific provisions banning the use of torture, new measures to provide a quality legal defense for the accused, and other procedural safeguards intended to bolster due process. This new emphasis on the protections for the rights of the accused is frequently described as creating a “system of guarantees” or a *sistema garantista*.<sup>51</sup>

First, as part of the presumption of innocence, the 2008 reforms seek to limit the use of preventative detention, or “pre-trial” detention. In recent years, because of case backlogs and inefficiencies, more than 40% of Mexico’s prison population (some 90,000 prisoners) has consisted of prisoners waiting in jail for a final verdict.<sup>52</sup> Many suspects are detained even when charged with relatively minor offenses, such as shoplifting or an automobile accident.<sup>53</sup> Moreover, pre-trial detainees are frequently mixed with the general prison population, and in many instances their cases are not adjudicated

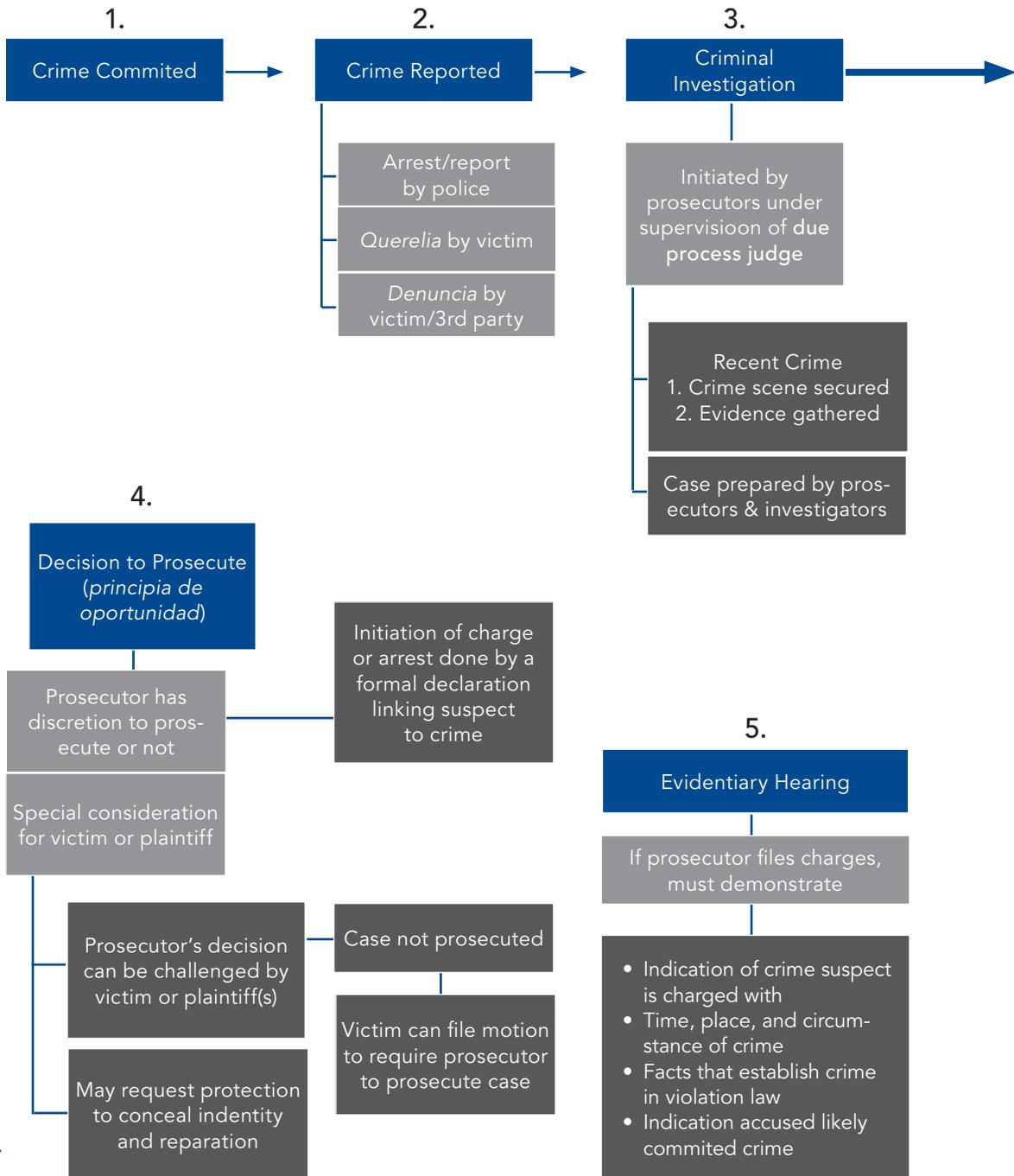
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<sup>51</sup>“Garantismo” is a loaded term in Mexico. On the one hand, it is used in a positive sense by progressive jurists concerned about the real effect of civil rights. On the other hand, it is used disparagingly by more conservative jurists who think judges and the state should be more concerned about the form and procedures of the law than with protecting particular interests. This tension resonates with discussions about legal or judicial “activism” in the United States.

<sup>52</sup>Ciudadano (2006), El Porvenir (2006), Reforma (2006), Salazar (2006).

<sup>53</sup>The consequences of mixing pre-trial and convicted prisoners can be dangerous. In September 2008, two prison riots broke out in the La Mesa prison facility known as “La Peni,” killing nearly two dozen people. The La Mesa prison is intended to house accused criminals who are ineligible for release before trial and sentencing, but also contained convicted criminals. Justice in Mexico Project (2008).

FIGURE 4: KEY STEPS IN THE NEW ADVERSARIAL CRIMINAL PROCEDURE MODEL IN MEXICO



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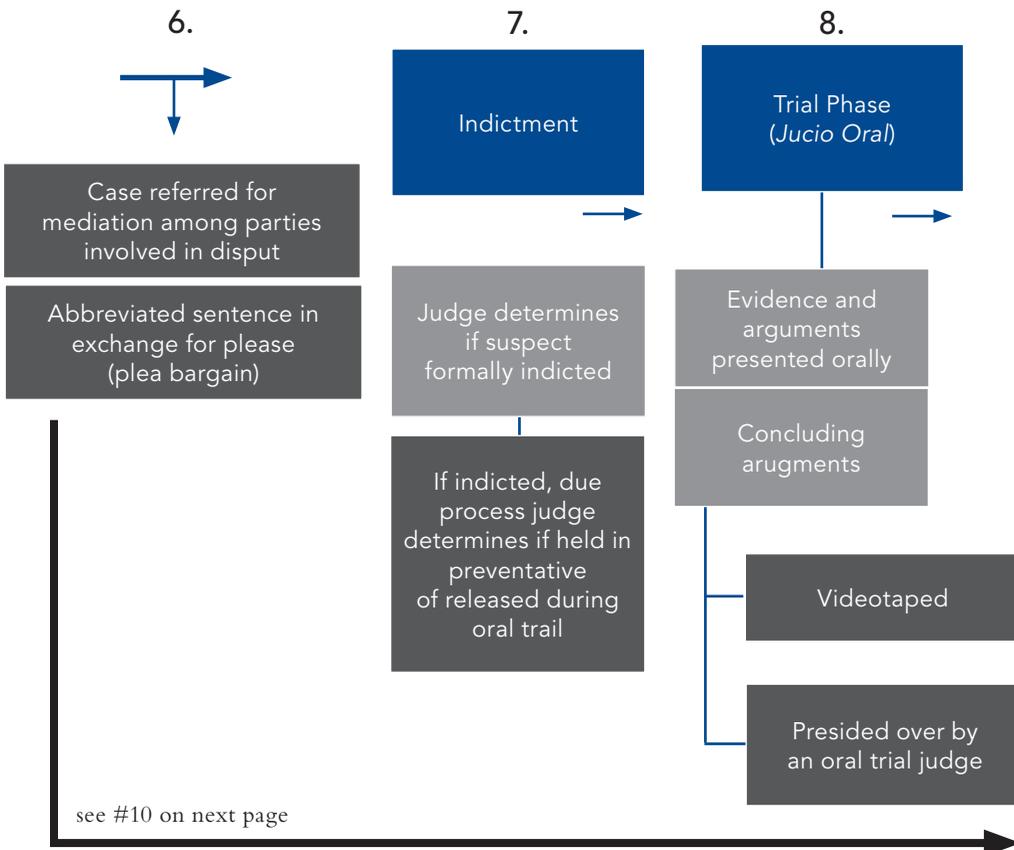
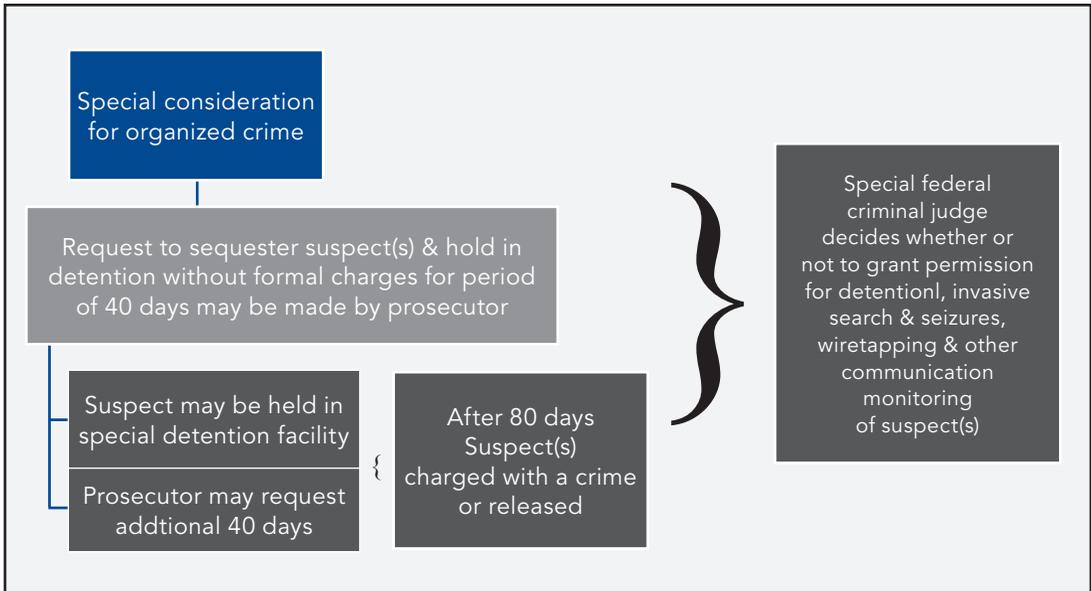
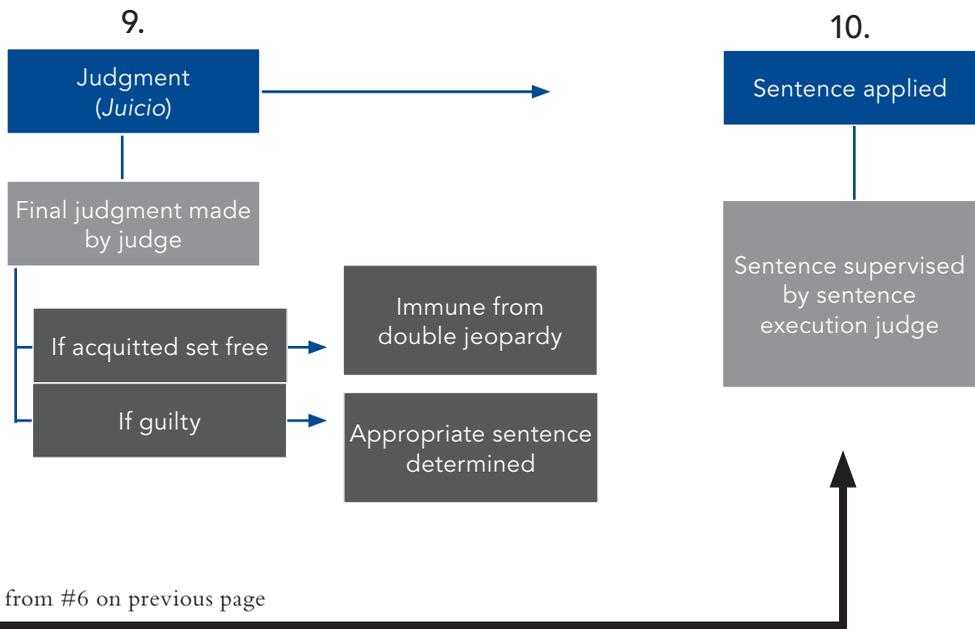
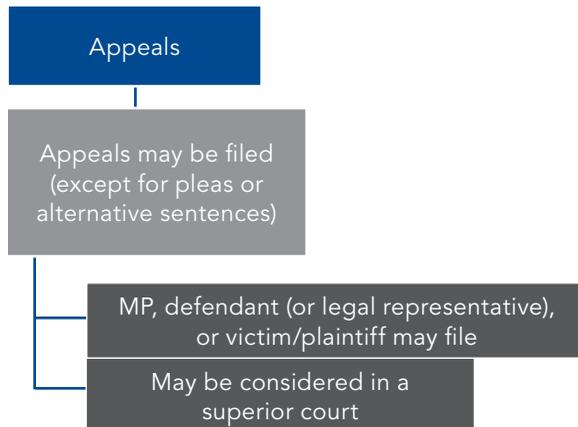


FIGURE 4: KEY STEPS IN THE NEW ADVERSARIAL CRIMINAL PROCEDURE MODEL IN MEXICO CONTINUED



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for exceedingly long periods of time. Under the new reforms, pre-trial detention are intended to apply only in cases of violent or serious crimes, and for suspects who are considered a flight risk or a danger to society. Also, the new reforms require those held in pre-trial detention to be housed in separate prison facilities (away from convicted criminals), and to be held only for a maximum of two years without a sentence.

Second, as noted earlier, the 2008 reforms created a new due process judge (*juez de garantía*, or *juez de control*), whose role is to ensure that a criminal case moves forward properly during its investigation, preliminary hearing, and indictment. The due process judge is responsible for determining whether a suspect's rights should be limited during the trial phase (e.g., pre-trial detention, house arrest, restraining order) or whether they should be released on bail or on their own recognizance until a guilty verdict has been delivered. The due process judge will also issue the final sentence in cases where the defendant accepts a plea bargain (*juicio abreviado*), in which all parties accept that the accused will receive a lesser sentence in exchange for a guilty plea. The due process judge will also oversee other alternative dispute resolution processes, such as the use of mediation.

The creation of the new judicial roles will have several major implications. First, it implies a greater role for judges the pre- and post-trial phases. During the pre-trial phase, the due process judge will strive to protect the rights and interests of all parties — including the accused, the victim, and witnesses — as the case moves forward toward a public oral trial.<sup>54</sup> During the post-trial phase, the sentencing implementation judge will effectively play the role of U.S. parole board, monitoring the proper application of a sentence and any violations of mediation agreements.<sup>55</sup> Second, as noted above, the creation of the due process judge implies a certain degree of separation of powers in the judiciary: the judge who determines whether a suspect is indictable will not be the same individual who must make a final determination of guilt. Theoretically, this will allow both judges to specialize to a greater degree, thereby ostensibly allowing greater efficiency in the processing of criminal cases.<sup>56</sup> Finally, the separation of powers will theoretically reduce conflicts of interest and provide checks and balances, since the oral trial judge will make a final decision without having made prior conclusions about the defendant's "probable guilt."<sup>57</sup>

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<sup>54</sup>As such, the due process judge must: "strike a balance between two legitimate, but conflicting interests: on the one hand, the guarantee of due process for the person under investigation and, secondly, the effective application of criminal law. While seeking to protect a person investigated for a crime from any violation of their rights in the process of arrest, searches, seizures and interception of communications, [the *juez de control*] also attempts to safeguard the proper unfolding of important investigatory proceedings." Valls Hernández (2008).

<sup>55</sup>There is cause for concern, of course, that neglect or corruption in the implementation of a sentence could lead to excessively permissive administration of sentences and continued problems of criminal impunity.

<sup>56</sup>Zepeda Lecuona (2008).

<sup>57</sup>Under the old system, a judge who determined that there was probable cause to try a suspect in the pre-trial phase might, theoretically, be disinclined to reverse his prior decision on the merits of the case during the trial phase. This conflict of interest is presumably eliminated by the separation of judicial decisions in the pre-trial and trial phases.

Another important change included in the new reforms is the emphasis on the physical presence of the judge during all hearings involving the defendant. Under Mexico's traditional system, criminal proceedings do not take place primarily during live audiences in a condensed timeframe, and hearings are sometimes conducted by court clerks without the presence of the actual judge. The result is that many criminal defendants attest that they never had direct interaction with the judge who handled their case. Indeed, in surveys with Mexican inmates, Azaola and Bergman (2009) report that 80% of inmates interviewed in the Federal District and the State of Mexico were not able to speak to the judge who tried their case.<sup>58</sup> With the shift to an emphasis on the physical presence of the judge throughout the criminal proceeding, crime suspects and their legal defense counsel will presumably have a greater ability to make direct appeals to the individual who will decide their case.

Third, the reforms also include specific provisions, under Article 20 of the Mexican Constitution, admonishing against the use of torture. In response to the aforementioned problems of torture-based confessions in the Mexican criminal justice system, the reforms make it unlawful to present a suspect's confession as evidence in court (unless obtained in the presence of the suspect's defense attorney). In theory, this means that the prosecutor will have to rely on other evidence to obtain a conviction, and thereby conduct more thorough investigations. This also means that the accused will theoretically have the benefit of good legal counsel and a more informed understanding of the consequences prior to implicating themselves in a crime.

Finally, with regard to the rights of the accused, the reforms aim to strengthen and raise the bar for a suspect's defense counsel. All criminal defendants will be required to have professional legal representation. Under the reforms, any third party serving as the defense counsel for the accused must be a lawyer, a change from the prior system, which allowed any trusted person (*persona de confianza*) to represent the accused. Under constitutional amendments to Article 17, the reform requires that there be a strong system of public defenders to protect the rights of the poor and indigent. This provision is extremely important, given that the vast majority of defendants rely on a public defender (*defensor de oficio*). Indeed, the same prisoner survey noted above found that 75% of inmates were represented by a public defender, and 60% of these switched from their first public defender because of the attorney's perceived indifference.<sup>59</sup>

### 3) Police Reform: Merging Preventive and Investigative Capacity

The main criticisms of the Mexican criminal justice system reside less with judges and courtroom procedure than with law enforcement, particularly prosecutors (*ministerios públicos*) and police officers.<sup>60</sup> While most attention to the 2008 judicial

<sup>58</sup>Azaola and Bergman (2009).

<sup>59</sup>*Ibid.*

<sup>60</sup>As Zamora, et. al. note, "Mexican criminal penalties are harsh, but the combination of harsh penalties and 'flexible' enforcement gives a great deal of power to police officers to exact bribes in exchange for overlooking an infraction, large or small." Zamora, et al. (2005), p. 359.

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reforms has focused on the shift in courtroom procedures, equally important changes are in store for police investigations and law enforcement agencies. Specifically, the reforms aim toward a greater integration of police into the administration of justice. Under Mexico's traditional system, most police were ostensibly dedicated to preventive functions, and — aside from detaining individuals in *flagrante delicto* — not considered central to the work of prosecutors and judges. Under the new system, police will need to develop the capacity and skills to protect and gather evidence to help prosecutors, judges, and even defense attorneys determine the facts of a case and ensure that justice is done. As police become more critical to criminal investigations and proceedings, it is essential and urgent that they be adequately prepared to carry out these responsibilities properly. Under Mexico's 2008 reforms, the Constitution (Article 21, Paragraphs 1–10) underscores the need to modernize Mexican police forces, which are now expected to demonstrate greater professionalism, objectivity, and respect for human rights. While the reforms provide an eight-year period for the transition to the new adversarial system, many of the reforms affecting police have already entered into effect.

The most significant change is that the reforms strengthen the formal investigative capacity of police to gather evidence and investigate criminal activity, in collaboration with the public prosecutor, or *ministerio público*. For example, under reforms to Article 21, Paragraph 1 of the Mexican Constitution, along with public prosecutors and investigators, police will now share responsibility for the protection of the crime scene and the gathering of evidence. This is significant because, until recently, as many as 75% of Mexico's more than 400,000 police lacked investigative capacity, were deployed primarily for patrol and crime prevention, and were largely absolved of responsibilities to protect or gather evidence. Given that evidence collected by the reporting officer is often a primary tool for the prosecution in other criminal justice system, the limited capacity of Mexican police in this regard seriously limits and sometimes even interferes with the successful resolution of criminal cases.

The 2008 reforms now open the door to greater police cooperation with criminal investigators, and even the reorganization of police agencies to facilitate more effective police investigations. At the federal level, thanks to supporting legislation passed in May 2009, the Attorney General's Office (*Procuraduría General de la República*, PGR) and the Secretary of Public Security (*Secretaría de Seguridad Pública*, SSP) have already reorganized their respective police agencies. Under the Federal Attorney General Law (*Ley Orgánica de la Procuradora General de la República*), the PGR effectively dissolved the Federal Agency of Investigations (*Agencia Federal de Investigaciones*, AFI) and created the new Federal Ministerial Police (*Policía Federal Ministerial*, PFM). Agents of the Attorney General's police forces will now have greater powers to investigate crimes, but will also be subjected to more rigorous confidence tests (*control de confianza*). For example, included under the new legislation are provisions that expand the ability of the Assistant Attorney General for Special Investigation of Organized Crime (*Subprocurador de Investigación Especializada de Delincuencia Organizada*, SIEDO) to assume responsibility for crimes that are normally reserved for local jurisdiction (*fuero común*). This procedure, known as

“attraction” (atracción), will enable — and presumably compel — the federal government to step in to investigate severe crimes that are beyond the capacity of state and local law enforcement.

Even more significant, the 2008 reforms allow for a blending of crime prevention and investigative functions that were formerly performed by separate law enforcement agencies: the preventive police and the investigative police. Under supporting legislation for these reforms, the 2009 Federal Police Law (Ley de la Policía Federal), the SSP replaced its Federal Preventive Police (Policía Federal Preventiva, PFP), creating the new Federal Police (Policía Federal).<sup>61</sup> The new law effectively bestows investigative powers upon what was previously the Federal Preventive Police (PFP), which formerly carried out a strictly preventive function. Under the new law, Federal Police officers will ultimately be able to collaborate with the PGR on its investigations, though it is not yet clear what protocols will be developed to manage this coordination. Other new functions include securing crime scenes, executing arrest orders, and processing evidence, all formerly functions of the AFI.<sup>62</sup> Federal Police agents also now have authorization to operate undercover to infiltrate criminal organizations.

It is somewhat unclear what implications the 2008 reforms will have for the investigation of crimes of local jurisdiction (fuero comun) at the sub-national level. However, the reforms presumably open the door for the participation of state and municipal preventive police forces in criminal investigations. Moreover, in light of the 2008 reforms, proposals have already been made at both the federal and state level to fuse state and local law enforcement, effectively dismantling all municipal police forces. Under Article 115, Frac. VII, governors have long had the power to take command of local police forces to address severe public security problems affecting their states.<sup>63</sup> The 2008 reforms further specify that the State Law of Public Security will regulate municipal police forces, and federal and state

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<sup>61</sup>The AFI was created by presidential decree in 2001 to bolster the investigative capacity of the Federal Attorney General’s Office (PGR). At that time, the AFI replaced the corruption-plagued Federal Judicial Police in order to bring about a more professional, scientific, and comprehensive investigative process that would take aim at the operational foundations of organized crime — similar to the stated goals of the new Federal Ministerial Police. The agency came under fire in 2005 under widespread allegations of corruption, and in December of that year the PGR announced that nearly one-fifth of its officers were under investigation for suspected involvement in organized crime. Agents of the AFI took to the streets in April 2009 to demand that the PGR and Congress not allow the agency to disappear. Nonetheless, the measure was approved by congress, and Pres. Calderón signed it into law on May 29, 2009. From the date the new law went into effect, the PGR had thirty days to purge its rosters of undesirable personnel. Former AFI agents able to pass toxicology, medical, psychological, and background checks were given priority in the new agency. *Economista* (2005), Castillo and Mendez (2006), *El Financiero* (2009).

<sup>62</sup>As discussed below, the reforms also grant expanded permission for authorities to monitor telephone, satellite, and internet communications in the investigations of organized crime activity, provided permission is granted through a judicial order.

<sup>63</sup>There is already some variation in terms of how states already exert control over local police forces: some state capitals are protected by state police forces in lieu of locals (e.g., Morelia), some state governors formally appoint the local police chiefs (e.g., Sonora), and the state of Durango has already initiated efforts to fuse all municipal and state police agencies. Cárdenas (2009), Cárdenas (2010).

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authorities have been increasingly advocating the elimination of local police forces as a solution to Mexico's public security concerns.<sup>64</sup> It remains to be seen, however, whether the federal government will require all states to unify their police forces.

A separate aspect of the 2008 reforms that is intended to promote police professionalism has mixed implications. Under the reforms, police are now subject to special labor provisions that give administrators greater discretion to dismiss law enforcement personnel. Specifically, Article 123 allows authorities to dismiss police more easily, weakening their labor rights protections. While the amendment of Article 123 is intended to ensure that administrators can remove ineffective or corrupt officers, Zepeda (2008) notes that it could have the unintended effect of further undermining civil service protections that help to ensure an officer's professional development and protect him from undue pressure or persecution.<sup>65</sup> Police already face unpredictable career advancement and deplorable working conditions, as illustrated by the results of a recent Justice in Mexico Project survey of police in Guadalajara, Mexico's second largest city.<sup>66</sup> That survey found that nearly 70% of officers feel that promotions are not based on merit, and most (60%) think that personal connections drive one's career advancement on the force. If that is indeed the case, the new reforms will likely make police officers even more dependent on the whims of their superiors.

Finally, the mandate to promote police professionalism has been supported by recent efforts of the Mexican federal government to increase investments in training, equipment, infrastructure, standardization, and integrity (control de confianza) for law enforcement. The two major sources of government grants to aid states and municipalities in strengthening law enforcement are the Municipal Public Security Subsidy (Subsidio para la Seguridad Pública Municipal, SUBSEMUN) and the Public Security Assistance Fund (Fondo de Aportaciones para la Seguridad Pública, FASP).<sup>67</sup> Both funds have directed millions of dollars in direct financial assistance to improve local and state level police agencies, respectively. However, the effectiveness of these funding mechanisms has been questioned, given that large amounts of money have gone unspent in recent years.<sup>68</sup>

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<sup>64</sup>It is worth noting, given recent debates about police reform, that Article 115, Section VII of the Mexican Constitution indicates that "The police will follow the orders of the governor of the State, in those cases where he or she judges that it needs extra force, or that there is a serious disturbance of the public order."

<sup>65</sup>Zepeda Lecuona (2008).

<sup>66</sup>More than 80% of the more than 5,400 participants in the study reported earning less than \$800 USD per month, relatively low compared to other public sector employment. Moreover, despite civil service protections in the law, over two thirds felt that the procedures used by police departments for raises and promotions are unfair and not based on merit. Many officers reported excessively long working hours (70% work more than 50 hours a week with no overtime pay); a fifth of the force reported extremely extended shifts (a 24-hour shift for every two days off); and 68% reported 30 minutes or less for meals and breaks. Moloeznik, et al. (2009).

<sup>67</sup>FASP was formerly known as the Public Security Funds (*Fondos de Seguridad Pública*, FOSEG). FASP is also sometimes listed under a slightly different name: *Fondo de Apoyo en Seguridad Pública*. Otero (2006).

<sup>68</sup>For example, in 2009, the Federal District and the states of Guanajuato, Jalisco, and Quintana Roo did not spend nearly 90% of their allocated FASP funds. Seminario (2009), Mejía (2010).

In the end, successful police reform will ultimately hinge not only on directing more resources to law enforcement agencies, but on the introduction of new checks and balances for police and prosecutors. In this regard, the shift to adversarial procedures will have a significant impact on law enforcement professionalism because, by placing greater emphasis on due process and the rights of the accused, it will necessarily raise the standards for police conduct. Hence, it will be important to make sure that police and prosecutors are carefully vetted, well prepared and equipped, and properly supported by superiors to do their jobs effectively.

#### 4) Organized Crime: Providing New Tools to Combat Crime Syndicates

Finally, the 2008 reforms also significantly target organized crime, defined in accordance with the United Nations Convention Against Organized Crime, signed in Palermo, Italy in 2000. That convention broadly defines an organized crime syndicate as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences [with a maximum sentence of four or more years in prison]... in order to obtain, directly or indirectly, a financial or other material benefit.”

In cases involving organized crime, the Mexican constitution has now been amended to allow for the sequestering of suspects under “arraigo” (literally, to “root” someone, i.e., to hold firmly) for up to 40 days without criminal charges (with possible extension of an additional 40 days, up to a total of 80 days).<sup>69</sup> Under arraigo, prisoners may be held in solitary confinement and placed under arrest in special detention centers created explicitly for this purpose. Furthermore, in order to facilitate extradition, the reforms also allow for the suspension of judicial proceedings in criminal cases. Prosecutors may use the 40 day period to question the suspect and obtain evidence to build a case for prosecution. Because formal charges have not been levied, they are not entitled to legal representation and they are not eligible to receive credit for time served if convicted.

The arraigo procedure was first introduced in Mexico in 1983, as a measure to combat organized crime. However, in 2006, the Supreme Court ruled that the procedure was unconstitutional, citing violations of the habeas corpus rights of individuals held without charge. The 2008 reforms raised the arraigo procedure to the level of a constitutional provision, thereby eliminating charges of unconstitutionality. Because arraigo applies to serious crimes, and especially organized crime, it is used primarily by federal prosecutors. However, some states — like Nuevo León — have their own

<sup>69</sup>Currently, the Federal Code of Criminal Procedure does not have clear criteria for how a judge should make a determination regarding the application of arraigo, or what is the necessary burden of proof that prosecutors must met (e.g., probable cause). As stated under Article 133 of the CFPP, “The judicial authority may, at the request of the public prosecutor, impose preventive measures on the person against whom a criminal action is being introduced, in so far as these measures are necessary to prevent flight from judicial action; the destruction, alteration, or hiding of evidence; intimidation, threats, or improper influence over witnesses to the crime.” Deaton (2010), p. 17.

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provisions for the use of arraigo within their jurisdictions.<sup>70</sup> Critics highlight the inherent tension of accepting such an exceptional custody regime within a democratic society, and the potential abuses that it may bring. Meanwhile, how broadly, frequently, and effectively the procedure has been utilized since 2008 is not clear, in large part because access to information about arraigo cases is difficult to obtain.

In addition to special mechanisms for the detention of organized crime suspects, the 2008 reforms also paved the way for new uses of wiretapping and other tools for fighting organized crime. Also, following from the 2008 reforms, new supporting legislation on asset forfeiture (*extinción de dominio*) was passed in 2009 to define the terms for seizing property in cases related to drug trafficking, human trafficking, and auto theft.<sup>71</sup> Under the new law, the Federal Attorney General's office has discretion to determine when a particular suspect is involved in organized crime, and whether or not assets related to those crimes are eligible for forfeiture.<sup>72</sup>

More recently, in February 2010, President Felipe Calderón proposed a new General Law to Prevent and Sanction Crimes of Kidnappings, also known as the "Anti-Kidnapping Law" (*Ley Anti-Secuestro*).<sup>73</sup> In addition to the use of wiretapping, the bill also proposes the use of undercover operations to infiltrate kidnapping organizations, anonymous informants, witness protection programs, and asset forfeiture. If passed, the law would also apply higher penalties (30 years to life in prison) when the perpetrator poses as a government official, or kidnaps especially vulnerable individuals (minors, pregnant women, elderly persons, or mentally disabled persons); the minimum sentence for a kidnapping resulting in the victim's death would be 40 years in prison.<sup>74</sup> The reform also proposes special prison facilities for kidnappers to serve their sentences, as well as requiring that electronic tracking devices be placed on kidnappers released from prison after serving their sentence.

## IMPLEMENTING JUDICIAL REFORM AT THE FEDERAL AND STATE LEVEL

As noted above, a similar reform package was proposed in April 2004 by the Fox administration, but failed to gain legislative support. The 2008 judicial reform package came primarily from a bill passed in the Chamber of Deputies, with some significant

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<sup>70</sup>Interview with Nuevo León Assistant Attorney General Javier Enrique Flores Saldivar on March 4, 2010.

<sup>71</sup>Becerril and Ballinas (2009), Villamil (2009).

<sup>72</sup>"Assets falling subject to the law are defined as: instruments, objects, or products of crimes; those used to hide, disguise, or transform criminal proceeds; properties of third parties used to aid in the commission of crimes; and goods belonging to third parties deemed by the PGR to be the product of criminal activity... Under the law, the PGR must submit an annual report to Congress of asset seizures. Moreover, if a judge deems that a seizure was performed unjustly the assets must be returned with interest within six months." Justice in Mexico Project (2009).

<sup>73</sup>Gómez and Michel (2010), Informador (2010), Notimex (2010).

<sup>74</sup>The reform contemplates even harsher penalties for public officials involved in kidnapping.

modifications introduced in the Senate in December 2007.<sup>75</sup> The bill was approved with broad, multi-party support in the Chamber of Deputies by 462 out of 468 legislators present, and by a vote in the Senate by a 71–25 vote of members present on March 6, 2008.<sup>76</sup> Because the reform package included constitutional amendments — including revisions to ten articles (16–22, 73, 115, and 123) — final passage of the reforms required approval by a majority of the country’s 32 state legislatures. The reforms came into effect with the publication of the federal government’s official publication, the *Diario Oficial*, on June 18, 2008.

The scope and scale of change contemplated under the 2008 judicial reforms is enormous. Existing legal codes and procedures need to be radically revised at the federal and state level; courtrooms need to be remodeled and outfitted with recording equipment; judges, court staffs, and lawyers need to be retrained; police need to be professionalized and prepared to assist with criminal investigations; and citizens need to be prepared to understand the purpose and implications of the new procedures. After the reforms passed in 2008, the federal and state governments were given until 2016 — a period of up to eight years — to adopt the reforms.

The Secretary of the Interior (Secretaría de Gobernación, SEGOB) chairs the 11-member Coordinating Council for the Implementation of the Criminal Justice System (Consejo de Coordinación para la Implementación del Sistema de Justicia Penal, CCISJP), which is aided by a technical secretary who oversees the reform process within SEGOB.<sup>77</sup> The council also has nominal representation from academia and civil society.<sup>78</sup> Although the reforms were passed in mid-2008, the CCISJP was not formally inaugurated until its first convocation in June 2009, which was followed

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<sup>75</sup>One of the earliest Calderón-era legislative proposals to modify the judicial system came from Federal Deputy Jesús de León Tello, from the National Action Party (PAN). However, the bill that became the basis for the 2008 reforms was championed by the head of the Judicial Committee in the Chamber of Deputies, former-Mexico governor and then-Federal Deputy César Camacho Quiroz, from the PRI. After the bill passed in the Chamber of Deputies key provisions (having to do with the use of search and seizure without a warrant) were removed by the Senate in December 2007.

<sup>76</sup>There are 500 members total in the Chamber of Deputies and 128 members total in the Senate. Members of the PRD supported the reforms, though the PRD was the party most divided on the vote. Tobar (2008).

<sup>77</sup>In addition to the Secretary of the Interior, this council includes representatives from the Chamber of Deputies, the Senate, the Supreme Court, the Federal Attorney General (*Procuraduría Federal de la República*, PGR), the Public Security Secretary (*Secretaría de Seguridad Pública*), the Federal Judicial Council (*Consejo de la Judicatura Federal*), the National Public Security Conference (*Conferencia Nacional de Secretarios de Seguridad Pública*), the Legal Counsel of the Federal Executive Branch (*Consejería Jurídica del Ejecutivo Federal*), the National Commission of State Supreme Courts (*Comisión Nacional de Tribunales Superiores de Justicia*, CONATRIJ), and the National Conference of Attorneys General (*Conferencia Nacional de Procuración de Justicia*).

<sup>78</sup>Professor Miguel Sarre Iguíniz, of the Technical Autonomous Institute of Mexico (Instituto Tecnológico Autónomo de México, ITAM) was approved as the academic representative in January 2010. Businessman and NGO activist Alejandro Martí García, whose son was kidnapped and killed, was appointed as the representative for civic organizations on the council. Secretaría de Gobernación (2010).

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by additional meetings in August 2009 and January 2010.<sup>79</sup> This initial delay was partly attributable to the death of the former technical coordinator of the council, Assistant Secretary of the Interior José Luis Santiago Vasconcelos, in a plane crash in Mexico City in April 2008, alongside then-Secretary of the Interior Juan Camilo Mouriño. The new technical coordinator for the counsel, Assistant-Secretary of the Interior Felipe Borrego Estrada, was appointed in December 2008.<sup>80</sup>

The role of the CCISJP is to: 1) serve as the liaison between the various members of the counsel and other entities working to promote judicial reform, 2) monitor advances in the implementation of federal reforms at the state level, 3) provide technical assistance to states working to implement the reforms (e.g., courtroom design, software, etc.), 4) provide training for judicial system operatives (e.g., judges, lawyers, legal experts), and 5) manage administrative and financial aspects of the reform (e.g., guiding legislative budget requests). The goal of the CCISJP is to have reforms approved in all Mexican states and implemented in 19 of 32 federal entities (31 states and the Federal District) by 2012, when the current administration leaves office.<sup>81</sup>

Efforts to implement these reforms will require resources, time, and some coaxing at both the federal and state level. Foremost is the problem of funds. While there is widespread recognition of the need for a massive investment of funds to the judicial sector, there is no estimate for the total cost of implementing the reforms. However, the commitment of governmental resources at the federal and state level will likely need to be greatly increased from their present levels.<sup>82</sup> A second challenge is the effort to generate momentum and political will at both the federal and state level. At the federal level, the Supreme Court has made little progress in developing a new Federal Code of Criminal Procedure (Código Federal de Procedimientos Penales, CFPP). This has left states with little guidance on the federal procedures that will

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<sup>79</sup>The inaugural meeting of the council took place on June 18, 2009, one year after the reforms were first approved. Deputy Carlos Navarro Sugich represented the Chamber of Deputies, Senator Mario López Valdez represented the Senate, Counselor Oscar Vázquez Marín represented the Consejo de la Judicatura Federal, Minister José de Jesús Gudiño Pelayo represented the Supreme Court. The second and third meetings took place on August 13, 2009 and January 8, 2010, respectively. Secretaría de Gobernación (2009).

<sup>80</sup>At the time of the crash, Santiago Vasconcelos, 51, was a long time federal prosecutor who had recently joined Pres. Calderón's staff as a top legal advisor. As a former drug prosecutor, Santiago Vasconcelos previously headed the Special Office for the Investigation of Organized Crime (*Subprocurador de Investigación Especializada de Delincuencia Organizada*, SIEDO), was subject to frequent threats on his life. Beginning his service with the Attorney General's office in 1993, Santiago Vasconcelos was appointed assistant attorney general for Judicial and International Affairs in 2007. Santiago Vasconcelos had helped oversee a dramatic increase in cross-border extraditions, including that of Gulf cartel leader Osiel Cardenas. His replacement, Borrego Estrada, was previously a member of the National Action Party (PAN), served as president of the Supreme Court of Zacatecas from 1998 to 2004, and at the time of his appointment was secretary of the Justice Committee in the Chamber of Deputies and PAN representative for the Committee for the Reform of the State. *El Universal* (2008), *Milenio* (2008).

<sup>81</sup>Interview with Felipe Borrego Estrada in Mexico City on March 17, 2010.

<sup>82</sup>One indicator of the low prioritization of resources for justice reform implementation is that the 2009 federal budget failed to include any funding for the CCISJP itself, which then required a special allocation to cover the activities of the technical secretary's office.

ultimately have important bearing on their own criminal codes. While there are some notable advocates for the reform on the Supreme Court, it is not clear how or when it will begin to demonstrate leadership on the generation of the new code of criminal procedure.

Meanwhile, at the state level, there has been some significant progress. Indeed, six states — Chihuahua, Mexico State, Morelos, Oaxaca, Nuevo León, and Zacatecas — had already adopted and implemented similar reforms prior to 2008, providing important precedents that informed the federal initiative. Indeed, in June 2007, the state of Chihuahua had already held its first oral trial.<sup>83</sup> Meanwhile, several other states — Baja California, Durango, and Hidalgo — had approved but not yet implemented state-level initiatives prior to the federal reforms. According to a January 2010 report from the CCISJP, several other states are currently working to revise their constitutions and criminal codes to achieve compliance with the 2008 reform.<sup>84</sup> Still, some states lag significantly behind, with no significant signs of activity toward adopting the reforms.<sup>85</sup> To be sure, with a total of 18 state-level elections in 2009 and 2010, there have been significant political distractions that make it difficult to mobilize reform initiatives. However, some states will need to either pick up the pace or eventually lobby for an extension of the current 2016 deadline for passage of the reforms.

There are certainly real prospects for the 2008 reforms to be successful. Proponents of Mexico's judicial sector reforms point to seemingly successful transitions from inquisitorial to accusatory systems elsewhere in Latin America, most notably Chile.<sup>86</sup> Indeed, the Mexican government has established an international agreement with the government of Chile to share experiences and training in order to facilitate Mexico's transition to the adversarial model of criminal procedure. The experience of Chile appears to suggest that the use of adversarial trial proceedings and alternative sentencing measures reduces paperwork, increases efficiency, and helps to eliminate case backlogs by concentrating procedures in a way that facilitates judicial decisions. Meanwhile, the emphasis on rights — for both the victim and the accused — is believed to strengthen the rule of law, promoting not only “law and order” but also governmental accountability and equal access to justice.

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<sup>83</sup>Anseldo Chávez Rivero, an indigenous man of Tarahumara descent, was charged with the rape of two minors; he and other witnesses testified in their native language before Judge Francisco Manuel Sáenz Moreno, who found the defendant guilty. Fierro (2007).

<sup>84</sup>According to CCISJP, in several states, one or more branches of government have demonstrated significant activity or political will to advance the reforms. These include Guanajuato, Tabasco, Tlaxcala, and Yucatán. Secretaría de Gobernación (2010).

<sup>85</sup>According to CCISJP, these states include Aguascalientes, Baja California Sur, Campeche, Chiapas, Coahuila, Colima, the Federal District, Guerrero, Jalisco, Michoacán, Nayarit, Puebla, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, and Veracruz. *Ibid.*

<sup>86</sup>Chile, of course, has had the advantage of a strong judiciary, low levels of institutional corruption in the judicial sector (including its national police force), and a relatively strong economy. Even so, on the aforementioned 2007 Gallup poll, Chileans rated the performance of their judicial system far more critically than Mexicans.

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Still, despite these much-touted benefits, Mexico's judicial reforms have faced serious and merited criticism, both from traditionalists and from advocates of more substantial reform. Some initially bristled at the perception that the reforms were being actively promoted by outside forces, particularly from the United States.<sup>87</sup> On a related note, given troubling gaps and inconsistencies riddled in the reforms themselves, some critics expressed concerns that the reform constituted an ill-conceived, costly, and potentially dangerous attempt to impose a new model without consideration of the intricacies, nuances, and benefits of Mexico's existing system. Indeed, even now, despite widespread agreement that massive investments in the judicial sector will be needed, there is no concrete estimate of the reforms' anticipated financial costs on which to base budgetary allocations. In short, critics tend to fear that Mexico's sweeping judicial reforms may be trying to do too much, too fast, with too few resources, with too little preparation, and with little promise of success.<sup>88</sup>

Meanwhile, others worry that the reforms have not gone far enough. In the eyes of some critics, the reforms ultimately fail to address the major institutional weaknesses of the judicial sector.<sup>89</sup> Indeed, in other countries where similar reforms have been implemented, such as Honduras, problems of corruption and inadequate professional capacity have continued to undermine the effective administration of justice. At the same time, as noted above, the 2008 reforms introduced new measures that may actually undermine fundamental rights and due process of law. The use of *arraigo* — sequestering of suspects without charge — is widely criticized for undermining habeas corpus rights and creating an “exceptional legal regime” for individuals accused of organized crime.<sup>90</sup> Although not usable as evidence in trial, confessions extracted (without legal representation) under *arraigo* can still be submitted as supporting evidence for an indictment.<sup>91</sup> Also of concern to due process advocates is the introduction of the use of the plea bargain (*juicio abreviado*), since unscrupulous prosecutors could try to use plea agreements as a means to pressure innocent persons into incriminating themselves.

Having strong rights for the accused helps to ensure that the government is itself bound by the law, and that all citizens have access to justice. Respecting the

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<sup>87</sup>Proceso (2008).

<sup>88</sup>Pelayo and Solorio (2010).

<sup>89</sup>Corcoran (2008).

<sup>90</sup>As Zepeda (2008) argues, the worst miscarriage of justice is when the coercive apparatus of a democratic state deprives an innocent person is deprived of their liberty; without a formal charge against an individual, the presumption of innocence should prevail. Zepeda Lecuona (2008).

<sup>91</sup>One concern about the *arraigo* is that it undermines the reforms' torture prohibitions. According to Deaton (2010), “The detaining authorities have a powerful incentive to torture a detainee in order to get them to make false confessions so that they may then have the “evidence” to file charges against them. Not only do they have the incentive, but given the secret nature of *arraigo* and its placement of detainees incommunicado, without adequate access to their attorney, *arraigo* is an invitation to torture. That is, it is an invitation to commit the very abuse that the constitutional prohibition against torture is designed to prevent.” Alcántara (2006), Deaton (2010), p. 16.

presumption of innocence and the due process of law ultimately imposes the burden of proof on police and prosecutors, who must demonstrate the credibility of their charges against a suspect. However, in Chile and elsewhere, concerns about pre-trial release and the risk of flight by the accused has led to backsliding on reforms that provided important protections for the presumption of innocence.<sup>92</sup> Given the proliferation of violent crime, many Mexicans are understandably reluctant to place greater emphasis on the presumption of innocence and pre-trial release, as this rights-based approach may excessively favor criminals to the detriment of the rest of society. To be sure, protecting the legal rights of crime suspects is often unsavory to the public, and some have come to the cynical conclusion that “oral trials only protect the criminals.”<sup>93</sup> As a result, there is some concern among reform advocates that Mexican authorities may give in to practical and public pressures that will undermine the rights-focused aspects of the reforms. In short, the road ahead for Mexico’s 2008 judicial reforms will likely be long, difficult, and of uncertain destination.

## CONCLUDING OBSERVATIONS: PROSPECTS FOR THE FUTURE

Mexico’s recent justice sector reforms are much more involved than the mere introduction of “oral trials.” They involve sweeping changes to Mexican criminal procedure, greater due process protections, new roles for judicial system operators, and tougher measures against organized crime. Advocates hope that the reforms will bring greater transparency, accountability, and efficiency to Mexico’s ailing justice system. However, by no means do recent reforms guarantee that Mexico will overcome its current challenges and develop a better criminal justice system. Whether this effort to reform the criminal justice system will succeed may depend less on these procedural changes than on efforts to address other long-standing problems by shoring up traditionally weak and corrupt institutions.

The ultimate legacy of these reforms will depend largely on how they are implemented, and by whom. There will need to be enormous investments in the training and professional oversight of the estimated 40,000 practicing lawyers in Mexico, many of whom will operate within the criminal justice system’s new legal framework.<sup>94</sup> Enabling Mexico’s legal profession to meet these higher standards will re-

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<sup>92</sup>Indeed, there are some concerns that reform efforts in Chile have not shown as much progress as advocates would like, and has even experienced a significant counter-reform movement that has reversed some key aspects of their reforms. Venegas and Vial (2008).

<sup>93</sup>Blake and Blake Bohne (2009).

<sup>94</sup>Since there are no requirements that lawyers maintain active bar membership or registration to practice law, the total number of practicing lawyers is unknown. Fix Fierro (2007) estimates this number to be around 40,000. There is no clear indication exactly how many of these practice criminal law. Fix Fierro suggests that, given the proliferation of Mexican law schools in recent years, Mexico’s legal profession suffers from a problem of quantity-over-quality. Fix Fierro and Jiménez Gómez (1997).

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quire a significant revision of educational requirements, greater emphasis on vetting and continuing education to practice law, better mechanisms to sanction dishonest and unscrupulous lawyers, and much stronger and more active professional bar associations.<sup>95</sup> At the same time, more than 400,000 federal, state, and local law enforcement officers have been given a much larger role in promoting the administration of justice. If they are to develop into a professional, democratic, and community-oriented police force, they will need to be properly vetted, held to higher standards of accountability, given the training and equipment they need to do their jobs, and treated like the professionals they are expected to be.

For comparative perspective, it is worth noting that in the United States several key reforms to professionalize the administration of justice and promote a rights-based criminal justice system only took effect in the post-war era. Also around the same time period, the development of professional standards and oversight mechanisms for actors in the U.S. judicial system took place sporadically and over the course of several decades. In the 1960s and 1970s, the United States established key provisions to ensure access to a publicly funded legal defense (1963 *Gideon v. Wainwright*), due process for criminal defendants (1967 *Miranda v. Arizona*), and other standards and practices to promote “professional” policing. In effect, this due process revolution — as well as other changes in the profession — helped raise the bar for police, prosecutors, and public defenders, and thereby promoted the overall improvement of the U.S. criminal justice system.<sup>96</sup>

Moreover, it took at least a generation and major, targeted investments to truly professionalize the U.S. law enforcement and judicial sectors. The Safe Streets Act of 1968 mandated the creation of the Law Enforcement Assistance Administration (LEAA), which helped fund criminal justice education programs. LEAA also supported judicial sector research through the National Institute of Law Enforcement and Criminal Justice, the precursor to the National Institute of Justice. Mexico will likely need to make similarly large investments in the judicial sector, and will require a similarly long-term time horizon as it ventures forward.

One possible accelerator for Mexico is that many domestic and international organizations have been working actively to assist with the transformation. The National Fund for the Strengthening and Modernization of Justice Promotion (Fondo

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<sup>95</sup>Efforts to promote professionalism among lawyers are needed, as they will be primarily responsible for “quality control” in the Mexican criminal justice system. Although Mexico has recently adopted a new code of ethics, Mexican lawyers are not presently required to receive post-graduate studies, take a bar exam, maintain good standing in a professional bar association, or seek continuing education in order to practice law. All of these are elements of legal professionalism that developed gradually and in a somewhat ad hoc manner in the United States, and mostly in the post-war era.

<sup>96</sup>At the same time, lawyers were building new standards for professional conduct, including its Model Code of Ethics first developed by the American Bar Association (ABA) in 1969 and used in most states. This code was preceded in 1908 by the Canons of Professional Ethics. An ABA Commission on Evaluation of Professional Standards was first appointed in 1977, and the ABA developed its Model Rules of Professional Conduct in 1983. Only one state, California, does not formally adhere to the model rules, though it does have its own rules of professional conduct. See: [www.aba.org](http://www.aba.org).

Nacional para el Fortalecimiento y Modernización de la Impartición de la Justicia, Fondo Jurica) has sponsored the development of a model procedural code and new training programs. Meanwhile, U.S. government agencies and non-governmental professional associations have offered various forms of assistance, including financial assistance and legal training. Notably, the Rule of Law Initiative of the American Bar Association (ABA), the National Center for State Courts, and U.S. government-funded consulting agencies, like Management Systems International, have also worked to promote reform and provide training and assistance. Also, from 2007–2008, the Justice in Mexico Project organized a nine-part series of forums hosted in Mexico and the United States in collaboration with the Center for Development Research (Centro de Investigación para el Desarrollo, A.C., or CIDAC) to promote analysis and public dialogue about judicial reform.<sup>97</sup>

Of critical importance for all of these efforts will be the development of quantitative and qualitative metrics to evaluate the actual performance of the new system. Are cases handled more efficiently by the criminal justice system than in the past? Are all parties satisfied when their cases are handled through mediation? Have police, prosecutors, public defenders, and judges demonstrated significant improvements in capacity and service delivery? Does the new criminal justice system adequately prepare convicts (and communities) for their ultimate re-entry to society? Unfortunately, on many of these questions, there are few adequate baseline indicators available.<sup>98</sup>

The enormity of the challenges confronted by Mexico's judicial sector is not to be under-estimated. Mexico is working to make major progress in a relatively short period, attempting to radically alter hundreds of years of unique, independent legal tradition in less than a decade. The reality is that the reform effort will take decades, will require massive resources and effort, and will involve a great deal of trial and error. Also, given the dramatic changes proposed, there may be significant and legitimate resistance to some aspects of the reforms. In working through these issues, Mexico can certainly look to and learn from both the positive and negative experiences of other Latin American countries that have adopted legal reforms in recent years (e.g., Chile, Colombia, Costa Rica, El Salvador, Honduras, and Venezuela). However, like Mexico itself, the Mexican model of criminal justice is quite unique. Any effort to change the Mexican system will undoubtedly develop along its own

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<sup>97</sup>This series of forums, known as the “Justice Network / *Red de Justicia*,” brought together hundreds of U.S. and Mexican law students, legal practitioners, businesspeople, academics, journalists, and NGO representatives in Aguascalientes (September 2007), Baja California (May 2007), Chihuahua (March 2008), Coahuila (March 2007), Jalisco (July 2007), Nuevo León (January 2008), Oaxaca (November 2007), and Zacatecas (September 2007). In 2009, the project also worked to establish a bi-national legal education program between the University of San Diego and the Universidad Autónoma de Baja California (UABC) with assistance from Higher Education for Development (HED).

<sup>98</sup>Recent efforts by the Justice in Mexico Project to interview lawyers and police through an instrument known as the “Justiciabárometro,” constitute some of the first independent surveys on the profile, operational capacity, and professional opinions of judicial system operators. However, other process indicators are sorely needed to measure the real implications of the reforms.

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course, at its own pace, and with sometimes unexpected results. In the end, the success of these efforts will rest on the shoulders a new generation of citizens and professionals within the criminal justice system, who will be both the stewards and beneficiaries of Mexico's on-going judicial sector reforms.

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# POLICE REFORM IN MEXICO: ADVANCES AND PERSISTENT OBSTACLES

Daniel Sabet

## INTRODUCTION

At no time in Mexico's history has there been a greater need for professional police forces. The current security crisis, which resulted in an estimated 6,587 organized crime related killings in 2009, has brought police reform to the top of the national agenda.<sup>1</sup> While law enforcement should be the primary tool to address the country's crime problems, the police are viewed as part of the problem rather than part of the solution. A brief review of the daily newspapers reveals problems such as (1) corruption and collusion with organized crime, (2) abuses of human rights in the form of torture, unwarranted search and seizure, violations to due process, and inversion of the presumption of innocence, and (3) ineffectiveness exemplified by the inability to stem the violence, poor investigation and intelligence gathering capabilities, and high rates of impunity. Evidence of these three problems has produced a deep seeded lack of confidence in the police, which ironically makes the police even less effective and further perpetuates corruption and abuse.

Addressing Mexico's security crisis will require creating an effective police force operating within the confines of the law. This chapter seeks to provide an overview of police reform in Mexico and elucidate the obstacles to institutional change. The chapter begins with an introduction to policing in Mexico and offers a brief exploration of the evidence of corruption, abuse, and ineffectiveness that plague Mexico's various and numerous police departments. The analysis briefly considers the different approaches to reform, including a limited discretion approach, professionalization, and militarization. I then offer an overview of reform during the last three federal administrations: Ernesto Zedillo Ponce de León (1994–2000), Vicente Fox Quesada (2000–2006), and Felipe Calderón Hinojosa (2006–2012). The analysis concludes that considerable advances have been made but is forced to recognize that the fundamental problems of corruption, abuse, and ineffectiveness remain. To understand why, I explore the considerable obstacles that continue to serve as a challenge to reform efforts.

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<sup>1</sup>The number of organized crime related killings is based on estimates from Reforma newspaper.

## POLICING IN MEXICO

While there are conflicting counts of Mexico's police forces, estimations as of June 2007 placed the number of public security personnel in Mexico at 454,574, of which 368,315 were police officers (See Table 1.1). When population is taken into account, it is estimated by Guillermo Zepeda Lecuona that there are 351 police for every one-hundred thousand people in Mexico and 299 police for every one-hundred thousand people when the Federal District is excluded. Both these numbers are above the United Nations average of 225 and the recommended level of 280 police per one-hundred thousand people (although a few individual states fall below this mark.)<sup>2</sup>

These law enforcement personnel are divided by both jurisdiction and function. Jurisdictionally, the police are divided into municipal, state, and federal police departments, each of which has different responsibilities. For example, drug trafficking is considered a federal crime and falls under the jurisdiction of the federal police. Homicides are state crimes and investigated by state police. Functionally, the police have traditionally been divided into preventive and investigative departments. Preventive police departments operate at all three levels of government and are typically organized under the auspices of a Secretariat of Public Security.<sup>3</sup> Their primary job is to conduct patrols, maintain public order, prevent crime and administrative violations, and be the first responders to crime. The transit police, responsible for sanctioning traffic violations and responding to accidents, are technically considered part of the preventive police; however, in some cases they are organized as a separate police force. The ministerial police, formerly known as the judicial police, organized under the auspice of federal and state public ministries, are responsible for investigating crimes and carrying out judicial and ministerial warrants.<sup>4</sup>

Unfortunately, a number of authors and studies have clearly identified persistent patterns of corruption, abuse, and ineffectiveness among all of these different types of forces.

- Corruption: Mexico's chapter of Transparency International, Transparencia Mexicana A.C., has conducted surveys measuring self-reported bribe payments that have consistently found that bribes to transit police officers and

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<sup>2</sup>Guillermo Zepeda Lecuona. 2009. "Mexican Police and the Criminal Justice System." In Robert A. Donnelly and David A. Shirk. *Police and Public Security in Mexico*. San Diego: University Readers: pg. 42.

<sup>3</sup>Technically, the Federal Police is no longer a preventive police force. Reformers in the Calderón administration have sought to simplify Mexican policing by eliminating the jurisdictional and functional divisions within the police. As such, the 2009 Federal Police Law granted the newly named Federal Police investigative functions. Also on the legislative agenda is a proposal to eliminate Mexico's municipal police forces. These issues will be dealt with in greater detail below.

<sup>4</sup>See Benjamin Reames. 2003. "Police Forces in Mexico: A Profile." Working Paper: Reforming the Administration of Justice in Mexico. Center for U.S.-Mexican Studies; or Ernesto López Portillo Vargas. 2002. "The Police in Mexico: Political Functions and Needed Reforms." In *Transnational Crime and Public Security*, edited by John Bailey and Jorge Chabat. La Jolla: Center for U.S.-Mexican Studies for an in-depth description of the Mexican police structure.

TABLE 1: BREAK DOWN OF MEXICO'S ESTIMATED 454,574 LAW ENFORCEMENT PERSONNEL (JUNE 2007)

Police	Number	Percent
Federal Preventive Police and National Migration Institute	18,296	4.97%
State ministerial police	25,615	6.95%
Federal ministerial police	5,900	1.60%
State preventive police	94,587	25.68%
Mexico Federal District preventive police	77,132	20.94%
Municipal preventive police	146,785	39.85%
Total Police	368,315	100.00%
Non-police public security officials	Number	Percent
Public ministers and specialists	24,453	28.35%
Prison personnel	30,403	35.25%
Police administrators	31,403	36.41%
Total	86,259	100.00%

Note: There is no authoritative tally of Mexico's police forces and federal agencies have provided conflicting numbers. The figures reported by Zepeda Lecuona are the most comprehensive but the estimates of federal police forces contradict other government estimations. Data cited below on the federal forces provided in the Calderón administration's annual report puts the total number of PFP and AFI in 2007 at 21,761 and 7,992 respectively.

Source: Guillermo Zepeda Lecuona. 2009. Mexican Police and the Criminal Justice System. In David Shirk ed. *Police and Public Security in Mexico*. San Diego: University Readers. Using statistics from the Sistema Nacional de Seguridad Pública.

public security personnel top their list of the most common acts of corruption in Mexico.<sup>5</sup> Furthermore, daily newspaper reports and academic writings also reveal extensive collusion with organized crime.<sup>6</sup>

- Abuse: A study conducted by Fundar, a Mexico City based think-tank, reveals interesting variation in the type of abuses across departments.<sup>7</sup> The study finds that of 744 Mexico City residents who had contact with the police, 385 (51.7%, or 10.5% of the total sample) reported some form of abuse or mistreatment by the police (broadly understood to include insults). Transit police were most often accused of soliciting bribes; preventive police were most often accused of threats to be charged on false grounds, insults and humiliations, and soliciting bribes; and ministerial police were most often accused of threats to obtain a confession, to cause harm, or to charge on false grounds.<sup>8</sup> In addition, human rights commission reports have detailed specific cases of police excesses.<sup>9</sup>
- Ineffectiveness: Using large sample victimization surveys, the Citizen Institute of Insecurity Studies (Instituto Ciudadano de Estudios de la Inseguridad — ICESI) estimates that 11.5% of Mexicans were a victim of crime in 2008. Moreover, they find that citizens only report 22% of these crimes and only 15% of these crimes results in an open case file.<sup>10</sup> Zepeda and others have found that only a very small percentage of crimes result in successful prosecutions.<sup>11</sup>

These findings have been confirmed by qualitative ethnographic studies that reveal in great detail the nature of corruption, abuse, and ineffectiveness

<sup>5</sup>Transparencia Mexicana. 2007. *Informe ejecutivo: Índice Nacional de Corrupción y Buen Gobierno*. Mexico City: Transparencia Mexicana A.C.

<sup>6</sup>See for example, John Bailey and Matthew M. Taylor. 2009. "Evade, Corrupt, or Confront? Organized Crime and the State in Mexico and Brazil." *Journal of Politics in Latin America*. Vol. 2: 3–29, Daniel M. Sabet. 2010. Confrontation, Collusion, and Tolerance: The Relationship between Law Enforcement and Organized Crime in Tijuana. Forthcoming in *The Mexican Law Review*. Vol. 3(1); Luis Astorga. 2005. *El Siglo de las Drogas: El narcotráfico, del Porfiriato al nuevo milenio*. Mexico City: Plaza Jánés.

<sup>7</sup>Claire Naval. 2006. *Irregularities, Abuses of Power, and Ill-Treatment in the Federal District: The Relation between Police Officers and Ministerio Público agents, and the population*. México: Fundar, Centro de Análisis e Investigación A.C.

<sup>8</sup>*Ibid.*

<sup>9</sup>For example, in 2006, police from the State of Mexico clashed with protestors in San Salvador Atenco resulting in numerous alleged violations including arbitrary detentions, torture and sexual abuse. Comisión Nacional de Derechos Humanos. 2006. *Recomendación 38/2006 sobre el caso de los hechos de violencia suscitados los días 3 y 4 de mayo de 2006 en los municipios de Texcoco y San Salvador Atenco, Estado de México*. Mexico City: Comisión Nacional de Derechos Humanos.

<sup>10</sup>ICESI. 2009. *Sexta Encuesta Nacional Sobre Inseguridad: Resultados Primera Parte*. Mexico City: Instituto Ciudadano de Estudios sobre la Inseguridad A.C.

<sup>11</sup>Guillermo Zepeda Lecuona. 2009. *Índice de Incidencia Delictiva y Violencia*. Mexico City: Centro de Investigación para el Desarrollo A.C.

in Mexico's police forces and the factors that give rise to these problems, such as poor working conditions, perverse institutional incentives, distrust between police and citizens, and low moral.<sup>12</sup> Some scholars contend that corruption, abuse, and ineffectiveness should not be surprising given that historically the police primarily existed to support the governing regime rather than to protect and serve the Mexican people.<sup>13</sup> This was the case from Benito Juárez's *Rurales*, formed in the mid-1800's, to the Institutional Revolutionary Party's Federal Security Directorate (Dirección Federal de Seguridad — DFS), which was dissolved in 1986.<sup>14</sup> Regardless of whether or not these problems are the product of historical legacies, however, there is clearly an urgent need for reform.

### APPROACHES TO REFORM

Given the above mentioned findings, it is necessary to ask: why are officers not acting consistent with their mission and what can be done to reduce corruption and abuse and improve police effectiveness? Many Mexican police leaders have answered the former question with Robert Klitgaard's formula that *monopoly plus discretion equals corruption*. As such, rather than address the causes of corruption, they have attempted to reduce police discretion.<sup>15</sup> The hallmarks of what can be termed the "limited discretion model" include constant rotation of personal (to prevent police from developing unhealthy commitments), deployment in large groups (to make it harder to arrange corrupt deals), restricted access to information, and reductions in authority. For example, preventive police are often sent to patrol in a district of which they have no knowledge; they are not allowed to make arrests unless a criminal is caught red handed; and they are prohibited from handling evidence or interviewing witnesses. Ministerial police are tasked to carrying out warrants on cases they know nothing about; they are asked to chauffeur witnesses to the public ministers rather than conduct interviews themselves; and they are buried under paperwork.

Ironically, these policies have not only failed to reduce corruption and abuse, they have had the unfortunate impact of turning the police into ineffective and reactive security guards. For example, Elena Azaola argues that rather than create accountable police, reporting requirements for investigative police have created what she

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<sup>12</sup>Nelson Arteaga Botello and Adrián López Rivera. 1998. *Policía y corrupción: El caso de un municipio en México*. México: Plaza & Valdés; Elena Azaola and Marco Antonio Ruiz Torres. 2009 *Investigadores de Papel. Poder y derechos humanos entre la policía judicial de la Ciudad de México*, Fontamara, México D.F.; María Eugenia Suárez de Garay. "Mexican Law Enforcement Culture: Testimonies from Police Behind Bars." In Robert A. Donnelly and David A. Shirk. *Police and Public Security in Mexico*. San Diego: University Readers

<sup>13</sup>Paul J. Vanderwood. 1992. *Disorder and Progress: Bandits, Police, and Mexican Development*. Wilmington: Scholarly Resources Inc; Lopez Portillo. *The Police in Mexico*.

<sup>14</sup>See Astorga. *El Siglo de las Drogas*. for dissolution of the DFS.

<sup>15</sup>Robert Klitgaard. 1988. *Controlling Corruption*. Berkeley: University of California Press

calls “investigadores de papel,” or “paper investigators.”<sup>16</sup> Guillermo Zepeda sums the problem up well when he writes, “Generally speaking, both society as a whole and the authorities themselves mistrust the police, but instead of taking steps to improve the police, the police have seen their functions stripped away piece by piece.”<sup>17</sup> This paradigm is still predominant in a number of departments and altering it confronts a chicken and egg problem: treating the police as corrupt and abusive perpetuates unprofessional departments; however, police cannot be treated as professionals if they are corrupt and abusive.

Recognizing the failure of the limiting discretion approach, more recent reforms have sought to produce police forces deserving of the authority and discretion necessary to be effective. These include a wide range of reforms, such as raising salaries and benefits, improving recruitment and selection criteria, elevating training times and standards, offering specialized training, developing and certifying operational procedures, offering a system of merit based promotion, vetting officers, and creating and strengthening accountability mechanisms and oversight.

Despite a growing consensus on these measures, there are considerable implementation challenges to such a holistic reform package. Moreover, these changes are being carried out under two very different paradigms: (1) citizen oriented professionalization and (2) militarization. The former can be seen in police departments led by reformist civilian police chiefs and have been complemented with citizen outreach and community oriented policing strategies. Documented examples include the Chihuahua City police force (1998–2009) and the Queretaro state police (2003–2009).<sup>18</sup>

Militarization shares many of the same elements of reform but with a strong emphasis on discipline and hierarchy under the command of current or former military leadership. As such, the militarization approach is best viewed as a half-way point between the limited discretion model and the professionalization model, as officers are still afforded very limited authority and discretion. While a professionalization approach is more desirable, given the lack of trust in the police and the ever worsening security crisis, the militarization paradigm currently predominates. This can be seen most visibly in increasingly common appointment of military and retired military personnel to lead Mexico’s state and municipal police forces.<sup>19</sup>

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<sup>16</sup>Elean Azaola and Marco Antonio Ruiz Torres. 2009 *Investigadores de Papel. Poder y derechos humanos entre la policía judicial de la Ciudad de México*, Fontamara, México D.F.

<sup>17</sup>Zepeda Lecuona. “Mexican Police and the Criminal Justice System”: pp. 42.

<sup>18</sup>Daniel M. Sabet. 2009. Two Steps Forward: Lessons from Chihuahua. In Robert A. Donnelly and David A. Shirk. *Police and Public Security in Mexico*. San Diego: University Readers; Juan Salgado. 2009.

“Buenas prácticas en prevención del delito y seguridad ciudadana en México.” Presented at the Seminario Internacional de Seguridad y Convivencia Ciudadana. Chihuahua: March 19.

<sup>19</sup>See Roderic A. Camp’s contribution to this working paper series for statistics on military personnel in local law enforcement. See Fogelson (1997) for a discussion of militarization vs. professionalization in U.S. policing. Fogelson, Robert M. 1977. *The Big-City Police*. Cambridge: Harvard University Press.

## OVERVIEW OF POLICE REFORM IN MEXICO

In the following section, I offer an overview of police reform in Mexico under the last three federal administrations. As all police departments and all three federal administrations have seen their fair share of corruption scandals, it is tempting to conclude that Mexican police are the same as they were fifteen years ago. A closer look, however, reveals that some important advances have been made. Nonetheless, there are a frustrating number of reforms that have never made their way from paper to implementation and others that have not survived administration changes or changes in police leadership.

Police reform arguably did not become a national priority until the administration of Ernesto Zedillo (1994–2000); however, previous administrations did confront civil society pressure to address human rights abuses. As mentioned above, President Miguel de la Madrid Hurtado was pressured to disband the DFS, and following the 1990 murder of Sinaloa human rights activist Norma Corona (who had uncovered judicial police abuses and extrajudicial killings) the administration of Carlos Salinas de Gortari established the National Human Rights Commission. The Commission was later made independent, given constitutional status and replicated across the Mexican states. Unfortunately, the Commission’s credibility has declined during the Fox and Calderón administrations, and the government’s war against drug trafficking organizations has produced an increase in allegations of arbitrary detention, torture, and violations of due process.<sup>20</sup> Nonetheless, the commissions have had a profound impact on Mexican policing. While human rights abuses still occur at unacceptable levels, the commissions offer aggrieved citizens an autonomous institution to investigate their complaints. Non-obligatory recommendations emitted by the commissions, while too frequently ignored, at least offer civil society an authoritative account of alleged abuses. Moreover, the commissions are frequently responsible for training police officers and educating the public about human rights. As a result, in interviews, reformist police officers contend that there has been a significant shift in officers’ attitude and behavior as a direct result of the human rights commissions.

### ZEDILLO

A crime wave in the mid-1990’s revealed the deficiencies in the country’s police forces and moved police reform onto the national agenda. A diagnostic study conducted early in the Zedillo administration was not encouraging and identified a

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<sup>20</sup>From 1990 to 2002, the federal government reports an average of 72 officers a year sanctioned as a result of recommendations of the National Human Rights Commission; however, since 2003 the government reports no such sanctions. Felipe Calderón Hinojosa. 1999. *Tercer Informe de Gobierno*. For a critique of the Commission see Human Rights Watch. 2008. “Mexico’s National Human Rights Commission: A Critical Assessment.” Vol. 20. No. 1B. New York: Human Rights Watch. The report argues that the Commission has become a “chronicler of the status quo” having narrowly interpreted its mandate, failed to follow up on recommendations, not promoted reform, and hesitated to “name and shame.”

litany of weaknesses across the country's many departments.<sup>21</sup> Investment in public security was minimal, estimated at .008% of the GDP. There were over 2,000 departments across the country but only 41 police academies and many police never received any formal training. Of the 41 academies, only 14 required education up to the 9<sup>th</sup> grade, and the majority of preventive police throughout the country (55.6%) had only primary school or no education at all.<sup>22</sup> The report recognized the lack of capacity in state and municipal forces and the lack of coordination across the country's many departments.

To improve coordination across jurisdictions and to set national policy for police professionalization and operations, the Zedillo administration oversaw the creation of the National Public Security System (Sistema Nacional de Seguridad Pública — SNSP). The system entailed the creation of a National Public Security Council, made up of state and national police and political leaders, and state and local councils, made up of federal, state, and municipal leaders.<sup>23</sup> While national policy and inter-jurisdictional cooperation have been elusive targets, the SNSP continues to be the primary mechanism to set national policy.<sup>24</sup>

Rather than confront the weaknesses of the poorly trained and ill-equipped state and municipal forces more directly, the Zedillo administration chose to create and focus its attention on a new federal police force, the Federal Preventive Police (PFP — *Policía Federal Preventiva*). By mid-2000 the new agency totaled around 11,000 men and women made up of roughly 5,000 military personnel, 4,000 officers from former federal highway police, 700 from the country's intelligence agency (CISEN), and over 1,000 new recruits trained at a recently created national police academy.<sup>25</sup> The PFP's primary responsibility was to support and coordinate with local authorities to maintain order, prevent crimes and administrative violations, and provide security in federal areas (e.g. highways, railways, ports, etc.); however, unlike other preventive forces it was to participate more actively in investigations and intelligence.

The administration also conducted a massive purge of the Federal Judicial Police (*Policía Judicial Federal* — PJF), firing over 700 officers (of roughly 4,400), and replenishing its ranks with over 1,000 military personnel.<sup>26</sup>

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<sup>21</sup>Sandoval Ulloa, José G. 2000. *Introducción al Estudio del Sistema Nacional de Seguridad Pública*. Mexico City: Unknown publisher.

<sup>22</sup>*Ibid.*

<sup>23</sup>For a more detailed discussion see Vivianna Macías and Fernando Castillo. 2002. Mexico's National Public Security System: Perspectives for the New Millennium. In John Bailey and Jorge Chabat eds. *Transnational Crime and Public Security*. La Jolla: Center for U.S.-Mexican Studies.

<sup>24</sup>The SNSP is governed by what is known as a "General Law," a somewhat unique feature of Mexican jurisprudence, as states and municipalities must adapt their legislation to its provisions. As such, reforms to the General Law of the National Public Security System in 2009 offered the Calderón administration the means to set a number of new requirements for local police professionalization.

<sup>25</sup>López Portillo. *The Police in Mexico*.

<sup>26</sup>PGR. 2006. AFI, *Un Nuevo Modelo de Policía*. Mexico City: Procuraduría General de la República.

While the Zedillo administration set in motion several important initiatives as well as the militarization of the police, it discovered the implementation challenges inherent in police reform. For example, the administration announced the creation of a nationwide, secure communications network, databases for improved information sharing, and a national registry of law enforcement personnel. These were to be important mechanisms to ensure coordination and prevent departments from unknowingly rehiring corrupt officers that had been fired from another agency. However, at the time, departments used entirely different criteria to quantify and classify crimes, lacked technical capacity and infrastructure, and were resistant to systematically tracking and sharing information. Over ten years later and after millions of dollars in investments, officials are still working to put national crime databases and the police registry to effective use.

### FOX

The Vicente Fox administration (2000–2006) maintained the SNSP and the PFP, not a foregone conclusion in the politics of Mexican law enforcement, and continued to build the federal government’s policing capacity. Fox moved the PFP out of the interior ministry and into a newly created Secretariat of Public Security (SSP). The centerpiece of Fox era police reform, however, was the dissolution of the scandal ridden PJF and the creation of what was intended to be a new model of professional investigative policing, the Federal Investigations Agency (Agencia Federal de Investigaciones — AFI).

In addition to considering the PJF corrupt and ineffective, incoming administration officials felt that investigations and intelligence had taken a backseat to reaction and dissuasion, that the agency was too small, that its structure was too decentralized with insufficient internal supervision mechanisms, and that officers lacked proper training, salary, and benefits.<sup>27</sup> The newly created AFI sought to overcome the errors of the past through the following:

- A police civil service, with improved selection criteria, emphasis on education and training, a merit-based promotion process, improved salaries, and improved equipment and facilities. For example, by 2005, incoming AFI agents were required to have a college degree.
- A new police structure prioritizing planning, tactical analysis, and investigations.
- An emphasis on improved statistics, information flows, technology, and unified databases known as AFInet.
- A focus on clear processes and procedures, much of which were ISO-9001 (International Standards Organization) certified.

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<sup>27</sup>*Ibid.*

- An emphasis on improved accountability mechanisms, including an office to investigate officers, a second office to conduct vetting, and a third to oversee the agency as a whole. The administration reported that during its six years there were 512 criminal investigations resulting in 277 penal processes against 353 officers.<sup>28</sup>

The AFI was not without problems, as salaries remained relatively low, corruption persisted, and agents criticized promotion criteria and arbitrary decision making. Nonetheless, the new standards and procedures established at the AFI represented an advance for Mexican policing. Ironically, however, its former director Genaro García Luna, who was promoted to Secretary of Public Security in the Calderón administration, would later act to undermine the agency, hoping to transfer its functions to the SSP. As will be discussed below, this merger was unsuccessful and left the AFI weakened.

Without question the Zedillo and Fox administrations focused their efforts on building federal police capacity; however, they did take some steps to strengthen the state and municipal departments that contained the majority of the country's police. The Public Security Support Fund (Fondo de Aportaciones para la Seguridad Pública — FASP) grew to include an annual transfer of \$5 billion pesos to the states by 2006 (roughly \$500 million in 2006 U.S.\$). The states were asked to match a percentage and meet certain reporting requirements. The fund supported the development of emergency call and dispatching centers under a unified 066 number (equivalent to the U.S. 911), the continued development of national crime and police databases, and training and infrastructure development.

While a portion of the funds were supposed to trickle down to the municipalities, the states tended to use the FASP funds to build up their own capacity rather than share the funds. For example, during the Fox administration the states of Chihuahua, Baja California, and Sonora all spent enormous sums to create new, elite (albeit small) state police forces, leaving little left over for the municipalities.

The Fox administration also intended to develop initiatives to build local capacity. The Preventive Police Standardization Program hoped to create model criteria for future police development; a pilot initiative called the Planning and Police Control System was developed to improve local level operations and internal supervision; and the AFI planned to work with state investigative police in creating model police investigations units. Unfortunately, these efforts were all under-prioritized pilot programs. For example, of the 500 officers selected to participate in the model investigations units, only 42 passed the program's vetting procedures.<sup>29</sup> Fortunately, however, the Calderón administration, which maintained much of the same police leadership, learned from these mistakes, gave money directly to the municipalities, and made local police professionalization a centerpiece of their reform efforts.

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<sup>28</sup>*Ibid.*

<sup>29</sup>*Ibid.*

## CALDERÓN

Upon coming into office, the Calderón administration proposed dissolving the state and municipal police forces and creating a unitary national police force. The administration contended that such a force would avoid the coordination problems across jurisdictions, offer a unity of command, and facilitate reform. Officials could point to both Chile and Colombia as national police forces that had successfully undergone transformations in a relatively short period of time. Nonetheless, the required constitutional reform and major restructuring of the Mexican state was a political non-starter. Instead, the administration set its sights on at least unifying the federal police by merging the investigative and preventive forces. Again, they were unable to rally sufficient congressional support, and in mid-2009 the AFI and the PFP were replaced with the Federal Ministerial Police (Policía Federal Ministerial — PFM) and the Federal Police (Policía Federal — PF), respectively.<sup>30</sup>

The restructuring did include some important changes. The AFI's tactical analysis and reactive operations were transferred to the PF, allowing the future PFM to in theory focus more on investigations. The reforms also resulted in expanded powers for the PF as compared to its predecessor organization, offering it more tools in gathering intelligence and combating organized crime, such as the authority to conduct investigations, operate undercover, locate cell phones, and tap phone lines (all with supervision by either the public minister or a judge). Officials in the Secretariat of Public Security can boast an impressive new intelligence center and contend that the state's intelligence gathering capacities are stronger than ever.

However, the restructuring also had unintended negative consequences. First, just as there was the greatest need for federal investigative capacity, the uncertainty regarding the restructuring weakened the ability of the federal government to investigate crimes. News reports suggest a decline in the AFI's ability to carry out its functions due to a drop in personnel, resources, and infrastructure.<sup>31</sup> Much of the AFI's newer recruits transferred over to the SSP, leaving critics to allege that the remaining officers were holdovers from the old and discredited Federal Judicial Police. One of the AFI's most celebrated accomplishments in the previous administration, the system of databases known as AFInet was reported to be no longer operational and much of its data had been transferred to the PF.

Second, when the AFI was created in 2001 it was heralded as a new model of policing and the solution to Mexico's policing problems. The subsequent dissolution of the agency seemed to repudiate this message and increased skepticism towards yet another new police force. Third, restructuring inevitably requires high costs in creating and adapting to new work structures and risks leaving the underlying

<sup>30</sup>As of this writing the PFM is still formally referred to as the AFI and will be until the Calderón administration emits the internal regulations for the new agency.

<sup>31</sup>Rolando Herrera and Antonio Baranda. "Concentran a AFI en labor ministerial." *Reforma*: January 11, 2010.

**TABLE 2: FEDERAL INVESTIGATIVE POLICE PERFORMANCE INDICATORS**

	Average monthly federal crimes reported	Average time to complete investigation (days)	Percent of investigations that go before a judge	Percent of sentences of cases investigated	Backlog of judicial warrants
2005	7,284				
2006	9,146	270	22.4	14	
2007	11,441	151	18.3	12	44,625
2008	11,341	152	19	11	43,566
2009*	10,594	157	15.3	9	39,054

\*Based on the first six months of the year.

Source: *Tercer Informe de Gobierno*. Data on the judicial warrant backlog came from the PGR. 2009. *Informe de Labores*. Mexico City: Procuraduría General de la República.

Note: Among the states the national average was 12% with states like Sonora reaching up to 36%. Eduardo Bours. 2009. *Sexto Informe de Trabajo*. Hermosillo: Gobierno del Estado de Sonora.

challenges confronting the police (e.g. accountability) unaddressed. A year after legislative changes went into effect, the Calderón administration had still not issued internal regulations for these new agencies, leaving them in a state of legal limbo and delaying advances on everything from using undercover agents to addressing internal corruption.

Official data from the Calderón administration presented in Table 2 suggests that on the plus side the federal investigative police are attending to a greater number of cases, carrying out more judicial warrants per officer, and reducing the time that it takes to investigate a case. In addition, a slightly higher percentage of these cases come before a judge than the national average among state investigative police (15.3% as compared with 12%).

## POLICE REFORM IN MEXICO: ADVANCES AND PERSISTENT OBSTACLES

On the other hand, Table 2 reflects the police's large backlog of judicial warrants. More importantly, the percent of cases going before a judge and the percent resulting in a conviction has declined in recent years, inviting criticism that many of the administration's heavily promoted drug related arrests are based on insufficient evidence. Authorities use a policy called "*arraigo*" to hold detainees accused of involvement in organized crime for up to eighty days without charge. Proponents defend the *arraigo* policy as a necessary stop gap measure; however, unless the detainee confesses or becomes a protected witness, it is very difficult to build a solid criminal case after arrest. Nationally the situation is even worse: Guillermo Zepeda calculates that in 2007 only 1.71% of crimes resulted in a detention and 1.24% in a sentence.<sup>32</sup>

While improvements in effectiveness continue to be elusive, the Calderón administration can be credited with overseeing unprecedented financial investments in public security and the criminal justice system. Table 3 shows that since 2006, the total number of federal police and size of the federal agencies' budgets have grown dramatically.

In addition, the administration has focused its efforts on strengthening Mexico's municipal police departments. Although, federal crimes such as drug trafficking capture the headlines, the vast majority of crime continues to be local and local police officers make up a majority of the country's forces. Unable to nationalize the police, the Calderón administration turned to the power of the purse to encourage and facilitate local professionalization. In addition to continuing the FASP financial transfers to the states, in 2008 the administration initiated a program targeted at the country's largest and most dangerous cities (initially 150 and later 206), known as the Municipal Public Security Subsidy (*Subsidio de Seguridad Pública Municipal — Subsemun*). In order to obtain the funds, however, municipalities have to comply with a series of requirements, including the following:

- Matching 30% of the funds and dedicating these monies to police remuneration.
- Using the funds for communication technology, equipment purchases and infrastructure improvements, and police professionalization, much of which is targeted at vetted, model police units.
- Connecting to a shared system of national databases known as Platform Mexico (*Plataforma México*) and uploading information to those databases, including the national registry of police and the national crime database.
- Developing model police units of 100 officers who undergo "confidence control" testing, or vetting, which involves psychological and intelligence testing, drug-testing, medical examination, asset declarations and

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<sup>32</sup>Guillermo Zepeda Lecuona. 2009. Mecanismos alternativas de solución de controversias y salidas alternativas al juicio oral en la propuesta de Jalisco. Presented to the Consejo Ciudadano de Seguridad Pública del Estado de Jalisco. Guadalajara: Sept. 24. Available at <http://www.consejociudadano.com.mx/lecuona.pdf> Comparative data is hard to obtain. Zepeda uses an analysis by Lucia Dammert from 2000 in Argentina calculating that 12% of crimes result in arrest and 2.3% result in sentences.

**TABLE 3: CHANGE IN THE SIZE OF THE FEDERAL POLICE FORCES AND SPENDING**

	AFI	PFP	Total federal forces	PGR budget (thousands of pesos)	SSP budget (thousands of pesos)
2001	4,920	10,241	15,161	\$5,451.2	\$5,156.8
2002	5,525	10,830	16,355	\$6,991.9	\$6,389.0
2003	6,122	12,535	18,657	\$7,267.0	\$6,259.6
2004	8,078	14,415	22,493	\$7,521.3	\$6,397.6
2005	7,676	11,756	19,432	\$7,572.3	\$6,976.9
2006	8,127	12,907	21,034	\$8,862.4	\$8,676.0
2007	7,992	21,761	29,753	\$9,439.5	\$17,626.9
2008	5,996	31,936	37,932	\$8,950.2	\$21,140.3
2009*	4,974	32,264	37,238	\$12,309.9	\$32,916.8

\* Data from June 2009 when the PFP became the PF. Budget for 2009 is the total amount authorized by Congress.

Note: As both the PGR (Attorney General's Office) and the SSP (Public Security Secretariat) are larger than the AFI (Federal Investigations Police) and the PFP (Federal Preventive Police), the budgets presented are larger than the budgets of these police agencies. For example the PGR also includes public ministers and the SSP includes prison wardens and guards.

Source: Tercer Informe de Gobierno de Felipe Calderón.

## POLICE REFORM IN MEXICO: ADVANCES AND PERSISTENT OBSTACLES

background checks, polygraph (lie-detector) test, and examinations on basic police knowledge and tactics.

- Adopting a form of police civil service that determines criteria for selection, training, promotion, and discipline.
- Adopting a national police operations manual and a standardized police reporting mechanism, implementing new patrolling policies, and participating in joint operations.

As this partial list of requirements suggests, the Subsemun program reflects a comprehensive and ambitious approach to police reform. As a result, the effort confronts enormous implementation challenges and perverse incentives for municipalities to implement window dressing reform. The main tool to ensure compliance has been the threat of “turning off the tap of funds,” but the administration has also pursued a consensus building strategy. The tragic kidnapping and death of 14 year old Fernando Martí in June 2008 and subsequent civil society mobilization, led to the signing of the National Agreement on Security, Justice, and Legality in August 2008. The agreement committed signatories to many of the reforms already included in the Subsemun program. These professionalization measures were also approved by the National Public Security Council and were incorporated into the 2009 revision to the General Law of the National Public Security System (*Ley General del Sistema Nacional de Seguridad Pública*). For example, the 2009 law requires all states to create state trust control centers to provide ongoing vetting and certification of state and municipal officers.

Table 4 offers a glimpse of the situation at the municipal level at the end of 2008. The eleven municipalities presented responded to a survey sent to the forty largest departments in the country. Given an expected self-selection process, it is safe to assume that these are the better municipal departments in the country. While each municipality scored well on certain indicators, there are wide fluctuations, suggesting that advances are uneven. In the last couple of years, several departments have adopted minimum high school education requirements for incoming cadets. Although those with a high school degree or greater only make up around half of the responding police forces, this is a significant improvement from the 1990's, when over half of the police had only a primary level of education.<sup>33</sup> While spending has increased across the board, it nonetheless varies among the departments. Only Chihuahua stands out as having made up the deficit in police vehicles. But even standouts like Chihuahua have been hesitant to address corruption, as evidenced by the very small internal affairs agency. Torreón on the other hand, has fired a number of officers for corruption, but lags in many of the other areas.

TABLE 4: SELECT INDICATORS ON MUNICIPAL FORCES, 2008  
CONTINUES ON FACING PAGE

City	Minimum education requirement	Percent of qualified applicants accepted to the academy	Percent of police with a high school degree or greater	Duration of cadet training (months)	Basic monthly salary (pesos)
Ahome	High School	54.00%	55.15%	12	\$6,269
Chihuahua	High School	15.67%	47.07%	10	\$8,745
Cuernavaca	High School for traffic police	.	55.80%	.	\$5,952
Guadalajara	Secondary	26.60%	34.17%	8	\$7,916
Mérida	Secondary		28.39%	3	\$4,672
México DF	Secondary	22.02%	40.03%	6	\$8,186
Monterrey	Secondary	65.91%	33.97%	6	\$7,243
Puebla	High School	.		.	\$7,226
S.L. Potosí	High School	12.82%	35.27%	8	\$6,506
Torreón	Secondary	45.07%	.	6	\$6,625
Zapopan	Secondary	32.30%	34.55%	6	\$9,050

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City	Vehicles per police	Budget per police officer (pesos)	Internal affairs employees per 100 police	Average annual firings as a percent of police?
Ahome	0.13	.	0.50	3.12%
Chihuahua	0.68	\$240,183	0.44	0.97%
Cuernavaca	0.26	\$184,471	1.13	1.40%
Guadalajara	0.23	\$121,161	2.94	0.76%
Mérida	0.25	\$147,007	0.64	1.71%
México DF	0.18	\$181,774	0.84	3.09%
Monterrey	0.25	\$260,976	3.72	1.90%
Puebla	0.38	.	0.43	
S.L. Potosí	0.22		1.35	3.81%
Torreón	0.46	\$39,880	0.40	16.05%
Zapopan	0.19	.	1.14	0.36%

Source: Information provided by police departments in response to the Police Professionalism Survey administered in early 2009 by the author.

## ADVANCES AND CONTINUED CHALLENGES

In summary, there have been a number of changes to Mexican policing over the last two decades. It is possible to conclude that Mexican law enforcement has advanced in the following areas:

- As illustrated in Table 5, there has been a major and sustained increase in public security budgets allowing for improvements in equipment and technology. From 2007 to 2008 and from 2008 to 2009, spending in the policy arena increased 20.2% and 21.7% respectively. These investments have allowed for the strengthening of 066 (911) call centers and communications systems, and the purchase of vehicles, uniforms, bullet proof vests, guns and other tools necessary to professional police work.
- The federal government has a far greater law enforcement capacity than it had 15 years ago. Federal police officers have grown from 11,000 in 2000 to approximately 37,000 in 2009, more than tripling.
- There is consensus on the need to professionalize federal, state, and municipal law enforcement through better selection and recruitment, improved training, better remuneration, and improved operational procedures rather than simply limiting officer discretion. This consensus has been enshrined in law and the federal government has provided funding to help states and municipalities comply with the law.
- There has been a dramatic and impressive increase in the use of vetting, including polygraph tests. The SSP conducted 54,536 trust evaluations over the course of one year, including 24,971 applicants, 3,878 federal personnel, and 25,687 state and municipal police.<sup>34</sup>
- Institutional mechanisms (e.g. National Public Security Council), communication systems (i.e. Platform Mexico), and databases (e.g. registry of law enforcement personnel) have been created to allow for (but not guarantee) better coordination between Mexico's police forces.

While these advances deserve recognition, they have been obscured by continued evidence of corruption, abuse and ineffectiveness. Organized crime related killings have increased every year since they spiked in 2005 and even targeted efforts in specific regions have failed to quell the violence. Daily newspaper articles reveal cases of

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<sup>34</sup>SSP. 2009. *Tercer informe de labores*. Mexico City: Secretaría de Seguridad Pública, pg. 77. The federal government released aggregated test results in late 2008 showing that nationwide 61.6% of tested officers were not recommended for service. Rather than fire the vast majority of their officers, local police leaders report that they view the test results as red flags that need further substantiation. The response has merits, particularly given the limitation of the lie detector test and the inadmissibility of its results in court. Nonetheless, it only highlights the continued importance of a currently ineffective internal investigation agency.

TABLE 5: SPENDING ON PUBLIC SECURITY, PROSECUTION OF JUSTICE, AND PRISONS

	Municipal and state budget (in millions of pesos)	Federal budget (in millions of pesos)	Total budget (in millions of pesos)	Percent of government budget	Percent of GDP
2007	84,846.9	48,110.7	132,957.7	5.9%	1.2%
2008	100,804.0	58,982.7	159,786.7	6.2%	1.3%
2009	117,002.4	77,766.5	194,769.0	6.4%	1.7%

Note: The state and municipal budget for 2009 made up 60.1% of the total. Subsemun and FASP monies are included in the municipal and state budgets and made up 4.7% and FASP 8.4% of the total budget. The total budget grew 20.2% from 2007 to 2008 and 21.9% from 2008 to 2009.

Source: Developed by Carlos Mendoza Mora. 2009. *El Costo de la Inseguridad en México*. Mexico City: Instituto Ciudadano de Estudios sobre la Inseguridad. Based on state and federal budgets.

corruption rising to the highest levels of police agencies.<sup>35</sup> Faced with insecurity and corruption scandals, citizens are left to wonder why announcements of improved selection criteria, training, vetting, and other professionalization reforms have failed to alter this status quo.

It is therefore necessary to ask why reforms have not been more successful. First and foremost, from a U.S. perspective, it is important to recognize that police reform in the United States was a decades long process. Warren Sloat, for example, documents congressional inquiries and civil society mobilizations against police corruption in New York City in the late 1800's.<sup>36</sup> Over 70 years later, the 1972 Knapp Commission

<sup>35</sup>To offer a few examples, in 2008 and 2009 Saulo Reyes Gamboa, the former director of municipal police in Ciudad Juárez, Hugo Armando Reséndiz Martínez, the former assistant attorney general in Durango, Carlos Guzmán Correa, the former head of public security in Cárdenas, Sinaloa, Gerardo Garay Cadena, the former head of the Federal Preventive Police, Noé Ramírez Mandujano, former acting director of the country's anti-drug agency (SIEDO), Francisco Velasco Delgado, former head of the municipal police in Cancún, Juan José Muñiz Salinas, former head of the municipal police in Reynosa, and Roberto Terán the former head of the municipal police in Pachuca, Hidalgo were all arrested for ties to organized crime.

<sup>36</sup>Sloat, Warren. 2002. *A Battle for the Soul of New York: Tammany Hall, Police Corruption, Vice, and the Reverend Charles Parkhurst's Crusade against Them, 1892–1895*. New York: Cooper Square Press.

was still uncovering widespread corruption and abuse, and it was not until the 1990s that the New York City Police Department became a model agency.

Second, it is a mistake to analyze the police as an isolated actor. Rather, the police force is embedded within a larger political, legal and cultural system. Politically, it is important to remember that the police leadership is appointed by, highly dependent on, and accountable to the elected president, governor, or mayor. While no president and only one governor has ever been convicted on collusion charges, there are no shortage of allegations of political collusion with organized crime and there appears to be widespread tolerance.<sup>37</sup> Collusion and even tolerance effectively rules out the possibility of meaningful reform. Legally, there is considerable ambiguity in the justice system, discretion in the application of the law, and a tendency to elevate informal rules above the law. Culturally, citizens expect and sometimes even benefit from the ability to bribe officers. As officers frequently point out in rationalizing their own corruption, it is typically the citizen who will offer the bribe first.<sup>38</sup>

Executive power and police dependence on the executive appears to be one of the biggest obstacles to reform. In theory, executive appointment of police chiefs should make the police more accountable to citizens and executive discretion should facilitate rapid reform, but in practice, this power has led to window dressing reform, patronage appointments, poor policies, and a lack of continuity in reform efforts.

There is a tendency among political leaders coming into office to repudiate the past administration, restructure the police, and introduce new programs. However, change is not the same as reform. In the discussion above it was noted that the structure of the federal police changed dramatically under each administration, and such practices are perhaps even more common at the state and municipal level. For example, in the early 2000s most state judicial police were renamed ministerial police and many municipal police departments became secretariats. While a new name, new uniforms, and new logos are meant to symbolize a break from the past, there is often insufficient substance to such reforms. Moreover, political, human, and financial capital is spent adjusting to the new structure rather than tackling the real challenges of police reform.

Despite significant efforts to strengthen the municipal police since 2008, there is (at the time of this writing) a proposal on the table with considerable political momentum to dissolve the country's municipal forces and subsume them within the state police. While it is argued that the proposal will allow for improved coordination and facilitate reform implementation, it is hard not to see the proposal as just another restructuring without confronting the real challenges of police reform. The proposal would likely change "who" provides policing services rather than alter "how" those services are provided.

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<sup>37</sup>Astorga. *El Siglo de las Drogas*; Ravelo, Ricardo 2006. *Los Capos: Las narco-rutas de México*. Mexico City: DeBosillo; Jesús Blancornelas. 2002. *El Cártel: Los Arellano Félix: La mafia más poderosa en la historia de América Latina*. México: Plaza & Janés México.

<sup>38</sup>For a more thorough exploration of these themes, see Azaola and Ruiz Torres. *Investigadores de papel*.

## POLICE REFORM IN MEXICO: ADVANCES AND PERSISTENT OBSTACLES

Ironically, while executive control makes rapid change possible, it makes real reform difficult to institutionalize. For example, it is common for a municipal administration to focus on improving the quality of selection criteria and training, only to have the following administration prioritize dramatically increasing the size of the force, and in so doing undermining previous efforts to improve selection and training. Although undermining accountability to voters does not appear advantageous, increasing accountability to the law rather than to the executive and granting city councils, state legislatures, national and state public security councils, citizen public participation committees, and citizen observatories meaningful oversight authority offers an attractive alternative to the current system.<sup>39</sup>

Third, reform efforts have not been more successful because even with an increased emphasis on vetting, they have not sufficiently confronted corruption. Whether by design or by default, reformers (particularly at the local level) have instead prioritized improving selection criteria, education and training and investing in equipment and technology over developing robust accountability mechanisms.<sup>40</sup> As the latter entails confronting organized crime and the rank and file police who supplement their salary with daily bribe payments, state and municipal political and police leaders have opted for less threatening reforms.<sup>41</sup> Such a strategy might provide a long term foundation for tackling corruption, but in the short term, existing reforms have proven to be insufficient to improve police effectiveness. Creating accountability will also require an effective mid-level command structure promoted based on their merits rather than their personnel ties. Although a civil service type reform is central to the current package of initiatives, it challenges the tradition of clientelism and confronts considerable opposition and implementation hurdles.

Fourth, the challenges of building accountability mechanisms and merit-based promotion criteria point to the fundamental problem of implementation. A large literature has sought to understand the gap between reform policy and reform im-

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<sup>39</sup>Kelling and Moore argue that real reform did not begin in the U.S. until the 1930's when reformist chiefs succeeded in insulating themselves from the political process and civil service reforms were passed. Kelling, George L, and Mark H. Moore. 1988. *The Evolving Strategy of Policing. Perspectives on Policing*. Vol 4.

<sup>40</sup>Even when combating corruption has been made a priority, the results have often been less than desirable. Absent effective investigative capacity, anti-corruption crusaders have simply assumed police culpability despite insufficient evidence. Azaola and Ruiz Torres in *Investigadores de Papel*, go so far as to argue that anti-corruption initiatives actually help fuel corruption. They write that the promotion of zero-tolerance policies against impunity have led to a "reaction of resistance and rationalization on the part of those who are stigmatized as guilty, in this case the police, that results in more actions of abuse of power and corruption" (46). This is not to say that anti-corruption crusades should be abandoned, merely that departments require effective investigative capacity.

<sup>41</sup>Departments typically have an internal affairs type unit responsible for investigating police corruption; however, as they respond to citizen complaints they do not tend to address corruption issues. More importantly, with limited investigative capacity, such agencies have a hard time building a solid enough case to prove corruption beyond a reasonable doubt. In addition, these agencies are focused on finding rotten apples and rarely analyze and address institutional causes of corruption.

plementation.<sup>42</sup> It is far easier to write a policy outlining merit based reform than to implement it. In fact, departments frequently have had formal policies outlining such promotion criteria on the books for over a decade. Opponents to reform often find ways to subvert what on the surface appears to be good policy. For example, many departments are now able to track arrest and crime indicators at the neighborhood level in close to real time. But as soon as performance becomes measured based on statistics, there is an incentive to manipulate the data. As one officer interviewed by Azaola and Ruiz Torres offers, “If they want numbers, we’ll give them numbers — even if they’re garbage.”<sup>43</sup> In fact, other authors have shown how the police discourage crime reporting to keep crime statistics low.<sup>44</sup> The problem is not a desire to measure police performance, which is of course a positive development, but the implementation challenges of developing reliable data. The Calderón administration’s *Integral Police Development System* and *New Police Model* outline the correct policies required for long term change, but the real challenge is implementation.<sup>45</sup>

Finally, underlying and compounding all of these factors, is of course the presence of powerful and unscrupulous organized criminal organization. If organized crime is able to credibly threaten police officers, then a well trained, well educated, vetted officer is just as subject to the choice between the bullet and the bribe as his or her predecessors. Protecting officers by securing radio communications, properly equipping officers, allowing threatened officers to carry weapons off duty, transferring officers when necessary, and most importantly investigating and prosecuting police killings remain challenges for the future.

In summary, it is important to recognize both the advances that reformers have achieved in Mexico, but it is also necessary to recognize continued corruption, ineffectiveness, and abuse. On the one hand, it is perhaps unrealistic to expect a radical revolution in Mexican policing in the short term. On the other hand, there has perhaps never been such an opportunity for real reform. Nonetheless, speeding up reform efforts will require a sober and realistic analysis of the continued challenges ahead. In short, police reform will likely require greater police insulation from the political arena accompanied by greater accountability to the law, the legislative branch, public security councils, or directly to citizens. As a corollary to this, police reform will require long term efforts that outlast police and political leaders. Real change will also require confronting corruption head on, not by reversing the presumption of innocence, but by developing a merit based mid-level command structure, appropriate accountability mechanisms that address both the rotten barrel

<sup>42</sup>Jeffrey L. Pressman and Aaron Wildavsky. 1979. *Implementation: How Great Expectations in Washington are Dashed in Oakland*. Berkeley: University of California Press.

<sup>43</sup>Azaola and Ruiz Torres. *Investigadores de Papel*: pg. 79

<sup>44</sup>Catalina, Pérez Correa. Front Desk Justice: Inside and Outside Criminal Procedure in Mexico City. *The Mexican Law Review*. Vol. 1(1): 3–31.

<sup>45</sup>SSP. 2009. *Sistema Integral de Desarrollo Policial*. Mexico City: Secretaría de Seguridad Pública; SSP. 2009. *Nuevo Modelo Policial*. Mexico City: Secretaría de Seguridad Pública.

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and the rotten apples, and by protecting officers. All of this demands more than well written policies, but the capacity to anticipate and respond to the many implementation challenges and unintended consequences of reform.

### ACRONYMS

Acronym	Spanish	English
AFI	Agencia Federal de Investigaciones	Federal Investigations Agency
DFS	Dirección Federal de Seguridad	Federal Security Directorate
FASP	Fondo de Aportaciones para la Seguridad Pública	Public Security Contribution Fund
ICESI	Instituto Ciudadano de Estudios de la Inseguridad A.C.	Citizen Institute of Insecurity Studies
PGR	Procuraduría General de la República	Attorney General of the Republic
PF	Policía Federal	Federal Police
PFM	Policía Federal Ministerial	Federal Ministerial Police
PPF	Policía Federal Preventiva	Federal Preventive Police
PJF	Policía Judicial Federal	Federal Judicial Police
SNSP	Sistema Nacional de Seguridad Pública	National Public Security System
SSP	Secretaría de Seguridad Pública	Secretariat of Public Security
Subsemun	Subsidio de Seguridad Pública Municipal	Municipal Public Security Subsidy



# PROTECTING PRESS FREEDOM IN AN ENVIRONMENT OF VIOLENCE AND IMPUNITY

**Dolia Estévez**

This chapter reviews the situation of violence against the press in Mexico and what each of the different actors involved is doing, or not doing, to address a problem that in some Mexican states has reached alarming crisis levels. The essay examines the political willingness and steps taken by the federal and legislative branches of government to protect freedom of expression, through the exercise of journalism. It discusses measures taken by reporters, editors, media companies, and civil society to defend that right. Special attention is given to explaining how the failure of federal and local authorities to effectively prosecute crimes against reporters has resulted in almost total impunity. Most crimes against reporters remain unsolved; authorities rarely determine who perpetrated the crime and there are no prosecutions, much less convictions. The report also examines the extent to which editors and journalists working in states overwhelmed by violence have engaged in widespread self-censorship out of fear for their lives. The report emphasizes freedom of expression and a free press as fundamental and universal rights protected by international law. These rights are also considered an effective way to measure the strength of a democracy.

This paper has benefited from direct testimonies and first-hand accounts obtained through a series of interviews with reporters, media advocates, editors and government officials during a trip to Mexico City in December 2009. Many of these individuals have put forward concrete recommendations that if adopted, they believe, could help halt the wave of violence, intimidation and impunity against the media. Finally, this work reflects the contributions of numerous colleagues, academics and civil rights advocates who have generously shared their views over the past decade when I first became concerned with the unsafe conditions and lack of legal protections under which reporters operate in Mexico.

## **A UNIVERSAL RIGHT**

Killing and threatening journalists with impunity has negative consequences for the consolidation of a modern democratic state and the rule of law. The right of a citizen to be informed is violated every time a reporter is killed, abducted, attacked or forced to resort to self-censorship to protect his or her life. No story is worth a life. In many places in Mexico, issues that affect the daily lives of ordinary people

— drug trafficking, crime, corruption and ineffective governance — are not being covered. Citizens are being deprived of essential information that enables them to make informed decisions on public policies of direct concern to them. They are being deprived of the type of investigative reporting that makes the press in the United States, and many other democratic nations, the “watch dog” of democracy.

The inability of the Mexican state to guarantee the right to freedom of expression, through a free and independent press, and the apparent lack of political will by the Mexican government to protect reporters, journalists, photographers and editors, has turned Mexico into one of the most dangerous places in the world for journalists to work. Not one of the murders or forced disappearances of journalists since 2000 has been really solved. Impunity is allowed to prevail in the vast majority of cases. Since President Felipe Calderón launched the “war on drugs” at the end of 2006, more reporters have been slain and attacked than ever before. Mexico has displaced Colombia as the most dangerous country in Latin America for reporters and the practice of journalism.

While the death toll in 2009 was one of the highest, 2010 could be even deadlier, for it began with an intensification of violence against the press, which resulted in the killing of five journalists during the first ten weeks of the year. From January 8<sup>th</sup> to March 15<sup>th</sup>, four reporters and one editor were kidnapped, tortured and shot in the states of Guerrero, Coahuila, Sinaloa and Tamaulipas.<sup>1</sup> These events marked an unprecedented wave of abductions of reporters that generated international condemnation and fear among the media community in Mexico.<sup>2</sup> Between February 18<sup>th</sup> and March 3<sup>rd</sup>, eight reporters were kidnapped in Reynosa, a border city across from McAllen, Texas.<sup>3</sup> Three of the journalists were released, but one was tortured and beaten so badly that he died three days later.

“As drug trafficking, violence, and lawlessness take hold,” said the senior program coordinator for the Americas at the Committee to Protect Journalists (CPJ) in a statement on the abductions, “the Mexican media are forced into silence. This pervasive self-censorship is causing severe damage to Mexican democracy.”<sup>4</sup> The CPJ, once more, urged the government of President Calderón to provide safety guarantees for the press, and to make the protection of free expression a top priority. However, as with most other past cases, no one has been arrested or charged. Impunity has succeeded in creating a culture of fear in news rooms that has reached alarming levels in the Mexican provinces.

Over the past 12 years, all murders of reporters confirmed killed because of their job have taken place in the provinces, outside of Mexico City. The Mexican chapter of Article 19 and the National Center for Social Communications (Centro

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<sup>1</sup>Valentín Valdés Espinosa, *Zócalo de Saltillo*, Jan. 8; José Luis Romero, *Línea Directa*, Jan. 16; Jorge Ochoa Martínez, *El Oportuno*, Feb. 1st., Jorge Rábago Valdez, *La Prensa*, March 2, and Evaristo Pacheco, *Visión Informativa*, March 15.

<sup>2</sup>Committee to Protect Journalists (CPJ), “Drug-related violence, endangers media in Reynosa,” March 11, 2010, [www.cpj.org](http://www.cpj.org)

<sup>3</sup>Alfredo Corchado, “Cartels use intimidation campaign to stifle news coverage in Mexico,” *The Dallas Morning News*, March 8, 2010. [www.dallasnews.com](http://www.dallasnews.com)

<sup>4</sup>Carlos Lauría, quoted in “Drug-related violence, endangers media in Reynosa,” *CPJ*, March 11, 2010.

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Nacional de Comunicación Social or CENCOS), two non-governmental organizations (NGOs) that promote freedom of expression and public access to information, joined forces to track aggressions against reporters, report that Oaxaca, Veracruz and Chihuahua were the most dangerous states where the highest number of attacks took place in 2009, although most killings happened in Durango, Sinaloa, Guerrero, Michoacán and Quintana Roo.<sup>5</sup> With a total of 11 reporters killed and one disappeared, 2009 was one of the deadliest years ever for the Mexican press. Of these reporters 70% were slain in direct reprisal for their work, Article 19 and CENCOS research shows. In addition, there were a total of 244 attacks against press freedom, broken down as follows: assassinations (4.5%); disappearances (0.82 %), physical assaults (44.6 %), harassment (19.2%), intimidation (19.2%), arbitrary detentions (9.4%) and defamation (2.05%).<sup>6</sup>

According to the New York-based CPJ, an independent, nonprofit organization founded in 1981 to promote press freedom worldwide, in the last 10 years alone in Mexico, 32 editors and reporters have been killed, at least 11 in direct reprisal for their work. Nine more journalists, who covered crime and corruption, have been missing since 2005, a tally nearly unprecedented worldwide where “disappearing” reporters is not part of the menu of violence against the media.<sup>7</sup> Other media advocacy and human rights groups put the death toll higher. Reporters Without Borders, a non-profit international organization based in France that defends free press in five continents, reports that 61 journalists have been murdered in Mexico since 2000 and nine others have gone missing since 2003; Mexico was ranked 137 out of 175 countries in the group’s 2009 press freedom index.<sup>8</sup>

An statistical analysis by the CPJ, shows that since 1992, 95% of the journalists who lost their lives were murdered; 61% of the suspected perpetrators belong to criminal groups and 22 % were government and military officials. In addition, 89% of the crimes were carried out with full impunity; 39 % of the victims were threatened before being murdered; 28 % were taken captive and 22 % were tortured.. Of those attacked, 74% covered crime and 37% corruption; 84% worked in print media; 95% were male; 89% were local and 11 % foreign. Among leading NGO’s, however, there is a lack of consensus on the extent of the role government agents play in the aggressions. Article 19 and CENCOS argue that while the most serious violations, such as assassinations and forced disappearances, can be attributed directly to organized

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<sup>5</sup>Dolia Estévez, “¿Juárez: El futuro de México?,” 62–65, *PODER y Negocios*, Año 6, No. 06, March 12, 2010. In this interview, Edgardo Buscaglia argues that 68% of Mexico’s municipalities have been infiltrated by organized crime.

<sup>6</sup>Article 19, Mexico and Central America chapters, and Cencos, *Entre la Violencia y la Indiferencia: Informe de Agresiones contra la Libertad de Expresión en México 2009*, 11–18, Annual Report, Feb., 2010, [www.cencos.org](http://www.cencos.org)

<sup>7</sup>CPJ, *Attacks on the Press in 2009*, Annual Report. [www.cpj.org](http://www.cpj.org)

<sup>8</sup>Reporters Without Borders, “Another journalist shot dead amid a wave of threats against media personnel,” Press Release, Feb. 1, 2010. [www.rsf.org](http://www.rsf.org)

crime, their figures continue to point to local and state authorities, mainly corrupt policemen, as the principal perpetrators in most other non-lethal threats and aggressions against journalists. Of the alleged perpetrators in the 244 incidents registered in 2009 against reporters and media workers, research by Article 19 and CENCOS found that local and state police and law enforcement officials operating outside the control of the federal government were likely responsible in 65.7 percent of the cases.<sup>9</sup>

## MEDIA GEOGRAPHY

Mexico City, where the country's most influential newspapers, magazines, television networks, radio stations and media organizations are headquartered, has mostly been an exception to this rule of violence. In 2008, Alejandro Junco, the CEO and Editor in Chief of *Reforma*, one of Mexico's leading newspapers, was forced into self-exile for security reasons.<sup>10</sup> Murdering journalists in the nation's capital appears to be politically too costly for criminal organizations. Mexico City is where all three branches of government are concentrated, where diplomatic embassies are based and where social and political groups from throughout Mexico come together to make their voices heard. Mexico City's print media (known as the "national media"), exercises greater political influence and editorial independence than their provincial counterparts. This, plus higher wages and education, makes the media in Mexico City less susceptible to bribes, blackmail and corruption.

"Part of the problem that we confront in Mexico is the 'abysmal media geography' between Mexico City and the provinces," observed Jorge Zepeda Patterson, the Managing Editor of the leading Mexico City daily *El Universal*:<sup>11</sup>

"There are two very different realities. The level of tolerance we find towards editorial lines of some of Mexico City's newspapers is not far from the levels of editorial independence that exist in the first world. One can print cartoons, editorials and columns very critical of the government and even cruel against President Calderón. This is not the case with newspapers in the interior, which are not at liberty to criticize state governors and local authorities. There is a strong 'centralism' in Mexico City and the tendency is to underestimate the

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<sup>9</sup> *Artículo 19 and Cencos*, *Agresiones contra la Libertad de Expresión en México*, testimony before the 138th Period of Sessions of the Inter-American Commission on Human Rights (IACHR-OAS), (page 7), March 22, 2010. Title of the hearing: Attacks on Journalists in Mexico; petitioners: *Artículo 19* and Cencos.

<sup>10</sup> Carmen Aristegui, "Junco de la Vega," *Reforma*, Oct. 24, 2008. www.reforma.com. In a speech during the conference *Scared Silent, Mexico's Journalists Under Attack by Drug Mafias*, Oct. 15 and 16, 2008, at Columbia University, Alejandro Junco de la Vega, *Grupo Reforma's* CEO and Chief Editor, announced his decision to relocate with his family to Texas. He denounced the Mexican government inability to protect the free exercise of journalism.

<sup>11</sup> Jorge Zepeda Patterson, *El Universal*, Managing Editor, interviewed by the author, Mexico City, Dec. 8, 2009.

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interior, but this is just an ‘excuse of conscience’ to justify oneself for not doing what we should be doing to support local reporters.”

The lack of support from the national media, as reporters are under fire in cities and states throughout Mexico, is hard to explain for international media advocates who have become more vocal on behalf of local reporters. “Mexico City is an island,” explained the Mexican representative of an international foundation.<sup>12</sup> “Reporters from northern states are left alone. Attacks on the press in the provinces have no consequences. It would be different if the victims were DF [Mexico City] reporters. Influential media personalities that could make a difference if they were to raise their voices refuse to do something about it. It is not like Colombia where media owners formed a united front to put pressure on the government.” Assassinating an editor or media personality in Mexico City, could be counterproductive. It could become the turning point causing media companies, editors and reporters to unite in demanding that the government intervene to put an end to violence against them, similar to what happened in Colombia.<sup>13</sup>

## INTERNATIONAL AND CONSTITUTIONAL RIGHTS

The rights of citizen to be informed and the right to free speech imply a double obligation by the state. The state is not only obliged not to violate those rights, but also to protect them and promote an environment in which they are allowed to flourish. Freedom of the press and the right to know are fundamental rights protected by international treaties and Mexico’s constitution. Article 19 of the Universal Declaration of Human Rights of the United Nations, adopted in 1948, reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>14</sup>

Principle 9 of the Declaration of Principles on Freedom of Expression, adopted in October 2000 by the Organization of American States’ Inter-American Commission on Human Rights, states that “the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts freedom of expression. It is the duty of the State to prevent and investigate

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<sup>12</sup>Dario Fritz, Mexican representative of the Rory Peck Foundation, interviewed by the author, Mexico City, Dec. 7, 2009. Created in 1995 to honor the memory of Rory Peck, a freelance war cameraman who was killed while covering Russia in 1993, the Rory Peck Foundation sponsors seminars on security issues and gives training on safety to reporters.

<sup>13</sup>In 1986, Guillermo Cano, the Editor of *El Espectador*, was murdered by a gunman paid by the cartels. It is believed that the event was a key turning point in the fight against violence in Colombia.

<sup>14</sup>The Universal Declaration of Human Rights. <http://www.un.org/en/documents/udhr/index.shtml#a19>.

such occurrences, to punish their perpetrators and to ensure that the victims receive due compensation.”<sup>15</sup>

In addition, Mexico’s 1917 Constitution defends freedom of speech and expression in two places. Article 6 states: “The expression of ideas shall not be subject to any judicial or administrative investigation, unless it offends good morals, infringes the rights of others, incites to crime, or disturbs the public order.” Article 7 reads: “Freedom of writing and publishing writings on any subject is inviolable. No law or authority may establish censorship, require bonds from authors or printers, or restrict the freedom of printing, which shall be limited only by the respect due to private life, morals, and public peace. Under no circumstances may a printing press be sequestered as the instrument of the offense.”<sup>16</sup>

The U.S. Government is well aware of the dangers reporters face in trying to do their job in Mexico. The State Department 2009 Human Rights Report, in its chapter dedicated to Mexico, writes that “despite federal government support for freedom of the press, many journalists worked in a dangerous environment. Reporters covering corrupt public officials and various organized criminal organizations acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and to their families.”<sup>17</sup> It says that in 2009, Mexico’s Human Rights Commission issued (non-binding) recommendations to make “journalists a protected class, sanction authorities that are negligent in their investigation or prosecution of cases, guarantee the safety and support of journalists that cover high-risk and sensitive issues, and give victims of violence the right to reparations.”<sup>18</sup> Under Section 2, “Respect for Civil Liberties, Freedom of Speech and Press,” the State Department Human Rights Report details a number of prominent cases involving journalists who were slain or disappeared during 2009. Despite this acknowledgment, protecting free press in Mexico has not become part of the regular human rights concerns raised in the bilateral agenda. Nor has it been considered in the new “institution building” approach under discussion for the second phase of the Mérida Initiative, the U.S. counternarcotics assistance package for Mexico.<sup>19</sup>

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<sup>15</sup>Declaration of Principles on Freedom of Expression, OAS’ Inter-American Commission on Human Rights. <http://www.cidh.oas.org/declaration.htm>.

<sup>16</sup>1917 Constitution of Mexico. <http://www.ilstu.edu/class/hist263/docs/1917const.html>

<sup>17</sup>Department of State, Bureau of Democracy, Human Rights, and Labor, 2009 Human Rights Report: Mexico, [www.state.gov](http://www.state.gov)

<sup>18</sup>*Idem*.

<sup>19</sup>The “Programa de Protección a Periodistas y Comunicadores Sociales de Colombia,” founded in 2000 to protect and prevent violence against journalists, was partially financed, in coordination with Plan Colombia, by the U.S. Agency for International Development (USAID.) As part of its five-year Colombian program of strengthening democratic institutions (estimated at \$144 million), USAID assisted the mixed Ministry of Interior-NGO committee for protection of journalists. Radios, bulletproof vests and other commodities as well as security remodeling of offices for journalists, were purchased and delivered by USAID. USAID Colombia: Support to Democratic Institutions, Washington, D.C. Fact sheet, June 1, 2001. [www.usaid.gov/press/releases/2001](http://www.usaid.gov/press/releases/2001)

## GOVERNMENT RESPONSE

The wave of violence against the news media and the failure of federal and local authorities to investigate and effectively prosecute crimes have resulted in an 89% level of impunity in murder cases against reporters, according to the CPJ. Other NGOs place the level of impunity higher. CPJ's research shows that the absence of justice promotes a higher incidence of murder and perpetuates further violence against the press. Impunity is a major world-wide problem; according to the CPJ, the lack of justice in journalist murders represents the world's gravest threat to free expression. In Mexico, most crimes remain unsolved as Mexican law enforcement agencies, riddled with corruption and incompetence, do not aggressively investigate leads. The initial reaction is often to smear the victim, alleging that he or she was killed or abducted for reasons other than their job.

In 2008, the CPJ launched an 'Impunity Index' to calculate the number of unsolved journalist murders as a percentage of a country's population. The CPJ examined every nation in the world for the years 1999 through 2008. Cases are considered unsolved when no convictions have been obtained. Only those nations with five or more unsolved cases are included on this Index, a threshold reached by 12 countries in the 2010 list. Mexico ranked 9<sup>th</sup>, not far away from authoritarian countries such as Pakistan (10<sup>th</sup>), Russia (8<sup>th</sup>) and Afghanistan (6<sup>th</sup>).

According to the CPJ, "astonishing levels of violence against journalists covering crime, drug trafficking, and government corruption continued in 2009, pushing Mexico up two spots on the index. Impunity in nine murders over the last decade can be largely attributed to the government's inability to rein in organized crime's far and brutal reach."<sup>20</sup> The report adds that the country's ranking, poor as it is, might actually be much worse: at least seven Mexican journalists have gone missing since 2005. "Those reporters and editors are suspected to have died, although their cases are not yet included in this index."<sup>21</sup>

A dysfunctional judicial and law enforcement system makes people doubt whether the few suspects who have been arrested, or the few cases where authorities have obtained convictions, have anything to do with the crimes. Investigations consistently produce no results. No progress has been made in high-profile murder cases<sup>22</sup> because, as one NGO's put it, "the government lacks political will. They don't see a problem. They are unable to conceptualize it."<sup>23</sup>

Worse yet, the government often plays down the problem and sometimes blames the press itself. President Calderón has accused the media of "helping organized crime get their message out" and of contributing to Mexico's deteriorating image

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<sup>20</sup>CPJ's 2010 Impunity Index report, *Getting Away with Murder*, April 20, 2010. The report spotlights countries where journalists are slain and killers go free, [www.cpj.org](http://www.cpj.org)

<sup>21</sup>*Ibid.*

<sup>22</sup>Francisco Ortiz Franco, *Zeta* (Tijuana, 2004) ; Bradley Will, freelance (Oaxaca, 2006) and Amado Ramírez, *Televisa* (Acapulco, 2007).

<sup>23</sup>Brisa Maya Solís, *Cencos*, *Idem*.

abroad.<sup>24</sup> Other government officials have blamed the press for “trivializing crime” by taking it out of context, creating fear among the population and putting too much emphasis on the inability of Mexican law enforcement to fight the cartels and on the corruption of government institutions.<sup>25</sup> Negative views of the media by high level federal authorities feed local and state officials’ animosity against the press.

The Special Prosecutor’s Office for Crimes Against Journalists (*Fiscalía Especial para la Atención de Delitos Cometidos contra Periodistas*), part of the Attorney General Office, has denied that Mexico has become a dangerous place for the exercise of journalism or that journalists are being killed in reprisal for writing about drug trafficking and government corruption. The Special Prosecutor has argued that most of the killings of reporters in 2009 were due to personal problems or business deals gone bad. While conceding that “some cases exist of reporters slain in direct reprisal for their work,” the Special Prosecutor has insisted that the numbers are not as high as the figures claimed by the press and civil society.<sup>26</sup> It should be noted that most aggressions, particularly death threats, go unreported because reporters and media companies distrust authorities or they are too afraid to speak out and risk being singled out.

The *Fiscalía* was created four years ago, at the end of the Fox Administration, in response to an international demand for greater and more permanent involvement by federal authorities in the investigation of crimes against free expression. While it was a step in the right direction, the *Fiscalía* has been largely ineffective in part because of its limited mandate, lack of autonomy and weak and unqualified leadership. “The Special Prosecutor’s Office is run by very mediocre people. They have no influence whatsoever. For these, reasons, the *Fiscalía* was still born,” said *El Universal*’s Managing Editor.<sup>27</sup>

In announcing its creation, the Mexican government stated that the Special Prosecutor’s Office for Crimes Against Journalists, which helps the Attorney General’s Office of Justice of the Federal District, and the diverse Attorneys General’s Offices of the member states of the Federation, “is competent to direct, coordinate and supervise the investigations and, if needed, the prosecution of the crimes committed against national and foreign journalists within the national territory, [if] these crimes were committed because of the practice of their profession. The new Special Office will also seek sanctioning of the authors of the crimes and insure the victim’s proper

<sup>24</sup>Jorge Ramos, *FCH se lanza contra los medios*, *El Universal*, Feb. 26, 2010. [www.eluniversal.com.mx](http://www.eluniversal.com.mx)

<sup>25</sup>Attorney General Eduardo Medina Mora, speech before the forum *La responsabilidad de los medios de comunicación ante la lucha contra la delincuencia organizada*, Mexico City, March 2, 2009, as reported by *La Jornada* on May 3, 2009. [www.jornada.unam.com.mx](http://www.jornada.unam.com.mx)

<sup>26</sup>Octavio Orellana, Special Prosecutor for Crimes Against Journalists, interviewed by the author, Mexico City, Dec. 9, 2009. On Feb. 15, 2010, Mexico’s Attorney General replaced Orellana with Gustavo Salas Chávez, a lawyer with prosecutorial experience and no human rights or freedom of the press training. PGR’s Press Release 172/10. [www.pgr.gob.mx](http://www.pgr.gob.mx).

<sup>27</sup>Jorge Zepeda Patterson, *El Universal*, Managing Editor.

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reparation of the damages.”<sup>28</sup> Although the Attorney General has the discretionary authority to name and remove the Special Prosecutor, the Prosecutor doesn’t respond directly to him. The Fiscalía is assigned to the PGR’s Assistant Attorney General for Human Rights (Subprocuraduría de Derechos Humanos, Atención a Víctimas y Servicios a la Comunidad), an arrangement that deprives it of legal or political autonomy.

Furthermore, the Fiscalía is not empowered to tackle cases involving drug traffickers or organized crime, both central sources of attacks against the media. It was created with no law enforcement or prosecutorial mandate to bring criminal perpetrators to justice and no formal ability to investigate and make charges. “The Fiscalía is not really a Fiscalía. Its role is not to investigate. It has no teeth,” said a high level Foreign Ministry official.<sup>29</sup> In its first four years of existence, the Fiscalía has averaged one prosecution per year.<sup>30</sup>

The Fiscalía has justified its inefficiency by saying that its role is limited to monitoring investigations on crimes against reporters perpetrated by federal officials and authorities. “The Fiscalía has no jurisdiction on crimes committed by organized crime or drug trafficking organizations against reporters,” the Special Prosecutor explained.<sup>31</sup> The Fiscalía does not gather evidence or issue indictments. SIEDO is in charge of investigating these crimes.” The Assistant Attorney General for Special Investigations and Organized Crime (*Subprocuraduría de Investigación Especializada en Delincuencia Organizada*), or SIEDO, is the organized-crime division of the PGR. SIEDO gives information to the Fiscalía on cases of reporters suspected to have been slain by organized crime in connection with their job, but the Fiscalía does not make the determination on the motives of the killings. According to the Fiscalía, the majority of crimes against reporters belong to the “*fuero común*” meaning that they fall within the responsibility of local and state jurisdictions.

Drug trafficking, identified by the Mexican government as the main source of violence against the press, is a federal crime under Mexican law. Murder and assault, when not proven to be the works of organized crime, are state rather than federal crimes, and the federal government has no automatic right to intervene. In addition to these jurisdictional impediments, local and state investigations are in the hands of state and local authorities, prone to corruption, with fewer resources and subject to less accountability.

Initially welcomed as a step forward in recognizing Mexico’s deteriorating press climate, the Fiscalía’s performance has been disappointing. To date there have been no successful prosecutions. According to the CPJ, the office has lacked legal

<sup>28</sup>Articles, 4 Transitory Articles, Pages 52–54; Mexico’s Diario Oficial, Feb. 15, 2006.

<sup>29</sup>Ambassador Juan Manuel Gómez Robledo, Deputy Secretary for Multilateral Affairs and Human Rights in the Foreign Ministry, interviewed by the author, Dec. 9, 2009.

<sup>30</sup>Article 19 and CENCOS, , *Entre la Violencia y la Indiferencia: Informe de Agresiones contra la Libertad de Expresión en México 2009*, 33–36, Annual Report, February 2010., [www.cencos.org](http://www.cencos.org)

<sup>31</sup>Octavio Orellana, Special Prosecutor for Crimes Against Journalists. *Idem*.

jurisdiction to pursue most cases and the authority to take independent action: “It has proved largely ineffective.”<sup>32</sup>

In the beginning of 2010, Mexico’s Attorney General named Gustavo Salas Chávez, a lawyer with little human rights or freedom of the press background, as the new Special Prosecutor.<sup>33</sup> In a statement announcing the change, the PGR said that the new Prosecutor was given “precise instructions” by Attorney General Arturo Chávez to “thoroughly review each one of the cases” filed with the Fiscalía and to “combat impunity, as well as to reorganize the structure of the office.”<sup>34</sup> Some media organizations welcomed the change of leadership in the Fiscalía as a preliminary step by the Mexican government to make the Special Prosecutor’s Office more effective. In a hearing before the Inter-American Commission on Human Rights, Salas said that the Fiscalía was undergoing an “institutional review” to improve its operations in four broad areas: administrative, technological, juridical and social engagement. This will lead, he explained, to the implementation of four “sub-programs” to systematize crime information, respond to crimes and crime claims, and to promote free press and free speech.<sup>35</sup> Salas, who became the third head of the Special Prosecutor Office since its creation in 2006, said that as part of the reorganizations the Fiscalía will expand its duties to include crimes against freedom of speech (not only crimes of press freedom) and that it will therefore change its name to “Special Prosecutor’s Office for Crimes Against Freedom of Expression” (Fiscalía Especial para la Atención de Delitos Cometidos contra la Libertad de Expresión).

## MEDIA RESPONSE

Leading Mexican journalists argued that one reason why media companies, reporters and editors do not confront the government to demand protection for journalists and justice for those killed, is that “impunity breeds apathy” within Mexican society, and journalists are no exception.<sup>36</sup> Impunity has generated a sense of battle fatigue within the media. The more killings, the less brutal they are perceived. This, in turn, has a paralyzing effect. The next death is no longer front page news and covering new killings becomes less important. The repetition of a tragic event ends up losing its news worthiness and moral value. At the end, the problem goes back to impunity and its empowering effect on organized crime.

<sup>32</sup>CPJ, *Attacks on the Press in 2008*, Annual Report. [www.cpj.org](http://www.cpj.org)

<sup>33</sup>PGR’s Press Release 172/10, Feb. 15, 2010.

<sup>34</sup>PGR’s Press Release 172/10, *Designa el Procurador Arturo Chávez a Gustavo R. Salas como Titular de la Fiscalía Especial para Periodistas*, Feb. 15, 2010. [www.pgr.gob.mx](http://www.pgr.gob.mx)

<sup>35</sup>Gustavo R. Salas, *Intervención del Fiscal Especial para la Atención de Delitos Contra Periodistas*, before the 138th Period of Sessions of the Inter-American Commission on Human Rights (IACHR–OAS), March 22, 2010. Title of the hearing: Attacks on Journalists in Mexico; petitioners: *Article 19* and Cencos.

<sup>36</sup>Carmen Aristegui, host of *MVS Radio Noticias* morning edition and *CNN’s Aristegui*, interviewed by the author, Mexico City, Dec. 9, 2009.

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In addition, editors and journalists argue that the financial crisis reduced their response latitude, since it increased media companies' economic vulnerability. The press is now financially weaker than some years ago. While some major daily newspapers in Mexico City practice relatively high levels of editorial independence, openly criticizing the government and the president, something unheard of 20 years ago, media owners are reluctant to pressure the government into doing something about violence against the press. According to Jorge Zepeda Patterson, "media owners have little interest in putting the government against the wall around violence against journalists because they might risk losing sources of advertising."<sup>37</sup>

Contrary to their Colombian counterparts, who believe that mobilizing the press and civil society around attacks against the right to information is the best way to guarantee the free exercise of journalism, the lack of solidarity and rivalries within the Mexican press makes it more difficult for them to close ranks. Media groups that have experienced killings and threats against their reporters, often opt for dealing with the situation on their own rather than asking for support from their counterparts in denouncing the federal government's inability to protect the press.<sup>38</sup>

A few years ago, print media journalists, editors and columnists made an attempt to speak with one voice. In February 2006, after publishing a series of articles on drug violence and corruption, *El Mañana*, Nuevo Laredo's oldest newspaper founded in 1924, was attacked by armed assailants, firing semi-automatic assault rifles and tossing a grenade. One reporter was seriously injured. The event, an act of violence unseen in Mexico against a building housing a newspaper, infuriated journalists throughout Mexico. As a result, 65 newspapers, media owners and editors from Mexico City, Monterrey, Guadalajara, Baja California, Baja California Sur, Coahuila, Chihuahua, Guanajuato, Sinaloa, Sonora, Tamaulipas and Yucatán launched an unprecedented initiative known as Proyecto Fénix. After expressing their "outrage" for the high levels of drug violence against journalists and journalism, the members of Proyecto Fénix issued a declaration stating that federal and local authorities have the "obligation" to investigate crimes against journalists in Mexico. They committed themselves to maintaining open channels of communications to develop responses of solidarity on behalf of colleagues threatened by drug trafficking anywhere in the country and to encourage the work of a special team of investigative reporters that, under the auspices of Proyecto Fénix, was to deepen and expand the research of threatened journalists. Their work was to be published in all the newspapers that participated in Proyecto Fénix.<sup>39</sup>

Proyecto Fénix's subscribers believed that by publishing the content of the research work that provoked the enemies of free speech to threaten the authors of the

<sup>37</sup>Jorge Zepeda Patterson, *Op.cit.*

<sup>38</sup>El Universal did not openly denounce the death threats against Mónica Hernández, their Durango correspondent. Instead, they told the state governor, Ismael Hernández Deras (of the PRI party), that if he guaranteed Hernández's safety she would no longer write "crime stories."

<sup>39</sup>*Desplegado / No a la violencia, no al silencio*, Feb. 9, 2006, [www.reforma.com](http://www.reforma.com).

research, they would be collectively protecting the authors and their journalistic work. Proyecto Fénix, however, soon vanished. Its failure can be partially explained by the lack of cohesion Mexican journalists have shown since the late 1990s when the media began decoupling itself from the government's control. Some journalists believe that despite the horrible high levels of violence against local reporters, perhaps the one thing that might trigger them to organize a united response would be the assassination of a prominent media personality in Mexico City. "We are left with the question of who would have to be killed or who would have to die to evoke a sense of solidarity. This has not happened despite the fact that all the reasons exist for it to have happened," says journalist and TV host Carmen Aristegui.<sup>40</sup>

When studying countries that have lived through and largely survived episodes of violence against the press similar to what Mexico is experiencing now, the country that comes to mind is Colombia. For the Mexican media there are lessons to be learned from the Colombian experience. In the 1980 and 1990, when Colombian reporters were being slain and newspapers' offices attacked, there were three steps taken collectively by the actors involved which changed the deadly trend.

First, the larger and more influential media companies took smaller papers under their protection, and created a united front to demand security and safety to do their job. Second, civil society and the general public supported their effort with the understanding that by doing so they were defending their own right to be informed. Lastly, the Colombian government recognized its failure to fulfill its obligation of protecting freedom of the press.<sup>41</sup>

In Mexico, all three steps are absent. Without solidarity among reporters and media companies, effective solutions to stop the wave of violence will be hard to come by. International media advocates say that there is only so much they can do to defend press freedom in Mexico. They believe that the answers can only come from inside Mexico, from those directly affected. If media companies and reporters do not pressure the government, they argue, if they don't organize themselves to demand protection and the end of impunity, the government will continue dragging its feet.<sup>42</sup>

## FORCED INTO SILENCE

As more reporters die, journalism itself and the right of citizens to be informed is suffering. Since the government declared the "war on drugs" in 2006, turf wars between drug cartels have intensified. Many editors and journalists working along the U.S.-Mexico border and in states overwhelmed with violence have engaged in widespread self-censorship. Self-censorship is defined as an act of controlling what

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<sup>40</sup>Carmen Aristegui, *Op.cit.*

<sup>41</sup>Darío Ramírez, *Article 19*, Director for Mexico and Central America, "Cómo protegió Colombia a sus periodistas," *El Universal*, Feb. 8, 2010.

<sup>42</sup>Dario Fritz, Mexican representative of the Rory Peck Foundation, *Idem.*

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one publishes, writes or says in order to avoid annoying or offending others, but without being told that such control is necessary. In countries like Mexico, where freedom of the press is not protected by the State, self-censorship derives from fear of reprisal by those who feel their criminal or special interests are being threatened by the press. Self-censorship also works as a defensive mechanism against legal intimidation by powerful political and business interests.

In northern border towns, drug traffickers have gone after the media with particular vengeance. They have attacked news rooms, and killed, kidnapped and called up reporters and editors regularly with threats, demanding “do not dare print our names. We will kill you the next time you publish a photograph like that.”<sup>43</sup> As a result, sensitive issues such as drug trafficking, organized crime, and political corruption are not being covered. Frequently, reporters file crime stories based solely on official sources. The editor of a border town said they have learned the lesson: “To survive, we publish the minimum. We don’t investigate. Even at that, most of what we know stays in the reporter’s notebook.” Many journalists said the November 2008 killing of a veteran crime reporter served as a warning to the entire press corps in Ciudad Juárez.<sup>44</sup> While newspapers’ coverage of organized crime, particularly along the northern border states, was already meager, in 2006 self-censorship took a turn for the worse, after the violent assault on the Nuevo Laredo daily *El Mañana*. “With the level of impunity on crimes against journalists and with the war on organized crime that the government is waging, reporters who cover violence and drug trafficking have, more than ever, the most to lose. There is fear. Fear to write about issues that we know will bring reprisal or death,” said a former reporter with Frontera in Tijuana.<sup>45</sup>

In some states, self-censorship has reached new levels. The power of organized crime to intimidate reporters has gone from silencing news to demanding that the press follow particular agendas dictated by “powerful interests” (“poderes fácticos”), which include drug cartels and organized crime. Local newspapers are making deals with city authorities to print favorable news in return for protection. In some towns run like “small fiefdoms” by wealthy local people that exercise great power on people’s ordinary lives, the relationship with the local media is determined by money. News rooms are reported to receive “sacks full of cash” from local powerful groups in return for their silence or to control what is published.<sup>46</sup> The success of silencing

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<sup>43</sup>Marc Lacey, “Drug Killings Go Unreported Inside Mexico,” *The New York Times*, March 14, 2010. [www.nyt.com](http://www.nyt.com)

<sup>44</sup>Alfredo Quijano, editor-in-chief of *Norte de Ciudad Juárez*, referring to his newspaper’s practice of self-censorship. CPJ Special Report by Mike O’Connor, June 2009. [www.cpj.com](http://www.cpj.com).

<sup>45</sup>Jesús Angulo Corral, message sent to the author via Facebook, Jan. 17, 2010, which he authorized to publish.

<sup>46</sup>Francisco Bidal Benítez, Centro de Periodismo y Ética Profesional’s (CEPET) President, Elía Baltazar, CEPE’s Advisory Board member and Miguel Ángel Ortega, CEPET’s member, interviewed by the author, Mexico City, Dec. 8, 2009. CEPET is a Mexican NGO founded by print media reporters to promote journalism ethics.

the media is seen in the case of a local reporter in Michoacán who was threatened just for writing a minor story on a water leak in a parking garage of the town's municipal art center, or the sportswriter who was kidnapped in Monterrey by drug cartel hit men upset over coverage of their favorite soccer teams.<sup>47</sup>

The situation of violence and intimidation against reporters makes it difficult to know with certainty which cases involved honest reporters trying to do their job and which involved corrupt reporters in the payroll of the cartels. Rejecting bribes or resisting threats can be tantamount to signing one's death sentence. An editor in Michoacán, close to the female reporter who disappeared in November 2009,<sup>48</sup> said she told him of a recent meeting with several other reporters in Zamora. Leading the meeting, he said, was a key police reporter who obviously represented one of the cartels. The reporter pointed to the other reporters and named the monthly amounts they would receive for skewing their coverage. They agreed to go along. The now missing female reporter refused and tried to leave, the editor said, but the others shouted her down and made her stay. He said she still rejected the offer. It was brave, said the editor, but considering the moral corrosion in government institutions, and now in journalism, it may have been her fatal mistake. It may well be, he said, that the corrupt journalists, and the cartel, couldn't allow the honest journalist to live.<sup>49</sup>

Poor working conditions, low wages, a lack of health insurance, and long hours of work with scarce resources, also act as a deterrent for developing high standards of professional ethics among journalists. These poor conditions increase reporters' vulnerability to corruption and compromise of moral and professional values. Honest reporters are often left with having to choose between being a poor reporter or a dead one. In Mexico City, the average monthly pay for a reporter is between \$700 and \$1,500 USD; in the provinces, it runs from \$300 to \$500 USD. Not even large papers pay well. A leading Mexico City daily, for instance, pays freelancers 140 pesos (around \$11 USD) per published story. Most media groups have the policy of not hiring reporters, excluding them from the pay-roll and not signing long term labor contracts, to avoid paying benefits and complying with labor rights regulations.<sup>50</sup>

Many opinion makers believe that press freedom in Mexico is not only being threatened by organized crime and corrupt government officials, but also by the "legal structure" that allows two corporations — the duopoly of Televisa and TV Azteca — to control the airwaves and decide which stories receive news coverage on the basis of political expediency and their own business interests. Most Mexicans

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<sup>47</sup>Mike O'Connor, "Michoacán journalists under siege with nowhere to turn," CPJ, Dec. 7, 2009. [www.cpj.org](http://www.cpj.org)

<sup>48</sup>María Esther Aguilar Cansimbe, a reporter who covered organized crime and corruption for Cambio de Michoacán, was last seen Nov. 11, 2009. She is feared dead.

<sup>49</sup>"Michoacán journalists under siege with nowhere to turn," *Idem*.

<sup>50</sup>Francisco Bidal Benítez, Centro de Periodismo y Ética Profesional's (CEPET) President, Elia Baltazar, CEPE's Advisory Board member and Miguel Ángel Ortega, CEPET's member. *Idem*.

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get their news from television, In talking about violence against the press, we should expect television to play a critical role as well, which is not the case. The issue is not being seriously covered by television news,” says Aristegui.<sup>51</sup>

### SECURITY STEPS TAKEN BY THE MEDIA

Protecting journalists, freedom of the press and the right to know is primarily the responsibility of the state. However, in Mexico’s unsafe working environment, reporters, editors and media owners have been forced to take security measures to protect themselves. While self-censorship is the main survival mechanism, there are additional initiatives that editors and individual reporters take. It is increasingly common to reassign reporters to less dangerous beats or physically transfer them to other locations, to install surveillance cameras, hire armed private guards and screen visitors in news media buildings. In some border cities, like Tijuana and Nuevo Laredo, reporters, photographers and cameramen sent to cover shootings and violence wear bullet proof jackets and helmets.

Measures to protect reporters’ identities are being taken by editors and reporters as well. After a wave of violence against the press in Monterrey, the third largest city in Mexico, some crime reporters asked to not sign their stories. Even without bylines, editors feared drug cartels could identify reporters who have distinctive writing styles. Editors decided to rewrite all crime stories in an antiseptic, just-the-facts style. Also in Monterrey, one of Mexico’s most competitive television markets, television reporters are going out in groups to cover crime stories.<sup>52</sup>

A poll on security measures by the press, conducted by Article 19 at the end of 2009 and beginning of 2010, shows the absence of a “culture of prevention” among news media personnel from the top (owners and editors) to the bottom (reporters and photographers.) Violent incidents and other means of censorship are seen as extraordinary events despite the fact that a high percentage, 81.2 %, viewed the places where they work to be of high risk for journalism. A relatively high percentage, 68.7 %, of the 15 media outlets interviewed for the survey in Baja California, Chihuahua, Coahuila, Mexico City, Guerrero, Nuevo León, Oaxaca, Puebla, Queretaro, San Luis Potosí, Sinaloa and Tamaulipas, responded that no steps have been taken to give protection to threatened reporters. In addition, 43.7 % reported that there are no special resources available for physical protection and 81.2 % said that their employers don’t offer self-defense training.<sup>53</sup>

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<sup>51</sup>Carmen Aristegui, *Op.cit.*

<sup>52</sup>Manuel Roig-Franzia, “Mexico’s Journalists Feel Heavy Hand of Violence,” *The Washington Post*, front page, May 30, 2007.

<sup>53</sup>Article 19 and Cencos, *Entre la Violencia y la Indiferencia: Informe de Agresiones contra la Libertad de Expresión en México 2009*, 49–50, Annual Report.

In an effort to train reporters for dangerous assignments, the Rory Peck Foundation in recent years has been instrumental in organizing groups of 20 to 25 Mexican reporters to take courses offered on the Internet by the Dart Center for Journalism and Trauma (Columbia University School for Journalism's project for journalists who cover violence and tragedy). The courses last four to five days and focus on practical measures to protect themselves and deal with trauma. However, NGOs caution that in the general context of the government's failure to protect journalists and journalism, the measures being taken by media groups and reporters are not only insufficient and appeared to be more reactive than preventive.

## LEGISLATIVE INITIATIVES

The Mexican legislative branch has been mostly ineffective in fulfilling its central role of producing laws to strengthen and expand the legal framework to defend free speech, protect journalists and the practice of journalism. Although some progress has been made, such as the passage of a landmark reform to the Federal Criminal Code in 2007, signed by President Calderón, that effectively eliminated criminal penalties at the federal level for defamation<sup>54</sup>, a lot more remains to be done to safeguard freedom of expression for all citizens, not just journalists. Top priority should be given to making the investigation of crimes against the press the responsibility of federal rather than state and local authorities.

In October 2008, President Calderón sent Congress a bill proposing a constitutional amendment that would make a federal offense of any crime related to “violations of society's fundamental values, national security, human rights, or freedom of expression, or for which their social relevance will transcend the domain of the states.”<sup>55</sup> Commonly known as the “federalization” of crimes against freedom of expression, the legislation proposed to change the penal code to make it a federal crime to curtail an individual's right to freedom of expression. It also calls for reforming the *Fiscalía* by making it a dependency of the Attorney General's office. In June 2008, President Calderón pledged his commitment to the bill in a meeting with the CPJ in Mexico City.

In April 2009, the Chamber of Deputies approved the federalization bill with 263 votes (out of a total of 500 members). Subsequently, the legislation adds to the Federal Criminal Code, “Crimes perpetuated against freedom of expression exercised through journalistic activity.” The reform calls for imposing penalties of up to five years in prison for anyone who “impedes, interferes, limits, or attacks journalistic activity.” Sentences could be doubled if the assailant were a public official. An analysis by the CPJ, which has followed the bill's legislation process since the outset,

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<sup>54</sup>In March, 2007, the Mexican Congress abolished articles 350 and 363 of the Federal Criminal Code that codified defamation as a crime and transferred it to the Federal Civil Code.

<sup>55</sup>*Silence or Death in Mexico's Press*, CPJ special report, September 2010, <http://cpj.org/reports/2010/09/silence-death-mexico-press-federal-obligation.php>

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found that if passed, it would be an encouraging but preliminary step in combating deadly violence against the press. The enactment of new penalties, CPJ found, would have a significant effect only if accompanied by adoption of a constitutional amendment granting federal authorities the jurisdiction to prosecute all crimes against free expression. But the proposed amendment stalled in the Senate. Legal experts told CPJ researchers that a lack of consensus among political parties in Congress, an unwillingness to negotiate those differences, and the emergence of other priorities have dimmed the prospects for reform. They also observed that passage was further complicated by the fact that constitutional amendments require a two-thirds vote by Congress and approval by a majority of the state legislatures.<sup>56</sup> In a meeting with a delegation from the CPJ and the Inter-American Press Association in September 2010, Calderón promised to work for passage of federal legislation that would make attacks against free expression a federal crime.

In a separate development, in September 2009 the newly inaugurated legislative session of the Chamber of Deputies decided not to renew the Special Committee for Dealing with Attacks against Journalists and News Media (Comisión Especial para el Seguimiento a las Agresiones y Medios de Comunicación). In coordination with media representatives and civil society, the Committee, created in 2006, had been charged with examining violence against the press and had made progress in raising political awareness about the increasing number of victims and the deteriorating security situation. Its disbandment was seen as a set back for press freedom.

However, in the midst of reports of another brutal murder,<sup>57</sup> the Chamber of Deputies retracted its earlier decision and agreed to reestablish the Special Committee for Dealing with Attacks against Journalists and News Media.<sup>58</sup> In February 2010, the Special Committee was formally inaugurated. Formed by 13 representatives of all the political parties, the Special Committee is led by PAN Congresswoman Yolanda Valencia Vales, and co-chaired by Efraín Aguilar Góngora (PRI) and Agustín Guerrero Castillo (PRD). The Committee endorsed a long list of challenging “strategic objectives” to strengthen freedom of the press. At the top of the list are the “federalization” of crimes against freedom of expression and reforming the Fiscalía by granting it autonomy and prosecutorial powers. Between September and December of 2009, when the Chamber of Deputies was debating whether to revive the Committee, four journalists were killed and one more disappeared. So far the Mexican Congress has not moved in a timely way in recognizing and taking action to address the gravity of the situation. It remains to be seen how effective and diligent the new Commission will be in pressing for new legislation strengthening the legal protection for journalists and journalism.

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<sup>56</sup>*Silence or Death in Mexico's Press*, CPJ's special report, <http://cpj.org/reports/2010/09/silence-death-mexico-press-federal-obligation.php>

<sup>57</sup>On Nov. 2, 2009, Bladimir Antuna García, a crime reporter for the daily *El Tiempo de Durango*, was found dead in Durango. Next to the body was a note stating: “This happened to me for giving information to soldiers and for writing too much,” according to *La Jornada*. Antuna appeared to have been strangled.

<sup>58</sup>*Gazeta Parlamentaria*, Dec. 10, 2009.

## OBJECTIVES AND RECOMMENDATIONS

The following is a compilation of objectives and recommendations proposed by leading U.S. and Mexican NGOs that, if adopted by the federal government, media companies, and civil society, could help protect journalists, freedom of expression and press freedom in Mexico.<sup>59</sup>

- Guarantee the right of all Mexicans to express their ideas freely in any form, as established in Articles 6 and 7 of the Mexican Constitution.
- Protect and promote an environment in which freedom of expression, through a free and independent press, is allowed to flourish.
- End the pattern of violations of the right to freedom of expression by state authorities.
- Develop prevention policies through effective human rights training for security forces at all levels of government.
- The legal reform to “federalize” crimes against free expression and freedom of the press that was approved by the Chamber of Deputies in 2009 should be voted on and passed by the Senate.
- The “federalization” measure should:
  - Be accompanied by the adoption of a constitutional amendment granting federal authorities the jurisdiction to prosecute all crimes against free expression. Ensure that future federal law is in line with international standards. Ensure that the language utilized is sufficiently broad to protect the rights of everyone, including journalists, whose freedom of expression is threatened.
- The Office of the Special Prosecutor (Fiscalía) should be:
  - Restructured to answer directly to the Attorney General, rather than to the Deputy Attorney General for Human Rights. Empowered to investigate and prosecute crimes against the press.
  - Given the power to make mandatory the compliance of the National Human Rights Commission’s recommendation on violence against the press.
- Create, within the state legal framework, a Mexican Committee to Protect Journalists to be composed of representatives from the government, civil society and the media, with the mission of protecting the public’s right to a free press and the right of reporters to work in a safe environment.

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- Modeled on the Colombian “Programa de Protección a Periodistas y Comunicadores Sociales,” the Mexican Committee to Protect Journalists’ role would be to set up a mechanism of protection and prevention through risk assessments, the implementation of basic preventative measures such as removing reporters from dangerous areas and providing them with bullet proof jackets and armored cars.
- Open a “casa de refugio” (sanctuary) in Mexico City to host local reporters under threat or in dangerous situations in the provinces.
  - The sanctuary would give reporters under threat the opportunity of escaping to Mexico City, instead of crossing the border like many reporters in the north do. (A bill requesting 8.5 million pesos to rent a house to be used as a sanctuary for 20 to 25 threatened reporters was introduced in Mexico City’s Asamblea Legislativa in 2009.)
- Demand an investigation into who is behind the attacks and request that reporters are given full protection before leaving the “casa de refugio” to return home.
- Launch an “adopt a journalist campaign” among the Mexico City press. Under this campaign, reporters in Mexico City would “adopt” a slain or disappeared reporter to try to solve his or her case through the tools of investigative journalism.



# ARMED FORCES AND DRUGS: PUBLIC PERCEPTIONS AND INSTITUTIONAL CHALLENGES

Roderic Ai Camp

This essay proposes to briefly describe and analyze the evolution of the Mexican Army and Navy's role in drug interdiction, focusing on the patterns that have emerged since 1995, when the Army accepted responsibility for that task without any internal opposition. I will argue that Mexican national security priorities have shifted significantly, focusing on domestic security issues, specifically drug-related criminal activity and violence. In response to the government's emphasis on drug-related crime, civil authorities have relied increasingly on the armed forces to carry out an aggressive anti-drug mission. The increased role of the military in carrying out these assignments has produced significant changes within the Mexican Navy and the Army, and in their relationship with the American armed forces. Citizen views of the Mexican armed forces as an institution, its performance of the anti-drug mission, and its reactions to increased levels of personal insecurity, have altered Mexican perceptions of national sovereignty and the United States' role in their country. Finally, the role of the Catholic Church as an increasingly influential actor in government attempts to curb the drug cartels, as well as the source of potential conflict with the armed forces over growing numbers of human rights abuses, are essential to understanding the consequences of the military's anti-drug mission.

## THE EVOLUTION OF THE MILITARY'S ANTI-DRUG ROLE AND CIVIL-MILITARY RELATIONS

Mexico's armed forces have undergone significant changes since 1995, when an internal memorandum, outlining significant criticisms of army structures and policies, was released to the Mexican media. Despite the long list of complaints outlined in this document, only one assigned mission generated no dissent: the need for the armed forces to carry out the government's anti-drug trafficking mission.<sup>1</sup> The extent of the officer corps' agreement on this task was all the more remarkable given the opposition voiced to me in interviews from 1986–1992. Most of the individuals

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<sup>1</sup>For a detailed analysis of this document, see my ““The Mexican Military, Marching to a Democratic Tune?,” in Kevin Middlebrook, ed., *Dilemmas of Political Change in Mexico* (London: Institute of Latin American Studies, University of London, 2004), 353–372. My original analysis was published in a two-part series in *Excelsior* in 1995.

I spoke to were opposed to this mission because they believed it would expose the military to extensive corruption.<sup>2</sup>

During Ernesto Zedillo's administration (1994–2000), the military's primary tasks were to destroy the production of drugs in Mexico, and to prevent the flow of drugs through Mexico. The military took on greater responsibility for performing anti-drug trafficking tasks, assigning larger numbers of troops and officers to this specific mission. Despite the willingness of the military to perform this assignment, opposition to their substituting for civil authorities encouraged Vicente Fox, the National Action Party candidate for president in 1999–2000, to promise to withdraw the armed forces if he won the election.<sup>3</sup> Once victorious, however, he, like his predecessor, discovered that no viable civilian alternative to the military existed.<sup>4</sup> Fox committed an average of 19,293 troops yearly to this task during his administration.<sup>5</sup> Under Calderón, during the first two years of his administration, those figures increased to 45,000, or a 133 percent increase. During 2009, the Army assigned 48,750 personnel to the drug mission,<sup>6</sup> of which 26 percent were involved in 20 ongoing joint operations.<sup>7</sup>

The victory of an opposing party in 2000, and the beginning of democratic consolidation influenced other characteristics of armed forces behavior affecting civil-military relations generally. The most important of these potential influences in the late 1990s and 2000s was a shift in armed forces missions within newly redefined national security priorities to non-traditional tasks typically performed by civilian agencies. It is fair to say that the extent to which the Mexican armed forces are

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<sup>2</sup>Interestingly, in a poll published by *Parametría* in early 2007, most Mexicans, 65 percent, thought the army would be corrupted in performing their anti-drug tasks, reinforcing the perception which the army leadership itself held in the early 1990s. Yet, in June 2009, in another poll, only 34 percent thought the army would be corrupted by drug cartels, suggesting that the public's perception after more than two years of intensely fighting the cartels, that the army has to a great degree resisted this outcome. 1,200 interviews, national sample, Jan 27–30 2007, +/-2.8 margin of error. Published in *Excélsior* 19 Feb 2007. The danger of that has been brought home in remarks by General Galván, Secretary of National Defense, to PRI members of the Senate, where he revealed that as many as 15,000 individuals detained in the drug war, had received some form of military training. Andrea Becerril and Victor Ballinas, "Negocian legalizar actividad de militares en la lucha antinarco," *La Jornada*, March 3, 2010, 8.

<sup>3</sup>His *Plan de Gobierno, 2001–2006* actually stated that the armed forces will be excluded from the public security sphere and will stop fighting drug trafficking. Sigrid Arzt, "The Shaping of Mexico's Civil-Military Relations under the Fox Administration in Light of the Law Enforcement Challenges," Unpublished paper, School of International Studies, University of Miami, September 8, 2001.

<sup>4</sup>The extent of weak civilian institutions is reflected by the recent request of PRD deputies that the government should examine the idea that National Defense, not customs, should be in charge of preventing arms shipments to Mexico. "El PRD propone que la Sedena controle las aduanas," *Diario de Yucatán*, January 6, 2009.

<sup>5</sup>Transparency request, 0000700035209, March 20, 2009.

<sup>6</sup>Transparency request, 0000700168109, November 14, 2009. The composition of the personnel carrying out these operations is also worth noting. For example, in the summer of 2009, 4,921 cadets, students, and officers attending most of the military academies were involved in drug eradication missions, 388 of whom were women. Transparency request, 0000700107009, August 13, 2009.

<sup>7</sup>Transparency request, 0000700108809, July 29, 2009.

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involved in national security decision making and its drug enforcement mission are the two most controversial roles affecting the established civil–military relationship.

These roles provoke controversy in the region because many scholars have argued for decades that when the Latin American military takes on such tasks, especially during an era of democratization, such new missions enhance the armed forces prestige and influence, increasing their potential for creating an imbalance in the tenuous democratic civil–military relationship. In Mexico, journalists, intellectuals and scholars provocatively label this influence as the militarization of civil society.<sup>8</sup> This linkage is a realistic concern in Mexico and elsewhere in the region. In a 2008 AmericasBarometer survey, 64 percent of Mexicans agreed with the statement: When there is a lot of crime, a military take-over would be justified. The higher the level of trust in the military, a prevailing condition in Mexico, the more likely support for a military government.<sup>9</sup>

Within the larger national security context, the military’s mission is delineated in four defense plans known as DN I-IV. Plans II through IV open the door for non-traditional military responsibilities, all involving internal, civilian-related responsibilities. DN-II responds to internal problems, including insurgencies, strikes, and other civil disturbances. The plan is relevant to the drug mission because it justifies both the use of the armed forces’ intelligence services and preventative measures in responding to civilian actions deemed internal threats. Obviously, drug cartels fall into this category. DN-III, which has been implemented on numerous occasions, uses the armed forces to respond to natural disasters to avoid becoming vulnerable to internal or external enemies. The newest of these plans, DN-IV, organizes and legitimizes the military’s anti-drug mission, and was implemented at the end of the Zedillo administration.

A sense of how Mexicans currently view the most prominent national security issues, which reinforces the rationale for the armed forces being assigned the anti-drug mission, is suggested in Table 1. Broadly speaking, Mexicans are divided in how they conceptualize national security.

In August of 2009, 31 percent viewed it as the defense of national sovereignty and territory, while a nearly equal 29 percent viewed it as protecting the population from threats confronting the country. The remainder were split among four other responses. But when asked specifically about the major threats confronting their country, organized crime, essentially the drug cartels, holds a commanding lead, followed by insecurity, both related to the drug cartel’s increased responsibility for the level of crime and violence. Furthermore, when Mexicans were asked what they

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<sup>8</sup>This term is not confined to Mexicans alone. Analysts, theorists and critics in the United States similarly use militarization as a crucial component of the imbalance between civil and military authorities. For a recent critical analysis, incorporated in a larger assessment of the Mérida Initiative, see Laura Carlsen, *A Primer on Plan Mexico*, Americas Policy Program, May 5, 2008, p. 3ff.

<sup>9</sup>Orlando J. Pérez, “Crime and Support for Coups in Latin America,” *AmericasBarometer Insights*, No. 32 (2009), 1–8.

TABLE 1: HOW DOES DRUG TRAFFICKING FIT INTO MEXICAN VIEWS OF NATIONAL SECURITY IN 2009? WHAT ARE THE PRINCIPAL THREATS AGAINST MEXICAN NATIONAL SECURITY?

Threats	Percent Who Chose
Organized Crime	47(a)
Public Insecurity	15
Kidnapping	8
Corruption	7
Armed Groups	7
Poverty and Inequality	5
Terrorism	3
Loss of Economic Competitiveness	2
Movements Against the Government	2

(a) The remaining 5 percent listed violation of national sovereignty, natural disasters, others, or did not know or answer the question. August 2009.

Source: Sistemas de Inteligencia en Mercado y Opinión, June–August 2009, “Encuesta Seguridad Nacional,” 1,250 interviews nationally, July 24–27, 2009, +/-1.9 percent margin of error.

considered to be the greatest threats to their country *from abroad*, 53 percent listed drug trafficking, followed by 21 percent indicating arms trafficking. In short, three quarters of the perceived threats stemmed from drug cartels.

The public policy issue of crime and personal security has become a crucial concern to most Mexicans. The Pew Foundation survey in September 2009 demonstrates why personal security or crime have been the single-most important issue

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(economic concerns combined was most significant). This response was equally true during the last three presidential campaigns. In the Pew poll, crime actually ranked above economic problems, and crime, drugs and corruption specifically account for three of the four major problems. In part, these views also are determined by Mexicans' experiences with crime. In Latin America, 33 percent reported they were a victim of crime in 2008. Mexico ranked second highest in the region, with 42 percent after Venezuela. Mexicans also perceive their country to be violent, 6.2 on a 10 point scale, the fourth highest in Latin America.<sup>10</sup>

Poverty too is linked to the drug mission, to the more than 450,000 individuals estimated by our intelligence community to be involved in the production or transportation of drugs. The extent to which individuals are employed by the cartels also affects how the drug cartels are viewed in poor regions.<sup>11</sup> Poverty is, in the words of Fox's defense secretary, General Clemente Vega, the fundamental national security problem in Mexico.<sup>12</sup> The military has given various forms of civic action, such as road building and dental care, directed at alleviating poverty, high priority in the past. Despite the fact that many elites would agree with General Vega's assessment of the number one security issue, underlying all other issues appearing in Table 2, only 5 percent of the public viewed it as a significant threat in 2009.

The military's potential effect on civil-military relations through the vehicle of national security, including its anti-drug mission, is dependant on the manner in which civilian and military leaders define national security. The trend toward an armed forces domestic national security function is universal. Some theorists expect it to become a primary function of the military in most countries, as is the case in Mexico. As I have argued, in the last twenty years Mexico has moved in the direction of the armed forces playing a growing national security role. The linkage between internal security and the military has a long history in Mexico, even if the military's own internal security role, in many respects, remained undefined until the mid-1980s. One outstanding feature of national security in Mexico was the peripheral participation of the military in defining national security and selecting the most appropriate means of implementing it.

Within a week of taking office in 1988, President Salinas appointed his chief of staff to direct a technical cabinet comprising five sections. Salinas added a fifth

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<sup>10</sup>From Latinobarometer 2008 poll, [www.latinobarómetro.org](http://www.latinobarómetro.org), 2009. For a discussion of the factors associated with perceived public insecurity, see José Miguel Cruz, "Public Insecurity in Central America and Mexico," *AmericasBarometer Insights*, No. 28 (2009), 1-7.

<sup>11</sup>The president of Mexico's Higher Agricultural Court estimated that 30 percent of Mexico's cultivatable land is used for producing drugs. The rationale for this is best expressed by one farmer as "for every peso that I invest in maguery, I earn seven pesos the following year... For every peso I invest in *mota* (marijuana), I get 500 pesos the following year." The difference in income is just too great for many poor farmers to resist. See Gardenia Aguilar Mendoza, "Cultivos de droga gana cada vez mayor terreno en México," *La Opinión Digital*, May 24, 2007, cited in Maureen Meyer, "At a Crossroads: Drug Trafficking, Violence and the Mexican State," Washington Office on Latin America, Washington, D.C., 2007.

<sup>12</sup>Personal interview, February 19, 2004.

TABLE 2: MEXICAN VIEWS ON PUBLIC POLICY ISSUES

How Big of a Problem is...?	Percent Responding Very Big
Crime	81
Economic problems	75
Illegal Drugs	73
Corrupt Political Leaders	68

Source: Pew Global Attitudes Project, “Most Mexicans See Better Life in U.S.—One in-Three Would Migrate,” September 23, 2009. 1,000 interviews nationally, May 26 to June 2, 2009, +/- 3.0 percent margin of error.

section: national security, composed of the Secretariats of National Defense, Navy, Government, Foreign Relations, and the Attorney General. This was the first time at the cabinet level that both the navy and the national defense secretariats were formally represented in national security matters. Some observers believe that the armed forces replaced civilian agencies as the most important voice in this sub cabinet. Despite this new structure, responsibilities for national security decisions remained divided, and military intelligence was not shared with civilian intelligence. Under the Fox administration, the national security cabinet became more fully integrated after structural reforms were introduced in 2003. Its mission was clearly defined to include social cohesion, protection of rights, and “preservation of democracy based on economic, social and political development of the country and its citizens.” Its members consist of the Secretariats of Government, National Defense, Navy, Public Security, Treasury, Controller, the Attorney General, and the director general of the Center for Research and National Security (CISEN).<sup>13</sup> In 2007, in response to President Calderón’s request to the Secretariat of National Defense to provide a detailed description of its participation in his National Development Plan, 2007–2012, the Army outlined three national security goals in support of Mexico’s foreign policy: guarantee national security and territorial integrity, protect border security and the human rights of those residents, and strengthen international cooperation for security and defense of sovereignty; and two objectives for internal

<sup>13</sup>*Diario Oficial*, April 19, 2003.

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security: *strengthen the state in the confrontation against drug trafficking and organized crime and improve the level of development and living conditions of Mexicans.*<sup>14</sup>

Intelligence sharing between the military and civilian agencies improved dramatically under with Fox, especially as it related to the pursuit of drug trafficking. President Calderón reinforced this cooperation against the drug cartels as the central national security mission.<sup>15</sup> The potential contributions of the Secretariat of National Defense to government intelligence is suggested by the fact that under Fox and Calderón huge numbers of individuals were assigned to Section 2 (intelligence) on the general staff.<sup>16</sup> The extent of the cooperation also can be measured by the presence of military officers in important positions in the attorney general's office and the Public Security position in charge of police reform.<sup>17</sup>

Within this evolving national security context since 1988, how did the military become involved in the anti-drug mission? The army's initial anti-drug mission began under President Lázaro Cárdenas, when he ordered the military to destroy marijuana and poppy crops in Sinaloa in the 1930s.<sup>18</sup> However, this trade actually increased during World War II because the United States needed a legal source of morphine, thus expanding production of poppies, and marijuana, because it required hemp fiber.

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<sup>14</sup>Secretaría de la Defensa Nacional, *Programa Sectorial de Defensa Nacional* (Mexico: SDN, 2007), 12.

<sup>15</sup>This collaboration was helped immensely when Fox, for the first time in decades, appointed a career Army general, Rafael Macedo de la Concha, to a non-military cabinet post as Attorney General. Macedo de la Concha's father was a prominent general in the 1970s and 1980s, having been Chief of Staff of the Presidential Guards under Luis Echeverría, and a zone commander in the 1980s. Macedo de la Concha was Fox's first wife's cousin. Letter from General Luis Garfias, January 27, 2005; *La Jornada*, April 21, 2002; Mexican Political Biographies Project, 2009; *Diccionario Biográfico del Gobierno Mexicano* (Mexico: Presidencia, 1984), 257. Despite these improvements, there still continued to be disputes over which agency would receive the funding for the performance of specific tasks, including helicopters and airplanes for drug detection missions. See "El ejército desplaza a la PGR a un discreto segundo plane," *Diario de Yucatán*, March 3, 2007.

<sup>16</sup>Service in the Staff Sections at National Defense headquarters always has been a valued component in the most successful careers in the officer corps. But serving as the Assistant Section Chief or Section Chief of Intelligence is appearing more frequently among top leaders of Army, including the current figures immediately under General Galvan.

<sup>17</sup>General Javier del Real Magallanes was appointed Assistant Secretary of Police Strategy and Intelligence, Secretariat of Public Security, in 2008, the highest post assigned to a general officer in the Calderón administration. He was appointed specifically to implement the new federal police model advocated by the Calderón administration, after a stellar career fighting drug traffickers, having been commander of the 4th Military Region in Monterrey and head of anti-drug operations in North East Mexico. General Del Real Magallanes was Chief of the Intelligence Section at the Secretariat of National Defense from 1990–94, suggesting his long experience with intelligence and national security issues. Mexican Political Biographies Project, 2009; *Por Esto*, Dec. 5, 2008; *La Jornada*, Dec. 4, 2008; [www.sedena.gob.mx](http://www.sedena.gob.mx), 2000, 2003. The focus has been on the Army presence, but in recent months, the Navy has taken on a much more visible role, as Admiral Wilfrido Robledo Madrid became the personal adviser to the new Attorney General of Mexico, Arturo Chávez Chávez, and Admiral José Luis Figueroa Cuevas was appointed head of the National Center of Analysis, Planning and Intelligence (CENAP). See Jorge Medellín, "De Orden Superior, Almirantes en PGR, contrapeso a la SEDENA," [www.columnas.ejecentral.com.mx](http://www.columnas.ejecentral.com.mx), November 19, 2009.

<sup>18</sup>Sinaloa has always been a significant source of drugs and illegal alcohol, which were smuggled to the United States since Prohibition.

The United States, by contrast, only seriously began its anti-drug interdiction program under President Nixon, whose Task Force proposed eradicating opium poppies and marijuana. In Mexico, during the 1960s and 1970s, the army was assigned an eradication mission, often in the same regions where it was performing civic action goals. During this period specific battalions, as far away as central Mexico, were sent to the drug producing states such as Sinaloa, Durango, Chihuahua, where they would spend six months a year destroying crops.<sup>19</sup> Two significant changes occurred in this era which produced critical features characterizing drug trafficking today: large cartels replaced individual family producers, who in turn increased the number of growers; and United States efforts to interdict the flow of drugs through the Caribbean resulted in South American sources shipping drugs through Mexico.

Mexico's Plan Condor in 1977 was the first large-scale army operation against drug production. By 1985, nearly twenty percent of the active army was engaged in the anti-drug mission. During the years 1976–1985, 315 military personnel died in performing that mission. When Carlos Salinas became president in 1988, he increased the emphasis on the military's role in the anti-drug mission and established the Drug Control Planning Center in 1991. When the officer corps expressed its opposition to such an enhanced role, Salinas narrowed the scope back to destroying drugs. The armed forces revived its expanded role in 1995, under President Ernesto Zedillo.

In spite of the armed forces expanded responsibilities, its growth has been relatively limited in the last fifteen years. (Table 3) What is revealing about the change in the size of the Army since 1970 is the persistent decline in growth from one administration to the next. Although one could make a case for the 18 percent increase during the De la Madrid administration (1982–88), when the military took on the eradication mission in earnest, as the battle against the cartels intensified, the rate of growth declined under Zedillo, and even more dramatically under Fox and Calderón.

In early 2009, the combined military forces consisted of 255,506 officers, enlisted personnel, and civilian employees.<sup>20</sup> (Table 4) When comparing the size of the armed forces to the population, Mexico's figure is 2.4 percent, well below that of Peru, Venezuela, and Colombia, but above Argentina and Brazil. It is the same ratio as that of Australia.<sup>21</sup>

While the growth of the military has been relatively gradual, the overall increases in expenditures on public security have increased significantly. Expenditures of the Secretariat of National Defense increased by 338 percent from 2000 to 2008, while

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<sup>19</sup>In an interview with a Mexican sergeant who participated in these patrols for years in the 1980s, he asserted that the officers often excluded certain fields from being destroyed, indicating that his commanders were compromised by specific drug producers. February 2009.

<sup>20</sup>Transparency requests produced different figures. According to the Navy, in February 2009, it consisted of 191 Admirals, 1,892 Captains, 10,646 officers, and 37,943 enlisted, totaling only 50, 672. More interesting is the fact that 15 percent of those personnel were women, 21 percent of officers, 3 percent of captains, and 14 percent enlisted. As of March 2009, the Army reached 202,355.

<sup>21</sup>Sergio Aguayo Quezada, *México Todo en Cifras* (Mexico: Aguilar, 2009), Table 15, 200.

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**TABLE 3: GROWTH OF THE ARMY/AIR FORCE, 1976–2009**

	1976	1982	1998	1994	2000	2006	2009
Nos.	93,278	113,5089	133,673	161,252	182,392	194,143	202,355
%		22	18	17	13	6	4

Source: Transparency request 0000700024708. These figures are from the last year of each administration since 1970.

comparable expenditures for the Navy actually decreased by 8 percent. (Table 5) The combined expenditures for all national security agencies during the same period increased by 152 percent. As Marcos Pablo Moloeznik correctly pointed out in his analysis of defense spending in 2006, which accounted for 2.41 percent of the federal budget, 80 percent went to personnel costs.<sup>22</sup> He argues that too little attention was paid to maintaining existing and acquiring new equipment.<sup>23</sup>

How has the military’s role changed since 2006, and why has the level of violence increased? When you compare the last ten years with the twelve years under the previous two PRI administrations, several important differences stand out. First, in the PRI era, military anti-drug missions were accompanied by tolerance of drug traffickers at many levels, thus criminal violence rarely touched ordinary people.<sup>24</sup> Under President Salinas, for example, a compromised army unit was involved in a deadly firefight with agents of the Attorney General in Veracruz, protecting a landing zone for drug dealers against civil authorities.<sup>25</sup> For the first time in decades, a

<sup>22</sup>Salary increases and reasonable retirement pay for the military were long overdue. Calderón increased both several times during his administration. Arturo Zárate, “El presidente Felipe Calderón propone incrementar el fondo de retiro para ex-militares,” *Diario de Yucatán*, August 27, 2008.

<sup>23</sup>Marcos Pablo Moloeznik, “Sistema de defensa, fuerzas armadas y profesión militar,” *Atlas de la seguridad*, p. 56. Interestingly, according to the National Council of Private Security, Mexico’s private sector spends 1 percent of its gross domestic product on security. Jorge Medellín, “La Seguridad,” in *Atlas de la seguridad*, 148.

<sup>24</sup>Estimates of drug related killings vary widely. The most careful analysis suggests that the rate increased from 1.1–1.3 in the early years to 1.7–2.0 during Fox’s last two years, to 4.8 and 6.1 deaths per 100,000 in 2008 and 2009 under Calderón, a dramatic increase. See *Drug Violence in Mexico, Data and Analysis from 2001–2009* (San Diego: Trans-Border Institute, USD, January 2010).

<sup>25</sup>Wesley A. Fryer, “Mexican Security,” Unpublished paper, August 24, 1993, [www.wtvi.com/wesley/mexican-security](http://www.wtvi.com/wesley/mexican-security).

TABLE 4: COMPOSITION OF THE ARMED FORCES

Ranks	Army/Air Force		Navy	
	No.	%	No.	%
Generals/ Admirals	537	0.3	221	04
Cols., Lt. Cols., Majors	5,364	2.7	1,713	3.1
Officers	30,110	15.1	12,586	22.5
Enlisted	162,686	81.5	40,378	72.2
Others	848	0.4	1,306	1.9
<b>TOTAL</b>	<b>199,545</b>		<b>55,961</b>	

Source: Sedena and Semar, *Presupuesto de egreso de la federación, analítico de plazas*, 2008, Sergio Aguayo Quezada, *México Todo en Cifras* (Mexico: Aguilar, 2009), 185. As of May 2009, 8,714 personnel in the Army/Air Force, and as of February, 7,471 in the Navy were women. Transparency request 0000700062709, May 7, 2009. In 2008, the Army introduced reforms to its organic laws which would allow women to obtain the highest positions. See “La Sedena abrirá más puertas a las mujeres,” *Diario de Yucatán*, April 27, 2008, and “Army Careers Opening Up in Mexico,” *Chicago Tribune*, November 7, 2007. In the Navy, 13 women reached the rank of Frigate Captain as of December, 2008.

President removed a secretary of the navy mid-term, in this case allegedly for “illicit enrichment.”<sup>26</sup> Zedillo experienced his own problems when he appointed a Division General, Jesús Gutiérrez Rebollo, as drug czar, only to have to remove him several days later for allegedly being involved with one of the cartels.<sup>27</sup>

These incidents, most notably the case of Gutiérrez Rebollo, symbolize what many analysts have suggested about the pre-2000 governments: a higher level of toleration toward drug traffickers. A careful examination of the military’s own investigation

<sup>26</sup>There was never a public investigation of these charges. *Proceso* provided what little evidence reached the media. See Carlos Marín, “Inexplicablemente rico, Schleske omitió declarar sus residencias en Houston,” *Proceso*, August 3, 1990, 8–13, and Francisco Ortiz Pinchetti, “Actividades de narcos de las que Schleske debió estar enterado,” *Proceso*, July 23, 1990, 8.

<sup>27</sup>General Gutiérrez Rebollo was convicted both for drug trafficking and arms trafficking in two separate trials. See Tim Golden, “U.S. Officials Say Mexican Military Aids Drug Trafficking,” *New York Times*, March 26, 1998.

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**TABLE 5: PUBLIC SECURITY EXPENDITURES FOR NAVY AND NATIONAL DEFENSE**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	Percent Increase
	Millions of Pesos									
Navy	250	250	250	319	274	108	117	229	229	-8.40
Defense	400	650	1429	1207	987	1049	1368	1434	1751	337.75

Source: “Presupuestos, Seguridad y Defensa 2000–2008,” Atlas de la seguridad y la defensa de México 2009 (Mexico, 2009) Table 11, p. 268.

of the general, exceeding 1,100 pages, makes abundantly clear that the general, who was the regional commander based in Guadalajara, Jalisco, openly associated with known drug traffickers for years, including his frequent attendance at social functions sponsored by these individuals. It was clearly impossible for Mexican military and civilian intelligence to be unaware of these associations, and equally surprising that the U.S. Drug Enforcement Agency had overlooked these activities.<sup>28</sup>

Calderón is pursuing an aggressive, pro-active strategy, temporarily reassigning large numbers of troops where the problems are most intense — in earlier eras, those battalions were conducting operations in isolated, rural areas.<sup>29</sup> Troops often have been stationed in major metropolitan centers, including Tijuana and Ciudad Juárez. To the extent that this strategy has been successful in capturing cartel leaders and their lieutenants, the government has exacerbated the internal battles among the cartels. Those conflicts are likely to increase.<sup>30</sup> The intensive, uncompromising federal strategy to defeat and destroy the drug cartels has contributed to increased levels of

<sup>28</sup>For background on this, see Sam Dillon, “Court Files Say Drug Baron Used Mexican Military,” New York Times, May 23, 1998, www.nytimes.com. I read through all of these papers personally. They are available at the Nettie Lee Benson Latin American Library, University of Texas, Austin.

<sup>29</sup>For a brief but interesting analysis of this new strategy, see Dan Lund’s report, “Shaping a New Administration in Mexico; Calderón Begins His Presidency with the Use of Massive Force against the Drug Cartels,” Series 7, No. 1, January 5, 2007, 1–4.

<sup>30</sup>Such conflicts are not only the product of instability in cartel leadership as a result of army and police successes, but more importantly will be intensified as U.S. domestic production of marijuana increases. As the *Washington Post* pointed out, marijuana “has long provided most of the revenue for Mexican drug cartels. More than 60 percent of the cartels’ revenue — 8.6 billion out of 13.8 billion in 2006 — came from U.S. marijuana sales...” Steve Fainaru and William Booth, “Cartels Face an Economic Battle,” October 7, 2009.

violence, and to the rise of homicides and other criminal activity.<sup>31</sup> The Army itself has suffered numerous casualties. From January 1, 2001 to May 2009, 476 soldiers have died in carrying out this mission, including 105 officers, many from accidents.<sup>32</sup> From December 1, 2006, through February 18, 2009, 79 officers and soldiers have been killed, and 173 wounded.<sup>33</sup> By the end of 2009, 40 more soldiers had died. These conditions create an overall environment which affects the public's perception of personal security and their views on other issues, including government priorities generally and national security priorities specifically.<sup>34</sup>

Perceptions can be different from reality, but regardless of whether they conform to reality they affect government legitimacy and potentially political stability. In 2008, Central America had a homicide rate 3 times higher than the world average and above the Latin American average. Yet, Argentina, Peru and Chile led the region with 57, 52 and 49 percent of residents respectively feeling insecure. Forty percent of Mexicans felt this way, and the figures for Americans and Canadians were 23 and 21 percent respectively. The author of this study concluded that “the perception that the local police are involved in crime and the presence of gangs and drug-trafficking in the neighborhood significantly increase feelings of insecurity” among Mexican and Central American respondents.<sup>35</sup> During this same year, 33 percent of Latin Americans reported they were a victim of crime. Mexico ranked second highest, after Venezuela, with 42 percent.<sup>36</sup> In the same poll, Mexicans also perceive their country to be violent, 6.2 on a 10.0 scale, the fourth highest in Latin America.

In response to the increased levels of violence, Calderón encouraged the collaboration between civilian and military agencies, including assigning retired or

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<sup>31</sup>Many political analysts believe Calderón's pursuit of this strategy was political, designed to establish his legitimacy as president after a close and disputed election. As I have argued, however, economic, crime and security issues have dominated the last three presidential campaigns. Most observers were surprised by Calderón's heightened emphasis on this issue because he did not highlight it during the campaign. Furthermore, President Fox recommended to Calderón to remove the army from this task. See Francisco E. González, “Mexico's Drug Wars Get Brutal,” *Current History*, February 2009, 72–76, for a discussion of the reasons behind his strategy, Jorge Medellín, “Fox, el ejército y la amnesia antidrogas,” *De Orden Superior*, www.columas.ejecentral.com.mx, October 20, 2009, and my “Democracy Redux? Mexico's Voters and the 2006 Presidential Race,” in Jorge I. Domínguez, Chappell Lawson, and Alejandro Moreno, eds., *Consolidating Mexico's Democracy* (Baltimore: Johns Hopkins University Press, 2009), 29–49, for the importance of issues during the campaign.

<sup>32</sup>The Secretariat of National Defense provided a complete record, name, rank, age, place of origin, unit, date and manner of death. Transparency request 0000700068809, August 13, 2009.

<sup>33</sup>Transparency request, 0000700000954, March 11, 2009.

<sup>34</sup>For Calderón's own views of a war on organized crime, see extracts from a 90 minute interview with Jorge Zepeda Patterson “La Guerra al crimen organizado,” *Atlas de la seguridad*, 17–24, taken from El Universal, February 27, 2009.

<sup>35</sup>Jose Miguel Cruz, “Public Insecurity in Central America and Mexico,” *Americas Barometer Insights*, No. 28, 2009, 4. The question was: Speaking of the place or neighborhood where you live, and thinking of the possibility of becoming victimized by an assault or a robbery, do you feel safe, somewhat safe, somewhat unsafe, or very unsafe.

<sup>36</sup>Latinobarometer 2008 poll, www.latinobarómetro.org, 2009.

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**TABLE 6: MILITARY PERSONNEL IN ALL FEDERAL, STATE AND MUNICIPAL SECURITY POSITIONS**

	2001	2002	2003	2004	2005	2006	2007	2008	2009(a)
Numbers	250	250	250	319	274	108	117	229	229

(a) 2009 figures only as of February.

Source: Transparency Request, February 24, 2009.

active duty military to civilian posts, believing that the military is less susceptible to corruption and more capable in confronting organized crime.<sup>37</sup> The data bear out this increase (Table 6), with assignments having risen from 4,504 in the last year of Zedillo’s administration to 8,274, nearly twice as much, 8 years later.

The same pattern has occurred on the state and local levels. For years, retired military have taken positions as state and local directors of public security.<sup>38</sup> In the last few years, their numbers also have increased significantly, reaching 501 in the first two years of the Calderón administration, as several have replaced civilian officeholders threatened or assassinated by the drug cartels.<sup>39</sup> General Galván convoked

<sup>37</sup>The last major example of the armed forces being tainted by drug-related corruption was the arrest of the entire 65th Infantry Battalion, stationed in Sinaloa, for ties to the Sinaloa Cartel, in October, 2004. Although news reports indicated that only a small number were found guilty, apparently, according to a response from the Secretariat of National Defense, July 24, 2009, they could not confirm how many were arrested and incarcerated. They did indicate, however, that as of that date, 549 members of the military were serving in prison, but not specifically for drug-related crimes. Two were generals, four were Lt. Cols, and five were majors. The Navy reported that from 2006 to March 5, 2009, no individuals had been removed from duty for their links to drug cartels. Transparency request, 0001300008309, April 3, 2009. The Army, on the other hand, has detained 91 individuals from 2003 to 2009, for ties to drug traffickers. Transparency request, 0000700036209, March 18, 2009. For some specific examples, see Jorge Medellín, “Narcomilitares y enredos en Banjército,” [www.columnas.ejecentral.com.mx](http://www.columnas.ejecentral.com.mx), November 11, 2009. Increasing corruption within the ranks is not the only potential consequence within the army. The performance of such a dangerous mission may have affected the persistence of future officers at the Heroic Military College. Graduates declined from over 650 from 2003, to less than half, slightly over 300 in 2004 and 2005. Those who left did not adapt to the military environment or the school did not meet their future expectations. Transparency request, [www.sedena.gob.mx/leytrans/petic.2006/junio/01062006b.html](http://www.sedena.gob.mx/leytrans/petic.2006/junio/01062006b.html).

<sup>38</sup>At any given time, the army conducts operations in collaboration with local civilian agencies. For example, in January 2009 they were engaged in six joint assignments with civilians against organized crime in Chihuahua, Durango, Nuevo León, Tamaulipas, Sinaloa, Zacatecas, Aguascalientes, Michoacán, and Veracruz. Transparency request, 0000700007409, January 26, 2009.

<sup>39</sup>See George Grayson for numerous examples: “Mexican Governors and Mayors Place Ex-Military in Public Safety Posts,” *Hemisphere Focus*, 17, No. 2, May 11, 2009, and his book, *Mexico, Narco Violence and a Failed State?* (New Brunswick: Transaction Publishers, 2009).

a meeting of all military public security directors in November 2008 to discuss common strategies and new forms of collaboration between police and the army.<sup>40</sup>

Often, in spite of Galván's efforts, considerable friction occurs between the armed forces and civilian police agencies, especially when the police are perceived as corrupt and collaborating with local drug traffickers. This tension is best illustrated by General Sergio Aponte Polito, Commander of the Second Military Region, in Mexicali, Baja California, who published a public letter in April of 2008, in which he bluntly criticized the local prosecutor for his failure to investigate many of the murders, kidnappings and force disappearances, citing a number of specific cases. He concluded "that to obtain better results in the combat against drug dealing and organized crime, it is necessary to propel and pursue strategies that bring some police cadres in line, so as to avoid the perpetuation of delinquent activities — through impunity — that are detrimental to society."<sup>41</sup> Confrontations between corrupt police and the army are happening in the field.<sup>42</sup> According to Associated Press, 65 such physical confrontations

<sup>40</sup>Jorge Luis Sierra, "Los generales, inermes frente al narcotráfico," *Atlas de al seguridad y de la defensa de México* (Mexico, 2009), 207. The drug cartels sent a grisly message to military officers who take these posts, when it kidnapped, tortured, and murdered Brigadier General Mauro Enrique Tello Quiñones, who had been appointed head of public security in the popular resort of Cancún, in February 2009. The General had been coordinator of the military's anti-drug strategy in Michoacán before retiring. To date, he is the highest ranking member of the officer corps to have been killed. Early investigations suggest a possible link between corrupt local police and a cell of the Zetas' cartel, a group originally founded by former and deserting soldiers. See *Justice in Mexico* (February 2009), 3. Deserters have been an important issue in Mexico. During the Fox administration, they were averaging more than 15,000 yearly, reaching 20,224 during 2005. Transparency request, Secretariat of National Defense, January 3, 2006 and March 11, 2009. Under Calderón, those figures began to decline dramatically after the first year of his administration. Among enlisted personnel, desertions were 16,500 in 2007, 9,050 in 2008, and only 5,316 in 2009. Among officers, the total for 2007 and 2008 combined was 203, most of whom were 2nd lieutenants. Transparency requests, 0000700158909, November 17, 2009, and 0000700319909. However, as one source discovered from examining numerous public documents, 90 percent of the desertions occur in the first two weeks of service (privates account for over 90 percent of enlisted desertions), when recruits realize that a life in military service does not meet their expectations. Currently, they are at an all time low if you subtract this figure from the reported totals. Communication, October 26, 2009. The argument that desertions increased as the battle against the cartels intensified is also sharply contradicted by the fact that the largest level in the last ten years occurred in the last year of the Zedillo administration, reaching nearly 21,000 enlisted personnel. Between 2000 and 2009, 29,641 were investigated and tried for numerous infractions. Of those, 25,882 were off duty desertions (comparable to absent without leave), 952 active duty desertions, 65 abandoning posts, and 1 deserting to a foreign country. From 2006 through July 2009, the Army sentenced 7,702 individuals, 7,396 for off duty desertion, 1 for active duty desertion, and 2 for abandoning their post. In 2004, Jorge Medellín indicated that 1,382 members of the elite Mobile Air (GAFES) and the Amphibious (GANFES) Special Forces, established in 1995, had deserted out of a total of 5,500 members. At least forty members, according to the Attorney General of Mexico, had become members of the Zetas. "Desertan 1,382 militares de elite," *El Universal*, March 28, 2004. For a broader discussion, see Marcos Pablo Moloeznik, "Las Fuerzas Armadas en México: entre la atipicidad y el mito," *Nueva Sociedad*, No. 213 (January–February 2008), 156–69.

<sup>41</sup>Excerpts from letter by General Sergio Aponte Polito to the Attorney General of the State of Baja California, April 22, 2008.

<sup>42</sup>Most media coverage focuses on the weakness found in civilian agencies, but military personnel in these positions have been unsuccessful too. The most prominent case was Division General Ricardo Andriano Morales, who took over public security in Durango in September 2009. In less than six months he resigned after a "series of complications and scandals in his administration." See Jorge Medellín, "La 'guerra oculta' de la Sedena," *De Orden Superior*, www.columnas.ejecentral.com,mx, January 19, 2010.

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**TABLE 7: MILITARY PERSONNEL IN STATE AND MUNICIPAL SECURITY POSITIONS, 2007–2009**

Rank	2007	2008	2009
Generals	31	36	23
Lt. Cols/Cols	39	78	26
Officers	14	134	54
Soldiers	3	43	20

(a) 2009 figures only as of March.

Source: Transparency request 000070036909, March 23, 2009.

occurred in the first eleven months of 2009, versus only two in 2008. The police chief of the municipio of García, near Monterrey, Mexico’s second largest city, Brigadier General Juan Arturo Esparza, was murdered four days after taking office in November, 2009, and five local police officers were among those arrested.<sup>43</sup> On the other hand, in Tijuana, where the head of public security and the chief of police are former military officers, the relationship between the army and the police has improved significantly, and inside sources describe it as “good.”<sup>44</sup>

The militarization of the drug war in Mexico has generated other consequences, some of them for civil-military relations, and others for the armed forces itself. The inability of the combined efforts of the attorney general’s office, state police, and the armed forces to rein in drug trafficking, in spite of its improved track record under Fox and Calderón, suggests that the government has a geopolitical security problem, and that its territorial hegemony is incomplete.<sup>45</sup> This perception, both from inside and outside Mexico, was highlighted by a statement appearing in the United States

<sup>43</sup>Olgar R. Rodríguez and Julie Watson, “Soldiers Wary of Often Corrupt Mexican Police,” *Washington Post*, November 9, 2009. Also see [www.milenio.com](http://www.milenio.com), Nov. 5, 2009.

<sup>44</sup>January 28, 2010. This is all the more remarkable because several years ago the army took over all police functions and disarmed the police, who were viewed by the public and army as corrupt. Half of the present police are still considered by insiders to be “questionable.” Nevertheless, in an arrest made in February 2010, in addition to top leaders in a local cartel organization, two top police commanders appointed by the general in charge of public security were also arrested.

<sup>45</sup>If one examines the Army’s success at this mission, using comparative data for the first 24 months of the last three administrations, the armed forces have been more successful in every category. What is significant about these statistics, however, is the cost to results ratio. Essentially, between Fox and Calderón, expenditures increased from 12.3 million pesos to 122.8 million, a ten-fold increase. The expenditures under Zedillo were 8.1 million. In no category of the measurable results has their success more than doubled. Gobierno Federal, *La política mexicana contra la delincuencia organizada* (Mexico: December 4, 2008).

**TABLE 8: LEVEL OF TRUST TOWARD THE ARMED FORCES IN THE WESTERN HEMISPHERE TO WHAT EXTENT DO YOU TRUST THE ARMED FORCES?**

Selected Countries	Percentage Response
Canada	79.3
United States	74.8
Mexico	70.8
Brazil	68.4
Venezuela	54.5
Peru	52.1
Argentina	36.3

Explanation: Response on a 1–7 point scale with 7 meaning “a lot,” recalibrated on a 0–100 scale. National average was 59.2 for twenty countries in the sample of U.S., Canada and Latin America.

Source: Figure 1, Daniel Montalvo, “Do you Trust Your Armed Forces,” *AmericasBarometer Insights*, No. 27, 2009, 1.

Joint Forces Command, *Joint Operating Environment, Challenges and Implications for the Future Joint Force* (2008), which argued that the two worse case scenarios for failing states “for the Joint Force and indeed the world, two large and important states bear consideration for a rapid and sudden collapse: Pakistan and Mexico.” It went on to conclude that “Any descent by Mexico into chaos would demand an American response based on the serious implications for homeland security alone.”<sup>46</sup> There is little question that the antidrug campaign has made the military the supreme authority, or in some cases, the only authority in parts of such states as Oaxaca, Sinaloa, Jalisco, and Guerrero, where local authorities do not exercise effective control or are themselves controlled by drug cartels.<sup>47</sup> The long-term effect of this is, of course, to

<sup>46</sup>United States Joint Forces Command, *Joint Operating Environment, Challenges and Implications for the Future Joint Force* (2008), 36. Incredibly, the report provides no details as to why Mexico should be considered such an extreme example. No serious analyst to date supports this view.

<sup>47</sup>For example, the Attorney General of Mexico reported that at least 80 municipalities were controlled by drug cartels. See Godofredo Vidal de la Rosa, “Estado debil y estancamiento democrático en México,” Unpublished paper, Universidad Autónoma Metropolitana, Azcapotzalco, Mexico City, December, 2009.

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potentially subvert civilian political supremacy and give the military a taste of political control on a regional level.<sup>48</sup>

Nevertheless, Mexican armed forces are unique in the region for the level of respect which they command. In a recent poll of the region, including Americans and Canadians, Mexico ranked third, closely following the percentages of respondents from Canada and the United States who expressed a lot of trust in their armed forces. Daniel Montalvo's statistical analysis of all countries demonstrated that repression alone (such as in Argentina and Chile in the 1970s and 1980s) is not correlated with lower levels of trust toward the armed forces in Latin America<sup>49</sup> Instead, for example, an increase in the economic growth rate produced a much stronger positive relationship, suggesting that citizens did not need to rely on military or military-controlled governments to produce economic stability.

Not only is Mexican trust in their armed forces comparatively high throughout the region, but importantly confidence in the military ranks high among all other potential institutions within Mexico (Table 9).<sup>50</sup>

Since the first surveys of citizen trust in Institutions were completed in the 1980s, the military consistently has been at the top. In the most recent poll, the Army ranked third after schools and the Church. Police, on the other hand, have consistently ranked at the bottom.<sup>51</sup> David Shirk found in the most detailed study of police in Mexico, in metropolitan Guadalajara, where 70 percent of the population consider crime and insecurity an urgent issue, that 49 percent of residents considered the police to be corrupt. Sixty-eight percent of those interviewed believed such corruption occurred at the highest levels. Interestingly, 51 percent of the respondents

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<sup>48</sup>One of the most interesting arguments is that a large percentage of the actual violence and murders are the result of cartels fighting each other for control, rather than the confrontations with the police or armed forces. As one well-informed observer who makes this argument noted, "In some ways, the Mexican military and security forces are a third party in this — not the focus. Ultimately, the cartels — not the government — control the level of violence and security in the country." Rodger Baker, "The Big Business of Organized Crime in Mexico," *Stratfor*, Feb 13, 2008, [www.stratfor.com](http://www.stratfor.com).

<sup>49</sup>Daniel Montalvo, "Do You Trust Your Armed Forces," *AmericasBarometer Insights*, No. 27, 2009, 3.

<sup>50</sup>Another way to measure the prestige of the armed forces is to examine the applications for entry into the various military schools. Compared to the first years of the Zedillo administration, when one student was admitted to the Heroic Military College for every student who applied, the admission ratio became increasingly difficult. By 2005, 2646 individuals applied, and only 604 were admitted, approximately one in four. In specialty fields in 2005, admission rates were highly competitive, such as the Military Engineering School, where only 29 of 214 were admitted, or Communications, with only five slots for 214 applicants, or Aviation, with 42 places for 1680 applications. On the other hand, the number of graduates decreased significantly. Graduates of the Heroic Military College declined from an average of over 650 from 2000–03, to less than half that number, slightly over 300 in 2004 and 2005. Those who left did not adapt to the military environment or the school did not meet their expectations for the future. [www.sedena.gob.mx/leytrans/petic.2006/junio/01062006b.html](http://www.sedena.gob.mx/leytrans/petic.2006/junio/01062006b.html).

<sup>51</sup>An indirect way of examining attitudes toward the armed forces is the level of support for obligatory military service. In a 2008 survey, 41.2 percent thought it should be only for men, 30.6 for both sexes, 25.8 opposed any obligatory service, and 2.4 didn't answer. "Public's View of Obligatory Military Service," Consulta Mitofsky, 1,000 interviews nationally, 25–29 July, 2008, +/- 3.1 percent margin of error.

TABLE 9: CONFIDENCE IN THE MILITARY COMPARED TO OTHER INSTITUTIONS IN 2009. HOW MUCH CONFIDENCE DO YOU HAVE IN THE FOLLOWING INSTITUTIONS?

Institution	Much or Some %
Church	75(a)
Schools	80
Army	74
National Human Rights Commission	65
Media	58
Supreme Court	54
President	52
Federal Electoral Institute	51
Secretariat of Public Security	43
Political Parties	31
Police	29
Congress	28

Source: Sistemas de Inteligencia en Mercado y Opinión, June–August 2009, “Encuesta Seguridad Nacional,” 1,250 interviews nationally, July 24–27, 2009, +/-1.9 percent margin of error. The Church is the only institution where nearly a third of Mexicans strongly trust it. The combined score for schools is slightly higher.

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considered citizens responsible for this condition, 44 percent thought both citizens and police were responsible, and only 5 percent blamed only the police.<sup>52</sup>

General support for the armed forces as an institution has been consistent over time; on the other hand, support for the military's anti-drug mission is more complex. In the earliest survey taken during the Calderón administration, shortly after he took office, when citizens were asked if they supported the armed forces taking on the anti-drug trafficking mission, 89 percent agreed with the army fighting drug traffickers. However, when given a choice as to which institution they would prefer "to protect the streets," the police or the army, 43 percent favored the police and 45 percent the army. This response unquestionably suggests that despite the public's consistently low evaluation of the police, at least half of all Mexicans thought they should perform ordinary, local, anti-crime functions. Furthermore, in assessing the likelihood of the Army defeating the drug cartels, even before Calderón had fully implemented his strategy, 65 percent thought the use of the army would solve the problem only temporarily.<sup>53</sup> In August 2009, strong support for the army carrying out the drug trafficking mission was 42 percent, while an additional 33 percent somewhat supported their role. In June, 44 percent thought the Mexican Army was winning the war against drug trafficking while 33 percent responded negatively.<sup>54</sup> In April 2010, 37 percent of Mexicans believed an organization outside of Mexico, such as the United Nations or the FBI, compared to 52 percent who supported the Army, would be most effective in bringing security to Ciudad Juárez, the most insecure metropolitan area in Mexico.<sup>55</sup>

## COLLABORATION BETWEEN THE MEXICAN MILITARY AND U.S. MILITARY

A significant consequence of the expanded military role in drug interdiction having national security implications for both countries is the augmented possibility of increased United States military involvement in Mexico. Since the 1990s, the relationship between the American and Mexican armed forces has been cordial but formal. The Mexican officer corps has never collaborated with American military leadership to the extent found elsewhere in the region, even when they have shared

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<sup>52</sup>David Shirk and María Eugenia Suárez de Garay, Reporte Global, 2009, *Justiciabarómetro, Encuesta a policías preventivos de la Zona Metropolitana de Guadalajara*, Unpublished paper, 2009.

<sup>53</sup>Parametría., 1,200 interviews nationally, January 27–30, 2007, +/- 2.8 percent margin of error. Published in *Excelsior*, February 19, 2007.

<sup>54</sup>Sistemas de Inteligencia en Mercado y Opinión, "Encuesta Seguridad Nacional," June–August 2009. 1,250 interviews nationally, July 24–27, 2009, +/-1.9 percent margin of error.

<sup>55</sup>Parametría, 1,200 interviews nationally, April 7–11, 2010, +/- percent margin of error. [www.parametria.com.mx](http://www.parametria.com.mx).

similar security interests. The reasons for this pattern can be attributed to the historic relationship between the two countries, and to the officer corps success in maintaining its own internal autonomy from Mexican civil and political intervention. It has sustained a closed, secretive posture even to the present day. In the past, the primary source of potential collaboration occurred through the numbers of Mexican officers who were trained in the United States.<sup>56</sup> Even though those numbers were large for many decades, such career experiences never enhanced institutional cooperation between the two armed forces at the highest levels.<sup>57</sup>

It is possible, however, to make the argument that Mexican training in the United States may have contributed to an internal security focus which took hold in the National Defense Secretariat at the higher echelons beginning under Salinas, reflected in the backgrounds of some of its top brass. For example, the official mayor of the secretariat (third ranked position) from 1988–1994, received added training in intelligence gathering, counter insurgency, and psychological warfare in the United States.<sup>58</sup>

In the mid-1990s, the United States army began training over 1,000 officers at more than a dozen bases in drug interdiction tactics, and the Central Intelligence Agency provided extensive intelligence courses to about 90 officers, who became part of the new counter-drug force in Mexico. From 2000 to the end of 2009, 1076 Army and Air Force personnel studied in the United States, 68 percent during the Fox administration.

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<sup>56</sup>By the end of the Zedillo administration, Mexican soldiers and officers accounted for 34 percent of all individuals trained at the Army's former School of the Americas, the Western Hemisphere Institute for Security Cooperation, at Ft. Benning, Georgia. At Lackland Air Force Base, Mexicans made up nearly 30 percent of Air Force personnel trained on site. Stanley Meisler, "U.S. Bolstering Mexican Military, Report Says," *Washington Post*, July 15, 1998, A4. The author of this article explicitly claims that "The statistics about the training of Mexicans by Americans reveal a surprising and close relationship between the two military establishments."

<sup>57</sup>From 1961–1998, 1,327 Mexican officers studied at the former School of the Americas. A complete list of personnel, enlisted and officers, who have studied at the School of the Americas since 1956 clearly demonstrates that most training is of short duration, generally 4–8 weeks. Mexicans and other Latin American soldiers are trained at dozens of bases and military programs in the United States, not just the Western Hemisphere Institute for Security Cooperation. More than 1,900 individuals from Mexico were trained in the United States in the first three years of the Fox administration. "Blurring the Lines, Trends in U.S. Military Programs with Latin America," Washington Office of Latin America, 2004. The strongest personal ties to date occurred between Defense Secretary William Perry and his counterpart General Enrique Cervantes Aguirre between 1995–1997. The fact that most of the top staff in the U.S. Defense Department is civilian negates the ties that might occur through military training. See Craig A. Deare's detailed review of these relationships in "U.S.–Mexico Defense Relations: An Incompatible Interface," *Strategic Forum*, No. 243 (July 2009), 1–10. For a response from the head of Northern Command, General Victor E. Renuart, Jr., and Biff Baker, see U.S.–Mexico Homeland Defense: A Compatible Interface," *Strategic Forum*, No. 254 (February 2010), 1–5.

<sup>58</sup>From 1965 to 1985, Mexico hosted 225 military personnel from other countries, most of whom studied at the Heroic Military College (46), the Higher War College (45) and the Military Medical School (63). Nearly all foreign students were from Central America, plus a handful from the Caribbean and Andean countries. Seventeen Americans and two Koreans attended the Higher War College. Transparency request 0000700140809, October 26, 2009.

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Under Calderón, their numbers have averaged 76 yearly.<sup>59</sup> In 2005, the Navy reported 82 individuals studying abroad, confirming the hugely disproportional ratio of foreign studies between the two services, with the Navy averaging 4 times that of the Army when controlling for the size of their total personnel.<sup>60</sup>

The most pronounced symbol of this indirect, potential American influence was President Fox's appointment of General Clemente Vega as his secretary of national defense. General Vega graduated from the counterinsurgency course at Fort Gulick, Panama Canal Zone, and is a military expert on national security, having authored a military manual on the subject used at the Escuela Superior de Guerra. Even though Vega personally received training from and contact with American Army officers, it did not produce significant changes in the relationship between the two armed forces during the Fox administration. However, Vega personally reported to me in 2004 that he felt their cooperation with the United States military had improved over that of his predecessor, even though Mexico was not willing to participate actively in the U.S. Northern Command.<sup>61</sup> The Canadian military reported the same difficulties as late as 2006 in developing closer ties to the Mexican military.<sup>62</sup>

Some of Calderón's appointees, and their most influential collaborators, offered similar points of contact which could bode well for increased collaboration between the two countries' armed forces. The President appointed Admiral Mariano Francisco Saynez Mendoza as his new Secretary of the Navy. Calderón's secretary spent more than a year in the United States, having served as the Assistant Naval Attaché to the Mexican Embassy in Washington, D.C., during which time he completed the graduate level Inter-Continental Defense course. Admiral Saynez is also fluent in English.<sup>63</sup> Mexico's current Assistant Secretary of the Navy, who previously was the Oficial Mayor from 2006–2008, also served as the Assistant Naval Attaché in Washington, D.C. Finally, the current Oficial Mayor, Admiral Moisés Gómez Cabrera, the former head of Naval Intelligence and the Navy's most decorated officer in 2008, also speaks English and studied the international maritime curriculum at the Naval War College in the United States.<sup>64</sup> I will argue below that the most significant advances in collaboration between the armed forces of both countries have occurred between the navies. It is not an accident that the top three naval administrators share these career experiences and fluency in English.

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<sup>59</sup>Mexican personnel have studied in 28 other countries during these years. Large contingents have gone to different countries in a given year, such as 32 to Germany in 2008, 23 to France in 2003, 37 to Russian in 2000, 16 to Sweden, 2004, 15 to Colombia in 2007, and 14 to Israel in 2009. Contrary to some assertions, few have studied in Guatemala (20 in nine years). Transparency request 0000700168209, November 19, 2009.

<sup>60</sup>Transparency request 0001300001406, February 24, 2006. This document contains a detailed list of regular but dynamic academic exchanges maintained by the Navy with various countries.

<sup>61</sup>Personal interview, February 19, 2004.

<sup>62</sup>Conversation with representatives of the Canadian Army and Ministry of Foreign Relations, August, 2006.

<sup>63</sup>Mexican Political Biographies Project, 2009.

<sup>64</sup>Milenio, April 18 and 19, 2008l [www.lajornada.unam](http://www.lajornada.unam), Nov. 23, 2006.

In contrast to the Navy, Calderón's top appointment to Defense is General Guillermo Galván Galván, who except for his assignment as Military Attaché to Spain, has never trained or served abroad, or in the United States specifically, becoming the first Assistant Secretary of National Defense to receive the defense post since 1945. His current Assistant Secretary, like his superior, has served in a Spanish speaking country, Argentina, as an assistant attaché, but has no experience in the United States. The only individual among the five generals since December, 2006, who have held the top three defense posts to have served in any capacity in the United States, was the first Assistant Secretary of Defense, Tomás Angeles Dauahare, who was appointed the Assistant Army, and then Army Attaché in Washington, D.C. With the exception of General Angeles Dauahare, the other National Defense leaders, similar to the Secretary, boast extensive careers as troop commanders rather than staff administrators.

Nevertheless, one variable which is contributing to increased collaboration is continuity in Army leadership. The fact that this is the first time in half a century that a sitting assistant secretary of national defense has become the secretary of national defense is important because General Galvan was mentored by General Vega, and although he had much more experience as a troop commander on the ground than his boss, he too directed the military university system, just like his mentor. He was the senior division general in the army at the time of his appointment and had commanded seven zones and regions from 1988–2002, before moving to his last two administrative positions.

Off the record, both Pentagon officials and those in Northern Command have confirmed that increased cooperation exists between the militaries of both countries, and not just with the Mexican Navy. Some of my sources reported a “dramatic change” toward more openness at the Secretariat of National Defense, which they believe is what has facilitated this new cooperation.<sup>65</sup> Sources also report a huge increase in interactions between the Canadian and Mexican militaries, complementing what has happened between the U.S. and Mexico.<sup>66</sup>

The most dramatic reflection of this collaboration is the significant increase in Mexican military training in the United States. All the sources I communicated with on both sides of the border agreed that these increased training programs have contributed to the improved relationship. Since 2006, the numbers of Mexican officers in U.S. schools has grown markedly. Mexicans have the most officers in the Department of Defense IMET funded programs of any Latin American country. One source reports that the number of Mexican Lt. Colonels attending the Naval Postgraduate School was unthinkable just a few years ago. Furthermore, the entire class of Mexico's premier National Defense College, consisting of all services,

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<sup>65</sup>One could even speculate that this greater level of openness to collaboration on Galvan's part might have been affected positively from his studies in educational psychology.

<sup>66</sup>I witnessed a major meeting between numerous uniformed Canadian officers and the Mexicans at the Four Seasons Hotel in Mexico City in December, 2009.

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including its director, a two star general, visited U.S. Northern Command, the U.S. Air Force Academy, and the Cheyenne Mountain Air Force Station, for the first time in 2008.<sup>67</sup> It is also noteworthy to mention that there has been increased contact between the U.S. military and Mexican political leaders, both at the National Defense University, which has been creating these contacts for five years, and more recently, at U.S. Northern Command, in which congressional members from the National Defense, Foreign Relations and Navy committees visited in 2008.<sup>68</sup>

The Navy stands out as the leader in cross-national collaboration. The Navy began assigning liaison officers at least four years ago. They have an officer in Key West at the Joint Interagency Task Force South; this individual is operational and plays a role in passing drug plane flight tracks to Mexico's Naval Ministry for the Navy to respond. Furthermore, information exchange between the U.S. 4<sup>th</sup> Fleet in Mayport, Florida and the Navy Ministry is excellent. The Mexican Navy activated another new position at Norfolk with the U.S. Fleet Forces Command at the same time it established the position at Key West. Sources report increased cooperation between the U.S. Coast Guard and the Mexican Navy, evidenced by the recent seizures of drug traffickers' vessels and mini subs in Mexican waters. In fact, the Mexican Navy liaison officer at U.S. Northern Command (assigned 2007) mentioned working closely with the U.S. Coastguard in developing its own search and rescue schools.<sup>69</sup> Also, the Mexican Naval Chief of Staff specifically reported that he was happy with the level of intelligence sharing in real time with the U.S. Coast Guard. Other sources see the cooperation between the U.S. and Mexican navies as far more intense because of trafficking (human and drugs) in international waters. The Mexican Navy participated in the UNITAS Gold 2009 exercises in April–May 2009.<sup>70</sup> In July 2009, the

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<sup>67</sup>Benjamin P. Gochman, "Fifty-one Sedena Senior College Fellows Visit USNORTHCOM," *Agora*, Vol. 1, No. 2, April, 2008. One potential downside of the increased training is that some of that training in the U.S. may benefit the drug cartels through deserters who join their ranks. One of the major cartels, the Zetas, some of whom may have received special forces training outside Mexico, initially were hired guns for existing cartels. For more details see George W. Grayson, "Los Zetas: The Ruthless Army Spawned by a Mexican Drug Cartel," Foreign Policy Research Institute, April 2008. For an outstanding analysis of the Zetas as a "private army," see Max G. Manwaring, "The "New" Dynamic in the Western Hemisphere Security Environment: The Mexican Zetas and Other Private Armies," Strategic Studies Institute, U.A. Army War College, Carlisle, PA, September 2009.

<sup>68</sup>Benjam P. Gochman and Marshall Smith, "Comando Norte recibe a líderes legislativos de México," *Agora*, Vol. 1, No. 3, 50–51. It is worth noting that the Naval liaison officer at U.S. Northern Command in 2009, a commander, graduated from the "Civic Military Responses on Terrorism" class from the U.S. Naval Postgraduate School as well as from the Center for Hemispheric Defense Studies and the National Defense University in Washington, D.C.

<sup>69</sup>For his comments on these and other collaborative issues, see Marisara Martín, "Full Speed Ahead Toward Solid Relationships," *Agora*, Vol. 1, No. 2, 2008, 16–18.

<sup>70</sup>"Slipping the Moorings, Mexican Navy Brings New Dimension to UNITAS Gold 2009," *Agora*, Vol. 2, No. 3, 2009, 30–37. This is a multinational fleet and the longest-running international military training exercise in the world, having started in 1959. For similar activities, and the British view that the Mexican Navy is "well-run and well-organized" and has quietly been modernizing, see Odin's Eye, "A New Mexican Wave," *Warships International Fleet Review*, February 2008, 5.

Mexican Army assigned an officer to U.S. Northern Command, and General Galván visited Northern Command headquarters, followed by a meeting with Robert Gates in Washington.<sup>71</sup>

The arrival of the Calderón administration and the government's dramatically pronounced emphasis on the anti-drug mission and the military's role in that mission increased points of potential contact between the two militaries.<sup>72</sup> Institutionally, the implementation of the Mérida Initiative, which includes increased training as part of the funding, enhanced likely contacts.<sup>73</sup> But again, does that imply that the two militaries will be closer? Not necessarily. All sources agreed that the changes that have taken place *preceded* the Mérida Initiative. They largely view the Mérida Initiative as increasing materiel, not personnel collaboration.<sup>74</sup> Most sources view the cooperation between the two countries as increasing as a result of the Mérida Initiative, but largely between Homeland Security and Justice. Sources believe it is too early to tell if the National Defense/Pentagon dialogue will produce similar results. An example of the Mérida Initiative producing disagreement is reflected in the Mexican Secretary of Navy's public statement in early 2009 that they did not want a small fleet of airplanes in the second phase of the program, but rather more helicopters, suggesting a lack of close collaboration in developing the composition of the equipment outlined in the Initiative.<sup>75</sup>

The question of how to increase collaboration between the two militaries has been a thorny question for decades. When I speak to military audiences in the United States,

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<sup>71</sup>Benjamin Gochman, "New Era of Increased Collaboration," *Agora*, Vol. 3, No. 1 (2009), 22–23. In September, the head of Mexico's Air Force also visited their headquarters and publicly discussed the benefits of increased cooperation. See "Two Command for North American Security," 24–27.

<sup>72</sup>Many sources correctly suggest that this cooperation could have been easily sidetracked within the military and among the general public as a result of the Defense Department's statement which labeled Mexico as a likely failed state. The statement received widespread attention in the Mexican media.

<sup>73</sup>Even before the approval and implementation of the Mérida Initiative, between 2005–07, Mexico was the 12th largest recipient of U.S. Foreign Operations Programs funding. Between 1996 and 2008, Mexico, with the exception of 2000 and 2003, has received larger sums for police and military assistance than social and economic assistance. The general ratio between military and economic assistance to the region in 2008 was 40 to 60 percent. For Mexico, however, the ratio was 72 percent military to 28 percent economic aid. "Below the Radar, U.S. Military Programs with Latin America, 1997–2007," Washington Office on Latin America, 2007. Requests for Mexico for 2010 for counter-narcotics and security assistance was \$485.6 million, \$167.8 million above the 2009 programs. [www.appropriations.house.gov/pdf/FY10](http://www.appropriations.house.gov/pdf/FY10), 2009. Ironically, as late as September 2009, the Government Accountability Office reported that only \$24.2 million has actually been spent. "Status of Funds for the Mérida Initiative," U.S. Government Accountability Office, December 3, 2009.

<sup>74</sup>The Mexican Army is most interested in U.S. military technology related to intelligence skills and collection, information operations, counter-drug operations, and peacekeeping operations.

<sup>75</sup>"La Armada rechaza aviones de EE.UU.," *Diario de Yucatán*, March 13, 2009.

## ARMED FORCES AND DRUGS: PUBLIC PERCEPTIONS AND INSTITUTIONAL CHALLENGES

it is the first question on the minds of American officers.<sup>76</sup> My experience has been that currently such a change is likely to be accomplished on a person to person basis. Naturally, it typically is helpful when your Mexican counterpart has some prior contact with Americans. Regardless of the level of contact, however, to date American officers have a much greater chance in developing a more collaborative relationship with naval and air force officers. In addition to the fact that a much higher percentage of naval and air force officers have studied in the United States, it is also the case that the institutional culture of the Navy is much more open to discussion. I can illustrate this personally. I have given two presentations to the Mexican military, the first of which consisted of two talks on controversial issues related to civil military relations, presented at the National Defense College, an Army operated institution which brings together top senior officers from all three services who typically achieve the highest ranks. A question and answer session occurred after my lengthy presentations, during which I received a single question from an admiral. In contrast, when I gave two presentations at the Naval Center for Higher Studies, the Navy's own post graduate war college, I received dozens of questions and was surrounded by officers with further questions after the presentation.<sup>77</sup>

The importance of institutional culture cannot be stressed enough.<sup>78</sup> Many analogies exist between the way in which the Mexican armed forces interact with domestic and external institutions. The long-standing "closed nature" of the military to outsiders is a distinctive feature. Some alterations in behavior are beginning to occur, but again, those incremental changes are more dramatic in the Navy. For example, if we examine how the military interacts with the media, it is apparent that the Navy maintains a much

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<sup>76</sup>Of course, the more fundamental issue is whether or not it should be increased, which has long provoked controversy in the region. In this regard, a number of observers have recently been drawing analogies to the U.S. role in Colombia. My sources have indicated that as of 2009, the Mexican armed forces are unreceptive to hearing about the Colombian experience directly from Colombia's armed forces or police. Interestingly, however, Colombia is second only to the U.S. as a training site for Mexican officers in the last several years. The best analysis I have encountered of the Colombia-Mexico comparison is Vanda Felbab-Brown, "The Violent Drug Market in Mexico and Lessons from Colombia," Foreign Policy at Brookings, Policy Paper, No. 12, March 2009. Also see Rory Carroll, "Why the War on Drugs in Colombia May Never be Won," [www.guardian.com](http://www.guardian.com), February 16, 2010.

<sup>77</sup>I found it revealing that the navy liaison officer for my visit to the Navy was none other than the great grandson of General and President Plutarco Elías Calles. This young officer was not a graduate of the Heroic Naval College, but a civilian who was given a direct commission. I would argue that if the United States educational experience has any impact at all on Mexican officers, it is most likely to influence their attitudes about questioning their instructors, rather than the content of these courses. For this argument in detail, see my *Mexico's Military on the Democratic Stage*, 199–200.

<sup>78</sup>Craig Deare offers another institutional obstacle as an explanation, arguing that the Mexican secretary of national defense has three counterpart agencies in the U.S., the secretary of defense, the chief of the joint chiefs of staff, and the chief of staff of the army. "Relaciones de defensa México-Estados Unidos," *Atlas de la seguridad*, 232–33. For a counter argument from the commander of U.S. Northern Command, see Victor E. Renuart, Jr., and Biff Baker, "U.S.-Mexico Homeland Defense: A Compatible Interface," *Strategic Forum*, No. 254 (January 2010), 1–6. This essay was written specifically to object to three of Deare's arguments for an "incompatible interface," which were; inadequate funding of the Mexican armed forces, the institutional structural differences indicated above, and lack of properly trained Mexican civilian leaders knowledgeable about military affairs.

TABLE 10: PUBLIC PERCEPTION OF MILITARY'S ROLE OUTSIDE OF MEXICO. PERCENT AGREEING THAT MEXICO SHOULD PARTICIPATE IN PEACEKEEPING MISSIONS, 2004–08

Group	2004	2006	2008
Public	48	49	60
Leaders	55	39	45

Source: Guadalupe González, Ferrán Martínez i Coma, Jorge A. Schiavon, *México, las Américas y el mundo. Política exterior: opinión pública y líderes 2008* (Mexico: CIDE, 2008), cited in *Atlas de la seguridad y la defensa de México 2009*, Table 135, p. 395.

more actively open policy toward the media than national defense. General Galvan, in the first three years of the Calderón administration, never held a press conference, whereas Admiral Saynez Mendoza did so repeatedly.<sup>79</sup> Moreover, when the Navy issues a press release, it also tells the media whether or not more information is available, and responds promptly to requests.<sup>80</sup>

Another vehicle which has promoted collaboration between the American military and the Mexican navy are joint operations and joint peacekeeping missions. The Mexican Navy has participated in joint naval operations with the United States and other countries, which is not the case of the Mexican Army.<sup>81</sup> Interestingly, the Mexican public, even more so than Mexican leadership generally, has increased their support for such missions (Table 10). This changing attitude is, I believe, part of a growing pattern of openness toward the outside world, and toward changing Mexico's larger, passive international role. Again, recent survey research strongly supports the view that the average Mexican is willing to invite outside involvement in police and military missions related to improving personal security and combating crime.

<sup>79</sup>An interesting exception to their level of collaboration with the media was the Secretariat of National Defense's decision to loan a helicopter and dozens of soldiers to Televisa in the filming of a movie focusing on the capture of a drug dealer. The Army defended the expenses of doing this as an additional means of promoting their efforts to combat drug trafficking among the general public. "Ejército mexicano presta helicóptero y soldados para una serie de Televisa," *Diario de Yucatán*, June 9, 2008.

<sup>80</sup>Jesús Aranda, "Prensa y fuerzas armadas," *Atlas de la seguridad*, 199–201.

<sup>81</sup>In its Defense Plan submitted to President Calderón in 2007, the Secretariat of National Defense suggests clearly in several parts of the report that it will increase cooperation with international organizations and bi-lateral partners, including their drug missions. See for example pp. 29–30. The only known case of Army participation in an international mission was the deployment of two officers on a United Nations mission to Kashmir in the 1950s. Arturo C. Sotomayor and Mónica Serrano, "Mexico's Security Problematique: Domestic and International Dimensions," Unpublished manuscript, 84.

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**TABLE 11: HOW MEXICANS VIEW U.S. ROLE IN DRUG TRAFFICKING MISSION 2009. DO YOU SUPPORT OR OPPOSE THE HELP OF THE U.S. GOVERNMENT TO THE MEXICAN GOVERNMENT IN THE FIGHT AGAINST DRUG TRAFFICKING?**

	% Oppose	% Support
Money	12	82
Equipment	25	68
Border Agents	34	59
Agents in Mexico	46	46

Source: Parametría, 400 interviews nationally, 28–31 March 2009, +/- 4.9 percent margin of error.

The data in Table 11 specifically asked ordinary citizens the extent to which they would accept help from the United States in combating drug trafficking. Support for funds is overwhelmingly positive, and more than two-thirds of Mexicans would accept equipment from the United States. These two contributions are major components of the Mérida Initiative.<sup>82</sup> More importantly, citizens view American border agents as important to combating drug trafficking in Mexico, and most controversial of all, half of all Mexicans support the involvement of United States Drug Enforcement Agents on Mexican soil. In the summer of 2009, the Pew Foundation completed a broader survey, including a more specific question involving the armed forces, finding that 78 percent of Mexicans favored personnel training by the United States, 63 percent would accept money and weapons from the United States, and most surprisingly, 30 percent actually were in favor of deploying American troops to Mexico, if it would reduce drug cartel violence.<sup>83</sup>

United States Drug Enforcement agents have been present in Mexico for years, but the Defense Department has not conducted field training in Mexico. However, to

<sup>82</sup>For a description of the funding categories and the beneficiaries in Mexico, see Andrew Selee, “Analysis of the Mérida Initiative: Strengthening U.S.-Mexico Cooperation Against Organized Crime,” Unpublished paper, Woodrow Wilson International Center for Scholars, May 1008. For the 2009 appropriations, see the Government Accounting Office, “Mérida Initiative Funding,” December 3, 2009.

<sup>83</sup>Pew Global Attitudes Project, “Most Mexicans See Better Life in U.S. — One in-Three Would Migrate,” September 23, 2009. 1,000 interviews nationally, May 26 to June 2, 2009, +/- 3.0 margin of error. These figures are even more surprising considering the fact that in 2008, 30 percent of Mexicans considered the United States as an “enemy of Mexico’s national security.” The question was: Who do you consider an enemy of Mexico’s national security? Fifty three percent said no country, followed by 30 percent U.S. and 15 percent Columbia. SIM, 800 interviews nationally, September 6–9, 2008 6–9, +/- 3.46 margin of error .

my knowledge, for the first time, a training session took place between the Mexican Army and the Defense Department in 2003, when the Mexican government requested that the Defense Institute of Security Assistance Management Foreign Purchasers class be held in Mexico, at the Secretariat of National Defense. A group of eighteen Army and Air Force field and company grade officers and noncommissioned officers took the class, which was arranged by Major David Whiddon, Chief of the Training Section of the U.S. Military Liaison Office at the United States Embassy. Many of the Mexican students in this class had taken prior courses in foreign military sales at the Inter-American Air Forces Academy at Lackland Air Force Base. The graduation ceremony was presided over by Division General Fausto Manuel Zamorano Esparza, Director General of Administration in Mexico's defense ministry and former Official Mayor of the Secretariat of National Defense under Zedillo.<sup>84</sup>

To some degree, public attitudes have helped pave the way for increased collaboration between the two militaries, in the same way that they have affected civil-military relations *within* Mexico and elsewhere in the region. Military officers, just like politicians, are products of the larger society, even though the officer corps is socialized by an pervasive institutional culture. From a broader perspective, this can be seen from survey data which explores how Mexicans view the causes of their drug trafficking and related criminal problems. While one would expect them to direct a large portion of the blame on the United States drug consumption habits, which most analysts identify as the root of the problem, ordinary citizens are far more critical of their own internal institutional culture, notably corruption.<sup>85</sup> The data in Table 12 demonstrate that among those who have an opinion on the causes for Mexico's drug problems, 70 percent point to general corruption. These data also explain why large numbers of Mexicans are willing to accept or tolerate help from the United States, including foreigners operating on their own soil.<sup>86</sup> One out of seven Mexicans in Ciudad Juárez were willing to invite the FBI or the UN to their city to solve the level of insecurity and violence; nearly six out of ten would accept their presence

<sup>84</sup>Lt. Col. Andrew P. White, "Mexico Hosts the Defense Institute of Security Management's Mobile Education Team," *DISAM Journal*, 2003, [www.findarticles.com](http://www.findarticles.com). It is important to point out that General Zamorano Esparza was a former Military Attaché to the Mexican Embassy in Washington, D.C., and chief of the Mexican delegation to the Inter-American Defense Board. Mexican Political Biographies Project, 2009.

<sup>85</sup>This view is also supported in the excellent research by John Bailey and Pablo Parras, "Perceptions and Attitudes about Corruption and Democracy," *Mexican Studies*, 22, No. 1 (Winter 2006), 57–82, who concluded that citizens viewed the government as a whole only slightly more corrupt than society.

<sup>86</sup>Perhaps the most interesting example of this was the request by the Association of Maquiladoras in Ciudad Juárez, one of the cities with the greatest level of drug-related violence, for United Nations peacekeepers or advisers to come to their city failing the response of joint military-police efforts to control crime. Mark Stevenson, "Mexico Border City Groups Call for UN Peacekeepers," Associated Press, November 14, 2009. Calderón replaced army troops with federal police in April 2010. Mark Stevenson, "Police Take Over from Army in Mexico Border City," *Washington Post*, April 8, 2010. However, lack of public confidence in the police probably explains strong citizen resistance to Calderón's efforts to unify federal and state. Only half of respondents favor such an option. [www.parametria.com](http://www.parametria.com), "Polariza a mexicanos utilidad de unificación," national survey of 1,200 respondents, +/- 2.8% margin of error, December 17–21, 2009.

**TABLE 12: HOW MEXICANS VIEW U.S. RESPONSIBILITY FOR THE DRUG PROBLEMS?**

Reasons	% Who Agree
U.S. consumption	26
Corruption in Mexico	62
Don't Know	11
No Response	1

Source: Parametría, 400 interviews nationally, 28–31 March 2009, +/- 4.9 % margin of error.

national-wide. Surprisingly, when comparing these two foreign institutions with the Mexican Army, 41 percent compared to 47 percent viewed them as more efficient in solving Ciudad Juárez’s situation.<sup>87</sup>

## THE ARMED FORCES AND HUMAN RIGHTS, A GROWING ISSUE AND A NEW ACTOR

The increased presence of the Mexican armed forces in the drug war has contributed to a significant, undesirable consequence, an extraordinary increase in human rights complaints. Those complaints have increased under President Calderón’s administration. The most recent reports of Human Rights Watch and Amnesty International, citing data of alleged military abuses before the National Human Rights Commission, indicate the complaints numbered 182 in 2006, 367 in 2007, and 1230 in 2008, a nearly six-fold increase from 2006 through 2008.<sup>88</sup> The Commission reported 1,500 complaints in 2009 alone, 45 percent of which emanate from just three states: Chihuahua, Michoacán, and Guerrero, followed by Durango, Baja California, and Sinaloa, in short, where drug violence is most pronounced.<sup>89</sup> Moreover, in a detailed

<sup>87</sup>“Ejército, FBI, o Cascos Azules: a quién le importa la soberanía,?” *El Universal*, March 24, 2010, based on a Parametría survey.

<sup>88</sup>Country Summary, Mexico, January 2010, 1; and Amnesty International, *Mexico, New Reports of Human Rights Violations by the Military* (London: AI, 2009). The total number of complaints from the Commission to the Navy for 2008 was 46. [www.semar.gob.mx](http://www.semar.gob.mx), December 27, 2009. The Navy formally established its own Human Rights Division, November 16, 2008, in response to the federal government’s approval of a National Program of Human Rights, August 29, 2008. The Army has a similar unit, directed by General Antonio López Portillo, which was established in January, 2008.

<sup>89</sup>Eugenia Jiménez, *Mileno*, “Derecho Humanos ha recibido 1,500 quejas contra militares durante el año,” December 22, 2009.

report, Human Rights Watch argues that by allowing the military to carry out its own investigations, few convictions have resulted, the investigations and trials are not transparent, and despite repeated requests from Human Rights Watch, as late as January 2009, the National Defense Secretariat could not provide them with a list of actual cases.<sup>90</sup> As of September 2009, the Secretariat of Defense was investigating 47 alleged human rights violations from the National Commission on Human Rights initiated during the Calderón administration.<sup>91</sup>

The Secretariat of Defense reported that from 2000 to January 2009, they have received 470 complaints from civilians against soldiers in which military investigators could not produce adequate evidence to try the accused.<sup>92</sup> On the other hand, they report investigating 372 complaints resulting in civilian deaths or injury, averaging 23 yearly under Fox, and 100 in the first two years of the Calderón administration, a 335 percent increase. Some insight into actual convictions and punishment is suggested by the fact that the Army claims that “despite an exhaustive search in the archives of the Attorney for Military Justice, no information was encountered related to how many soldiers were tried” for such crimes. During that same period, only ten individuals were actually sentenced by military courts, 1 in 2000 for murder, 7 in 2001 for murder, 1 in 2004 for murder, and 1 in 2005 for injuries.<sup>93</sup> Equally revealing are the actual sentences meted out to those convicted of crimes against civilians ranging from sexual abuse to homicide, a total of 37 cases in all military courts between 1999–2009. The longest prison sentence the courts awarded was 12 years to two sergeants, one for assault which led to death, the other for rape. Only six convicted individuals were officers, two of whom were general officers, a division general and a brigadier general, on trial for voluntary manslaughter, but the first general died before completion of the trial, and the charges were vacated for the second. The only officer above the rank of captain convicted in that ten year period was a Lt. Colonel, who received 3 years for sexual abuse.<sup>94</sup>

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<sup>90</sup>Human Rights Watch, *Uniform Impunity, Mexico’s Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations* (April 2009). The documentation in this report is detailed. In an important exchange between HRW and the Secretariat of Government, after requesting detailed information about cases under prosecution in the Calderón administration, and receiving a letter from the Secretary identifying specific cases and penalties, HRW responded with further questions about discrepancies in the information provided. See [www.hrw.org/en/news/2009/11/20](http://www.hrw.org/en/news/2009/11/20) for their response and Fernando F. Gómez-Mont’s letter. See William Booth and Steve Fainaru, “Skeptics Doubt Mexican Data on Military Abuses,” *Washington Post*, November 23, 2009, for an American media perspective. In 2010, the United Nations Human Rights Committee asked the Mexican government to remove soldiers from the battle against organized crime. *Diario de Yucatán*, March 10, 2010.

<sup>91</sup>Transparency request 0000700120109, September 18, 2009. The report also contains a breakdown of the charges, which typically are physical violence. For a precise breakdown of all soldiers charged, not just for crimes against civilians, see Transparency request 0000700108909 cited above, which breaks down the charges from 2000–2009 for 29,641 cases, as well as the 7,702 sentences from 2006–2009.

<sup>92</sup>These accusations averaged 44 yearly under Fox, and 76 in the first two years of the Calderón administration, a 73 percent increase.

<sup>93</sup>Transparency request, 0000700002709 January 13, 2009.

<sup>94</sup>Transparency request, 0000700109109, September 8, 2009.

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**TABLE 13: MILITARY’S RECORD ON TRANSPARENCY REQUESTS, 2003–09**

Type of Response	National Defense	Navy
	Percent of Total	
Responded via internet	81.4	44.0
Information solicited does not exist	5.4	14.9
Information is already public	1.7	10.0
Information is confidential	1.6	1.2
Request does not correspond to the law	0.6	0.5
Notification of the information’s disposition	0.7	12.6
Not in the purview of this agency	0.6	5.9
Others		4.4
<b>Total requests</b>	<b>6,294</b>	<b>2,096</b>

Source: Instituto Federal de Acceso de la Información Pública, cited in Table 122, p.373, *Atlas de la seguridad*. Of the five national security agencies, National Defense has the highest response rate.

The increasing attention to human rights accusations incorporates the larger issue of military transparency in responding to civilian complaints and other government agencies, including the National Commission on Human Rights.<sup>95</sup> Reporters, scholars, and others have attempted to use Mexico’s version of the United States Freedom of Information Act to obtain information and increase accountability from all federal agencies. Table 13 identifies how the Army and Navy respond to these requests. I

<sup>95</sup>These criticisms have led to a Senate approval of a constitutional reform to Article 102 strengthening the National Human Rights Commission by assigning it the right to conduct “unobstructed investigations in cases of gross violations — a prerogative currently reserved to the Supreme Court — and my hold State actors accountable for violations.” Embassy of Mexico, April 2010.

have made more than fifty requests from these two agencies, and have read through more than 700 requests in 2008–2010. My experience suggests that frequently there are contradictory answers to the same question, depending on the precise wording of the request. Moreover, both agencies often do not have important statistics or records, especially over time. The National Defense secretariat has given these requests more attention by typically placing general officers in charge of responding to requests, and creating an Information Committee of three generals, led by a Division General.<sup>96</sup>

The Army has responded by pointing to its significantly increased training in human rights, some of which is actually carried out on a yearly basis by the National Commission on Human Rights. In detailed responses to numerous requests related to internal human rights training in both the Army and the Navy, the Army has provided detailed descriptions of its activities in the classroom and in the barracks. For example, the Heroic Military College, which graduates most future Army officers, requires two courses, 52 and 56 hours respectively, in the first two years at the College. The second year course is almost entirely devoted to human rights concepts and issues, ranging from the Geneva Convention to the legislation creating the National Human Rights Commission.<sup>97</sup> There is no question that the attention paid to this issue within the armed forces has increased significantly during the last two presidential administrations. The fundamental issue, however, remains the increased allegations, and therefore, the impact of the training on actual behavior in the field and the degree to which the officer corps takes this issue seriously in its internal investigations.

The complaints by domestic and international human rights organizations, including the United Nations High Commissioner on Human Rights, and widespread coverage in the Mexican media, has led to increased discussion of the acceptability of the armed forces pursuing this mission. Moreover, 15 percent of the federal funds allocated for this mission through the Mérida Initiative were to be withheld, until the State Department reports that Mexico has met four specific human rights conditions, including that “civilian authorities are investigating and prosecuting army abuses, in accordance with Mexican and international law.”<sup>98</sup>

The most influential reactions to human rights abuses have emanated from Catholic bishops and members of the Chamber of Deputies. One issue which unifies

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<sup>96</sup>See their response to a vaguely worded request concerning human rights violations by the military. Comité de Información, No. CI/RR/1040/09, August 26, 2009. One of the committee members is Division General Roberto Miranda Sánchez, former Chief of Staff to President Zedillo.

<sup>97</sup>The Zip file in response to this request contains complete information on every training program and curriculum offered in the Army and Air Force on human rights as of 2008. Transparency request, 0000700071708, June 23, 2008, and July 13, 2009. It also includes the names of all instructors. There are five military and four civilian instructors at the Heroic Military College, seven military instructors at the Higher War College. In 2007, 170,690 officers and troops from general on down received instruction, and as of May 2008, 74,336 individuals. Human rights course work was first introduced in 1996, during the Zedillo administration.

<sup>98</sup>[www.hrw.org/en/news/2009/08/10](http://www.hrw.org/en/news/2009/08/10).

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various wings within the Catholic Church is human rights.<sup>99</sup> Because of the consistently high level of trust most Mexicans assign to the Catholic Church and their priests, these actors potentially exercise an important influence on citizen views in support of government policies toward organized crime.<sup>100</sup> But because each diocese is autonomous from the other, Bishops address such issues individually. Occasionally, when considerable consensus exists, the Conference of Mexican Bishops will also issue a general statement.<sup>101</sup> Indirectly, for the church initially offered support for the military and police in their confrontation against organized crime, announcing in their June, 2007 meeting that the Catholic Church had established chaplaincies for the army, air force and navy in dioceses near barracks, bases, and military hospitals, as well as for the police, with a special military bishop, Víctor René Rodríguez, in charge.<sup>102</sup> The episcopate, at its annual meeting, decided to examine insecurity and violence as a central issue, to be incorporated in its programs for 2009–12.<sup>103</sup> Many priests and bishops have taken a special interest in the drug war because priests themselves have become victims of drug-related violence, including a priest and two seminary students killed in Guerrero in 2009.<sup>104</sup> Sources suggest that seven bishops and 200 priests were threatened by drug dealers in recent years. Further, dioceses plagued by drug-related violence also have expressed strong positions against the consumption of drugs and proposals to legalize drugs, with the exception of their therapeutic use, viewing it as a grave sin.<sup>105</sup> Public statements have expressed support

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<sup>99</sup>Roderic Ai Camp, *Crossing Swords, Religion and Politics in Mexico* (New York: Oxford University Press, 1997), 79–84.

<sup>100</sup>For a detailed analysis of their potential influence on politics generally, and electoral politics specifically, see my “Exercising Political Influence, Religion, Democracy, and the Mexican 2006 Presidential Race,” *Journal of Church and State*, 50 (Winter 2008), 49–72.

<sup>101</sup>For a brief background on this in 2009, see my “Church and Narcostate,” *Foreign Policy*, August 13, 2009.

<sup>102</sup>“El Ejército mexicano vuelve al redil,” *Proceso*, June 17, 2007. This is truly surprising news for Mexico, given the historic confrontations between the Army and the Church as late as the 1920s and 1930s during the Cristero War and its aftermath. It deserved far more coverage in the Mexican media and the scholarly community. It is also essential to mention that in Latin America, where military chaplaincies have been common, scholars have suggested that the weak posture of the Catholic Church during Argentina’s dirty war can be attributed to the excessively close relationship between Catholic priests functioning in this capacity, and the military, given that a number of such priests condoned the torture and murder of political prisoners. Apparently, the Navy had been inviting various prominent clergy, including the Cardinal Archbishop of Mexico and the leader of the Jewish community in Mexico, to give presentations at the Naval War College during the Fox administration. See Jorge Medellín, “Pastoral militar en México; religión y política,” [www.columnas.ejecentral.com.mx](http://www.columnas.ejecentral.com.mx), January 12, 2010.

<sup>103</sup>[www.arquichi.org.mx/modules/news](http://www.arquichi.org.mx/modules/news), “Obispos mexicanos reunidos en asamblea plenaria,” November 11, 2009.

<sup>104</sup>“Mensaje de los Obispos de la Provincia de Acapulco con motivo de los asesinatos en Ciudad Altamirano,” [www.cem.org.mx/secciones-y-prelaturas](http://www.cem.org.mx/secciones-y-prelaturas), June 22, 2009, from the four bishops in this region. They state that security forces need to participate in the battle against organized crime, but at the same time, attention should be paid to the human rights of the population.

<sup>105</sup>See the Archbishop of Chihuahua’s blunt statement. [www.arquichi.org.mx/modules/news](http://www.arquichi.org.mx/modules/news), May 22, 2008. The six bishops of Chihuahua also issued a joint statement, urging their parishioners to make changes in their own behavior and attitudes, and not rely on the government, the military, or jails to solve the drug violence. March 2, 2009

for the collaboration between local and national authorities in their battle against organized crime.<sup>106</sup> The Church, in an episcopate statement, even has supported the government's cooperation with the United States.

The strongest public statement condemning military human rights abuses has been expressed by Raúl Vera López, Bishop of Saltillo, along with the civilian director of a diocesan human rights organization, condemning in detail, alleged human rights abuses committed by the Mexican Army on July 11, 2006, in Castaños, Coahuila.<sup>107</sup> In July 2009, following the congressional elections, Bishop Vera López, expressed stronger criticisms against the drug war strategy, calling it an “irresponsible lost war,” while severely scolding the military, judges, investigators and others for remaining silent about human rights abuses, even including priests for “remaining blind and deaf to the injustices” the public has suffered at the hands of the military and organized crime.<sup>108</sup> Recently, in August 2009, Enrique Díaz Díaz, the Auxiliary Bishop of San Cristóbal de las Casas, in a published mass, “Arma Peligrosa,” described one of his priests being stopped at a road block, and being extensively questioned after opening a box in his car containing religious posters of Moses listening to the voice of God. In presenting the soldiers' treatment of the priest, he described some soldiers as “likeable and attentive, others, despotic and aggressive.”<sup>109</sup> Even in dioceses where drug-related violence has not been a serious issue, such as Mexico City, the spokesperson for the Archdiocese of Mexico City, after Sunday mass at the Metropolitan Cathedral, told reporters that the federal authorities should not depend on the armed forces to combat organized crime because of human rights abuses, instead suggesting they should create a national police force.<sup>110</sup> Other dioceses have advocated a focus on prevention, rather than force.<sup>111</sup>

President Calderón reacted to the heightened criticism of Army abuses by suddenly shifting some of the more visible tasks to the Navy, which given its less visible and direct role, has received little if any public criticism.<sup>112</sup> The use of Navy marines in the spectacular killing of top cartel kingpin Arturo Beltrán Leyva in Cuernavaca in December, 2009, symbolizes the Navy's heightened role. However, an unintended

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<sup>106</sup>For example, Archbishop Rafael Romo Muñoz of Tijuana, who has expressed sympathy for police killed in the line of duty. “La Arquidiócesis de Tijuana se solidariz y ira por los policias,” [www.iglesiatijuana.org](http://www.iglesiatijuana.org), October 5, 2009. In turn, some municipal authorities have publicly requested the support of the Church.

<sup>107</sup>[www.derechoshumanos.org.mx/modules](http://www.derechoshumanos.org.mx/modules), July 20, 2006, a case often cited by national organizations.

<sup>108</sup>“María de Guadalupe nos enseña a ser colaboradores de Cristo en la Obra de la Justicia y de la Paz,” July 8, 2009.

<sup>109</sup>[www.cem.org.mx/secciones/voces-de-los-obispos](http://www.cem.org.mx/secciones/voces-de-los-obispos), August 28, 2009.

<sup>110</sup>“La Arquidiócesis pide el retiro del Ejército,” *El Universal*, December 14, 2009.

<sup>111</sup>See José G. Martín Rábago, Archbishop of León, Guanajuato, “La droga nos invade, qué debemos hacer,?” January 22, 2010. For other references from various bishops, see “Preocupación creciente del episcopado mexicano,” [www.caritas.tv/index](http://www.caritas.tv/index), 2010.

<sup>112</sup>For a discussion of this shift, especially as it relates to public opinion, see Dan Lund, “Handicapping the Current Administration at Midterm,” *Opinion and Policy Report*, December 17, 2009, 3.

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consequence of this strategy is to increase tensions between the Army and the Navy, which have existed for years.<sup>113</sup>

At the end of 2009, some members of the political class began to join their voices with human rights advocates and individual bishops. The Secretary of the Public Security Committee of the Chamber of Deputies, Teresa Incháustegui Romero, from the PRD, agreed with the statement emanating from the Archdiocese of Mexico City, suggesting that the use of the Army in public security functions was unsuccessful. In turn, the President of the Chamber's National Defense Committee, a PRI member, underlined his support for the armed forces frontal battle against organized crime.<sup>114</sup> Among the general public, tolerance is increasing toward accepting the presence of drug traffickers if the violence would abate.<sup>115</sup> The policy differences among political parties and their representatives are likely to increase, and the strategy for confronting organized crime, including the central role of the armed forces, will become a primary issue in the 2012 presidential race and its outcome.

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<sup>113</sup>For example, one source pointed out in March of 2009 that the Army had become somewhat jealous of the Navy's stronger relationship through Northern Command, and therefore was likely to assign its own liaison officer, which it did just a few months later.

<sup>114</sup>For both views, see Juan Arvizu and Andrea Merlos, "Perredista coincide con Iglesia sobre Ejército," *El Universal*, December 14, 2009, and Juan Arvizu, *El Universal*, "Analaizan dar nuevas facultades al Ejército," *El Universal*, December 25, 2009.

<sup>115</sup>The level of acceptance has increased from 33 to 48 percent from July, 2008 to December, 2009. "Crece tolerancia al narco por miedo a la violencia," [www.parametria.com](http://www.parametria.com), 2010. The level of discouragement toward the interdiction strategy was reinforced by a controversial interview between Julio Scherer, editor of Mexico's leading investigative weekly, *Proceso*, and a high-level drug cartel leader, who said killing him and other cartel leaders would not affect the presence of drug trafficking in Mexico. Jorge Carrasco Araizaga, "Encuentro Scherer-Zambada: El desconcierto oficial," [www.proceso.com](http://www.proceso.com), 2010.



# COMBATING ORGANIZED CRIME AND DRUG TRAFFICKING IN MEXICO: WHAT ARE MEXICAN AND U.S. STRATEGIES? ARE THEY WORKING?

John Bailey

Mexico confronts the greatest threat to its democratic governance from internal violence since the Cristero Revolt of the latter stages of the Revolution of 1910–29. In this case, the threat is posed by criminal groups, especially by politically savvy, hyper-violent drug-trafficking organizations (DTOs), currently inflicting spectacular damage in several regions and sowing insecurity throughout the country. But the DTOs are only the most pressing symptom of a growing mix of forms of organized crime (OC) rooted in a robust informal economy and a civic culture marked by comparatively little confidence in the police-justice system and low compliance with the state's law.<sup>1</sup> The threat is further exacerbated by a crisis of political legitimacy and state capacity. Neo-liberal policies since the mid 1980s have not generated a new social contract to replace the populist consensus of the “golden age” of growth with stability (1950s–1970s), and the Mexican state lacks an effective police-justice-regulatory system capable of enforcing its laws with respect to public security.

Elements of the OC/DTO threat have been present since at least the mid 1980s. What brings it to a level to threaten democratic governance is its rapid recent growth and aggressiveness. This is due to the confluence of large supplies of violent entrepreneurs and weapons, financed by domestic and foreign markets for illegal drugs, all in the context of slow or even negative economic growth. What in the past had been a chronic but tolerable problem of public security has passed the tipping point to become a genuine threat to national security and democratic governance.<sup>2</sup>

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<sup>1</sup>The informal economy is the “off-book,” untaxed, mostly unregulated market for both licit and illicit goods and services. In the 31–33 percent of GDP range over 1999–2005, Mexico's informal economy is close to the average (34–36 percent) that Schneider estimates for 145 countries. At 19 percent, Chile is at the low end in the Latin American context, while Peru (58 percent) is nearer the high end. Schneider (2007, Table 6.3, pp. 34–37).

<sup>2</sup>In my usage “public security” refers to threats to individuals' persons and property and to democratic institutions posed by crime (especially violent crime) and by varieties of natural disasters (e.g., disease, earthquake, etc.). “National security” refers to threats to state institutions, territory and sovereignty posed largely by other states and by a variety of non-state actors, including organized crime. Democratic governance “...refers to the government's and state's ability to deliver goods and guarantee rights that are important for citizen well-being, within the rules and institutions of a democracy” (Mainwaring and Scully 2010, 1). Technically, drug-trafficking has been considered a national security threat in Mexico since the Carlos Salinas presidency (1988–2004).

This chapter argues that the government of Mexico (GOM) under President Felipe Calderón (2006–2012) developed a strategy to confront OC generally and DTOs in particular. The strategy had multiple components and was internally coherent. Its central logic was to employ the armed forces, principally the Army, to confront armed bands of criminals in selected locales in order to disrupt their activities and to buy time to implement a long menu of institutional reforms. At some undetermined point, the armed forces would return to a secondary, back-up role in police functions and the reformed police–justice system would take the lead against OC/DTOs. The declaratory strategy was plausible; most of it, however, remained only partially implemented by early 2010. Faced with public unrest and political opposition, the issue was whether President Calderón would be forced to rethink his government’s strategy in 2010.

The U.S. government (USG) also evolved a strategy to confront OC/DTOs in Mexico, Central America and the Caribbean, as well as within the United States. Unlike Colombia where the USG largely shaped anti-drug policies, the strategy with respect to Mexico was to respond to GOM initiatives. For example, the Mérida Initiative was crafted by the executive branches in both countries in 2007 in response to Mexico’s preferences. The U.S. Congress subsequently negotiated specific provisions.<sup>3</sup> The Obama administration (2009–2013) maintained the basic thrust of Mérida, but made significant adjustments, e.g., to engage in social development programs and pilot projects in border cities.

This paper makes four points about Mexican institutional reform and timing in the GOM strategy. First, the scope of the institutional reforms needed to reconstruct Mexico’s national police, reorient the justice system from an inquisitorial to an adversarial (accusatory) model, build an intelligence system, and integrate the national, state, and local security apparatus requires decades, even in the best of circumstances. The cultivation of a culture of lawfulness to support institutional reform is also a generational shift.

Second, ordered into action, Mexico’s armed forces necessarily learn and adapt in a much shorter time frame in carrying out police operations. Whether they become more effective in their police roles remains to be seen; but their training, equipment, and methods underwent important change. Such change will likely affect the military’s thinking and behavior with respect to their role in Mexico’s political system.

Third, hundreds of officers from the armed forces have been recruited into civilian police and intelligence leadership positions at all levels.

Fourth, as a result we should expect a hybrid institutional work-in-progress: a police–intelligence system shaped by military influences, and a military that is adapting to police roles. A possible result is a better integrated police–intelligence system, one that can operate more effectively with military support as needed. The challenge is

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<sup>3</sup>Since the Mérida Initiative was considered an executive agreement and not a treaty, the Mexican Congress was excluded from the negotiations.

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the subordination of this hybrid police-intelligence-military apparatus to a reformed justice system, especially since the justice reform will require much more time than the 2016 target stipulated by law.

Much of the USG strategy responded to Mexico's initiatives. As such, it focused on two broad fronts: provision of training and equipment, and improvement in communication and coordination, especially in the border region. The USG, however, confronted something new in the OC/DTO threat. This was not a political-ideological insurgency, but rather a transnational criminal-industrial complex passing through a particularly violent phase. U.S. policy-makers struggled to assess the severity of the threat, with limited experiences to draw on. At the national level, the USG depicted its actions as responses to Mexican cues, and for the most part the responses percolated up from inter-agency consultations and negotiations with Congressional committees. Whether there was a deeper understanding of the threat and an unstated strategic response is unclear. Equally noteworthy responses were taking place at the state and local levels along the border.

This chapter first examines the evolution of the Mexican and U.S. national government strategies for confronting OC/DTOs, with particular attention to the institutional frameworks that have been established to implement these strategies. It then evaluates the degree of "fit" between the two governments' strategies and considers metrics by which progress can be measured. It concludes with an assessment of progress.

I. What are the current U.S. and Mexican government strategies for confronting OC/DTOs? What institutional frameworks have been established to implement these strategies?

"Organized crime" has both analytical and legal meanings. It can assume many different forms, but it is qualitatively different from other forms of criminal activity on two dimensions: time and numbers. Organized crime involves repeat actions over time by multiple colluding actors whose objectives are illegal and warrant substantial penalty.<sup>4</sup> In Mexican federal law, "When three or more persons de facto organize themselves to commit on a permanent or continual basis acts that are themselves or as linked to others have the effect of committing the following crimes, they will — for this reason alone — be penalized as members of organized crime."<sup>5</sup> The crimes listed include: terrorism; drug trafficking; currency counterfeiting; commercial activity based on illicit resources; trafficking in arms, undocumented migrants, or organs; corruption of minors in various ways; kidnapping; and vehicle theft. Some of these crimes (e.g., terrorism and drug-trafficking) are reserved for federal law (*fuero*

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<sup>4</sup>See, for example, von Lampe (2002) and Finckenauer (2005), for a discussion of the many different definitions and conceptions of organized crime. UNODC (2002) provides an especially useful analysis of the links between organizational variations of transnational organized crime and patterns of violence and corruption.

<sup>5</sup>See "Ley Federal contra la Delincuencia Organizada," available at: <http://leyco.org/mex/fed/101.html> (last accessed on October 30, 2009) (my translation).

*federal*), others (e.g., kidnapping and vehicle theft) are included in state law (*fuero común*) as well, which frequently creates conflicts over jurisdiction.

In my usage, a public security strategy includes goals (some of them clearly stated, even measurable) that are logically interconnected and linked to agency missions and resources over some defined time period. Strategy typically includes a stated set of aspirations and a real set of priorities to be implemented given time and resource constraints. A government may list dozens of goals, for example; in reality, however, it can focus only on some smaller subset of them. Further, one should expect that the various actors and agencies will differ as to which are the real goals and what is the proper priority among them. With respect to sequences, one expects an anti-organized crime strategy to combine short-term repression and control measures with longer-term attention to institutional reform, education, health, employment, and the like. Implementation of the strategy ought to include feedback mechanisms to permit periodic adjustments.

A basic strategy to combat organized crime evolved over the first half of Felipe Calderón's presidency (2006–2012). It was embedded in a broader set of policies to promote public security and justice reform more generally. At the declaratory level, the strategy identified various state responses to organized crime, some to be coordinated with civil society. Analogous to the U.S. military “surges” in Iraq and Afghanistan, the Mexican government sought to implement a reaction-repression-adaptation model while its prevention-justice administration model was constructed.<sup>6</sup> In effect, the Mexican armed forces would “stand down” when the justice administration system was “stood up.”

The strategy ran obvious risks. First, the armed forces, especially the Army, were deployed to defeat an “enemy” only poorly understood, organically linked to the economy and civil society, and dispersed throughout Mexico and into both neighboring and distant countries.<sup>7</sup> The military started out poorly prepared to act as a police in the sense of building support in local communities and employing minimum violence to apprehend suspects for judicial processing. They became exposed under intense media coverage to corruption, human rights abuses, and operational failure. Second, the dynamic of protracted confrontation with criminal gangs brought the risk of “dirty war.” Along with the civilian police and some societal groups, the Army, by unspoken doctrine or renegade units, was tempted to operate extra-judicially, using arbitrary detention, torture, and disappearances.<sup>8</sup> Third, even assuming success in the “take” and “clear” aspects of the surge, the scale of the

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<sup>6</sup>By reaction-repression-adaptation model I mean the government dispatches its armed forces to various trouble spots with the expectation that it will learn by doing how to deal with criminal organizations; by police-justice administration I refer to the long-term menu of institutional reforms to train police, modernize the intelligence system, and implement judicial reform.

<sup>7</sup>We lack a clear analytical “picture” of the DTOs in the sense of their organization and functioning. Astorga (2007) provides the most complete narrative account.

<sup>8</sup>Most publicized case of extra-official, vigilante justice is Mauricio Fernandez, mayor of San Pedro Garza García, Nuevo Leon. Also several cases of human rights complaints have been brought against the Army. A narrow focus on the Army may be unfair in the sense that civilian police are arguably as guilty (or more) of human rights abuses.

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institutional reforms required to stand up a competent police-justice system operates on a calendar of decades, not sexenios. By the middle of President Calderón's term (Winter 2009–10), political opposition to the use of the Army against OC had reached the point that the government was forced to adjust its tactics in the case of Juárez, Chihuahua, to rely more on the federal police.

In the following discussion, I focus on strategy to combat organized crime, particularly the DTOs within Mexico and along the Mexico-U.S. border. Much of Mexico's strategy is embedded in a broader set of policies aimed to improve public security and rule of law in a general sense.

### MEXICO'S DECLARATORY STRATEGY

In his inaugural address in December 2006 Felipe Calderón put the recovery of public security and legality as the first of his three main priorities as president (along with reducing extreme poverty and creating jobs).<sup>9</sup> As one of the promised "100 actions in the first 100 days," the Ministry of Public Security (Secretaría de Seguridad Pública — SSP) produced a "Crusade against Crime" strategy paper in March 2007. The document sets out eight ambitious goals. First among these was the consolidation of police forces (Federal Preventive Police, Federal Investigation Agency, National Migration Institute, and the Customs and Tax Inspection Center) under a single command to improve communication and coordination. The strategy also emphasized crime prevention and citizen participation, institutional development to professionalize the police, efforts to combat corruption, and the development of standardized record management among police agencies and improvement of communications and coordination.<sup>10</sup>

President Calderón laid out the main elements of a strategic response to OC in particular in subsequent speeches. On Navy Day, June 1, 2008,<sup>11</sup> he conveyed his sense of the threat: OC is more than trafficking: "[organized crime] also seeks to put the entire structure of illegality at its service," referring to contraband, counterfeit products, auto theft, kidnapping, and the like. His stated priorities were, first, joint military-police operations to regain territory and support local authorities. Second, justice reform, to better equip the judicial system to deal with organized crime. Third, police reform, to purge corrupt personnel and create a new professional police. Fourth, implementation of "Platform Mexico," (Plataforma Mexico),

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<sup>9</sup>"Palabras al pueblo de México desde el Auditorio Nacional," (December 1, 2006) (<http://www.presidencia.gob.mx/prensa/discursos/?contenido=28316> last accessed on July 16, 2009).

<sup>10</sup>"Estrategia integral de prevención del delito y combate a la delincuencia," (SSP March 2007). See "Unidad en guerra contra el crimen, pide el gobierno," *ElUniversal.com.mx*, January 23, 2007.

<sup>11</sup>Discurso, El Presidente Felipe Calderón en la Inauguración de las Instalaciones de la V Región Naval Militar, 1 junio 2008. See also, « La política mexicana contra la delincuencia organizada, (Mayo 29, 2008) ;

a nationally integrated information system intended to improve police intelligence. Fifth, “Clean up Mexico,” (Limpiemos Mexico), to promote drug prevention and rehabilitation.

Events also drove the evolution of declaratory policy. The kidnapping and murder in June 2008 of Fernando Martí, son of a prominent businessman, galvanized the country. The ensuing scandal created momentum to produce the “National Pact for Security, Justice, and Legality” the following August 22. The Pact, which remains the major policy statement to date, enumerated some seventy-five commitments by the three branches at the federal and state levels, plus the mayors, as well as various civil society groups, to take in order to promote public security.<sup>12</sup>

By summer 2009 the overall declaratory strategy against organized crime, essentially drug trafficking, took the following shape:

1. Deploy federal forces (police and Army) in the most seriously affected areas. The aim of these joint police–military operations (*operativos conjuntos*) was to confront armed gangs, take back territory, and prop up local security forces and municipal governments. The goal was to disrupt the criminal groups’ capacity for reproduction by applying targeted pressure. The operations were mainly in the North and a few internal locations (e.g., Michoacán). The state of Chihuahua was most affected, but joint operations were conducted in Baja California, Nuevo León, and Tamaulipas as well.
2. Attack OC’s finances. Though there was some progress in creating a legal framework (e.g., asset seizure), Treasury (*Secretaría de Hacienda y Crédito Público* — SHCP) lacked sufficient resources to prepare cases for prosecution, and the Federal Attorney General’s Office (*Procuraduría General de la República* — PGR) did not have enough trained attorneys to prosecute the cases. The banking system developed some measures against money laundering, but numerous other channels (e.g., currency exchanges, hotels, restaurants, race tracks, professional sports, and the like) remained vulnerable.
3. Dismantle OC’s political cover. In recent years several mayors and a governor (Quintana Roo) had been arrested for protecting trafficking. Calderón dramatically stepped up the pressure in a joint police–Army operation in his home state of Michoacan in May 2009. With no advance warning to the state governor, ten mayors from the three main parties, along with seventeen other officials, including an adviser to the state’s attorney general, were charged with collusion with organized crime. Rather than a “wake-up call” to the political class, many viewed the operation a partisan maneuver

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<sup>12</sup>“Acuerdo Nacional por la Seguridad, la Justicia y la legalidad,” *ElUniversal.com.mx*, August 22, 2008.

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to strengthen the government's hand in the July mid-term elections.<sup>13</sup> The episode also showed the disconnect between police operations and judicial process, as twelve of those detained in Michoacan were subsequently released due to lack of evidence.<sup>14</sup>

4. Promote institutional reform, with priority to intergovernmental cooperation, reform of the police and justice systems at all levels, and improvement of intelligence capabilities.<sup>15</sup> The administration encountered delays in organizing itself at the federal level, but the bigger problem was enlisting effective cooperation from the 32 states and 2,140 local governments. Until the kidnapping scandal of June 2008, many state and local officials were skeptical about the Calderón's motives, suspecting a ploy to gain legitimacy after the contested 2006 presidential election. By summer 2009 the federal government had developed a "3X3 plan," that is, cooperation among the legislative, executive, and judicial branches at the federal, state, and local levels to promote anti-crime measures. Ideally judicial reform would move in tandem with other measures, but the congress had stipulated eight years to complete the process.
5. Generate grassroots support and recover the societal base. In places the Army and police could disrupt criminal activities, the objective was to deliver basic social services to build public support for the government. At the policy-making level, the social cabinet (including the health, education, and social development ministries) created special programs for the targeted areas. The programs included health care, "Safe Schools," and safe spaces.
6. Promote international cooperation, primarily with the United States, but also with other governments in the region (especially Colombia and Guatemala). With respect to the United States, the Obama administration appointment's at State, Justice, and Homeland Security strongly promoted bilateral cooperation. A priority was to improve cooperation between U.S. and Mexican intelligence services.

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<sup>13</sup>Sigrid Arzt (2002, 137–38) points to a three-prong strategy against organized crime: first, identify and attack the criminal group's operations; second, eradicate the group's financial base; and third, dismantle its political-institutional protection. The last is both the most difficult and the most important. On the Michoacan operation, see "Histórico: PGR pega al gobierno en Michoacán," *ElUniversal.com.mx*, May 27, 2009.

<sup>14</sup>"Por falta de pruebas liberarán a 12 exfuncionarios de Michoacán," *Milenio online*, January 31, 2010.

<sup>15</sup>For example, CISEN needed a more comprehensive framework law to spell out its functions and institutional accountability. It was the sole source of the trained polygraphers needed to vet police forces and could produce only a limited number per year.

These elements made up the GOM's declaratory policy, in effect what the government said it wanted to do. If this characterizes the strategy, it is less complicated than President Calderón has suggested.<sup>16</sup> The immediate goals were to: (1) break up and disarticulate the criminal groups' operational networks for logistics, finance, and economic activity; (2) help break up international operations of OC; (3) incarcerate the main leaders, operators, and strategists; and, thereby (4) eliminate the impunity that allows this sort of criminality to harm society (Mexico PGR 2008).

If these are the broad outlines of the strategy, the Presidency's National Security Program 2009–2012 (Programa para la seguridad nacional 2009–2012) goes into considerable detail about two “special objectives,” 13 “strategic lines,” and 148 “action lines” designed to link the security program to the National Development Plan 2007–2012 (Plan nacional de desarrollo 2007–2012), as required by law. The National Security Program identifies threats and lists varieties of activities, but it does not link the activities to particular agencies nor set out performance metrics.<sup>17</sup>

The limited scope of the chapter rules out an evaluation of each point of the declaratory strategy. I shall comment only on the joint police–army operations and on selected institutional reforms. I return to goals in the consideration of metrics.

## JOINT POLICE-ARMY OPERATIONS

While other scholars such as Roderic Camp have examined in depth the armed forces' role in domestic policing, this paper focuses on joint police–Army operations as the key short-term tactic in the Mexican government's anti-OC strategy. Drawing on press accounts, Donnelly and Shirk (2009, 29) list fourteen deployments to ten different locales between December 2006 and July 2009, totaling more than 43,000 personnel. Michoacán (with two deployments) and Chihuahua (with four) got special attention. They note that we lack a precise breakdown between numbers of police and military, nor do we have information on the length of the deployments.<sup>18</sup>

Were the deployments “successful”? There are several different measures of success (some considered below), but my interest is whether the joint operations (*operativos conjuntos*) improved coordination among federal agencies and between these

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<sup>16</sup>See “Es difícil explicar estrategia contra el crimen,” *ElUniversal.com*, March 10, 2010. In my view, Joaquín Villalobos (2010), the former Salvadoran guerrilla commander, explains and defends the government's anti-crime policy more ably than do official spokespersons.

<sup>17</sup>The strategy document goes part of the way to address a basic criticism by RAND Corporation analysts, who claim that the Calderón administration failed to develop a cohesive national security strategy. “While Calderón has made fighting the drug cartels, crime, and corruption a cornerstone of his administration, a cohesive national security strategy has, again, yet to be articulated. Such a national security strategy would identify the nature of new security threats, describe how the country is responding to the threats, and delineate responsibilities across agencies and levels of government. Calderón has articulated his National Development Plan; however, there is no explicit link between national security priorities and that plan or among the various national security institutions” (Schaefer et al. 2009, 14).

<sup>18</sup>It would seem conventional to keep this sort of information classified.

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and state-local forces. We would expect variation in outcomes across the various locales, depending on the mix of personalities and circumstances.<sup>19</sup> At least one press account was generally negative about inter-agency cooperation. “The failure of the deployments against organized crime and the need to restructure them was because the federal police commanders never subordinated themselves to military command — as originally agreed — and often acted to protect drug traffickers, alerting them to actions planned against them.”<sup>20</sup> As a result, military forces found themselves isolated in a climate of confrontation with other federal, state, and local authorities.<sup>21</sup> In its original design, the military planned the deployments, which were to be implemented by SSP and the PGR. On the ground, the operations were commanded by military officers. However, civilian police did not usually adhere to the command structure.

### ASSESSING INSTITUTIONAL REFORM

#### **Reform of the police and intelligence systems:**

Police reform was the top priority in the institutional reform agenda. In President Calderon’s words, “I would start with the federal police. I want to deliver to my people, when I finish my presidency, a new and cleaner police corps at the federal level.”<sup>22</sup> The architect-engineer and policy entrepreneur for this goal was SSP Secretary Genaro García Luna, whose career trajectory is central to understanding the design of Calderón’s police reform. García Luna, like many others in the public security apparatus, began his career in the Center for Research and National Security (Centro de Investigación y Seguridad Nacional — CISEN), which was founded in 1989 to replace the disgraced Federal Security Directorate (Dirección Federal de Seguridad — DFS).<sup>23</sup> Trained as a mechanical engineer, with graduate study in strategic planning, he joined CISEN early in his career and departed with the diaspora from that agency that fanned out to SSP, the PGR, and several states in the latter months of Ernesto Zedillo’s administration (1994–2000). He first helped

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<sup>19</sup>Based on field interviews in early 2010, coordination between military and police forces appeared better in Tijuana than in Ciudad Juárez (Olson 2010, 5).

<sup>20</sup>“El ejército lucha case en solitario contra el hampa,” *LaJornada.unam.mx*, January 20, 2009. The problem of poor (or nonexistent) coordination between the Army and police was emphasized by U.S. and Mexican officials in author interviews in Mexico City (April 26–27, 2010). Original *Spanish Text*: “El fracaso de los operativos contra el crimen organizado y la necesidad de reestructurarlos se debe a que los comandantes de la policía federal nunca se subordinaron al mando militar — como se acordó inicialmente —, y, muchas veces protegieron a narcotraficantes, avisándoles sobre las acciones planeadas en su contra.”

<sup>21</sup>See “Policías y militares se amagan en Monterrey,” *Impreso.milenio.com*, January 14, 2010.

<sup>22</sup>“My Goal is to Transform Mexico,” *The Washington Post*, February 7, 2010, B1.

<sup>23</sup>CISEN was formed from the General Directorate for Research and National Security, which served briefly after the collapse of the DFS. An unusually interesting official history is CISEN 2009, in which the founders tell their stories. “*Investigación*” (research) is used deliberately in the agency titles to avoid the term “intelligence,” which creates unease in public opinion.

organize the intelligence unit of the Federal Preventive Police before moving on to the PGR in 2000. There he designed and built the Federal Investigation Agency (Agencia Federal de Investigación — AFI), which served as the investigative police for the Attorney General's office.

Some thought President Calderón's appointment of García Luna as SSP secretary and Eduardo Medina Mora as Attorney General might calm the inter-agency feuds that hampered security policy during the Fox administration. But conflicts between the ministers continued up to Medina Mora's resignation in September 2009.<sup>24</sup> While never publicly aired, the conflicts were probably related to differing visions of police reform and to García Luna's bare-knuckle style of bureaucratic infighting.

Judging from policy statements and press accounts, García Luna's vision of police-intelligence reform was to consolidate the various federal police forces into one organization, develop an effective intelligence apparatus to guide police operations, and devise an effective coordination mechanism to integrate police operations on all levels. The new police would operate under SSP control and be integrated into the National Public Security System (Sistema Nacional de Seguridad Pública — SNSP),<sup>25</sup> the main institutional framework. Central to his thinking was to extend investigative powers to the preventive police.<sup>26</sup> By April 2008 García Luna proposed integrating the AFI and PFP into a new Policía Federal, composed of six total divisions and approximately 30,000 officers divided into central operations and 34 regional police stations.<sup>27</sup>

Even with President Calderón's strong support, however, the implementation of García Luna's vision of police reform was blocked by corruption scandals, including the top levels of both AFI and the PFP, and by congressional opposition. Some congressmen pointed to constitutional provisions that specified public safety functions for the municipalities and the mandatory subordination of investigative police to PGR attorneys (ministerios públicos). In the truncated version of reform, the PGR was left with a hollowed-out Ministerial Police (Policía Ministerial), essentially the

<sup>24</sup>As to personal and bureaucratic in-fighting, a leading student of public security commented: "...durante los tres primeros años de este gobierno tuvimos un conflicto impresionante entre la Procuraduría General de la República y la Secretaría de Seguridad Pública federal. A la par de un problema que ha ocasionado 14 mil muertos, la guerra entre narcos, hemos visto un conflicto básico y un error de conducción política del gobierno federal al permitir que el secretario de seguridad y al procurador estuvieran confrontados en prácticamente todos los frentes" ("Perdemos ante el crimen: Samuel González Ruiz," *Siempre*, September 13, 2009).

<sup>25</sup>The SNSP is the institutional mechanism for the coordination of public security agencies at the federal and state levels. The Public Security Council is the federal counterpart to the National Security Council. SNSP and the Council are the primary national-level policy making bodies. A priority of the SNSP is collection of data and integration of data bases on weapons, vehicle registration, stolen vehicles, public security personnel, prison populations, citizen identification, and the like. For a critical appraisal see "Seguridad: 10 años de propuestas y ninguna política de Estado," *ElUniversal.com*, December 28, 2006.

<sup>26</sup>Mexican police forces have traditionally been divided along jurisdictional lines (federal, state, and local) and by function — investigative police and preventive police. The later were limited primarily to patrolling streets and protecting facilities.

<sup>27</sup>Justice in Mexico Project News Report, April 2008

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vestiges of the AFI. García Luna focused on the new Policía Federal (to replace the Policía Federal Preventiva) endowed with investigative powers. He also proposed the creation of 32 state police forces which would combine preventive and investigative agencies at the state level and absorb the municipal (preventive and transit) police.<sup>28</sup>

Effective intelligence is central to combating the DTOs. At the federal level there are four main agencies. CISEN, under the Ministry of Internal Affairs (Secretaría de Gobernación), is the lead strategic intelligence agency, focusing mainly on political and internal security issues. It focuses on drugs as these affect broader political issues. Its founders sought to separate CISEN from anti-drug operations to protect it from infiltration and corruption.<sup>29</sup> Although its operational arm was spun off to the PFP in the late 1990s, it plays a leading role in inter-agency coordination both internally and internationally (e.g., in the National Security Council, Public Security Council, and the SNSP). Operating under the PRI-government system, CISEN was viewed with deep suspicion by opposition parties. Following a period of relative neglect and slim budgets during the Fox administration, the agency recovered status and resources under Calderón. The agency apparently enjoys considerable trust by the USG.<sup>30</sup>

PGR's National Planning and Intelligence Center (Centro Nacional de Planeación e Inteligencia e Información para el Combate a la Delincuencia-CENAPI) is the successor agency to the Planning Center for Drug Control (Centro de Planeación para el Control de Drogas –CENDRO). Currently headed by a Navy admiral with an extensive background in intelligence, it appears to have more of an analytical than operational role. It provides intelligence directly to the Attorney General and presumably to the Deputy Attorney General for Specialized Investigation on Organized Crime (Subprocuraduría de Investigación Especializada en Delincuencia Organizada — SIEDO).

SSP's Undersecretariat for Strategy and Police Intelligence (Subsecretaría de Estrategia e Inteligencia Policial) and the new Federal Police Intelligence Center (Centro de Inteligencia de la Policía Federal-CIPF) apparently have more operational roles, with access to multiple data-bases and the Mexico Platform (Plataforma México).<sup>31</sup> The Platform, currently under construction, is a nation-wide network of data bases with information on vehicle registration, weapons, public and private security personnel, prison censuses, arrest records, and the like. In principle, Federal, state, and local law enforcement personnel would provide constant updates, and the information would be available to authorized users throughout the country.

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<sup>28</sup>Ricardo Ravelo, "Las policías: Improvisación, caos, desastre," *Proceso*, 1659, 17 August, 2008. <http://www.proceso.com.mx/rv/modHome/buscar/1>.

<sup>29</sup>A press item reports that CISEN's role was expanded under Calderón to include anti-drug and kidnapping roles. See "Reforman el Cisen; entrará de lleno al combate contra bandas del narcotráfico," *LaJornada.com*, January 28, 2009.

<sup>30</sup>A significant sum in the Mérida package was invested in CISEN. See "EU inyectará 17 millones de dólares al Cisen," *ElUniversal.com*, October 6, 2008.

<sup>31</sup>The Center is described in "'Cerebro' tecnológico enfrentará criminales," *ElUniversal.com*, November 25, 2009.

The Secretariat of Defense (Secretaría de Defensa Nacional — SEDENA) plays a leading role in combating DTOs. We know little to nothing about its intelligence services. SEDENA's Second Section deals with general defense-related intelligence, and its Seventh Section focuses on anti-drug intelligence. In recent years, the Secretariat has decentralized more of its intelligence-gathering to its twelve military zones.<sup>32</sup>

### **Reform of the judicial system:**

Mexico's federal law authorizes the basic tools to act against organized crime; the problem is in administrative and judicial implementation. Among other things, the law:

- specifies tougher penalties for higher-ups in criminal organizations or for public officers engaged in organized crime;
- authorizes a special unit in the Attorney General's office to investigate organized crime and specifies how the unit should work with financial units to investigate financial irregularities;
- permits police infiltration of criminal organizations and protects their identity;
- provides for protection of witnesses and others who might be at risk in criminal investigations;
- sets out rules for police searches, communications intercepts, uses of intercepted information, asset seizure, anonymous tips, rewards or sentence reduction for cooperation with investigators; pretrial detention to develop evidence against suspects; and special prison assignment and treatment.

The thrust of Mexico's broader judicial reform centers on presumption of innocence and oral trials. These priorities would likely improve transparency and, possibly, protection of defendants' civil rights with respect to criminal trials in general. Based on a comparative study of several Latin American countries, however, Luis Pásara (2010) cautions against expecting that judicial reform in general will have significant effects on crime. Beyond generic criminal justice, Guillermo Zepeda (2009, 27–28) offers useful ideas for judicial reforms especially applicable to organized crime. These include: specialized judicial units with limited workloads; professional investigators; technical auxiliary units; elite police units to serve judicial orders; specialized courts with reduced workloads; protection for victims and witnesses; better quality maximum security prisons; and, follow-up and social readaptation programs. An immediate priority, given the military's lead role in anti-DTO policing, is to improve coordination among the Army, federal police (SSP), and the Attorney General's ministerial police and prosecutors (*ministerio público*) so that persons apprehended in joint operations enter directly into the criminal justice system.

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<sup>32</sup>Benítez Manaut et al. (2009) is useful for varieties of information on security and defense.

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### **Institutional changes in the military:**

As important as the reforms attempted with respect to police and intelligence agencies, the military forces adopted changes to support its enhanced police roles, including:

1. Creation of a human rights directorate in SEDENA (announced in January 2005 and implemented with the Calderón presidency): “It is a clear indicator that the armed forces are improving their doctrine in order to continue operations that will put them in direct contact with society” (Guevara 2008, 9);
2. Creation of the Federal Support Forces Corps: Intended to support civilian authorities in operations against OC, leaving the rest of the Army to carry out traditional functions. There was concern both within and outside the Army about placing it under President Calderon’s direct control. Even though this was amended by a September 2007 decree, no funds were provided for the Support Forces Corps in 2008–2010;
3. Expansion of the Marine Infantry Corps: “A total of 32 battalions (BIM) are being raised . . . , which will see a manpower expansion of about 13,000 [troops]” (Guevara 2008, 10). They are being equipped for a maritime police role (e.g., assault rifles, night vision, body armor, GPS-transceivers, light trucks, and the like);
4. Enhancement of detection capabilities by the Navy: Unmanned Aerial Vehicles and maritime surveillance aircraft are being incorporated. The Navy also has ordered six CN-235MPA Persuader surveillance aircraft to complement its C-212PM’s, relatively new addition which have been instrumental in several interdictions. Also, eight Naval SAR stations were to be completed 2009, which will permit permanent presence without the need for bases. (Guevara 2008, 11);
5. Intelligence, surveillance, and reconnaissance: Enhanced satellite imaging processing by the Navy has increased its capacity to identify marihuana and poppy fields. It has also improved the Navy’s ability to intercept illegal seagoing vessels. The interception of a semi-submergible vessel on July 15, 2009, was credited to improved intelligence-sharing with the Colombian navy and the DHS (ibid.); and,
6. Improving inter-service operations: Mexico’s Army and Navy operate in two separate ministries and with little operational coordination until recently. Beginning in 2007 SEDENA and SEMAR Chiefs of Staff began holding periodic meetings. In May 2008 the two ministries agreed to logistics and acquisitions coordination. Beginning in September 2007 they have held joint training exercises, focusing on airborne troops and special forces

operations. Army and Navy units have cooperated separately with civilian police in joint operations. In November 2007, the two armed forces joined in a detection/eradication operation for the first time (Guevara 2008, 12).

7. Training of special Army units to act against DTOs (especially the Zetas): Small groups (10 per unit) were trained for day- and night-time helicopter-borne maneuvers and deployed to Chihuahua and Sinaloa.<sup>33</sup>

The Army's heightened role in law enforcement naturally brings it more directly into politics. We see more active lobbying in Congress by the Army to defend its budget and expand legislation to protect its activity in its policing role.<sup>34</sup> Beyond this, the Army has become more active in publicizing its anti-DTO roles, in calling for an inter-party pact to promote public security, and even in public safety messages (e.g., advice to landlords to monitor renters).<sup>35</sup>

## U.S. STRATEGY: FOLLOW MEXICO'S LEAD

The U.S. and Mexican national governments have cooperated increasingly closely to combat drug trafficking since the latter 1980s.<sup>36</sup> Complicating this cooperation is Mexico's sensitivity about real and perceived U.S. intervention into its domestic affairs (thus the U.S. insistence on following Mexico's lead) and the distant relations between the Mexican and U.S. armed forces (thus the difficulty in dealing with Mexico's Army, the main instrument to combat OC/DTO). It is useful to consider U.S. strategy in both general and border-centric perspectives.

The main innovation in general bilateral security relations was the Mérida Initiative, announced in October 2007.<sup>37</sup> At the declaratory level, it represented a qualitative advance in terms of U.S. material assistance, policy targets, and

<sup>33</sup>“Entrenan Sedena a Fuerzas Especiales contra Zetas,” *ElUniversal.com*, August 6, 2008.

<sup>34</sup>The armed forces seek amendments to the National Security Law to establish legal bases for their involvement in law enforcement. Mexico's senate passed legislation that specifies the president's authority to declare a “state of exception” to justify use of the armed forces. Governors and state legislatures can petition the National Security Council to use the armed forces. The legislation requires that armed forces be accompanied by civilian authorities to ensure protection of human rights and conduct legal arrests. Further, the armed forces cannot be used to repress social movements or resolve electoral disputes. See “Limitan a Ejecutivo en uso de las Fuerzas Armadas,” *ElUniversal.com*, April 28, 2010.

<sup>35</sup>See, for example, the Army's account of its police activity in “Sedena ha detenido a 17 mil delincuentes en el sexenio,” *Impreso.milenio.com*, October 28, 2009; its advice to landlords to monitor renters, “Sedena pide a casero vigilar a inquilinos,” *ElUniversal.com*, March 7, 2010; and Defense Secretary Galván's complaints that the PGR and SSP are not doing enough about money laundering, police reform, and justice reform, “Galván exige en contra el ‘levado’ de dinero,” *ElUniversal.com*, March 3, 2010.

<sup>36</sup>The watershed event was the murder of DEA agent Enrique Camarena in February 1985, which led to period of two or three quite difficult years in the bilateral relationship. Cooperation flourished under Carlos Salinas (1988–2004), bolstered by the good feeling of the NAFTA negotiations.

<sup>37</sup>My discussion of the Mérida Initiative draws heavily on Seelke (2010). See the edited volume by Velázquez Flores and Prado Lallande (2009) for Mexican perspectives. Carlson (2009) is a critical appraisal.

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commitment to shared responsibility. As to financial commitment, the USG appropriated U.S.\$1.330 billion for fiscal years 2008–2010. Note that this money was not transferred directly to the GOM; rather, funds went to purchase equipment and support varieties of training.<sup>38</sup>

In past years, drug supply reduction and interdiction were the focus of U.S. policy. The declared policy targets of Mérida, however, were much broader: “(1) break the power and impunity of criminal organizations [not just DTOs]; (2) assist the Mexican and Central American governments in strengthening border, air, and maritime controls; (3) improve the capacity of justice systems in the region; and, (4) curtail gang activity in Mexico and Central America and diminish the demand for drugs in the region” (Seelke 2010, 2). Finally, with respect to shared responsibilities, the USG committed to do more to reduce drug demand, and to deter southbound weapons trafficking and bulk cash shipments.

The Obama administration introduced significant adjustments to Mérida. In terms of policy design, the scope of the “Bush Mérida” included Mexico, Central America, and the Caribbean. The “Obama Mérida” (i.e., the innovations introduced in early 2010) shifted from a combined regional perspective to one with three separate sub regions: Mexico, Central America, and the Caribbean. The Obama Mérida also introduced the concept of four pillars: “(1) disrupting the operational capacity of organized crime, (2) institutionalizing Mexico’s capacity to sustain rule of law (police and judicial reform), (3) creating a 21<sup>st</sup> century border structure, and (4) building strong and resilient communities” (Seelke 2010, 22), all of which were consistent with GOM policy. Community development (pillar four) appeared to broaden U.S. involvement in Mexico’s internal affairs in new ways (*ibid.*, 23).<sup>39</sup>

The U.S. State Department submitted to Congress its “FY2008 Supplemental Appropriations Spending Plan, Mexico, Central America, Haiti, and the Dominican Republic” (September 2008), which elaborates on the four strategic goals for Mexico by adding ten main objectives, twenty more specific objectives, and dozens of illustrative actions. The Plan also itemizes thirty-one specific performance measures (which I return to below).

With respect to the U.S.–Mexico border region, the Obama administration updated the National Southwest Border Counternarcotics Strategy (from the original version published in 2007). At the declaratory level, the strategic goal remained drug-centric: “Substantially reduce the flow of illicit drugs, drug proceeds, and associated instruments of violence across the Southwest border” (ONDCP 2009, 2). The document

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<sup>38</sup>See United States Senate 2007, Appendix II, “The Mérida Initiative Security Assistance Proposals — Budgets and Item Breakdowns,” for detailed descriptions.

<sup>39</sup>The State Department’s fiscal year 2011 budget justification states that, “Funding will support critical efforts to implement specialized assistance in one or two Mexican border cities with an aim of synthesizing the four pillars into a positive demonstration of local effectiveness, which can then be replicated elsewhere by the Government of Mexico. This effort would also highlight increased emphasis on expanding assistance from the federal level to state and municipal levels” (United States Department of State 2010, 70).

set out six “strategic objectives” (e.g., “enhance intelligence capabilities associated with the Southwest border”) and then catalogued how dozens of USG agencies and programs relate to nine themes (e.g., “money,” “weapons,” “technology,” etc.). With recurring reference to good intentions (e.g., expand, enhance, expedite, ensure, encourage, and the like), the strategy should be read as a statement of how a very complicated bureaucratic apparatus might be deployed to improve coordination (internal and bilateral) to reduce northbound flows of drugs and southbound flows of weapons and bulk cash. As a catalog it displayed the various agencies and programs with respect to a series of themes but without any sense of what office, agency, or person is in charge of setting priorities and managing operations on the ground. Possibly the classified version of the report goes into detail on these matters.

Mérida and the Southwest Border Strategy were the main USG federal pronouncements on bilateral security strategy. Though beyond the scope of this paper, there were numerous significant innovations in bilateral cooperation at the state and local levels along the border. We have glimpses of specific cases; however, no one — to my knowledge — has produced a comprehensive analysis of trends in this zone of 630,000 square kilometers, 41 major border crossings, and 12 million residents.<sup>40</sup>

II: How do the two countries’ strategies and frameworks interconnect? In what ways has there been progress in coordination, and what gaps remain (e.g., database and intelligence sharing, satellite and communications monitoring, etc.)?

At the declaratory level, the two countries’ strategies fit together well. The adoption by Mexico’s DTOs of less lethal, but still grotesque, terrorist tactics seems to qualify these criminal groups as terrorist organizations. This connects with the anti-terrorist momentum in the United States but can complicate anti-DTO initiatives in Mexico.<sup>41</sup> Furthermore, the leadership levels of both governments actively seek ways to harmonize their strategic visions and to work together more closely. The USG claims to follow Mexico’s lead, and this is consistent with the adjustments made in the Obama Mérida to expand the scope beyond drug trafficking to include organized crime generally, promote institutional reform, and to experiment with new forms of social development.<sup>42</sup>

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<sup>40</sup>Wikipedia, “Mexico-U.S. Border,” [http://en.wikipedia.org/wiki/Mexico\\_%E2%80%93\\_United\\_States\\_border](http://en.wikipedia.org/wiki/Mexico_%E2%80%93_United_States_border) (last accessed on March 12, 2010). Zamarripa (forthcoming) has analyzed recent state-level innovations in security cooperation; Taboada Villasana (2009) provides a useful overview.

<sup>41</sup>For example, DTOs either create or take advantage of anti-government street protests in order to cast blame on the police and Army for human rights abuses. The anti-terrorism lens can depict such protesters as terrorist sympathizers or tools.

<sup>42</sup>See, for example, the transcript of a press conference, “U.S. Ambassador to Mexico Carlos Pascual and Mexican Ambassador to the United States Arturo Sarukhan,” September 26, 2009, in which Ambassador Pascual stated: “And Arturo speaking first is not just symbolic, it’s real, in that the strategy has to come from Mexico. And the way that the United States plugs into that is what makes it effective” (available at <http://www.state.gov/r/pa/prs/ps/2009/sept/129672.htm>, last accessed on March 12, 2010). Joint responsibility and the four-pillars strategy were reiterated following the Second Meeting of the High Level Group in Mexico City in March 2010. See “Declaración conjunta sobre cooperación bilateral contra la delincuencia organizada transnacional,” (March 23).

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At the operational level, significant gaps remain in inter-agency coordination within and between the two countries. Mexico's federal system is undergoing a rapid decentralization, which has strengthened the 32 state governors and complicated policy coordination generally. With respect to intergovernmental coordination in security policy on Mexico's northern border, Olson (2010) reported that a "lack of coordination and political infighting between political parties, political leaders, and government agencies has crippled Mexican anti-crime efforts." Local authorities state that their opinions are often ignored by state and federal actors, and federal agencies appear unable to coordinate their tasks adequately. Further, ". . . there does not appear to be a tradition or culture of inter-agency cooperation or joint task forces that result in a well coordinated policy amongst the various ministries and levels of government." (ibid.)

At the federal level, President Calderón gave a starkly negative appraisal of disorganization of the police-intelligence apparatus in his defense of the General Law for the National Public Security System submitted to congress in September 2008. He pointed to a "wrongheaded fragmentation" of commands that produced divisions among police agencies, hindered coordination, and even produced a "logic of rivalry" that blocked intelligence sharing. This had led to the disorganization of state capacity to confront crime.

That organic dispersion means duplicating functions and spending, not to mention the gradual loss of the ability to ensure an adequate scheme for protecting classified information, as well as a complete lack of coordination, congruent and uniform protocols, systems, organizational forms, ranks, and police functions, explained the president.<sup>43</sup>

Problems of coordination are also built into the U.S. federal bureaucracy in the sense that cabinet-level agencies operate with equal standing and their various bureaus and programs have specific statutory authorities and report to different oversight and appropriations committees in the Congress. Law enforcement programs need to be coordinated through hundreds of federal, state, local, and tribal police and justice agencies. The standard solution is to set up interagency mechanisms and to work out memorandums of understanding where missions overlap. The Southwest Border Strategy describes a variety of such coordination mechanisms, some fairly well established (e.g., Border Enforcement Security Task Forces), others fairly new (e.g., Organized Crime Drug Enforcement Task Force Fusion Center).<sup>44</sup>

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<sup>43</sup>See "Calderón senala fallas en sistema de seguridad," *ElUniversal.com*, October 2, 2008. Original Spanish Text: Esa dispersión orgánica implica duplicidad de funciones y dualidad de gasto, sin mencionar la pérdida gradual de la capacidad de garantizar un adecuado esquema de control de confianza, así como una total carencia de coordinación, congruencia y homogeneidad de protocolos, sistemas, formas de organización, grados y atribuciones policiales, explicó el mandatario.

<sup>44</sup>See United States Government Accountability Office (2009a) for a discussion of coordination problems (e.g., ICE and DEA with regard to drugs seized by CBP between ports of entry) and an evaluation of coordination mechanisms. USGAO 2009b discusses coordination problems with respect to controlling weapons trafficking. As important as coordination problems was the delay in moving funds through the appropriations pipelines. See USGAO 2009c.

A significant recent development is increased cross-border coordination in law enforcement and intelligence. At the central government level, a bilateral inter-agency group to oversee the implementation of Mérida-related programs was scheduled to begin operations in April 2010. Located in Mexico City, the group — estimated at some 70 officials — would facilitate the administration of programs by the various participating U.S. and Mexican agencies.<sup>45</sup> Though beyond the scope of this paper, there are ongoing advances in intelligence and law-enforcement cooperation along the U.S.-Mexican border as well.<sup>46</sup>

III. What are the available metrics for evaluating both countries strategies? What measurable progress has been made in recent years, and what are the prospects for further progress in the short, intermediate, and longer term?

Strategies should be evaluated with both political and technical metrics. At the political level the key metrics for Mexico are criminal violence, essentially gang-related kidnappings and murders, and the detention of DTO leaders perceived as kingpins; for the U.S., the political metrics are spillover of violence from Mexico along the Southwest border and the price and quality of illegal drugs in retail markets. Performance on these metrics has the greatest impact on public opinion, which is the critical judge about “success” in anti-OC/DTO activity.

Beyond these, both governments have developed numerous technical measures. In the case of Mexico, the measures usually take the form of results of anti-crime operations in terms of persons detained, products confiscated (e.g., drugs, currency, vehicles), weapons and munitions seized, public spaces recovered, schools opened, and the like. The numbers reported indicate that the Calderón government was much more effective in the first half of his term than were his two immediate predecessors. On various measures, the Calderón government accomplished more in three years than previous administrations accomplished in full six-year terms.<sup>47</sup>

As noted, the U.S. State Department’s “FY2008 Supplemental Appropriations Spending Plan, Mexico, Central America, Haiti, and the Dominican Republic” (September 2008), goes into detail about general and specific objectives and illustrative actions. The Plan also itemizes thirty-one specific performance measures. Some of these are fairly general, e.g., “acquisition of the infrastructure and capabilities to enable full-time operation of the Government of Mexico’s strategic communications system;” but most are specific and quantifiable, e.g., “percentage change in the Mexican federal

<sup>45</sup>“Mexico y EU afinan apertura de oficina sobre la iniciativa Mérida,” *impreso.milenio.com*, March 21, 2010.

<sup>46</sup>In addition to Zamarripa (forthcoming), see “México y EU concretan policía transfronteriza,” *ElUniversal.com.mx*, December 2, 2007, which describes the formation of an “International Trans-border Police” made up of Mexican and U.S. federal-state-local agencies and modeled on the successful Sonora-Arizona International Police.

<sup>47</sup>See, for example, GOM, “Indicadores de gestión, en contra de la delincuencia organizada, Enero 1, 2006 al 31 de mayo del 2008,” and “Indicadores de gestión, en contra de la delincuencia organizada, diciembre 1, 2006 al 1 de enero del 2009.”

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criminal case backlog.” The State Department is scheduled to present its progress report, presumably including hard numbers, to Congress in April 2010.

### ARE THE STRATEGIES WORKING?

We need to address this sensitive issue by differentiating between short- and medium-term perspectives and between political and technical policy criteria. The view about anti-OC/DTO strategy in Mexico is generally negative as of April 2010 with respect to short-term political and institutional-policy criteria, and the short-term assessment colors views about the longer term. This perception, however, is subject to change, depending on perceptions of violence and the government’s success with respect to apprehending drug “kingpins.” My sense is that the perceptions about strategy in the United States are less pessimistic than they are apprehensive. That is, the USG and public opinion are getting a clearer appreciation (if not comprehension) of the breadth and depth of the OC problem. Only in recent months, however, has the USG begun to focus on mobilizing resources and experimenting with more comprehensive approaches.

Beginning with the politically relevant criteria in Mexico’s case, the key issue is that gang-related violence continued to rise through the first quarter of 2010. Eerily reminiscent of the public support in the United States during the Viet Nam war, public opinion has focused on the body count despite the GOM’s emphasis on impressive results on a variety of technical indicators. The government could plausibly argue that increasing violence was an indicator that DTOs are fighting among themselves in response to heightened pressure from the armed forces and law enforcement. At some point, however, and especially as more ordinary citizens were affected, the violence must be seen to recede. As to kingpins captured, the paramount symbol, Joaquín Guzmán Loera, remained at large.

By late March 2010, public opinion appeared negative with respect to the government’s strategy.<sup>48</sup> A government spokesman’s reference to Colombia’s experience to argue that much more time is needed to reverse negative trends is plausible in the abstract, but it appears unpersuasive in the current public debate.<sup>49</sup> In substantive terms, the GOM strategy will be judged over the longer term by whether significant progress was made by 2012 to train and deploy a federal police of acceptable professional competence and ethical character. Also important is the perception that judicial reform is having visible effects in reducing public insecurity.

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<sup>48</sup>See, “Gana el narco guerra contra el gobierno federal, piensa 59% de los mexicanos,” *Impreso.milenio.com*, March 23, 2010. As to strategy, 47 percent indicated the government was pursuing the wrong course. Even though we should not rely too much on a single telephone survey (N=600), the results themselves become “facts” in the public debate.

<sup>49</sup>Remarks by Ambassador Arturo Sarukhan, Georgetown University, March 26, 2010.

With respect to the United States, the strategies could be viewed as “working” in the short term in the sense that the quality and price of illegal drugs remained relatively stable in major urban markets.<sup>50</sup> The scope of spillover violence along the Southwest border was unclear; the problem remained potentially salient but analysts struggled to identify and measure it (Lake et al. 2010). Public opinion has not yet been activated and targeted on the issue.

With respect to longer-term judgments, my sense is that much depends on the performance of institutions and programs that are being assembled and implemented in the Obama Mérida. For example, perceived success of the innovative pilot projects in the “hard cases” of Juárez and Tijuana can create positive expectations elsewhere. Progress in bilateral, interagency cooperation by the group assembled in Mexico City in March 2010 would be noteworthy as well. Also important are continued innovations in cooperation at the state and local levels along the border.

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<sup>50</sup>Administration officials are prone to suggest that supply reduction and/or interdiction have important effects to raise drug price and reduce quality. Walsh (2009) reports on a study by the Institute for Defense Analysis that used the DEA’s “System to Retrieve Information from Drug Evidence” database and RAND’s 2004 methodology. A main finding is that cocaine prices in U.S. markets continued to drop over this period while purity remained relatively constant.

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# U.S.-MEXICO SECURITY COLLABORATION: INTELLIGENCE SHARING AND LAW ENFORCEMENT COOPERATION

Sigrid Arzt

This paper will identify the mechanisms for cooperation between law enforcement and intelligence agencies, evaluate how these are working, identify the obstacles to cooperation and explore the efforts undertaken to address these obstacles. While addressing these core issues I will examine the role extradition is playing in promoting bilateral law enforcement cooperation and the limitations to that cooperation.

The core challenge for intelligence gathering today is the ability to create conditions to prevent, preempt, and deter adversaries. In this case, the adversaries for Mexico and the United States are drug trafficking organizations (DTOs). Hence, the assumptions for this paper are:

1. Drug-related organized crime does not respect of jurisdictional boundaries; therefore confronting organized crime requires responses from both the intelligence and law enforcement communities. Overlapping work amongst federal agencies in both countries is important, but works at the state and local levels is also critical.
2. Each government has its own domestic intelligence and law enforcement agencies that act and react primarily to domestic challenges, and, thus, may differ in how they prioritize security matters related to combating organized crime.
3. Intelligence sharing is an inherently secretive process, and, as such, is usually hindered by a natural reticence to share information across and amongst domestic agencies as well as transnational.

Today it is clear that Mexico and the U.S. have taken steps to improve coordination of their efforts against DTO's<sup>1</sup> in both countries. However, bilateral intelligence and law enforcement efforts invariably lead to turf wars, interagency rivalries and domestic political obstacles within each government and bilaterally.<sup>2</sup> Sharing intelligence is sharing information that was gathered, analyzed and is valued for a specific purpose. Sharing information amongst agencies is therefore a daunting task.

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<sup>1</sup>DTO refers to drug trafficking organizations.

<sup>2</sup>See Tony Payan, (2006) *Cops, Soldiers and Diplomats. Explaining Agency Behavior in the War on Drugs*. Lexington books. Rowman and Littlefield Publishers, Inc.

Nevertheless, it was the Calderon administration that reached out to the U.S. government in order to examine ways to improve intelligence and law enforcement cooperation against DTOs. No other Mexican administration had ever taken such an ambitious step in matters of security. It was clear that the need to improve security conditions required a more effective coordinated strategy between both countries. It also required the U.S. to share responsibility for the high levels of violence and drug-related insecurity that was plaguing Mexico by the end of 2006. In this context, Presidents Bush and Calderon initiated talks in Mérida with the goal of working together to enhanced security in both countries.

Still, it is important to note that the growth in U.S.-Mexico bilateral cooperation did not start when President Calderon took office in December, 2006. Mexican security agencies have been engaged in a process of increasing cooperation for at least a decade.

## I. BACKGROUND

Before examining the current of state of Mexico-U.S. bilateral cooperation in law enforcement and intelligence sharing, it is important to note that a number of previous institutional agreements were established by both governments that have helped create a framework to address this issue. For example, in December 1987 both governments signed a Memorandum of Understanding that, for the first time, sought to establish the rules for information exchange amongst law enforcement agencies in both countries and regulated the presence of law enforcement personnel in each others country.<sup>3</sup> In 1989, Mexico and the U.S. signed another agreement to combat drug trafficking and drug abuse; and in July of 1992 Mexico published the “Norms that regulate the temporal presence of foreign agents, that do policing, inspection or surveillance;” and finally, at the end of that same year, the government of Mexico issued the “Specific rules that regulate the activities of technicians and agents from the DEA in Mexico.” All these set the norms and standards for binational collaboration prior to the Mérida Initiative, which began a new phase in bi-national security collaboration between Mexico and the U.S.<sup>4</sup>

In March, 1996, during the administration of President Zedillo, Mexico and the U.S. created the High Level Contact Group (HLCG). By this time, both countries had accepted their roles in the trafficking of illicit drugs, whether as producers, consumers or transit points and sought to develop more effective bilateral cooperation to address important issues such as public education, treatment, prevention, drug trafficking, money laundering, diversion of precursor chemicals and illicit arms

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<sup>3</sup>The MOU is known in Spanish as, “Tratado de Cooperación entre los Estados Unidos Mexicanos y los Estados Unidos de América sobre Asistencia Jurídica Mutua.” Its objective was to further binational legal assistance for the persecution, investigation and prevention of criminal activities. The MOU went into effect in 1991.

<sup>4</sup>See <http://www.iniciativaMérida.gob.mx/pdf/antecedentes-cooperacion.pdf>.

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trafficking. The new partnership was embodied in the “Declaration of the United States–Mexico Alliance against Drugs,” signed in May, 1997.

By February, 1998, the HLCG approved the “Mexico–U.S. Bilateral Strategy of Cooperation against Drugs.” At that time, the strategy contained sixteen major areas of collaboration. In an effort to keep track of their progress, in February, 1999 both nations agreed to numerous “Measures of Effectiveness” (MOE) as an additional tool to evaluate the implementation of the Strategy. Zedillo did face internal opposition to increasing U.S.–Mexico law enforcement cooperation. The negotiated MOE were conceived of as an institutionalized mechanism to follow up on both nation’s commitments, but were the beginning of still deeper mistrust amongst agencies on each side of the border.

### THE CASE OF JUAN GARCIA ABREGO

Juan Garcia Abrego’s deportation to the U.S. was an important first sign of the changing cooperation policy between both countries as they sought to deal with drug kingpins. As the leader of the Gulf Cartel and the first drug trafficker to ever appear on the FBI’s “Ten Most Wanted” list, Garcia Abrego was arrested on January 14, 1996 at a ranch near Monterrey, Nuevo León. A few days later he was expelled from Mexico to the United States under Article 33 of the Mexican Constitution (Garcia Abrego was both a U.S. and Mexican citizen). According to statements by President Zedillo, the Gulf Cartel had the operational capability to mount an offensive to rescue their leader and therefore he could not stay in the country. While probably true, this explanation was only part of the story. Had Mexico–U.S. cooperation been a lower priority, President Zedillo could have easily prevented Garcia Abrego’s expulsion to the U.S. by denying U.S. requests to send him back. Mexican law at the time prohibited extradition of Mexican nationals to any country where life in prison or the death penalty were possible punishments,<sup>5</sup> so the Zedillo government could have treated Garcia Abrego as a Mexican citizen and denied his extradition. Instead, the Zedillo government decided to expel Garcia Abrego considering that he was a U.S. national. as a foreign national.

The U.S. government later acknowledged that in 1997, Drug Enforcement Agency (DEA) agents assisted the Mexican government in the arrest of Juan Garcia Abrego. “The DEA office in Mexico City was instrumental in the arrest and prosecution of Garcia Abrego,” said the Bureau of International Narcotics Police and the State Department, who jointly presented an overview of worldwide U.S. counter-narcotics activities in 1997. During recent interviews held with officials at the time stationed at the Mexican Attorney General’s Office (PGR in Spanish), they confirmed that the personal relationship with U.S. law enforcement liaisons helped facilitate

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<sup>5</sup>Interview with former federal official from the Attorney General Office (PGR).

the decision to extradite Garcia Abrego and even shared information that helped prove his U.S. nationality.

Garcia Abrego's extradition was symptomatic of an entire period of increased cooperation based on extraditions. To wit, between 1995 and 2000, Mexico extradited a total of sixty one persons to the United States. That is, in five years, Mexico increased by more than seven times the number of extraditions compared to the preceding fifteen year period. In turn, from 1995 to 2000 the United States tripled its number of extraditions to Mexico, with a total of eighty six.

Also during this period, the Zedillo government decided that, in exceptional circumstances it would grant the extradition of Mexican nationals to be tried in places where they were charged with committing a crime. In order to expedite mechanisms of exchange of information the PGR had to establish precise protocols and institutionalize legal instruments that would strengthen the capacity of the Mexican government to extradite criminals to the U.S. The institutionalization of these processes was developed over several years and is closely followed by the U.S. Department of Justice, State Department and its respective counterparts in Mexico.

## THE CASE OF AMEZCUA CONTRERAS

On June 1, 1998 the Luis and Jesus Amezcua Contreras brothers were arrested in the city of Guadalajara by agents of the Special District Attorney's Office for the Attention to Crimes against Health with support from the DEA. Both brothers, together with Adam and Emma Amezcua Contreras, were known as the "kings of amphetamines" and leaders of the so-called Colima Cartel. They were allegedly responsible for the introduction of large volumes of synthetic drugs into the United States. Their territories were the states of Michoacán, Colima, Jalisco, Aguascalientes, Nuevo León and Baja California.

Despite their notoriety, law enforcement agencies struggled to link the Amezcua family directly to amphetamines trafficking and in 1999 they were absolved of money laundering charges. While Adam Amezcua was set free, the U.S. government requested that Jesus and Luis be extradited, The Amezcua's made use of all legal means at their disposal to prevent their extradition, but on May 22, 2001 Jesus Amezcua's extradition to the U.S was granted. Later, however, the Mexican Supreme Court nullified the process because Amezcua could have faced life in prison in the U.S., a penalty which was prohibited by the Mexican Constitution.<sup>6</sup>

In 2001 the Supreme Court examined two contradictory lower court rulings about extradition. In one case a court had ruled that a Mexican national could be extradited for a crime committed in another nation as long as the potential penalties

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<sup>6</sup>To learn more on the resolution of legal contradictions see <http://www2.scjn.gob.mx/Ministros/oscgv/Conf/EXTRADICION.%20ITESM.pdf>, this is a conference by Supreme Court Judge, Olga Sanchez Cordero that explains the vote of the majority with regards to this issue. Pages 40-46.

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faced by the extradited did not exceed those permitted in Mexican law. In another decision, a second lower court ruled that extradition was not possible under most circumstances.<sup>7</sup> In the end, the Supreme Court ruled that the Executive is granted full power to proceed with a requested extradition even when the potential penalty went beyond what was stipulated in Mexican law. The only exception to this would be in cases involving the death penalty, in which case extradition would still be prohibited. (44/2000)<sup>8</sup>

For example, prior to 1994 no Mexican national had been extradited to the U.S. But in 1995 the Mexican government undertook a review of its extradition policies and subsequently began to extradite Mexicans accused of criminal activity if a potential death penalty sentence was not in play. Under these guidelines, only 16 Mexicans were extradited to the U.S. between 1995 and 2001. Subsequently the average annual rate of extradition increased to 30, according to Labardini.<sup>9</sup>

In their 2001 ruling the Supreme Court of National Justice ruled bilateral legal treaties set the standard for extradition, and only when bilateral treaties were absent would the International Extradition Treaty set the standard. This decision differed from the practice in other Latin American countries, where there is an expressed disposition to deny extradition like in Brasil, Ecuador, Panamá y Venezuela.<sup>10</sup>

The Fox administration (2000-2005) and members of its security cabinet pushed for an even closer relationship with the U.S.. During this time the National Security Center (CISEN) and the PGR were key supporters of change because they shared the goal of strengthening the exchange of information with the U.S.. According to the PGR, the average number of annual extraditions to the U.S. was twenty four between 1996-2000, while the annual average was forty three between 2000 and 2003.<sup>11</sup> The PGR reported the extradition of at least 136 people but also recognized that in 17 cases the extraditions were denied because of the possibility of the death penalty. It must be said that in terms of death penalty the Court's ruling had not changed. By the end of the Fox administration and during Attorney General Cabeza de Vaca's term around 70 extraditions to the U.S. were pending.<sup>12</sup> Some would not proceed because the accused could face the death penalty which is forbidden in the Mexican constitution.

However, after the tragedy of 9/11, priorities in the U.S. intelligence and law enforcement communities changed dramatically which had an impact on cooperation with Mexico. The U.S. bureaucracy went through a reorganization that had an impact on its relationship with the Mexican authorities as the creation of the

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<sup>7</sup><http://www2.scjn.gob.mx/Ministros/oscgv/Conf/EXTRADICION.%20ITESM.pdf>

<sup>8</sup>*Tesis Jurisprudencial 11/2001 y Contradicción 44/2000-PL*. Project by Supreme Court Judge Olga Sanchez Cordero, 10 votes in favor, the vote against was Supreme Court Judge Humberto Román Palacios.

<sup>9</sup><http://www.bibliojuridica.org/estrev/derint/cont/2/art/art3.htm>

<sup>10</sup>*Ibid.*

<sup>11</sup><http://www.pgr.gob.mx/cmsocial/bol04/mar/b23004.htm>

<sup>12</sup>PGR press releases numbers: 398/06; 715/06; 1000/06; 1229/06.

Department of Homeland Security took place. The impact was twofold: on the one hand, drug trafficking was not a high priority or concern for the U.S., and secondly, all law enforcement and intelligence cooperation began to be seen through the lens of the fight against terrorism. So the commonality of objectives was diverted because of the events that unfold with the acts of terrorism at the Twin Towers in New York.

The U.S. had a clear and urgent need for better intelligence cooperation, not only internationally but also domestically. U.S. law enforcement had to increase its own intelligence capacities. As a result, beginning in 2004–2005, the U.S. created what are called Fusion Centers (FC)<sup>13</sup> a coordination space where representatives from multiple agencies come together to share information relevant to a particular case. The creation of FCs came at a time when, as stated in a joint Department of Justice and Department of Homeland Security document on fusion center guidelines: “Leaders must move forward with a new paradigm on the exchange of information and intelligence, one that includes the integration of law enforcement, public safety and the private sector.”<sup>14</sup> By creating these structures the U.S. security community intended to respond to terrorism, public safety and law enforcement threats that were emerging in a dynamic and changing environment. Hence, it was recognized that the sharing of information and intelligence across agency lines is necessary to effectively address security challenges, particularly criminal and terrorist activities.

The FCs are designed to operate consistently, enhance coordination efforts, strengthen partnerships and improve institutional capacity against security threats. Interestingly, the needed allocation of resources and standardization of procedures and methods has taken some time. The U.S. agencies had to realize how important it is to cooperate and leave aside the turf wars—that largely persist to this date—in order to find more effective ways to exchange information. In fact, a Government Accountability Office report concluded that:

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<sup>13</sup>A FC is defined as a “collaborative effort of two or more agencies that provide resources, expertise and information to the center with the goal of maximizing their ability to detect, prevent, investigate and respond to criminal and terrorist activity,” p. 2. Success stories: ability of fusion centers to accomplish an all-crimes and all-hazards mission requires long-term investment. To date, there have been several fusion center success stories. One such success occurred in May 2008, when the DHS Intelligence Operational Specialist for Northern California coordinated with Federal officials on an Amber Alert for a three-year-old child who was to be taken out of the United States by a suspect wanted for rape and murder. By coordinating with DHS officials, local law enforcement, and INTERPOL, the DHS Intelligence Operations Specialist was able to track the suspect and the kidnapped child to a flight bound for the Netherlands. With only hours to spare, the DHS Intelligence Operations Specialist coordinated with authorities to ensure law enforcement authorities in Amsterdam detained the subject. The child was recovered unharmed. In March 2007, the Denver Fire Department responded to seven cases of SUVs being firebombed. Investigators requested the Colorado Information Analysis Center’s (CIAC) assistance in developing case information. The CIAC developed a report that included a description of the suspect’s vehicle. Based on this report, the suspect in the crimes was arrested shortly thereafter keeping the community safe from additional fire hazards. [http://www.dhs.gov/ynews/testimony/testimony\\_1238597287040.shtm](http://www.dhs.gov/ynews/testimony/testimony_1238597287040.shtm)

<sup>14</sup>“Fusion Center Guidelines *Developing and Sharing Information and Intelligence in a New Era.*” [http://www.it.ojp.gov/documents/fusion\\_center\\_guidelines.pdf](http://www.it.ojp.gov/documents/fusion_center_guidelines.pdf)

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“In the National Strategy for Information Sharing, state, local, and tribal government officials are critical to our nation’s efforts to prevent future terrorist attacks. Because these officials are often in the best position to identify potential threats that exist within their jurisdictions, they must be partners in information sharing that enhances situational awareness of border crimes and potential terrorist threats. In border communities, this partnership is particularly important because of the vulnerability to a range of criminal activity that exists along our nation’s borders. Therefore, a more robust effort by federal agencies to identify the information needs of local and tribal law enforcement agencies along the borders and periodically assess the extent to which partnerships exist and related mechanisms to share information are working—and fill gaps and address barriers where needed—could better enable federal agencies to provide useful information”<sup>15</sup>

The example above serves to demonstrate the size of the challenge inherent in improving U.S.–Mexico cooperation on law enforcement, especially in light of the challenges the U.S. faces in creating the trust, resources, and prioritizing necessary to ensure proper internal, cross agency coordination. This challenge is also shared by Mexican agencies. During Mexico’s history of one-party political hegemony inter-agency, and federal state and local coordination was much easier since the governing party (PRI) at the time had complete control of the incentives and disincentives to ensured cooperation among different levels of government. Yet, as Mexico became more politically plural and it exhibited diverse institutional capacity, the cooperation and incentives to work hand-in-hand with federal authorities and among different levels of government became a clear obstacle to coordinated effort to fight organized crime. Mistrust and institutional underdevelopment run deep at a time of consistent evidence of drug-related corruption.

## II. MECHANISMS FOR COOPERATION BETWEEN LAW ENFORCEMENT AND INTELLIGENCE AGENCIES

One can identify at least three types of mechanisms for cooperation between U.S.–Mexico law enforcement and intelligence agencies: institutional agreements; leadership and personal relationships; and standardized procedures. Institutional mechanisms refer to memorandums of understanding to exchange prisoners and

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<sup>15</sup>[http://www.kms.ijis.org/db/attachments/public/3985/1/GAO\\_Info\\_Sharing\\_Rpt\\_Dec09.pdf](http://www.kms.ijis.org/db/attachments/public/3985/1/GAO_Info_Sharing_Rpt_Dec09.pdf), page 39. GAO, “Information Sharing, Federal Agencies are Sharing Border and Terrorism Information with Local and Tribal Law Enforcement Agencies, but additional efforts are needed,” p.39

the extradition treaty signed by both governments and approved by each Senate.<sup>16</sup> It is important to mention that a number of agencies participate in this process. Some of the primary ones are the Mexican Ministry of Foreign Relations, the U.S. Department of State, the U.S. Department of Justice and the Mexican Attorney General's Office, but if the case of extradition is appealed to the Mexican Supreme Court for an amparo, a special injunction designed to safeguard an individual's constitutional rights, this institution can also have a say in the process.

Over time the process has been encumbered by the formal procedures defined in these agreements, and drug traffickers fighting extradition to the U.S. often use the process itself to obstruct their extradition. Fortunately, the obstacles of the past are now being removed for future extraditions. In fact, even the Mexican Supreme Court that in the past was cautious about allowing extraditions has now set the terms for this legal tool to be utilized.

At the time of the Fox administration, U.S. information sharing was key in a number of cases under the jurisdiction of Daniel Cabeza de Vaca, Mexican Attorney General, the Undersecretary for International and Judicial Affairs, Jose Luis Santiago Vasconcelos, and also the CISEN while Eduardo Medina Mora headed this agency. Medina Mora later expanded U.S. cooperation as the head of the Ministry of Public Security. In large part, bilateral cooperation took place among these agencies because of the leadership and importance that those Mexican officials gave to it, especially collaboration with the Drug Enforcement Agency (DEA).

Additionally, personal relationships are critical informal mechanisms of law enforcement cooperation. For example, during the Fox Administration, Mexican officials had settled into the bureaucratic structure allowing them to build a sense of personal trust and cooperation with U.S. counterparts, which in turn translated into increased cooperation in case investigations. Furthermore, Mexican cooperation with the U.S. was not only a focus of civilian agencies. Numerous interviews confirm that the army also benefitted from shared information that allowed them to go after specific targets. Yet, it is more difficult to measure the degree of improvement and efficiency this information produced in the army's efforts to combat organized crime because the Mexican armed forces (National Defense) are less open about their relationship with U.S. counterparts as a result of the historic nationalism and national sovereignty that permeate the institution.

Therefore, the second clear characteristic of U.S.-Mexico cooperation in law enforcement has to do with the leadership of the respective agencies and the commitment those in charge of this cooperation give to the exchange of information, the extradition mechanisms and the building of trust between actors on each side. There is no doubt that trust remains a key component to bilateral cooperation. The steps taken since the Zedillo Administration all the way through Calderon's time in

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<sup>16</sup>Extradition Treaty. 1980. <http://portal.sre.gob.mx/eua/pdf/EUAExtradicion1978.pdf>. Procedures to be followed: [http://www.oas.org/juridico/MLA/sp/mex/sp\\_mex-ext-gen-list.html](http://www.oas.org/juridico/MLA/sp/mex/sp_mex-ext-gen-list.html).

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office prove that a number of U.S. and Mexican officials have been in contact and collaborating all of these years to find more effective and transparent mechanisms to target a common enemy.

Finally, there are other important arrangements, developed since the late 1990s, that have institutionalized law enforcement cooperation. The DEA's Mexico office, like their Colombia office, has been part of the Sensitive Information Units' (SIU) program since its inception in 1997.<sup>17</sup> During the Fox administration the SIU members came from the Mexican Federal Investigative Agency (AFI), headed by Genaro Garcia Luna, leaving law enforcement and intelligence bilateral cooperation strongly tied to its parent agency, the PGR.<sup>18</sup> This program allowed Mexican law enforcement to be vetted and learn and exchange standardizing processes of intelligence and information gathering. As personnel of both nationalities came to work together they became aware of the institutional and legal arrangements and had to find and work out points of contact that would allow them to build a case together.

While a major institutional rearrangement has taken place within the U.S. bureaucracy since 9/11, the DEA has grown and remains strongly linked to Mexico in efforts to deal with DTOs. This agency's international presence and level of interaction with its respective foreign counterparts has increased incrementally. The DEA's five objectives for its work with foreign counterpart agencies are: (1) to participate in bilateral investigations, (2) to cultivate and maintain quality liaison relations, (3) to promote and contribute to foreign institution building, (4) to support intelligence gathering and sharing efforts, and (5) to provide training opportunities. Since FY 2003 the DEA's office in Mexico is actively targeting a total of 212 Priority Target Organizations.<sup>19</sup> The data indicates that the DEA's foreign offices were pursuing high-priority cases and have succeeded in disrupting or dismantling a significant portion of DTOs.<sup>20</sup>

It is important to mention that in addition to the DEA, other U.S. agencies are participating in some of these coordinating efforts on a more regular basis and at times this leads to conflict, both among themselves or with their Mexican counterparts. Nevertheless, each agency has its own bureaucratic constituency and objectives to pursue. Hence, turf wars, competition, stepping on each other's toes during

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<sup>17</sup><http://www.justice.gov/oig/reports/DEA/a0719/chapter3.htm>. The Drug Enforcement Agency's International Operations (Redacted). Audit Report 07-19. February 2007. Office of the Inspector General. Chapter 3. International Operations

<sup>18</sup>*Ibid.*

<sup>19</sup><http://www.justice.gov/oig/reports/DEA/a0335/findings.htm> See footnote 13 of *The Drug Enforcement Administration's Implementation of the Government Performance and Results Act*. Report No. 03-35 September 2003 Office of the Inspector General

<sup>20</sup>*Organized Crime Drug Enforcement Task Forces (OCDETF) Program was established in 1982 to conduct comprehensive, multi-level attacks on major drug trafficking and money laundering organizations. This program produces the Consolidated Priority Organization Target (CPOT) List.* See <http://www.justice.gov/dea/programs/ocdetf.htm>

investigations and a tendency of U.S. agencies to deal on a one-to-one basis (without interagency coordination) with their Mexican counterparts all create disruptions in the growing need to work together and continue building trust.

As the DEA has strengthened its collaboration with Mexican agencies, the use of vetted units has become a vital means of pursuing its investigative needs in that location. The DEA uses two types of vetted units: (1) vetted units that are part of the DEA's Sensitive Investigative Unit (SIU) Program and (2) non-SIU vetted units. The DEA's SIU program was created in FY 1997 when Congress appropriated \$20 million for the creation of vetted units in Bolivia, Colombia, Mexico, and Peru.<sup>21</sup> In FY 2006, the budget to support the SIU Program was \$18.3 million.

SIU members participate in a specially designed training course at the DEA Training Academy in Quantico, Virginia.<sup>22</sup> The National Drug Control Budget released in February of 2010 highlights an FY2011 budget request of \$10.8 million in non-personnel funding to "provide permanent funding for the expanded SIU program in Mexico."<sup>23</sup> The SIU program allows the training of foreign police officers that work cooperatively with the DEA to focus on specific cases.

In February 2006 a Mexican SIU unit conducted a surveillance operation with assistance from the DEA that resulted in the arrest of a members of a Consolidated Priority Organization Target<sup>24</sup> residing in Mexico. Additionally, the SIU program in Mexico was instrumental in the successful completion of a major methamphetamine investigation that resulted in the seizure of 15 methamphetamine labs and over 130 pounds of methamphetamine with a potential street value of over \$1 million.<sup>25</sup> Yet, it is still difficult to assess the impacts of the SIU program in Mexico mainly because Mexican authorities are extremely reserved about discussing them and the type of information that is being shared by their U.S. counterparts that leads to successful operations. In fact, what has been described here previously is the result of an extensive review of public documents released by the U.S. law enforcement agencies and their international programs subject to review from the General Accounting Office.

Of the few comments that were picked up when interviewing Mexican sources they claimed to hold more operational intelligence information than what is shared by their U.S. counterparts. Mexicans believe that the quality of U.S. intelligence is not always as good as claimed. However, what is clear is that the training, screening and vetting process of Mexican law enforcement officials have proven helpful to the standardization of information gathering and intelligence sharing. Today,

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<sup>21</sup>La información de la cita no. 16

<sup>22</sup>*Ibid.*

<sup>23</sup>National Drug Control Budget Highlights. February 2010. P.11. ONDCP.

<sup>24</sup>Consolidated Priority Organization Target (CPOT) List, a unified agency target list of international "command and control" drug traffickers and money launderers. See <http://www.justice.gov/dea/programs/ocdetf.htm>.

<sup>25</sup><http://www.justice.gov/oig/reports/DEA/a0719/chapter3.htm>

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cooperation amongst some Mexican law enforcement and intelligence agencies has reached the point where Mexican nationals are stationed in U.S. agencies. This suggests they are developing standardized procedures for information sharing that allows for better targeting of DTOs.

An example of this shows how the DEA office in Mexico provides information and support to investigations through communication and collaboration with other DEA offices, including its domestic field offices. The El Paso Intelligence Center (EPIC) has become instrumental in efforts to coordinate not only the array of U.S. agencies that converge to work on a case, but also in the coordination of bilateral cooperation.<sup>26</sup> EPIC was established in 1974 to improve coordination among agencies addressing law enforcement matters related to the Southwest Border. EPIC brings together representatives from many agencies including the DEA, FBI, the U.S. Marshals Service (USMS), and the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE), who work together on various matters related to drug-trafficking and immigration. Today, EPIC also includes Mexican foreign nationals that share their experience and expertise on crime, terrorism and contraband information and build personal relationships with U.S. law enforcement.

There is no doubt that as violence on the Mexican side of the border grew, more coordinated U.S.-Mexican responses had to take place. Another example of building joint efforts to counter organize crime capabilities in the region is the creation of the Border Enforcement Security Task Force (BEST) that was started in January 2006 in Laredo, Texas. The BEST are lead by U.S. Immigration and Customs Enforcement (ICE) the largest investigative agency in the Department of Homeland Security (DHS).<sup>27</sup> Since then DHS has established a number of BEST<sup>28</sup> teams on the Southwest Border where several U.S. law enforcement agencies come together in coordination with the Mexican Ministry of Public Security.<sup>29</sup> The results reported describe border-related arms and ammunition smuggling investigations in Texas and Arizona, leading to the arrest of hundreds and the seizure of 68 thousand rounds and multiple 687 firearms.<sup>30</sup>

The efforts described above show how the Mexican and U.S. law enforcement communities have grown closer in order to achieve a shared goal. A couple of decades ago this would have seemed unthinkable to the PGR. As economic, social and political processes continue to move forward, particularly after the North American Free Trade Agreement, and even with the post-9/11 transformations to the U.S. security

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<sup>26</sup>Page 70.

<sup>27</sup>[www.ice.gov/pi/news/factsheets/080226best\\_fact\\_sheet.htm](http://www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm)

<sup>28</sup>As August 5,2010 One can find 17 BEST teams in places such as Mexico city, Phoenix, Tucson, Yuma; Imperial Valley, Los Angeles, Long Beach Seaport; San Diego; Miami seaport; Deming, Las Cruces, El Paso, Laredo, Rio Grande Valley and in New York, Michigan and Washington states.

<sup>29</sup>*Ibid.*

<sup>30</sup>*Ibid.*

community, the reality is that both nations know they still need to work out more efficient ways to undermine DTO's capacity. It is in the best interest of both nations to have trustworthy neighbor.

## THE CALDERON ADMINISTRATION

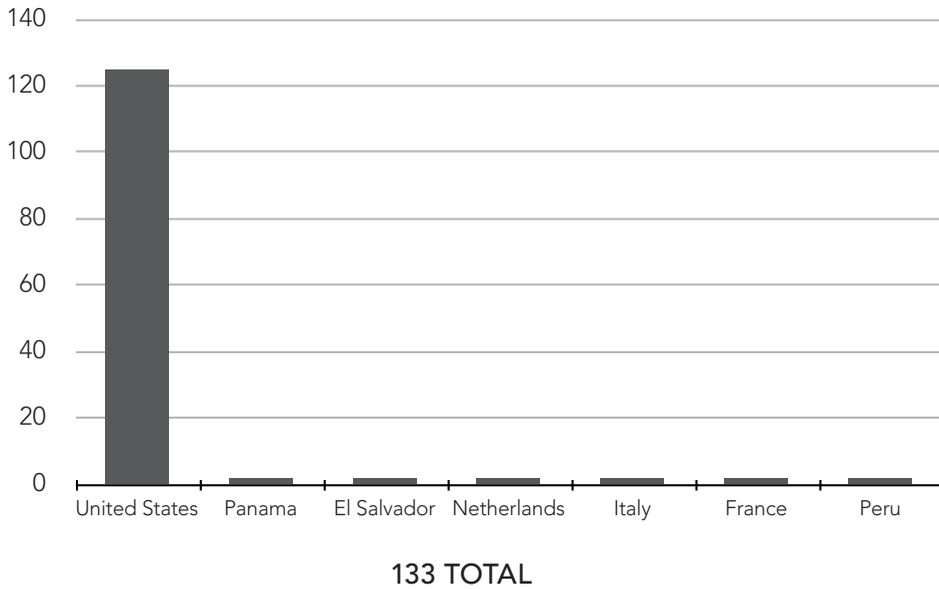
The political context under which President Calderon took office in 2006 was without a doubt a complex one. By that time, the DTO's had dramatically escalated the violence against law enforcement officials and their enemies. Executions, decapitations and disappearances had already taken place in a number of states, including Michoacán, Baja California, Sinaloa and Chihuahua. So President Calderon instructed the appropriate agencies to strengthen their commitment to cooperation with the nation's northern neighbor. A key element of the increasing cooperation was that a number of Mexican officials from the security community had already worked to strengthen collaboration with the U.S. regarding the exchange of information, similar policing procedures, intelligence sharing and confidence building were now become heads of agencies. This was the case for Attorney General Eduardo Medina Mora, who would lead U.S.-Mexico cooperation as a continuation of what he had achieved during the previous administration. The case of Genaro Garcia Luna, President Calderon's choice to be Secretary of Public Security, was very similar; he was well known by U.S. officials as a long time partner to U.S. law enforcement because of his work at CISEN and AFI during the Zedillo and Fox administrations. In other words, the road was already paved, and officials could identify priorities to work together and improve the capacity of the institutions against organized crime.

In a smart move, it was Calderon who presented a proposal for an increase of U.S.-Mexico cooperation in Mérida when meeting with President Bush. Although initially the proposal was well received, the U.S. was not sure about the implementation of this initiative for increased cooperation with its southern neighbor. Nevertheless, it is also true that the plan called on the Mexican intelligence and law enforcement communities to make immense efforts at coordination and setting aside personal agendas and egos. Many of the agency heads had developed extensive relationships and trust with their U.S. counterparts over the years, so there was concern that inter-agency coordination could hamper their personal relationships based on trust with U.S. officials resulting in the exchange of valuable information with their U.S. counterparts. Nevertheless, once the coordination plans and ground rules were clarified and the agency heads were convinced that operational information would not be put at risk in the inter-agency process, all the actors understood the roles they could play to improve efficiency in the fight against organized crime.

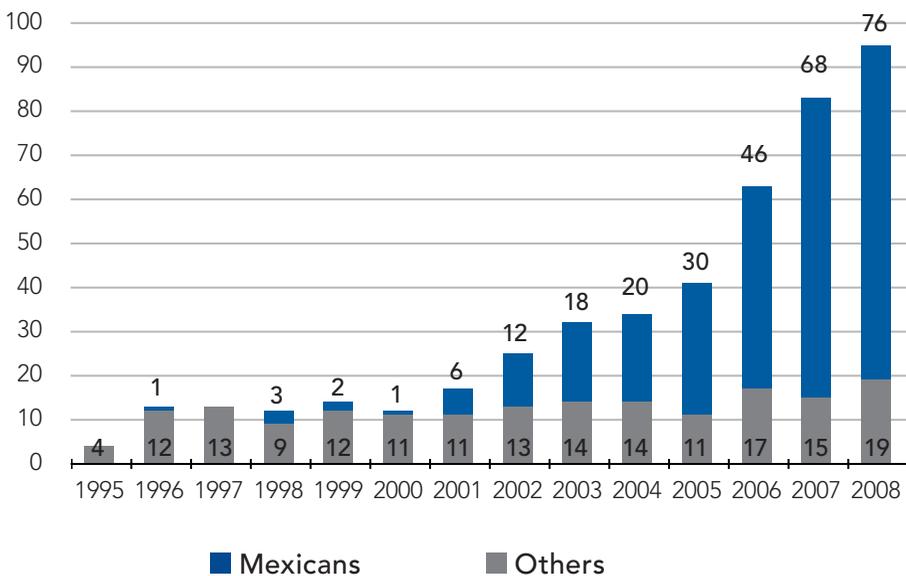
Key in the process of building trust between the two countries was the number of major drug traffickers that had been extradited to the U.S. by January 2007. Among

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EXTRADITIONS FROM MEXICO BY DESTINATION, 2007



EXTRADITIONS FROM MEXICO BY NATIONALITY, 1995–2008



Source: <http://www.pgr.gob.mx/prensa/2007/docs08/Extraditados%20al%20mundo.pdf>.

the extradited drug figures where Osiel Cardenas of the Gulf Cartel, Gilberto Higuera Guerrero from the Arrellano Felix Organization in Tijuana, Hector Palma Salazar from the “Chapo” Guzman Cartel in Sinaloa, and thirteen other high profile Mexicans that had committed homicides, drug related crimes or other federal crimes in the United States.<sup>31</sup> All of these persons had failed in their attempts to be protected from extradition under the Mexican Constitution (agotado juicio de amparo) and were sent to the U.S. on charges of drug trafficking, organized crime or other crimes. The action was welcomed by the U.S. government as a clear sign from the Calderon administration of the seriousness of its efforts to extradite those kingpins that were taking advantage of the justice system in Mexico in order to continue terrorizing regions of the country with violence and corruption.

Extradition is not only related to drug crimes, as there are a number of other crimes committed in the U.S., by nationals and non-nationals, that seek safe haven in Mexican territory. More and more, through an important exchange of information, those running from justice and trying to hide in Mexico are being caught and extradited to face charges in U.S. courts. Mexico has extradited sexual offenders, murderers, money launderers and human traffickers. Close proximity attracts those committing crimes in the U.S. to run to Mexico, so it is understandable why there are so many extraditions from Mexico to the United States.

For Mexican authorities, extradition has become a strong legal tool to combat crimes that are committed in one or multiple territories by criminals that seek or attempt to buy safe haven.<sup>32</sup>

In testimony at the U.S. Senate, the DEA said:

The acknowledgment of a shared problem has paved the way for cooperation between DHS, along with DOJ, and the government of Mexico that would have been unthinkable 10 years ago, and even unspeakable 3 years ago. DHS is working in full partnership with the government of Mexico to respond to the dangers and the opportunities that the current crisis has presented. This is a relationship of trust with verification, and one that is accepted by both countries.<sup>33</sup>

President Calderon has continued to work against the violence and drug related crimes that persist in Mexico. As part of this effort, this administration has taken further steps to better coordinate along the U.S.-Mexico border. For example, after the killing of three people with ties to the U.S. Consulate in Ciudad Juarez in March

<sup>31</sup><http://www.pgr.gob.mx/prensa/2007/bol07/Ene/b03007.shtm>.

<sup>32</sup>Jose Luis Santiago Vasconcelos, August 13, 2007. Opening statement at the Workshop on Extradition. <http://www.pgr.gob.mx/prensa/2007/bol07/PGR/bol38807.shtm>.

<sup>33</sup>United States Congress, House of Representatives, Committee on Oversight and Government Reform, Hearing, *The Rise of the Mexican Drug Cartels and U.S. National Security*, 111<sup>th</sup> Congress, 1<sup>st</sup> Session, July 9, 2009, 49.

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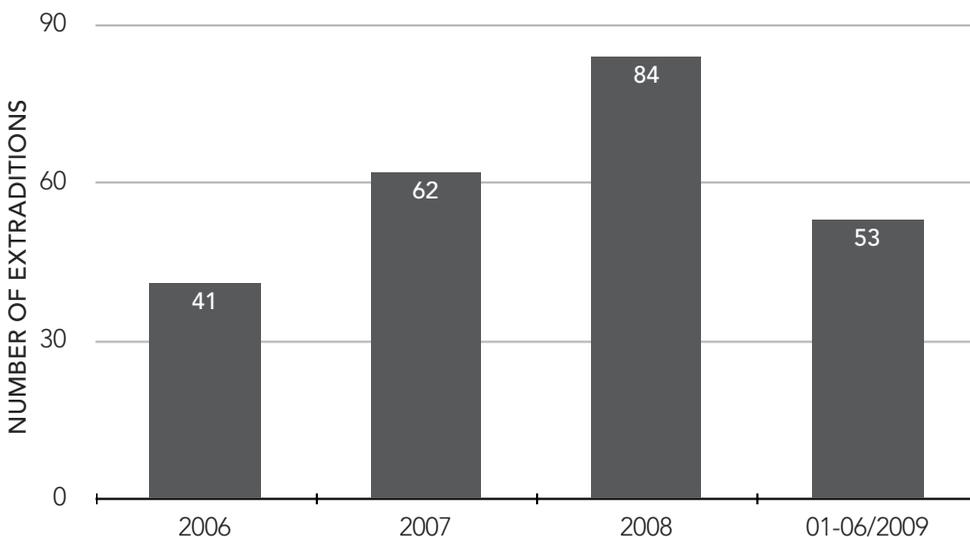
2010, including one American consulate employee, a group of U.S. officials traveled to Mexico for a high level meeting between U.S. and Mexican officials. This was the second time high level officials met as a follow-up to the Mérida Initiative. At the end of the meeting officials on both sides of the border announced that they would concentrate in four strategic areas: a) dismantling criminal organizations; b) consolidating institution building; c) developing a 21<sup>st</sup> Century border; and d) improving social cohesion in communities.

Clearly pressure on the U.S. Congress from border constituencies and the sense of responsibility the United States has regarding the provision of arms that give immense firepower to criminal organizations increase the sense of urgency to improve the public safety of those living along the border. At some point, it seems inevitable that the U.S. will need to find a way to address the arms market at the border.

### THE CASE OF MARIO VILLANUEVA

In May 2010, Mario Villanueva, ex-governor of Quintana Roo, was extradited to the U.S. as part of an improved environment for bilateral cooperation. Villanueva was governor of his state between 1993 and 1999, but he did not finish his term in office because he was accused of having links with organized crime. Villanueva was the first high profile PRI governor to be arrested on organized crime charges during the Zedillo administration.

### EXTRADITIONS FROM MEXICO TO THE U.S.



Source: “Mexico – U.S at a Glance: Extraditions,” (June 2009), <http://mexico.usembassy.gov>.

The U.S. government requested his extradition based on charges that Villanueva helped traffic drugs into the United States. Villanueva was accused of having received millions of dollars from the Juarez Cartel in exchange for protecting the transportation of more than 200 tons of cocaine to the United States. After numerous judicial proceedings, Villanueva was finally extradited to face charges in the United States. For some analysts, his extradition was unthinkable given Villanueva's strong links to the country's oldest and strongest political party known as the Institutional Revolutionary Party (PRI in Spanish) and the fact that Quintana Roo would have gubernatorial elections later in the year. However, the levels of drug-related corruption and violence he had freely exhibited in his everyday life made all too clear the failure of law enforcement and policing efforts in the state. Days after the extradition, the mayor of the famous tourist city, Cancun, was also arrested on organized crime charges.

Mexico is increasingly putting together cases of political-drug corruption. The challenge for the Mexican PGR remains putting together all the judicial elements needed to attain the ultimate goal, which is getting a guilty verdict from the judge. Impunity must not prevail under the current circumstances, and Mexican authorities need to continue improving the capacity to gather intelligence and share information amongst and between government agencies. It is important to highlight that during 2009, 107 Mexican nationals were extradited to the U.S., and up to September 2010, 58 Mexican nationals were handed over to U.S. Department of Justice. This has no doubt been one of the most important means to undermine the capabilities of organized crime, but maybe more importantly strengthening collaboration between the U.S. in law enforcement and intelligence matters.

## CONCLUSIONS

During an interview in Washington, DC for this paper, the author asked a U.S. official, "What should U.S.-Mexico law enforcement and intelligence cooperation look like?" The answer: "Ideally, an automation of information and intelligence sharing."<sup>34</sup> The sharing of information and intelligence should be taking place at all three levels of government (federal state, and local) he continued, "just like it happens between the U.S.-Canada." When one examines the case of U.S.-Canada cooperation one observes that no matter the political moment, changes in government or the current mix of bilateral issues, both countries have reached such a level of institutional strength that they are able to share intelligence and information regularly.

Even with the Mérida Initiative, Mexico has to understand the political reality of its Northern neighbor — drug policy is not a priority on the U.S. domestic political agenda at this time. The institutional arrangements to undermine drug sales in the U.S. are focused on the local level and fall mostly to local law enforcement.

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<sup>34</sup>Interview held April 2010.

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If local police come upon a particularly violent gang they might receive reinforcements from federal agencies. Therefore, there are limits to the information gathering process that can be performed by federal agencies and then shared with international partners. The number of coordination points amongst U.S. agencies is also enormous, as highlighted by the ambitious efforts and challenges faced by the Fusion Centers cited earlier.

Today both countries share a strong political commitment to strengthen institutional cooperation and capabilities. This essay reviews the important progress that has been made to date. However, we must remember that in both countries law enforcement and intelligence agencies are constrained by their own political leadership, constituencies and bureaucracies that are maneuvering in political arenas. Therefore, achieving a consolidated bi-national operational capacity to exchange information relevant to combating organized crime, or any other national security threat, remains the goal, but is not yet a reality. Both governments will always face a limit to what they can share as a result of national security or judicial constraints on the exchange of information. Additionally, both governments will experience times where agency heads are replaced or changed, and priorities can also change as well. Yet, as of today Mexican foreign nationals are stationed together with U.S. law enforcement agencies learning together from common experiences, building personal relationships, and sharing information that benefit both communities. This is by itself a clear example of how far both countries have moved in an effort to improve and deepen information sharing.

It is clear that even within the U.S. there are challenges to be met regarding information sharing and intelligence. Hence, sharing information is not a minor challenge because agencies compete to get the credit for prosecuting high profile cases. The irony is that as crime becomes more transnational as a result of globalization, federal law enforcement agencies in Mexico and the U.S. need more and more local and state information. But obstacles remain to obtaining this information. There are occasions when information is not shared because state and local laws protect privacy rights in the U.S.; and, because of changes in agency leadership in Mexico leave many officials waiting for new direction.

In sum, challenges remain for both governments that need to be addressed to continue strengthening U.S.-Mexico cooperation. Clearly Mexico has made a tremendous effort in its institution building over the last four years, particularly at the federal level. However, critical improvements are pending at the state and local level, especially in the border states, where local and state authorities have left the majority of the effort against organized crime to the federal government. In some sad cases, police and law enforcement on both sides of the border have even acted in favor of organized crime.<sup>35</sup> Authorities need to be clear that trust needs to be built

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<sup>35</sup>See U.S. has established a Anti-Corruption Task Force for the Southwest Border. [http://www.fbi.gov/page2/august10/border\\_080910.html](http://www.fbi.gov/page2/august10/border_080910.html)

continuously, but they should also recognize that at present there is greater penetration of drug trafficking organizations than ever before. This should be seen as an area of opportunity to work together and stand together against drug-corruption.

Only a few weeks ago Mexico's National Intelligence Director recognized that drug related violence had taken the life of more than 28 thousand persons during the current administration. In order to strengthen U.S.-Mexico cooperation, this official said that the anti-narcotics assistance had jumped significantly from U.S.\$37.3 million between 2000 and 2007, to \$443.3 U.S. million dollars between 2008 and 2010.<sup>36</sup> But despite the increase in resources, many significant challenges lie ahead, especially when one sees the amounts of arms, ammunitions, vehicles, and money that has until now been seized from criminal organizations.<sup>37</sup>

As Mexican law enforcement agencies continue to face corruption in drug-related cases, so, too, have U.S. partner agencies. News reports about the challenges faced by agencies recruiting personal have highlighted problems with screening, training and supervising new agents. Similar findings were also documented in a report by the Office of the Inspector General of the Department of Homeland Security about ICE agents.<sup>38</sup> The report says the officers have, at times, inappropriate or unauthorized access to Homeland Security intelligence systems.<sup>39</sup> This also has an impact on the security of Mexican officials as they share information that allows them to act against criminal groups.

In all the interviews conducted with Mexican and U.S. officials the recurring theme was personal trust and building partnerships. Trusting each other and building the capacity to share information are key components of cooperation. Historically U.S. officials have been concerned with corruption in Mexico, however, the above cited press reports and Inspector General's report should make Mexican officials concerned about their northern neighbor too. This is not to say that cooperation should not grow; on the contrary, it needs to do so continually and incrementally. But the U.S. also needs to be more open about the corruption cases that it is facing and share these vulnerabilities with its Mexican counterparts.

Considering the commitment from both nations to continue improving law enforcement and intelligence capabilities and their evident asymmetries in terms of human and financial resources, it is clear that the Mérida Initiative has become an umbrella for increased information sharing, data inter-operability and the use

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<sup>36</sup>Talking points at the Dialogos por la Seguridad, Guillermo Valdes, CISEN.

<sup>37</sup>*Ibid.* Seized vehicles 34,669; firearms: 83,997; U.S. dills. 411'952'887; were used as examples.

<sup>38</sup>Julia Preston, "Report Faults Training of Local Officers in Immigration Enforcement Program," New York Times, April 3, 2010.; Also see AP, "U.S. Customs: Mexican Cartels corrupt border agents," March 11, 2010.

<sup>39</sup>See: [www.allbusiness.com/print/12832577-1-22eeq.html](http://www.allbusiness.com/print/12832577-1-22eeq.html). "Former Top Ice Agent Arrested in drug smuggling corruption case"; Reuters, "Drug smugglers bribing U.S. agents on Mexican Border," July 15, 2008. According to news reports, between 2007-2009, more than 80 officials who worked along the border have been convicted on drug related charges.

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of common systems, such as fusion centers, that create platforms for information sharing, whether through SIUs or BEST teams. The reality is that both governments need to continue strengthening these structures. Not doing so can hamper not only the bilateral relationship, but more importantly, the safety and well-being of both nations' communities.



# ABOUT THE AUTHORS

## **SIGRID ARZT**

Information and Privacy Commissioner at the Instituto Federal de Acceso a la Información y Protección de Datos Personales. She was the National Security Advisor to President Felipe Calderón until April of 2009. She also worked at the Office of the Mexican Attorney General in the early 1990s. She is PhD Candidate at the University of Miami, and has a Master's Degree from Notre Dame University and a B.A. in International Studies at Iberoamericana University in Mexico.

## **LUIS ASTORGA**

Luis Astorga is a Professor at the Institute for Social Research (Instituto de Investigaciones Sociales) at the National Autonomous University of Mexico (UNAM). He currently coordinates UNESCO's program on "Economic and Social Transformations and the International Drug Problem." He is a member of the National System of Researchers (Sistema Nacional de Investigadores) and of the Mexican Academy of Sciences. Astorga is the author of *Seguridad, traficantes y militares*, Publisher in 2007; *Drogas sin fronteras*, Publisher in 2003; *El siglo de las drogas* (2005), and of *Mitología del 'narcotraficante' en México* (1995). He has published numerous journal articles about the trafficking of illegal drugs in Mexico, the United States, Colombia, France, Italy, India, Great Britain, and Belgium. He earned a doctorate in sociology from the University of Paris.

## **JOHN BAILEY**

John Bailey is Professor of Government and Foreign Service and Director of the Mexico Project at the Center for Latin American Studies at Georgetown University, where he has taught since 1970. Following study and fieldwork in Peru and Colombia, his research after the late 1970s focused largely on Mexico. He has published occasional papers, articles and book chapters on a variety of policy issues in Mexican politics, including agriculture, public budgeting, decentralization,

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education, electoral reform, government-business relations and social security. During 1980-90 he directed the Mexico Seminar at the U.S. Department of State's Foreign Service Institute. His book, *Governing Mexico: The Statecraft of Crisis Management* (St. Martin's Press, 1988), draws together policy and political themes in the context of democratic transition. Since the early 1990s he has concentrated on issues of national and public security in the bilateral relationship and in the Western Hemisphere more broadly. Recent edited books include *Strategy and Security in U.S.-Mexico Relations: Beyond the Cold War* (University of California-San Diego, Center for U.S.-Mexican Studies, 1996; with Sergio Aguayo); *Organized Crime and Democratic Governability: Mexico and the U.S.-Mexican Borderlands* (University of Pittsburgh Press, 2000; with Roy Godson); *Transnational Crime & Public Security: Challenges to Mexico and the United States* (University of California-San Diego, Center for U.S.-Mexican Studies, 2004; with Jorge Chabat); and *U.S.-Mexico Economic Integration: NAFTA at the Grassroots* (LBJ School of Public Affairs, University of Texas at Austin, 2001). His current projects include an edited volume on public security and police reform in the Americas (with Lucia Dammert of the University of Chile) and a book-length study on the relationships between crime, corruption, violence and democracy in the Latin America. Prof. Bailey received his A.B. with High Distinction from Indiana University (1966) and his Ph.D. in Political Science from the University of Wisconsin-Madison (1972).

## RODERIC AI CAMP

Roderic Camp is presently the Philip McKenna Professor of the Pacific Rim at Claremont McKenna College. He has served as a visiting professor at the Colegio de México and the Foreign Service Institute, and carried out research as a fellow at the Woodrow Wilson Center for International Scholars, Smithsonian Institution. He has received a Fulbright Fellowship on three occasions, as well as a Howard Heinz Foundation fellowship for research on Mexico. He was awarded two major grants from the William and Flora Hewlett Foundation to explore attitudes toward democracy in Mexico and Latin America. He serves as an adjunct fellow of the Mexico Program, Center for Strategic and International Studies, Washington, D.C. Camp is a contributing editor to the Library of Congress, *Handbook of Latin American Studies*, and to Microsoft Encarta, and serves on the Editorial Board of *Mexican Studies*. He is a frequent consultant to national and international media, including the *New York Times* and the *Wall Street Journal*. The author of numerous articles and twenty books on Mexico, his most recent publications include: *Politics in Mexico, the Democratic Consolidation* (Oxford University Press, 2007), *Mexico's Military on the Democratic Stage* (Praeger/CSIS, 2005), and *Mexico's Mandarins, Crafting a Power Elite for the 21st Century* (University of California Press, 2002).

## **JOSÉ DÍAZ-BRISEÑO**

José Díaz-Briseño is since 2005 the Washington, DC correspondent for *Reforma*, one Mexico's leading newspapers. His reporting covers mostly U.S.-Mexico affairs: from drug policy and immigration to trade and tourism. Before arriving in DC, Mr. Díaz-Briseño was based in Tucson, Arizona where he worked as the U.S.-Mexico border affairs correspondent for *El Imparcial*, a regional daily in northwestern Mexico. He holds a master's degree from Columbia University's Graduate School of Journalism in New York City and was a recipient of a Fulbright Scholarship. Before the year 2001, Mr. Díaz-Briseño worked as a researcher for The Los Angeles Times Mexico City bureau. He studied International Relations at El Colegio de México and has done summer courses on U.S. politics and history at the University of California-San Diego. Mr. Díaz-Briseño was born and raised in Mexico City.

## **STEVEN DUDLEY**

Steven Dudley is the co-director of InSight, a new non-profit initiative based in Bogotá that monitors organized crime in the Americas. He is the former Bureau Chief of The Miami Herald in the Andean Region and the author of *Walking Ghosts: Murder and Guerrilla Politics in Colombia* (Routledge 2004). Dudley has also reported from Mexico, Haiti, Brazil, Nicaragua, Cuba and Miami for National Public Radio, the BBC, and The Washington Post, among others. In addition to his work at InSight, he is finishing a documentary film on the life and career of a lawyer that defends Colombian drug traffickers and paramilitaries, and analyzing and writing policy briefs on extradition cases for a Colombian non-governmental organization *Fundación Ideas para la Paz*. Dudley has a BA in Latin American History from Cornell University and an MA in Latin American Studies from the University of Texas at Austin. He has won numerous journalism prizes and was awarded the prestigious Knight Fellowship at Stanford University in 2007.

## **DOLIA ESTÉVEZ**

Dolia Estévez is a Senior Mexico Correspondent and foreign affairs analyst in Washington, D.C. She is a regular commentator for Mexico's MVS Radio Noticias, a contributor to *Poder Magazine* and a weekly columnist for *El Semanario*. From 1989 to 2005, she was the Washington Correspondent for *El Financiero* and *Radio Monitor*. She serves as a Senior Advisor for the U.S.-Mexico Journalism Initiative at the Woodrow Wilson Center. She has lectured at public and private institutions in Mexico and the United States. She is an accredited foreign correspondent with the Department of State, Capitol Hill and the Foreign Press Center, and a member of Mexico's Council on Foreign Relations.

## DOUGLAS FARAH

Douglas Farah is President, IBI Consultants, and Senior Fellow, International Assessment and Strategy Center. He is a national security consultant and analyst. He was a foreign correspondent and investigative reporter for the Washington Post and other publications, extensively covering Latin America, West Africa, and the Caribbean. He has investigated drug wars, drug trafficking, organized crime, radical Islamic groups, and terror finance. He is the author of *Blood from Stones: The Secret Financial Network of Terror* (2004) and with Stephen Braun, *Merchant of Death: money, guns, planes, and the man who makes war possible* (2007). He graduated with honors from the University of Kansas, earning a B.A. in Latin American Studies and a B.S. in Journalism.

## COLBY GOODMAN

Colby Goodman is an independent consultant engaged in research and advocacy on arms export control issues. For five years, Mr. Goodman led Amnesty International USA's (AIUSA) research and advocacy on issues related to conventional arms control. Most recently, he investigated the Pentagon's use of arms intermediaries with problematic records to ship weapons abroad for an in-depth report on the regulatory gaps in the U.S. Department of Defense's arms export controls for private contractors. In 2007, Mr. Goodman wrote a book chapter that covered U.S. arms trafficking to Mexico for Facultad Latinoamericana de Ciencias (FLACSO). Before joining AIUSA, Mr. Goodman was a Research Assistant with the Arms Division at Human Rights Watch where he researched cases of arms trafficking by sea vessels for a study on the nature and scope of this problem. He holds a Master's degree in International Policy Studies with a focus on security and development from the Monterey Institute of International Studies and currently lives in Washington, DC. He can be reached at [colbygoodman@msn.com](mailto:colbygoodman@msn.com).

## MICHEL MARIZCO

Michel Marizco is a journalist and producer on the Southwest border, specializing in organized crime and immigration reporting. He covers the Sinaloa Federation and the peripheral and burgeoning cartels that operate along the border of California, Arizona, New Mexico, and Texas. He also is the owner of [BorderReporter.com](http://BorderReporter.com), which specializes in intelligence and analysis from the border, uncovering government malfeasance, and feature stories from the region not covered by other media. As an expert on border issues, he won several regional and state awards for his work along the Arizona-Mexico border. Stories appearing on the [BorderReporter.com](http://BorderReporter.com) are regularly cited by national news media, from CNN to the Dallas Morning News,

## ABOUT THE AUTHORS

El Universal and Proceso magazine. Mr. Marizco lives in Tucson, Arizona and can be reached at [Marizco@borderreporter.com](mailto:Marizco@borderreporter.com).

### **PETER REUTER**

Peter Reuter is Professor in the School of Public Policy and Department of Criminology, University of Maryland. From 1981 to 1993 he was a Senior Economist in the Washington office of the RAND Corporation where he founded and directed RAND's Drug Policy Research Center from 1989-1993. Since 1985 most of his research has dealt with alternative approaches to controlling drug problems, both in the United States and Western Europe. He is author or co-author of six books including (with Robert MacCoun) *Drug War Heresies: Learning from Other Places, Times and Vices* (Cambridge University Press, 2001), and (with Letizia Paoli and Victoria Greenfield) *The World Heroin Market: Can Supply be Cut?* (Oxford University Press, 2009). From 1999 to 2004 he was editor of the *Journal of Policy Analysis and Management*. In 2007 he was elected the first president of the International Society for the Study of Drug Policy.

### **DANIEL SABET**

Daniel Sabet, Visiting Professor, Georgetown University's Edmund A. Walsh School of Foreign Service. His current research focuses on the obstacles to professionalizing Mexico's police forces. His work explores the reform challenges of policy design, implementation, and institutionalization; the formal and informal rules of police and governance; the negative impact of organized crime; the ambivalent relationship between the police and civil society; and new incentives being created by the federal government. This research agenda emerged out of Sabet's work coordinating rule of law educational programs for police throughout Latin America as part of the Culture of Lawfulness Project. Sabet's previous research, which recently has been published as a book entitled *Nonprofits and their Networks: Cleaning the Waters along Mexico's Northern Border*, seeks to understand how civil society organizations emerge to address local policy concerns in a political environment that has traditionally favored clientelism. Sabet earned his PhD in political science from Indiana University.

### **DAVID SHIRK**

David A. Shirk is the Director of the Trans-Border Institute and Associate Professor in the Political Science Department at the University of San Diego. Dr. Shirk was a fellow at the Center for U.S.-Mexican Studies from 1998-99 and 2001-2003. He conducts research on Mexican politics, U.S.-Mexican relations, and law enforcement

## ABOUT THE AUTHORS

and security along the U.S.-Mexican border. He is the principal investigator for the Justice in Mexico project, a bi-national research initiative on criminal justice and the rule of law in Mexico. Recent publications by Dr. Shirk include *Police and Public Security in Mexico*, co-edited with Robert Donnelly (Trans-Border Institute, 2009) and *Contemporary Mexican Politics*, co-authored with Emily Edmonds-Poli (Rowman and Littlefield Publishers, 2008). Shirk has a BA in International Studies from Lock Haven University and an MA and PhD in Political Science from the University of California-San Diego.



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## **Mexico Institute**

Woodrow Wilson International  
Center for Scholars  
One Woodrow Wilson Plaza  
1300 Pennsylvania Avenue NW  
Washington, DC 20004-3027

[www.wilsoncenter.org/mexico](http://www.wilsoncenter.org/mexico)

## **Trans-Border Institute**

University of San Diego  
5998 Alcalá Park, IPJ 255  
San Diego, CA 92110-2492

[www.sandiego.edu/tbi](http://www.sandiego.edu/tbi)