

## **Transnational Security Challenges in Mexico and the U.S.-Mexico Border Region**

Dr. David A. Shirk

University of San Diego

### *Overview*

U.S. concerns about national and domestic security in recent years have significantly highlighted Mexico and the U.S.-Mexico border. During the 1970s, shortly after the United States adopted a new immigration regime, the Mexican border became the primary conduit of undocumented labor entering the United States. Since the 1980s, levels of drug violence along the border have grown dramatically, with significant implications for the United States, including cross-border incursions by drug traffickers and rogue agents of the state, violent crimes perpetrated in U.S. territory, and even the corruption of U.S. law enforcement agencies. More recently, in the aftermath of the September 11 attacks, U.S. officials have attempted to lock down the border in an attempt to bolster the country's "first line of defense" against terrorism. These problems illustrate that both Mexico and the United States are currently confronting a new era that requires a significant shift in state responses to national and domestic security challenges. Ironically, in a more globalized, supposedly "borderless" world, state responses to transnational security problems seem to play out most visibly in the borderlands, the geographic areas associated with territorial boundaries. Indeed, the border factors very prominently into the way that the United States and Mexico have responded to their primary transnational security challenges. Yet, thus far, there is no evidence that their efforts—including tougher law enforcement and security in the border region—have strengthened the capability of either country to effectively address shared security concerns.

This paper explores this paradoxical dilemma, beginning with an examination of the dual security functions of the state. Specific attention is given to the challenges involved in confronting national and domestic security threats presented by transnational organized crime. As I argue below, *transnational crime syndicates operate in the "space" between the traditional approaches to national and public security, muddling the nature and effectiveness of the state's response.* In the U.S.-Mexico context, a two-pronged approach is needed to help bolster Mexico's capacity to deal with transnational security threats, and thereby contribute to the greater overall effectiveness of the U.S.-Mexico border security regime. On the one hand, bolstering the capability of the Mexican state to provide domestic security—to exercise a monopoly on the means of coercion—requires serious, sustained efforts to improve the rule of law in Mexico. On the other hand, Mexico cannot effectively address many security challenges it currently confronts alone. Hence, transnational cooperation between Mexico and the United States is essential. Fortunately, there is a growing general consensus and significant progress on both fronts. Mexico has recently taken important steps that promise to substantially improve the rule of law over the longer term. Mexico has also begun working with the United States (and Canada) in a concerted effort to develop and strengthen partnerships that promise to improve security in the binational context (and throughout North America). Strengthening transnational cooperation will enhance Mexico's domestic efforts to improve the rule of law, and vice versa.

The devil lies in the details, of course. Initiatives to bolster both domestic rule of law in Mexico and transnational security collaboration efforts are in still relatively nascent phases. Recent domestic reforms, for example, provide a procedural framework for greater efficiency, transparency, and fairness in the justice sector; but it will take a very long period of time (perhaps a generation) and enormous investments to achieve full professionalization of the justice sector. Meanwhile, recent collaborative initiatives between the United States and Mexico build upon a long history of binational collaboration on key security challenges through various partnerships, protocols, and other mechanisms. However, such collaboration has too frequently been impaired by the agendas of domestic agencies, particular interests in either country, and domestic rule of law challenges—notably pervasive corruption and inefficacy—that debilitate Mexico’s security apparatus. Examining these serious gaps and problems—and bringing to bear the resources and political will needed to overcome them—is of critical importance for Mexican domestic security, the protection of the U.S.-Mexico border, and the security of the greater North American community.

### *The Blurring of National and Domestic Security Concerns*

Understanding the dynamics of national and domestic security in an era of globalization requires reflection upon the beginnings and purpose of the modern nation-state. In international relations theory, numerous scholars focus on the “Westphalian” origin and function of the state, in reference to the 1648 Peace of Westphalia. Through the Peace of Westphalia, the nation-state emerged as a model of political organization superior to the local (feudal) and supranational forms of organization that had earlier predominated, and the principles of sovereignty and self-determination were established as the central right and purpose of the state. Thus, in the world system that developed after Westphalia, a critical function of the state has been to ensure its basic security and survival through the use or threat of force in relation to—and often generally in competition with—other states.

Two and a half centuries after the Peace of Westphalia, Max Weber’s now classic discourse, “Politics as a Vocation,” offered further insights on the state’s nature and functions in the modern world.<sup>1</sup> Since Weber’s central objective was to rethink the role of the modern state, especially with regard to its capacity to fulfill its domestic functions, his conceptualization accordingly offers less consideration of the relationships among states in the post-Westphalian world order. Rather, Weber focused on the state as the primary object of politics, and the organization that controls a “monopoly of the legitimate use of physical force within a given territory.”<sup>2</sup> As such, the “Weberian” model of the state tends to emphasize its role within its own territorial dimensions, and especially its coercive functions in maintaining order in society. At the same time, Weber also places emphasis on the legitimate exercise of power, raising questions of

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<sup>1</sup> Weber sought to redefine the state in response to critical Marxist conceptions of the state, which viewed the state as an illegitimate tool of oppression. Marxists offered a critical perspective on the conventional liberal conceptualization of the state developed by Enlightenment thinkers (such as Hobbes, Locke, and Rousseau), who had portrayed the state as the result of a social contract or bargain, as well as a tool for achieving compromise and even the greater good within a given polity.

<sup>2</sup> H.H. Gerth and C. Wright Mills, *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946).

governmental accountability and even access to justice vis-à-vis the state, key elements in modern conceptions of the “rule of law.”

To be sure, the “Westphalian” and “Weberian” functions of the state are, of course, complementary. That is, maintaining power and sovereignty in the larger system of states necessarily requires a state not only to establish its domestic domain, but to secure itself from unwanted intrusion through the use or threat of force.<sup>3</sup> Hence, both domestic and national security are clearly among the state’s core functions, and critical to its power and sovereignty. However, national security concerns are often considered largely unconnected to domestic rule of law challenges, in part due to the different tools and approaches required to achieve domestic order and to engage in interstate combat. Thus, most modern states create very distinct agencies and roles for those agencies that provide for domestic rule of law and national security. That is, while there are important exceptions to the rule, states carefully divide domestic and national security functions between the police and the military, respectively, and other supporting elements of the state apparatus (Figure 1).<sup>4</sup>

<b>Figure 1. The Dual Security Functions of the State</b>		
	<i>National Security</i>	<i>Domestic Security</i>
Functions of the state	<ul style="list-style-type: none"> <li>○ Defense of national territory</li> <li>○ Protection of sovereignty</li> <li>○ Human security</li> </ul>	<ul style="list-style-type: none"> <li>○ Maintenance of public order</li> <li>○ Legitimate use of state power</li> <li>○ Protection of individual rights</li> </ul>
Key elements of the security apparatus	<ul style="list-style-type: none"> <li>○ Military</li> <li>○ Intelligence community</li> <li>○ National guard</li> </ul>	<ul style="list-style-type: none"> <li>○ National and local police</li> <li>○ Judicial sector</li> <li>○ Penal system</li> </ul>

While the dual security functions of the state have traditionally been treated as separate and distinct, the lines between domestic and national security challenges have blurred (Figure 2). In recent years, states have increasingly confronted security threats from forces that operate transnationally and rival, outmatch, or simply evade the coercive capability of domestic police forces.<sup>5</sup> The new challenges that states face from

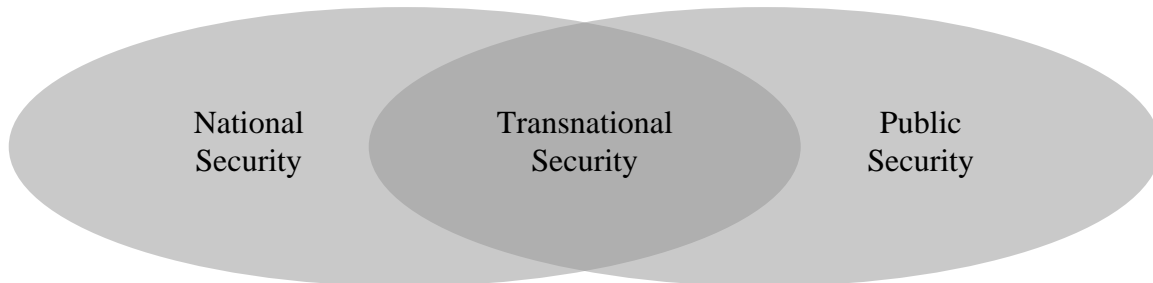
<sup>3</sup> Bislev provides a useful discussion of these themes. Sven Bislev, "Globalization, State Transformation, and Public Security," *International Political Science Review* 25, no. 3. (2004): 281-96.

<sup>4</sup> Some Mexican scholars of policing, for example, assert that Mexico’s tradition of policing actually draws from a blend of national and domestic security functions. José Arturo Yáñez R, *Policía mexicana: cultura política, (in)seguridad y orden público en el gobierno del Distrito Federal, 1821-1876* (Mexico City: Universidad Autónoma Metropolitana: Plaza y Valdés Editores, 1999) and Martín Gabriel Barrón Cruz, Carlos Silva and José Arturo Yáñez Romero, *Guardia Nacional y Policia Preventiva: dos problemas de seguridad en México* (Mexico City: Instituto Nacional de Ciencias Penales; Center for U.S.-Mexican Studies, 2004).

<sup>5</sup> At the same time, the lines have blurred in other ways. For example, the role of the military has changed as the nature of warfare has evolved from strictly interstate conflict to peacekeeping and other interventions in the affairs of wayward or “broken” states. Christopher Coker and International Institute for Strategic Studies, *Globalisation and Insecurity in the Twenty-First Century: NATO and the Management of Risk* (Oxford ; New York: Oxford University Press for the International Institute for Strategic Studies, 2002).

transnational crime and terrorism are due to the fact that the same factors that have boosted legitimate economic activity have also benefited the “illicit economy.”<sup>6</sup> For example, recent work by Bartilow and Eom (2007) suggests that the liberalization of commercial trade is accompanied by an increase in drug trafficking and other transnational crime. According to their findings, increasing interdependence between neighboring states—especially highly asymmetrical states—results in increased illicit flows.

**Figure 2. The Blurring of National and Domestic Security**



Thus, the *dark side of globalization* is that it has allowed relatively small, but highly flexible and loosely constructed, global networks of criminals and terrorists to share information, transfer funds, ensure “just in time” deliveries, and challenge states in ways that were previously impossible.<sup>7</sup> In a “flatter” more “borderless” world, illicit nonstate actors can outmaneuver and even challenge states, using the same financial and physical infrastructure, technologies, and organizational models of globalization.<sup>8</sup> Terrorist and criminal organizations have at their disposal new communications technologies (e.g., cell phones, computers, and the internet) and high-powered weaponry (e.g., improvised explosive devices, mortars, and rockets). Rapid transportation networks and sophisticated supply chains facilitate the smuggling of people, as well as the spread of disease. Thus, nonstate actors and other threats (e.g., pandemic flu) now constitute much more powerful “borderless foes,” and represent a greater threat to the state than ever before.

Adapting to this new reality, states have responded with a *mix of strategies, attempting to employ the instruments of both national and domestic security to address transnational security problems*. For example, many states have attempted to better integrate national and domestic security, modify domestic laws and investigative procedures, and adapt new technologies. At the same time, there has been an ongoing

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<sup>6</sup> H. Richard Friman and Peter Andreas, *The Illicit Global Economy and State Power* (Lanham, MD: Rowman & Littlefield Publishers, 1999); Moisés Naím, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* (London: William Heinemann, 2006).

<sup>7</sup> Of course, nonstate actors are not new threats, and many of the state’s nonstate enemies (e.g. pirates, smugglers, and organized crime) have been around for centuries. Thus, what is new today is the extent to which such forces are now empowered by the global economy, and the increased challenge that they therefore represent for the state.

<sup>8</sup> Kihong Eom and Horace A. Bartilow, “Free Traders and Drug Smugglers: Does Trade Openness Weaken or Strengthen States’ Ability to Combat Drug Trafficking?” (paper presented at the annual meeting of the International Studies Association, San Diego, California, 2006).

trend toward the privatization of security. States are farming out defense contracts to major corporations and private paramilitary forces (e.g., Blackwater) to realize national security objectives and, increasingly, outsourcing domestic security functions to private companies (e.g. prison management). Similarly, implicitly recognizing the limits of state capacity, businesses and ordinary citizens are relying on private firms to provide basic security.

These trends also hold especially significant implications for states and their physical borders.<sup>9</sup> Borders are the crossroads of globalization. They tend to most clearly manifest its promise and its problems, and they are the source of much concern when it comes to trying to guard against external and transnational threats. Since the construction of the Great Wall of China and Hadrian's Wall, states have fortified their territorial borders as a means of protecting their sovereignty. Indeed, while a state's sovereignty may be diminished without crossing its borders, its borders cannot be violated without challenging its monopoly on coercive force and, therefore, its sovereignty. Borders are often treated as the epidermal layer that contains and protects the nucleus (the capital) and vital components (productive centers) of the state; they delineate the boundaries of national identity that establish the greater concept of the "nation-state." Indeed, even in an era of nuclear proliferation, tactical air strikes, and domestic terrorism, agents of the state (e.g., U.S. Border Patrol agents) frequently identify land borders as part of the "first line of defense." Many states have therefore responded to the daunting challenges of the "borderless" world with stricter and more militarized territorial controls.

Yet when it comes to contemporary security challenges, borderlands also tend to fall between the cracks of traditional national and public security approaches. Neither domestic law enforcement agencies nor military units are typically well equipped to manage transborder security challenges. Indeed, while many border security challenges are actually transborder in nature, states tend to resist the development of joint border security operations because such arrangements blur and possibly compromise state sovereignty.<sup>10</sup> Meanwhile, unilateral efforts by states to defend national sovereignty or guard against transnational security challenges through well-fortified borders have not necessarily proved effective. Indeed, one of the ironies of globalization is that states have employed archaic solutions—building walls and deploying border defenses—to address twenty-first century problems like transnational crime and terrorism.

Well before the events of September 11, a number of scholars identified this contradiction. Global economic forces and political incentives have influenced state efforts to reduce illicit transnational flows of goods and people by *militarizing border security and contributing to an inherently hostile environment* with barbed wire, fencing, and armed government patrols, which have exacerbated violence in the borderlands (e.g., minor cross-border clashes between security forces, accidental deaths of migrants

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<sup>9</sup> See, for example: Richard L. Millett, "Weak States and Porous Borders: Smuggling Along the Andean Ridge," in *Transnational Threats: Smuggling and Trafficking in Arms, Drugs, and Human Life*, ed. Kimberley L. Thachuk (Westport, Conn.: Praeger Security International, 2007).

<sup>10</sup> Numerous scholars have begun to draw attention to the internationalization of law enforcement and security initiatives. For example, see: Peter Andreas, *Policing the Globe: Criminalization and Crime Control in International Relations* (New York, N.Y.: Oxford University Press, 2006); Ethan Avram Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA: Pennsylvania State University Press, 1993).

evading border controls, excessive use of lethal force against borderland populations, etc.).<sup>11</sup> According to Andreas (2001), heightened border security provides a highly visible indication that governments are “doing something” to address the challenges of globalization, even though these efforts are largely ineffective.<sup>12</sup> Hence, for Andreas, nation-states’ heightened border security measures are primarily the cynical result of efforts by political entrepreneurs and self-interested government agencies to capitalize on public anxieties about certain aspects of globalization, such as international migration, transnational organized crime, and terrorism. In the end, these efforts are largely ineffective because they do little to address the root causes that contribute to these problems.

### *Transnational Security Challenges in Mexico and the U.S.-Mexico Border Region*

Mexico and the U.S.-Mexico border region provide a useful illustration of the special challenges presented by globalization and the empowerment of nonstate actors. Mexico has not been engaged in a major armed conflict with another state since the nineteenth century. However, it is presently confronted by multiple well-armed and elusive nonstate organizations that test its monopoly on the means of coercion in its defined territory. *Drug cartels, anti-system insurgents, and other violent organizations have been able to leverage the multiple opportunities presented by the new global system—rapid transfers of capital, expanded trade infrastructure to move their goods, and high tech weapons and equipment—to develop highly sophisticated operations that seriously challenge the Mexican state.*

Even strong states would be challenged to respond effectively to such security threats. For example, in recent decades, the United States has struggled with significant challenges presented by drug-trafficking organizations, transnational gangs, and cybercriminals, as well as so-called “fourth-generation” threats—low intensity, long term challenges to national security and sovereignty by nonstate actors—that include both foreign and domestic terrorist organizations. Other modern states, like Great Britain and Spain, have similarly struggled with such challenges, whether combating domestic terrorism (e.g., Northern Ireland and the Basque region) or retaliation from al-Qaeda for supporting the United States. One thing that clear that globalization, technology, and transportation networks can be exploited by nonstate actors in ways that undermine the traditional approaches to security used by states.

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<sup>11</sup> See, for example: Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home* (Austin: CMAS Books University of Texas at Austin, 1996).

<sup>12</sup> For Andreas, nation-states’ heightened border security measures are primarily the result of efforts by political entrepreneurs and self-interested government agencies to capitalize on public anxieties about certain aspects of globalization, such as international migration, transnational organized crime, and terrorism. Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca: Cornell University Press, 2001). See also: Peter Andreas and Thomas J. Biersteker, *The Rebordering of North America: Integration and Exclusion in a New Security Context* (New York: Routledge, 2003); Peter Andreas and Timothy Snyder, *The Wall around the West: State Borders and Immigration Controls in North America and Europe* (Lanham, Md.: Rowman & Littlefield, 2000); Pravin N. Sheth, *Global Terrorism: Melting Borders, Hardened Walls* (Jaipur: Rawat Publications, 2005); Ian Townsend Gault and Heather N. Nicol, *Holding the Line: Borders in a Global World* (Vancouver: UBC Press, 2005); Elia Zureik and Mark B. Salter, *Global Surveillance and Policing: Borders, Security, Identity* (Cullompton ; Portland, Ore.: Willan, 2005).

In the case of states that have a weak or ineffective security apparatus, these challenges are even more difficult to manage. For example, 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. The fact that Mexico has recently undergone a major regime shift from autocratic to democratic rule also complicates the equation, as new democratic elites must ensure that civilian control of both law enforcement and military agencies remains strong. In the following section, I examine Mexico's domestic security context, and the growing dangers presented by transnational security threats in the U.S.-Mexico context. In the process, I give special attention to the way that Mexico's problems spill over into the United States, making it imperative that both countries cooperate to resolve their shared security concerns.

### *Public Security and the Rule of Law in Mexico*

For the last two decades, Mexico has experienced significant domestic public security challenges. Elevated levels of crime and violence have been consistently ranked among the top concerns of Mexican citizens. Yet due to the public's lack of confidence in the justice sector, an estimated 75 percent of all crimes go unreported, further exacerbating Mexico's severe problems of criminal impunity and making it extremely difficult to measure actual levels of crime. Though few reliable crime indicators exist in Mexico, some proxy measures—like the number of criminals arrested for specific crimes—provide useful clues about larger trends over the last few decades.<sup>13</sup> *Beginning in the mid-1970s*, for example, Mexico experienced a series of spikes in the number of suspects identified for certain types of violent crime, particularly robbery.<sup>14</sup> Arrest rates for robbery nearly doubled from 1976 to 1986 (growing from 22 per 100,000 to 40 per 100,000), and increased nearly 50 percent over the next decade (reaching 59 per 100,000 in 1996).<sup>15</sup> By 2005, robbery arrests climbed another 13 percent to 67 per 100,000. These *spikes appeared to follow severe economic crises* that occurred in 1976, 1982, and 1994. Other types of crime, such as assault and rape, also saw significant increases during these same periods.<sup>16</sup> Controlling for population, the arrest rate for assault increased by more

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<sup>13</sup> The rate of accused criminals is a problematic proxy because it only measures the number of suspects identified in cases investigated by authorities, not actual rates of crime. Large numbers of cases are not investigated, and many cases investigated do not yield a suspect. Nonetheless, this variable is somewhat useful because data are suggestive of the overall caseload handled by police, which presumably fluctuates in response to actual levels of crime. Accused suspect data are also available over a relatively long period of time; the INEGI database used by the Justice in Mexico Project dates back to 1926 and is available online at: [www.justiceinmexico.org](http://www.justiceinmexico.org).

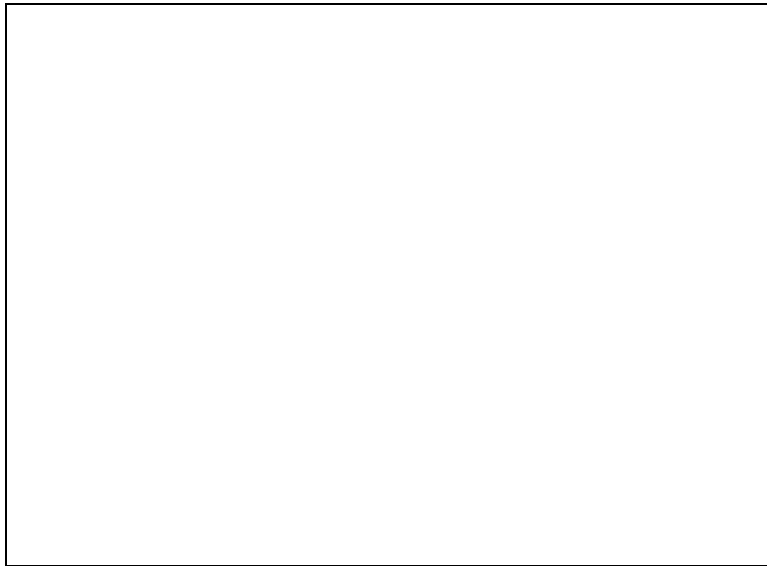
<sup>14</sup> Rates of robbery increased from 24 accused criminals per 100,000 during the five-year period from 1976-1980 to roughly 60 by the five year period from 1996-2000. Source: INEGI data compiled by the Justice in Mexico Project, [www.justiceinmexico.org](http://www.justiceinmexico.org).

<sup>15</sup> These figures reflect only local jurisdiction (*fuero comun*), and exclude federal-level crimes (*fuero federal*).

<sup>16</sup> Controlling for population, the rate of suspects accused of assault increased by more than 10 percent (from about 34 per 100,000) over the course of the 1980s. While the rate of criminals accused of assault dropped to earlier levels over the 1990s, it increased again by 5 percent in the period from 2001 to 2005. More significantly, though data on rape are notoriously problematic, the rate of suspects accused of rape (per 100,000 people) increased by over a third in the late 1980s and again by over 20 percent by the early 2000s.

than 25 percent over the 1980s (from roughly 31 per 100,000 in 1980 to 39 per 100,000 in 1990). While the arrest rate for assault dropped to 31 per 100,000 by 1997, it rose and fluctuated after 2000 (between 34 and 37 per 100,000). While barely visible in comparison to crimes with higher rates of arrest, rape arrests tripled from the 1950s from 1 per 100,000 persons to over 3 per 100,000 in the 1960s, and fluctuated upward by a third to the 2005 rate of roughly 4 per 100,000 persons.<sup>17</sup>

**Figure 3. Public Opinion on the Principal Problems in Mexico, Average 2000-2006**



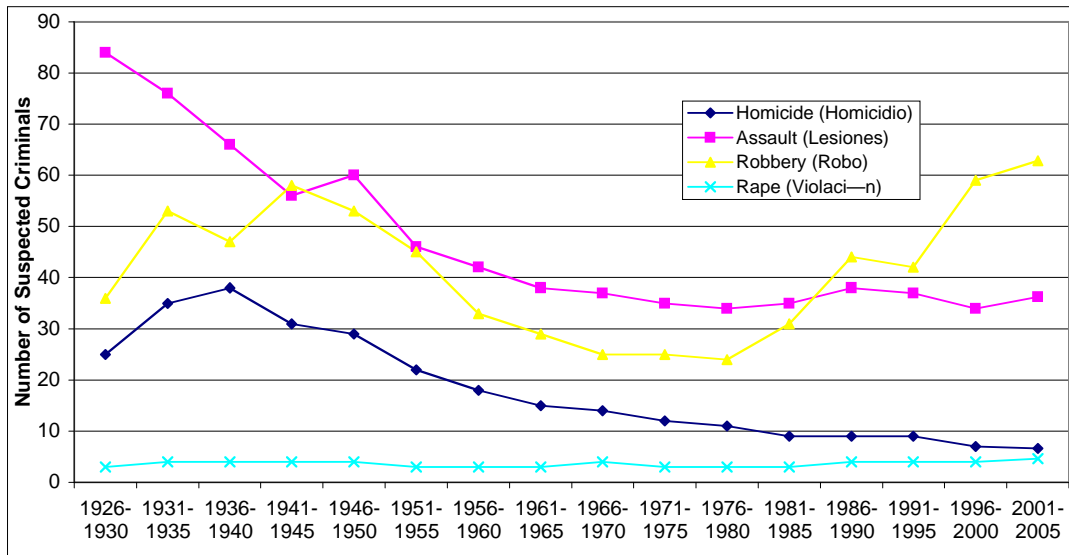
Source: Consulta Mitofsky, "Evaluación Final de Gobierno," November 2006.

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<sup>17</sup> Of course, it must be noted that rape data are notoriously problematic. Both male and female victims are extremely reluctant to report rape crimes. Moreover, historically, crimes against women have been taken less seriously by police in Mexico (and elsewhere). This said, data on arrests demonstrate a remarkable trend over the last 80 years.



**Figure 4. Number of Accused Criminals Per 100,000 Persons for Common and Federal Crimes from 1926-2005 (Homicide, Assault, Robbery, and Rape)**



Source: Data on accused criminals (*presuntos delincuentes*) compiled from INEGI by Pablo Piccato from 1926–2001 and from 2001–2005 by David Shirk and Rommel Rico. This figure expands data previously reported in David Shirk and Alejandra Ríos, “Introduction,” in Wayne A. Cornelius and David A. Shirk (eds.), *Reforming the Administration of Justice in Mexico*, (La Jolla; Notre Dame: Center for U.S.-Mexican Studies; Notre Dame University Press, 2007).

Given the Mexican government’s inability to respond effectively to these challenges, law enforcement and police agencies are much reviled and frequently disparaged. Mexican citizens view their law enforcement authorities as woefully ineffective, thoroughly corrupt, and frequently prone to abusive and criminal behavior. Yet the problem with Mexican law enforcement is rooted in institutional factors that practically guarantee that police will not only fail to adequately serve the public, but will become a menace to society. From the outset, *police*—especially at the local and state levels—are poorly trained and equipped, underpaid, and subject to an incentive system that leads naturally down a twisted path of extortion and corruption. The *criminal justice system* is also organized in a way that creates a major disconnect between critical police functions, undermines effective police investigation, contributes to criminal impunity, and violates the due process rights of criminals. This system is ultimately to blame for the problems of Mexican law enforcement and requires broad and penetrating reforms, some of which are already underway.<sup>18</sup>

In the United States, such reforms only took root around the mid-twentieth century, and required at least a generation and major, targeted investments before law enforcement institutions were truly professionalized. In the 1960s and 1970s, the United States established key provisions to ensure due process for criminal defendants (e.g.,

<sup>18</sup> Elena Azaola, María Eugenia Suárez, and Daniel Sabet provide compelling illustrations of the systemic problems of policing in Mexico in Robert A. Donnelly and David A. Shirk (eds.) *Police and Public Security in Mexico* (San Diego: Trans-Border Institute, forthcoming 2009).

*Miranda v. Arizona*), access to a publicly-funded legal defense (*Gideon v. Wainwright*), and other standards and practices to promote “professional” policing.<sup>19</sup> In effect, due process rights for the accused helped raise the bar for police and prosecutors, promoting the professionalization of the U.S. criminal justice system. At the same time, the U.S. government made important investments in the justice sector. 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 justice sector research through the National Institute of Law Enforcement and Criminal Justice, the precursor to the National Institute of Justice.<sup>20</sup> The point here is that some of the preeminent institutional features of professional law enforcement in the United States were brought about little more than a generation ago.

In short, there is reason to believe that significant improvements in Mexican law enforcement and domestic security can be made over the long term by developing similar initiatives today. In fact, over the last decade, innovations at the subnational level—the introduction of oral trials, alternative dispute resolution mechanisms, and mediation of legal disputes—initiated a groundswell of reforms to Mexico’s criminal justice system in several states (Aguascalientes, Chiapas, Chihuahua, Coahuila, México State, Oaxaca, Querétaro, Nuevo León, and Zacatecas), which finally reached the national level in 2008. In March, four years after President Vicente Fox introduced a similar proposal, Mexico’s Congress approved a sweeping reform initiative introducing major innovations that will overhaul the Mexican criminal justice system over an eight-year period.<sup>21</sup> These changes will move Mexico *away from its traditional inquisitorial model of criminal procedure, and toward an accusatory model* where cases are presented to a neutral judge by opposing counsel, with greater opportunities for plea bargaining, pretrial release, and alternative sentencing. These reforms have also allowed major changes to the structure and function of domestic law enforcement institutions, including the blending of investigative and preventive police agencies under the same umbrella, a shift that may increase the efficiency and effectiveness of criminal investigations.

### *National Security Challenges in Mexico and the Border Region*

These domestic security trends and reforms have occurred in the context of much larger national security concerns. For the last two decades, Mexico has confronted two major types of national security challenges. First, drug trafficking has factored heavily into Mexico’s overall national security picture since the 1980s, when trafficking routes were rerouted through the U.S.-Mexico border. As a country bordering the United States, Mexico has become a natural launching point for drug trafficking, and has faced significant security challenges in recent years as a result. The strength and pervasiveness of narco-trafficking organizations in Mexico is not surprising; it is the result of market dynamics and the heightened integration of the U.S. and Mexican economies. This significantly undermines the state in its dual tasks of achieving basic rule of law and

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<sup>19</sup> [\*Gideon v. Wainwright\*, 372 U.S. 335 \(1963\). \*Miranda v. Arizona\*, 384 US 436,467 \(1966\).](#)

<sup>20</sup> The National Institute of Justice came about as a result of the 1979 Justice System Improvement Act, and included provisions to enhance the collection and analysis of crime and justice sector data through the Bureau of Justice Statistics.

<sup>21</sup> The new reform package brings an end to Mexico’s primarily inquisitorial model of criminal procedure and introduces significant elements of the accusatory procedure used in the United States.

national security. Indeed, in recent decades, domestic law enforcement efforts to confront organized crime and other violent nonstate actors have been limited in their overall effectiveness. The result has been a tendency, dating at least from the 1980s, to rely more heavily on the state's national security institutions to resolve domestic security problems. Consequently, domestic and national security concerns have blurred significantly, particularly along the border.

In the early twentieth century, Mexico was an important but low-level supplier of drugs to the United States, notably with products like marijuana and opium that were homegrown in places like the "Golden Triangle" where the northern states of Durango, Chihuahua, and Sinaloa meet. In the 1970s, increased consumption of cocaine in the U.S. led to the rise of powerful drug cartels in Colombia. During the heyday of the Colombian cartels, most Andean product was moved into the United States via the Gulf of Mexico to Miami. However, as U.S. interdiction efforts in the Gulf gained ground, the Colombians increasingly relied on Mexican smuggling networks and routes into the United States. Later, with the disintegration of Colombia's major cartels in the late 1980s and early 1990s, Mexican cartels began to play a larger role in controlling smuggling routes into the United States. The shift to Mexico as a major drug supplier for the United States came at the same time that the two countries were becoming more economically integrated in legal trade flows in the 1980s.<sup>22</sup>

Mexico's drug cartels have since been divided into regional organizations, all with major operations in northern Mexico. The two most prominent organizations in the 1990s, the Tijuana and Juárez cartels, grew out of the organization developed by Miguel Angel Felix Gallardo after his arrest in 1989. The Tijuana cartel, operated by Gallardo's nephews and nieces in the Arellano-Felix family (including seven brothers, four sisters, and other relatives), is involved in the smuggling of marijuana, cocaine, methamphetamines, and heroin. At its peak, the Arellano Felix Organization (AFO) is believed to have doled out over \$50 million a year in bribes.<sup>23</sup> The other organization, the Juarez cartel, was operated in the 1990s by Amado Carrillo Fuentes, known as the "Lord of the Skies" because he pioneered airborne Mexican smuggling routes into the United States for the Colombians.<sup>24</sup>

Two additional cartels emerged along the Gulf of Mexico and in Sinaloa in the 1990s. First, the Gulf cartel was brought to fruition by Juan García Abrego in the 1980s, who solidified the organization's ties with Colombia's Cali cartel.<sup>25</sup> In 1996, Abrego was arrested and later extradited to the United States, leading to an internal contest for power

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<sup>22</sup> Several scholars noted earlier, notably Glenny and Naim, have documented the empowerment of organized crime networks thanks to technological advances and global trade flows.

<sup>23</sup> Some estimates suggest that bribes from the Arellano-Felix cartel ranged as high as \$75 million per year. Tim Padgett and Elaine Shannon, "The Border Monsters," *Time*, June 11, 2001.

<sup>24</sup> After Carrillo Fuentes mysteriously died—or not, some speculate—on the operating table of his plastic surgeon in 1997, it is believed that Vicente Carrillo Fuentes, the brother of Amado, continued to coordinate the remnants of the Juarez cartel.

<sup>25</sup> The Gulf cartel was originally founded in Matamoros, Tamaulipas in the 1970s by Abrego's uncle, Juan Nepomuceno Guerra, who got his start in cross-border smuggling as a bootlegger in the 1930s. Nepomuceno Guerra was never successfully charged with drug-related offenses, and died on July 12, 2001. Gustavo Castillo Garía and Armando Torres Barbosa, "La historia del *cártel* del Golfo," *La Jornada*, March 15, 2003.

between high-ranking members of the organization over the next several years.<sup>26</sup> After a series of clashes and betrayals, Osiel Cárdenas Guillén, a former “madrina,” or quasi-official police hit man, emerged as the new leader of the Gulf cartel.<sup>27</sup> After his arrest in 2003, Cárdenas continued from his jail cell to coordinate the cartel’s operations—including masked commando units known as *Zetas*, apparently comprised of corrupt, former elite military forces in his employ—until he was extradited to the United States in January 2007.<sup>28</sup> A second cartel, known as the Sinaloa cartel, was started in the 1970s by Héctor “El Guero” Palma Salazar, who broke with Gallardo to form his own organization. After Palma was arrested in 1995, Ismael Zambada, Joaquín Guzman Loera (alias “Shorty,” or El Chapo), and members of the Beltran Leyva family took over the cartel’s operations. The Sinaloa cartel subsequently developed several enforcer groups—Los Negros, Los Pelones, and La Gente Nueva—to counter the Gulf cartel’s *Zeta* commandos and is believed to work with transnational gangs (like the Mara Salvatrucha and the Mexican Mafia) operating in the United States.

Each of the cartels has suffered major blows in the last decade, and the resulting rivalries and disequilibrium within and among their organizations brought a cascade of violence. In 2002, Ramón Arellano Felix was killed in a shoot-out with police in Sinaloa (possibly in a clash with Zambada), and Benjamín Arellano Felix was arrested by Mexican authorities in a hideout in the state of Puebla. That same year, the arrest of drug kingpin Osiel Cárdenas and top lieutenant Adán Medrano Rodríguez severely weakened the Gulf cartel. In 2004 and 2005, respectively, Juan José “El Azul” Esparragoza Moreno and Ricardo Garcia Urquiza, major leaders of the Juárez cartel’s operations, were arrested. In the wake of these upsets, the major cartels appeared to be locked in an intense struggle for control, with the remnants of the Tijuana and Gulf cartels battling the Juárez and Sinaloa cartels, whose allied forces became known as “The Federation” or the “Golden Triangle” alliance.<sup>29</sup> The result was a *wave of violence that began to intensify in 2004 and through 2005*: the retaliatory murder of half a dozen Matamoros prison guards, the brazen assassination of Nuevo Laredo police chief Alejandro Dominguez only hours after being sworn in, thousands of drug-related homicides, and a series of kidnappings and assaults throughout the region.<sup>30</sup> Over the next few years, drug violence in Mexico reached unprecedented proportions, with brutal violence that included killings, kidnappings, assaults, gun battles in the public square, and a series of gruesome beheaded and dismembered bodies appearing in states like Baja California, Chihuahua, and Guerrero.

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<sup>26</sup> Vying for power were Salvador “El Chava” Gómez; 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. Gustavo Castillo Garía and Armando Torres Barbosa, “La historia del *cártel* del Golfo,” *La Jornada*, March 15, 2003.

<sup>27</sup> Cárdenas 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>28</sup> Thereafter, the cartel’s operations continued under his brother Antonio “Tony” Esquiél Cárdenas Guillén and top lieutenant, Jorge “El Coss” Eduardo Costilla.

<sup>29</sup> Jason Trahan, Ernesto Londoño, and Alfredo Corchado, “Drug Wars’ Long Shadow,” *Dallas Morning News*, December 13, 2005.

<sup>30</sup> George Grayson, “Los Zetas: the Ruthless Army Spawned by a Mexican Drug Cartel,” Foreign Policy Research Institute, <http://www.fpri.org/enotes/200805.grayson.loszetas.html> (accessed July 19, 2008).

Because the Mexican government did not release official data on the number of drug-related killings until 2008 (and still releases such data only sporadically), the best available estimates for drug violence in recent years have come from news sources that track the figures informally. According to data compiled by the Mexican newspaper *Reforma*, the number of drug-related killings in Mexico totaled around 1,500 in 2005, over 2,100 in 2006, and 2,300 in 2007 (Figure 5). A systematic analysis of drug-related murders reveals that central Mexican states like Michoacán and Guerrero experienced the largest number of killings in 2006.<sup>31</sup> Later, however, the greatest number of drug killings shifted to northern and border states, with the most violence 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 2006 and 2007, the national rate of cartel-related killings stood at 2.1 and 2.3 per 100,000, respectively.

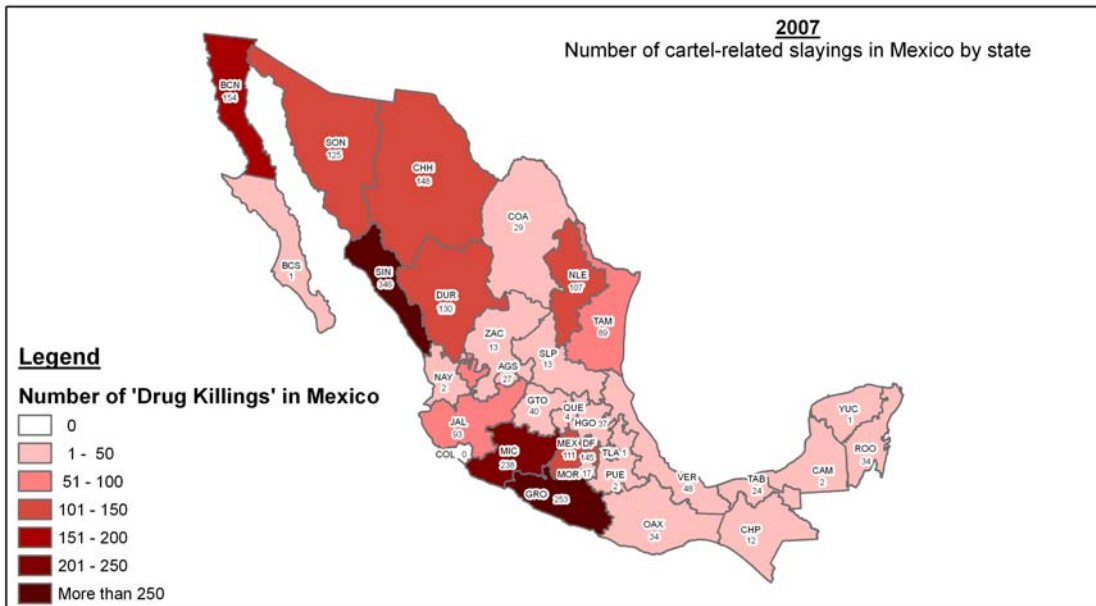
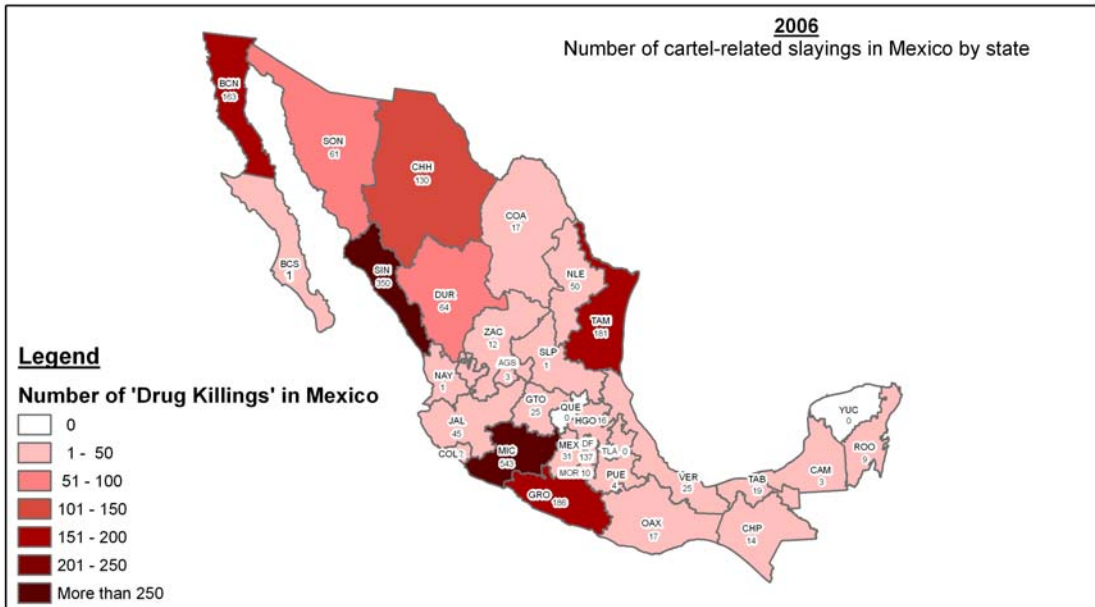
In 2008, Mexico experienced a dramatic escalation of cartel-related violence, with *Reforma* tracking a total of more than 5,000 cartel related killings (the government reported more than 6,000). By 2008, cartel-related killings became overwhelmingly concentrated along the border and especially the state of Chihuahua, with over 1,600 killings that year. Chihuahua's rate of killings increased fivefold to 49.3 per 100,000 people; nearly double the rate in Sinaloa (now more than 25.7 per 100,000) and more than 15 times the national rate (5 per 100,000). Hence, over the last four years, drug-related violence in Mexico has resulted in over 12,000 deaths, including at least 500 police officers, soldiers, and public officials.<sup>32</sup> Still, despite the large volume of cartel-related killings, Mexican officials claim that homicide rates in Mexico have remained at approximately 10 murders per 100,000 in recent years. This remains significantly lower than the rate of more than 90 killings per 100,000 people that accompanied drug- and paramilitary- conflict in Colombia during the late 1980s and early 1990s.

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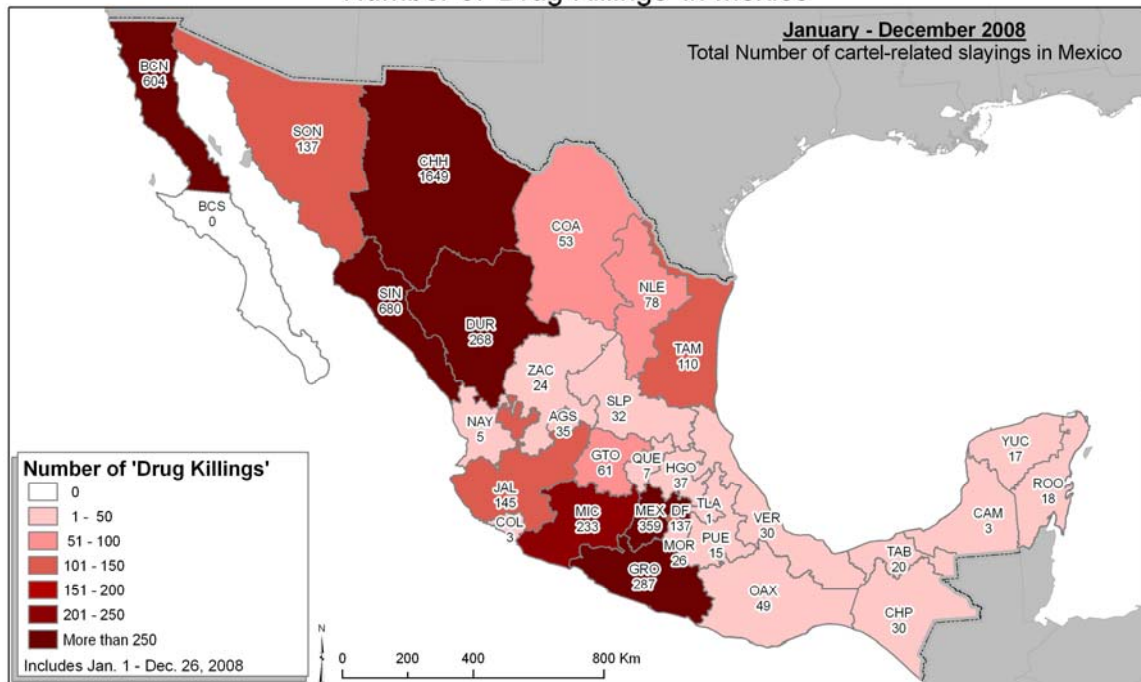
<sup>31</sup> In 2006 and 2007, Central Pacific Mexican states experienced the most killings, with 346 drug killings in Sinaloa (13.27 per 100,000), 238 in Michoacán (5.96 per capita), and 256 in Guerrero (8.03). In relative terms, Durango ranked among the top three states with the most drug killings, since its 130 killings in 2007 constituted a rate of 8.45 per 100,000.

<sup>32</sup> The Mexican attorney general's office released official figures in August which noted the deaths of more than 450 police officers between December 2006 and June 2008. At the time this paper was written, there were more than 50 police and military personnel murdered after June 2008 according to the newspaper *Reforma*.

**Figure 5. Drug Killings in Mexico By State from 2006 through 2008**



## Number of 'Drug Killings' in Mexico



Source: Trans-Border Institute. <http://www.sandiego.edu/tbi/projects/maps.php>. Maps reflect the state and national totals of cartel-related slayings in Mexico (“*ejecuciones*” and “*narcoejecuciones*”) obtained from data provided by *Reforma* newspaper. Maximum values are: 543 (Michoacán) for 2006, 346 (Sinaloa) for 2007, and 1,649 (Chihuahua) through December 26, 2008. Maps developed by Judith Davila, Robert Donnelly, Theresa Firestine, Ruth Gómez, Cory Molzahn, Charles Pope, and David Shirk.

U.S. officials initially responded to these trends with public admonitions of Mexico’s insufficient efforts in the war on drugs. In 2005, U.S. border governors Bill Richardson and Janet Napolitano of New Mexico and Arizona, respectively, declared states of emergency along their southern borders and called for Mexico to do more to control drug trafficking and border violence. U.S. Ambassador Tony Garza issued two State Department warnings for visitors traveling to Mexico, and subsequently closed the U.S. consulate in Nuevo Laredo in what Garza described as an American effort to “punish” Mexico for its failure to control the drug situation.<sup>33</sup> Such repudiations belie long-standing U.S. concerns about Mexico’s evolution as a major drug-trafficking conduit, and a number of high profile setbacks that have seriously undermined U.S.-Mexico collaboration over the past two decades: the torture and murder of U.S. Drug Enforcement Administration agent Enrique Camarena in 1985 due to alleged Mexican corruption, the discovery of the high-level corruption of Mexican drug czar Jesus Gutierrez Rebollo in 1997, and the defection of U.S.-trained commando forces (GAFES) that formed the *Zetas* in 2001.

Meanwhile, Mexico has its own concerns about the United States. The proximity of the United States is a serious liability for Mexico since the U.S. is the world’s largest market for drugs. Despite at least \$15 billion in annual federal anti-drug expenditures, U.S. efforts have been unsuccessful in significantly reducing domestic drug

<sup>33</sup> Dudley Althaus, et al., “Border Travelers Warned of Violence,” *The Houston Chronicle*, 2005; Reuters News Service, “Mexico Scolds U.S. Ambassador for ‘Punish’ Boast,” *The Houston Chronicle*, 2005.

consumption.<sup>34</sup> Proximity to the United States and the proliferation of local trafficking networks (*narcomenudeo*) have also contributed to *increasing drug consumption in Mexico*. In addition, the United States serves as the primary source for illegal weapons for drug traffickers. Mexican authorities believe that the vast majority—over 80 percent—of weapons used by organized crime in Mexico, where civilian gun ownership is prohibited, are smuggled into the country from the United States. An estimated 6,700 gun shops can be found along the U.S.-Mexico border alone, making it possible for Mexican criminal organizations to access high-powered weaponry and ammunition with relative ease; while the region has an estimated 16,000 U.S. border patrol agents, there are only 100 U.S. firearms agents and 35 gun inspectors.<sup>35</sup>

Furthermore, the United States can be a conveniently located refuge for criminals evading Mexican authorities. High-level Mexican criminals frequently reside (or seek haven) in the United States, particularly in the U.S.-Mexico border region where wealthy criminals live in luxury homes north of the border.<sup>36</sup> Assessments by the National Drug Intelligence Center and media reports suggest that American Indian reservations have also served as jurisdictional havens for drug traffickers operating in the United States.<sup>37</sup> In addition, in recent years, violent clashes between Mexican cartels have played out on the U.S. side of the border, with kidnappings and murders of Mexican cartel agents in the United States and the flight of Mexican cartel agents into the United States to avoid arrest or assassination in Mexico.<sup>38</sup>

The reach of Mexican drug trafficking organizations into the United States is not confined to the border region. In 2008, *the National Drug Intelligence Center (NDIC)*

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<sup>34</sup> Estimates of total U.S. expenditures in the war on drugs vary widely. In the *National Drug Control Strategy: FY 2009 Budget Summary*, the Office of National Drug Control Policy identified \$14.1 billion in counter-drug expenditures across 12 agencies that deal with demand and supply reduction. The ONDCP tallies federal expenditures in the following departments: Defense, Education, Health and Human Services, Homeland Security, Interior, Justice, Small Business Administration, State, Transportation, Treasury, and Veterans Affairs. ONDCP estimates for FY 2009 do not include the supplemental request of \$385 million for the Mérida Initiative, nor do they account for state and local anti-drug expenditures, such as expenditures on detention facilities used to house drug offenders. Total U.S. anti-drug expenditures are estimated to be in excess of \$30 billion. See:

<http://www.whitehousedrugpolicy.gov/publications/policy/09budget/index.html>; National Research Council, "Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us" National Academy of Sciences, (Washington, DC: National Academy Press, 2001), p. 1.

<sup>35</sup> For a number of years, the U.S. government has been working to make "eTrace," its registered firearms database, more accessible to Mexican officials, though the program is not currently available in Spanish to most Mexican law enforcement agencies. Richard A. Serrano, "U.S. Guns Arm Mexican Drug Cartels," *Los Angeles Times*, August 10, 2008.

<sup>36</sup> For example, members of the Arellano Felix organization maintained residences in the United States, possibly because of the additional protection that this afforded members of their family. For example, Ruth Corona de Arellano, the wife of Benjamin Arellano, resided in Chula Vista, a U.S. city neighboring Tijuana. "A Priest and a Crime Caper," *Newsweek*, June 17, 2002.

<sup>37</sup> "In some cases, outside drug gangs work with Indian criminals to distribute drugs on Indian and non-Indian lands. And on a growing number of reservations, drug traffickers — particularly Mexican criminals — are marrying Indian women to establish themselves on reservations." Sarah Kershaw, "Drug Traffickers Find Haven in Shadows of Indian Country," in the *New York Times*, February 19, 2006. See also: National Drug Intelligence Center, *Indian Country Drug Threat Assessment*, U.S. Department of Justice, June 2008.

<sup>38</sup> Miguel Bustillo, "Mexico Drug War's Costs, Risks Exported to U.S.," *Los Angeles Times*, August 17, 2008; "Chula Vista Kidnapping Raises Fears that Crimes Related to Drug Cartels Making Their Way North," in *North County Times*, July 8, 2007.



reported that Mexican drug cartels have operations in 109 cities throughout the United States, with a strong concentration in the U.S. Southwest (including 27 cities in California primarily operated by the Tijuana-based Arellano Félix cartel). There are also serious concerns about the integrity of U.S. law enforcement officials, as evidenced by over 340 new corruption cases filed against U.S. Border Patrol agents from October 2003 through April 2008.<sup>39</sup> According to one Customs and Border Protection internal affairs agent, "It's going to get worse before it gets better ... It's very difficult for us to get out and vet each and every one of the applicants as well as we should."<sup>40</sup>

In short, the problem of drug trafficking is highly destabilizing for Mexico, and has important ramifications for U.S.-Mexico border security. Mexico's recent instability also has implications for other potentially serious national security concerns. Since the 1960s, Mexico has been persistently plagued by radical insurgent groups that have launched guerrilla and terrorist attacks against the state with a wide range of objectives. At least three deserve special note. First, the Zapatista National Liberation Army (EZLN), which launched an insurgency in the southeastern state of Chiapas, is arguably the best known and most readily identifiable insurgent group. The EZLN has remained relatively contained after military operations in 1995 and the 1996 signing of the San Andrés Accords, though the organization continues to be armed and highly critical of the Mexican government. Meanwhile, the Popular Revolutionary Army (EPR), founded in the 1960s, has been primarily based in the southwestern states of Guerrero and Oaxaca. Several terrorist attacks have been attributed to the EPR in recent years: explosions outside the Mexico City offices of the Institutional Revolutionary Party in November 2006, attacks on natural gas pipelines in central Mexico in July 2007, and the explosion of oil pipelines in Gulf Coast states in September 2007.<sup>41</sup> Another insurgent organization that has posed a threat to the Mexican state in recent years is the Popular People's Assembly of Oaxaca (APPO). APPO emerged in the course of a teacher's strike that grew militant in late 2006. The organization has espoused socialist ideologies, as well as objections to the sitting government (due in part to the contested presidential election that year).

While the prospect of insurgency is not an immediate threat, particularly along the northern border, there is reason to believe that Mexico's current political and security situation may be growing more precarious. Consequently, insurgent groups may perceive a real opportunity to challenge the Mexican state directly. Moreover, the possibility of drug trafficking organizations resorting to political violence—as opposed to mere internecine conflict—remains uncertain. *Officials believe that drug trafficking organizations—namely the Zetas—were involved in a grenade attack that targeted civilians in the central plaza of Morelia, Michoacán on September 15, 2008 during celebrations for Mexican Independence Day. This represents the first major incident in which drug trafficking organizations have deliberately crossed the line between organized crime and terrorist activities seeking to harm the civilian population.*

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<sup>39</sup> These corruption cases also included border patrol agents found to have accepted bribes or assisted undocumented immigrants. Randal C. Archibald and Andrew Becker, "Border Agents, Lured by the Other Side," *New York Times*, 2008.

<sup>40</sup> *Ibid.*

<sup>41</sup> There is some doubt about whether the EPR was in fact responsible for all of these attacks, despite their efforts to claim credit. Ejército Popular Revolucionario, "Comunicado del EPR (texto íntegro)," *El Universal*, 2007.

This raises the final question of terrorism, which has been a central preoccupation of the U.S. government along the border since September 11. It is remarkable that *since September 11 there has not been a single known case of attempted entry into the United States on either the southern or northern border*. This suggests that efforts to sort through the haystack of millions of daily border crossers have either been largely ineffective, or otherwise unnecessary. That is, if terrorists are coming across the border, then they are doing so undetected; if not, our extremely costly efforts to deter them are not necessarily any more effective than the system that was in place prior to September 11. The fact that drug trafficking organizations have become more fragmented and less predictable raises very serious concerns for some U.S. security agencies, which have long feared that Mexican organized crime groups could develop links to terrorist organizations seeking to cause harm to the United States. Ironically, current strategies to combat organized crime in Mexico may actually be making this possibility a more real and present danger.

#### *Addressing Transnational Security Challenges*

In recent years, U.S.-Mexico collaboration on security matters has shown some signs of improvement. *Notwithstanding the temporary prohibition of extraditions in cases between 2001-2006 that resulted in a life sentence, the number of extraditions from Mexico to the United States grew at record levels during the same period*. Indeed, during the latter part of the 1990s, the number of extraditions from Mexico to the United States averaged around 11 per year, yet this rate more than tripled by the end of the Fox administration. *Since President Calderón took office in 2006, the number of extraditions has grown dramatically*. This trend toward greater bilateral U.S.-Mexico collaboration has been complemented by proposals for larger, regional security agreements involving Canada and Central America. In fact, such proposals have become a partial reality with initiatives such as the U.S.-Canada and U.S.-Mexico “Smart Border” agreements, which articulated specific objectives and areas for collaboration in ensuring secure and efficient cross-border flows. In March 2005, Canada, Mexico, and the United States went one step further by “trilateralizing” security collaboration with the creation of the Security and Prosperity Partnership (SSP), an agreement to identify shared goals and coordinate security strategies between the three countries.

Subsequently, during his 2007 goodwill tour of Latin America, President George W. Bush had conversations with Guatemalan President Oscar Berger and President Felipe Calderón that laid the groundwork for the development of a regional security plan. In March 2007, Presidents Bush and Calderón held a summit in Mérida, Yucatán that led to the announcement a \$1.4 billion package of U.S. aid to help fund Mexican and Central American counternarcotics initiatives over a three-year period. The Merida Initiative (*Iniciativa Mérida*) was approved by Congress in June 2008, and constituted the first major attempt to aid the Mexican military and domestic law enforcement in efforts to combat narcotrafficking and organized crime. Although critics worried about the possibility of corruption or human rights violations, President Calderón rejected any conditions on the aid, and President Bush lobbied Congress to approve the measure “without many conditions.”<sup>42</sup> The plan also includes efforts to promote greater information sharing and new equipment, technology, and training for surveillance, aerial

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<sup>42</sup> “Aprobó el Senado de EU la Iniciativa Mérida, pero le pellizcó 50 mdd,” *La Crónica de Hoy*, 2008.

transport, land and sea interdiction, and border security.<sup>43</sup> At the same time, due to concerns about corruption in Mexican law enforcement, Congress imposed specific provisions intended to promote progress toward the development of police professionalization in Mexico.<sup>44</sup> *In the first year of the agreement, roughly a third of the funding (\$334 million) has been appropriated to the Mexican military, which is viewed as having more integrity than domestic police forces.*

In the end, the key question is whether such regional initiatives can lead to the development of a more comprehensive approach to security that effectively counters the transnational challenges facing Mexico and the U.S.-Mexico border today. Greater binational security collaboration may certainly help to address a wide array concerns affecting the border region: the smuggling of U.S. arms to Mexico by organized crime groups; increasing problems of drug abuse and *narcomenudeo* along the border; crime, violence, and human rights violations against migrants and victims of human trafficking; and the proliferation of transnational gangs, such as the Mara Salvatrucha (MS-18 and MS-13).

### *Concluding Observations and Recommendations*

The foregoing discussion suggests that the lines between national and domestic security have become increasingly blurred, posing significant challenges for Mexico and the U.S.-Mexico border region. One part of the solution is to bolster Mexico's domestic public security apparatus, which currently suffers from severe problems of corruption and overall ineffectiveness. Yet, while such efforts can provide an important foundation, domestic initiatives alone cannot be successful in combating larger transnational security challenges. In the last three years, the prevalence of powerful, violent drug trafficking organizations in particular has resulted in unprecedented carnage—over 7,000 violent deaths—in Mexico and along the U.S.-Mexican border, with significant implications for the United States. Along with its neighbors in North America—the United States and Canada—Mexico has begun working multilaterally to address these problems, both through the Security and Prosperity Partnership and the new Mérida Initiative.

Considering these developments, I offer three main conclusions and recommendations. First, *Mexico cannot stand alone* in its efforts to combat transnational security challenges, whether in reference to possible international terrorism or the more immediate dangers presented by drug trafficking. *The United States has an obligation (if not to Mexico, then to its own security interests) to collaborate with Mexico to address these challenges.* Movement toward stronger bilateral and multilateral cooperation should be encouraged and strengthened in the new administration. This should move forward by strengthening the Security and Prosperity Partnership, developing clear institutional mechanisms for joint collaboration on the agreement. The SSP is currently coordinated through the respective executive branches of the three participant countries, and lacks a formal, permanent structure for coordination. Such a mechanism would help to ensure greater consistency, transparency, and protections for domestic sovereignty, and might

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<sup>43</sup> *Merida Initiative to Combat Illicit Narcotics and Reduce Organized Crime Authorization Act of 2008*, HR 6028, 110<sup>th</sup> Cong.

<sup>44</sup> The Mérida Initiative specifies that no funds be allocated to the Mexican Public Security Secretariat until the government's National Registry of Police Personnel is fully operational, and also emphasizes the need for comprehensive rule of law reform in Mexico.

include a permanent trilateral congressional commission to ensure proper oversight. Meanwhile, efforts to combat transnational security threats should also focus on improving cooperation at lower levels to combat arms smuggling, thwart money laundering, and facilitate cross-border extraditions and prosecutions (e.g., Article 4 and other mutual legal assistance). Bilateral cooperation in these areas weakens drug cartels and other organized crime groups by disrupting their command structures and making it more difficult for them to do business in the short term.

Second, the success of Mexico's justice sector reform initiatives over the next decade will be key to its longer-term ability to promote overall security and prosperity. As Mexico's partners, the United States and Canada share a strong interest in promoting the rule of law in Mexico. This will require more than mere changes in criminal legal procedure. *Effective criminal justice systems are supported by a professional legal community and security apparatus (e.g., bar-certified lawyers, paralegal assistants, highly educated police officers), adequate physical infrastructure (e.g., modern courtrooms, penitentiary facilities), and sophisticated information systems and analysis (e.g., national crime statistics monitoring, criminal databases, forensics investigation).* The United States and Canada have much to offer in the way of formal governmental assistance (e.g., USAID Rule of Law programs), as well as academic and non-governmental programs that work to promote the rule of law in Mexico (e.g., CALEA, Justice in Mexico Project, Open Society Justice Initiative, American Bar Association, National Center for State Courts). Given the blurring of the lines between "domestic" and "national" security challenges, such efforts will help to address larger transnational security challenges in Mexico and the border region.

Finally, while both of the above recommendations offer important guidance on improving security in the U.S.-Mexico context, they ignore the elephants in the room. The two most urgent problems in the U.S.-Mexico relationship are undocumented immigration and drug trafficking. Both have been persistent problems in the U.S.-Mexico context for over two decades. Both have extraordinary consequences for the U.S.-Mexico border region, but restrictionist policies have not demonstrated much success in either case. This is because both problems reflect powerful cross-border market forces that cannot reasonably be reduced without addressing their root causes: the enormous demand for undocumented labor and illegal drugs. Sometimes when there is a strong moral imperative and/or when demand is relatively weak—as in the case of child pornography, for example—fighting the black market demand makes sense from a cost-benefit perspective. That is, the social or economic harms are great, while the relative costs of fighting demand are acceptable. But for undocumented immigration and drug consumption, the costs of fighting black market demand have greatly increased in recent years. In both cases, there has been a growing sentiment—championed not only by migrant rights activists and drug legalization groups, but even by respected economists—that the costs of immigration and drug restriction have begun to outweigh the benefits.<sup>45</sup>

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<sup>45</sup> On the immigration question, the *Wall Street Journal* has published numerous editorials defending the importance of immigration, and advocating comprehensive immigration reform. See: "The GOP's Immigration Fumble," *Wall Street Journal*, August 1, 2002. With regard to drug legalization, an open letter by eminent economists, including Nobel Laureate Milton Friedman, advocates for the legalization of marijuana as a means of saving \$7.7 billion per year in law enforcement efforts, and generating a minimum of \$2.4 billion annually in sales taxes (and as much as \$6.2 billion if a vice tax is applied). See: <http://www.prohibitioncosts.org/endorsers.html> (accessed October 31, 2008).

While recent efforts by the U.S. Congress failed to produce comprehensive immigration reform, they did initiate a national conversation on the possible accommodation of demand for Mexican labor. Today, as several U.S. state governments have begun to promote the decriminalization of drugs or even allow recreational and medicinal use of marijuana, a similar conversation is in order regarding the costs and benefits of the war on drugs.<sup>46</sup> In October 2008, the Mexican executive branch introduced a proposal to decriminalize drugs by eliminating jail time for minor drug possession; representatives of the opposition PRD introduced a measure that would fully legalize the cultivation, distribution, sale, and consumption of the drug. Unfortunately, legalization of marijuana is unlikely to reduce the power of Mexican drug cartels because it represents a relatively small portion of their revenues, and (relatedly) because the United States market depends very significantly on domestic production and, to a lesser extent, imports from Canada. Thus, any serious consideration of drug legalization as a means to reduce the power of organized crime must look at the potential consequences of an across-the-board legalization of highly addictive and dangerous narcotics, such as cocaine and heroin. Such an approach to drug legalization would no doubt bring enormous costs for society, placing a severe burden on the medical system and increasing problems of public safety related to substance abuse (e.g., D.U.I. violations, interpersonal violence, etc.). However, the full extent of these costs are largely unmeasured because we have not seriously asked whether legalization is a viable option. As Mexico's security situation grows bleaker and the costs increasingly spill across the border, there is a stronger rationale to begin asking that question.

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<sup>46</sup> The pro-legalization group NORML identifies eleven states that have effectively decriminalized narcotics by reducing sentences (especially eliminating jail time) for minor drug-related offenses, such as small-scale possession: Alaska, California, Maine, Minnesota, Mississippi, Nebraska, New York, Nevada, North Carolina, Ohio, and Oregon. Ten states allow medical use of marijuana: Alaska, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, and Rhode Island. According to their survey of state drug penalties, Alaska is the only state that allows minor possession at home without a medical prescription. See: [www.norml.org](http://www.norml.org).