

INTERNATIONAL
COUNTER-TERRORISM
REVIEW

VOLUME I, ISSUE 4

August, 2020

The War Next Door

Narcoterrorism, Legal Challenges, and
Lessons Learned from the Mexican
Military's Engagement in the War on Drugs

SEAN F. O'BRIEN

ABOUT ICTR

The International Counter-Terrorism Review (ICTR) aspires to be the world's leading student publication in Terrorism & Counter Terrorism Studies. ICTR provides a unique opportunity for students and young professionals to publish their papers, share innovative ideas, and develop an academic career in Counter-Terrorism Studies. The publication also serves as a platform for exchanging research and policy recommendations addressing theoretical, empirical and policy dimensions of international issues pertaining to terrorism, counter-terrorism, insurgency, counter-insurgency, political violence and homeland security. ICTR is a project jointly initiated by the International Institute for Counter-Terrorism (ICT) at the Interdisciplinary Center (IDC), Herzliya, Israel and NextGen 5.0.

The International Institute for Counter-Terrorism (ICT) is one of the leading academic institutes for counter-terrorism in the world. Founded in 1996, ICT has rapidly evolved into a highly esteemed global hub for counter-terrorism research, policy recommendations and education. The goal of the ICT is to advise decision makers, to initiate applied research and to provide high-level consultation, education and training in order to address terrorism and its effects.

NextGen 5.0 is a pioneering non-profit, independent, and virtual think tank committed to inspiring and empowering the next generation of peace and security leaders in order to build a more secure and prosperous world.

COPYRIGHT

This material is offered free of charge for personal and non-commercial use, provided the source is acknowledged. For commercial or any other use, prior written permission must be obtained from the International Counter-Terrorism Review (ICTR). In no case may this material be altered, sold or rented.

The International Counter-Terrorism Review (ICTR) does not generally take positions on policy issues. The views expressed in this publication are those of the author and do not necessarily reflect the views of the organisation.

© The International Counter-Terrorism Review – (ICTR)

CONTENTS

Introduction	5
Drug Violence as Narcoterrorism	6
The Legality of Military Policing	10
Causes of the Military Strategy Failure	14
Conclusion	18

ABSTRACT

This paper argues that some cartel violence against civilians constitutes an act of terrorism under Mexican law. However, Mexico avoids labeling it as such because it may cost the government legitimacy and invite foreign interference. This paper also demonstrates that Mexico has maintained the use of military force against cartels despite a constitutional foundation that forbids military policing. Finally, having established the Mexican Drug War as a case of use of military force against a terrorist threat, this paper argues that the Mexican military strategy of targeting cartel leadership has failed due to three main factors.

Keywords: *Counterterrorism, Mexico, Cartels, Narcoterrorism, Law, Drug War*

INTRODUCTION

At dawn on June 26th 2020, members of the New Generation Jalisco Cartel conducted a coordinated ambush targeting Omar García Harfuch, Mexico City's most senior law enforcement officer, who had recently conducted several high-profile cartel arrests. The attack failed to kill García Harfuch but exhibited a strong show of force, demonstrating the Mexican government's persistent inability to combat the cartels and that the Mexican Federal District is no longer insulated from the violence that has gripped the country since 2006.¹ The current government under President Andrés Manuel López Obrador is being overtly challenged by the cartels through such high-profile attacks and cartel propaganda. The Mexican government has been unable to maintain a monopoly on violence within its borders and, at times, has been incapable of subduing competing cartel power structures in cities influenced by cartel corruption and violence.²

When considering a death toll that has reached over 120,000 individuals and overt armed resistance against the Mexican government in order to sustain an illicit market, cartel violence toes the line between simply a criminal matter and a serious national security threat such as terrorism.³ Such an unclear distinction begs the question: what level of force can the cartel threat legally be met with, and for how long? Similarly, why has the use of force against the cartels failed to improve the security situation over the past thirteen years?

This paper seeks to provide an answer to the aforementioned issues. This work first argues that cartel violence against civilians for political ends in Mexico legally constitutes an act of terrorism. The second point shows how Mexican administrations have been able to apply military force against the cartels despite constitutional restrictions on military policing. Finally, having established the Mexican Drug War as a case of the use of military force against a domestic terrorist threat, this paper argues that the Mexican military

¹ Andrew Rennemo, "Inside the Attack That Shocked Mexico City," *Geopolitical Monitor*, July 20, 2020, <https://www.geopoliticalmonitor.com/inside-the-attack-that-shocked-mexico-city/>.

² Conrad Duncan, "Powerful Mexican Drug Cartel Shows off Troops with Military-Style Weapons and Armoured Vehicles," *The Independent*, July 18, 2020, <https://www.independent.co.uk/news/world/americas/mexico-drug-cartel-video-jalisco-new-generation-weapons-military-cjng-a9626246.html>.

³ Laura Y. Calderón et al., "Organized Crime and Violence in Mexico" (University of San Diego, April 2019), 15, <https://justiceinmexico.org/wp-content/uploads/2019/04/Organized-Crime-and-Violence-in-Mexico-2019.pdf>.

strategy of targeting cartel leadership has failed due to the decentralized structure of the cartels, the geographic importance of Mexico within the drug markets, and the profit-driven nature of narcoterrorism.

DRUG VIOLENCE AS NARCOTERRORISM

This work seeks to bring to light insights from the application of Mexican military force against non-state actors in order to inform a variety of insurrection suppression operations not limited to counter drug trafficking. In order to do so, one must first establish that the cartel threat to the Mexican government meets the definition of terrorism or, in this case, narcoterrorism. The purpose of applying the terrorist label is not to elicit an extreme political reaction or outside intervention, but rather to categorize the Mexican Drug War with comparable grey zone conflicts with insurgencies.⁴ Similarly, establishing the conflict in a domestic terrorist context evokes the legal dilemmas posed by applying the military in a situation that is neither criminal nor formal armed conflict.

There is no singular dominant definition for terrorism.⁵ Different governments, agencies, and organizations utilize separate definitions for terrorism that fit their own purposes and interests. States are individually responsible for what happens inside their borders and determine their domestic terrorism laws and methods of enforcement as they see fit.

⁴ The grey zone is “metaphorical state of being between war and peace, where an aggressor aims to reap either political or territorial gains associated with overt military aggression without crossing the threshold of open warfare with a powerful adversary.” See “Abhijit Singh, “Between War and Peace: Grey-Zone Operations in Asia,” *Australian Institute of International Affairs*, February 13, 2018, <http://www.internationalaffairs.org.au/australianoutlook/paramilitaries-grey-zone-operations-asia/>.

An insurgency is “the organized use of subversion and violence to seize, nullify, or challenge political control of a region.” See “Joint Publication 3-24,” Joint Chiefs of Staff, April 25, 2018, https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_24pa.pdf.

⁵ Alex P. Schmid and Albert J. Jongman established that there is no singular dominant definition for terrorism. One popular academic definition is suggested by Boaz Ganor. Ganor suggests, “Terrorism is the deliberate use of violence against civilian targets by a non-state actor to achieve political aims.” See Albert J. Jongman and Alex P. Schmid, *Political Terrorism: A New Guide To Actors, Authors, Concepts, Data Bases, Theories, And Literature* (Transaction Publishers, 1988); Boaz Ganor, “MIA: An International Definition for Terrorism,” International Institute for Counter-Terrorism, March 10, 2018, <https://www.ict.org.il/Article/2259/MIA#gsc.tab=0>.

The Mexican Criminal Code defines terrorism as:

“...[T]hose who use explosives, toxic substances, firearms or fire, flood, or any other violent means, perform acts against people, things, or services to the public that produce alarm, fear, or terror in the population or in a group sector of it, to disturb the public peace, or try to undermine the authority of the State, or to pressure the authority to make a determination.”⁶

Clearly, narcoviolence meets this threshold. Mexican cartels routinely use mass killings, car bombs, rape, and dismemberment against members of the public who threaten their control over cartel territory. Through symbolic violent acts, the cartels form a “quasi-political discourse” that demonstrates direct opposition to the state and even creates a level of intimidation where the cartels become the de facto political power holder.⁷ In some cases, such as that of the Knights Templar cartel, this intimidation can be combined with providing comprehensive public services to their community to further erode the government’s role.⁸ The major cartels seek to establish a political climate where the police, government officials, and the public will find it too risky to interfere with their business. While the cartels lack typical political policy objectives that one usually associates with terrorist groups, their efforts to paralyze government law enforcement is a policy objective in itself.⁹

Although in November 2019 President Donald Trump expressed his desire to designate the cartels as foreign terrorist organizations, both the Mexican and

⁶ El Diccionario Jurídico Mexicano (1994) quoted in María Elena Martínez Carbajal, “Terrorismo - Mexico,” *Enciclopedia Jurídica Online*, February 25, 2018, <https://mexico.leyderecho.org/terrorismo/>.

⁷ See the case of border states in Howard Campbell, “Narco-Propaganda in the Mexican ‘Drug War’: An Anthropological Perspective,” *Latin American Perspectives* 41, no. 2 (March 2014): 60–77, <https://doi.org/10.1177/0094582X12443519>.

⁸ Rodrigo Canales, “The Deadly Genius of Drug Cartels,” TED: Ideas worth spreading, October 2013, https://www.ted.com/talks/rodrigo_canales_the_deadly_genius_of_drug_cartels/discussion.

⁹ Howard Campbell and Tobin Hansen, “Is Narco-Violence in Mexico Terrorism?,” *Bulletin of Latin American Research* 33, no. 2 (April 2014), <https://doi.org/10.1111/blar.12145>.

American governments have avoided adopting this policy.¹⁰ Mexican federal government officials have rejected labeling the cartel violence a terrorist insurgency as they claim that the cartels have no comprehensive political agenda and designation is not useful. Instead, former Secretary of the Interior Alejandro Poiré asserted that some attacks constituted acts of terror, such as throwing grenades at civilians, but characterizing cartel actions as anything other than drug violence “would [not have] strong enough evidence to be useful.”¹¹ President López Obrador’s administration has maintained this view. Foreign Minister Marcelo Ebrard claims, “You do not need to designate or classify a specific group as a terrorist to act against it... In addition to being inconvenient, it is unnecessary.”¹² Since at least 2007, Mexican administrations have repeatedly labeled individual attacks as terrorism but resist labeling entire organizations as terrorist entities.¹³

The explanation that cartels lack a clear political agenda and are therefore not terrorists is debatable. There are many reasons for Mexican officials to avoid the terrorist label, but perhaps the most convincing is their concern about the public perception of the conflict and the potential repercussions should that label be applied.¹⁴ If the Mexican government labels the cartels as terrorist organizations, the nature of the conflict changes from a widespread civil crimewave to civil insurrection. Such a situation may further discredit the government in the eyes of its own people as some Mexican communities already rely on the cartels for services like policing. The label could also

¹⁰ Jessica Donati and José de Córdoba, “Trump Says U.S. to Designate Mexican Drug Cartels as Terrorists,” *Wall Street Journal*, November 27, 2019, sec. Politics, <https://www.wsj.com/articles/trump-says-u-s-to-designate-mexican-drug-cartels-as-terrorist-11574831409>; Rebecca Ballhaus, “Trump to Hold Off Designating Mexican Cartels as Terrorist Groups,” *Wall Street Journal*, December 7, 2019, sec. US, <https://www.wsj.com/articles/trump-to-hold-off-designating-mexican-cartels-as-terrorist-groups-11575678153>.

¹¹ Alejandro Poiré quoted in “Peña Nieto’s Challenge: Criminal Cartels and Rule of Law in Mexico,” *International Crisis Group Latin America Report N°48* (March 19, 2013), <https://www.refworld.org/pdfid/51486dc62.pdf>.

¹² Marcelo Ebrard quoted in “Inconveniente e innecesario que EU declare al narco como terrorismo: Ebrard,” *El Financiero*, November 25, 2019, <https://elfinanciero.com.mx/nacional/inconveniente-e-innecesario-que-eu-declare-al-narco-como-terrorismo-ebrard>.

¹³ “Peña Nieto’s Challenge: Criminal Cartels and Rule of Law in Mexico.”

¹⁴ Reasons for Mexico to oppose the designation of cartels include trade and economic considerations, its international reputation, military action, and involvement in US politics. See Mary Beth Sheridan, “Why López Obrador, Mexico Oppose Trump Plan to Designate Cartels Foreign Terror Organization,” *The Washington Post*, November 27, 2019, https://www.washingtonpost.com/world/the_americas/five-reasons-mexico-objects-to-trumps-plan-to-designate-its-cartels-as-terror-groups/2019/11/27/fe21a91a-1124-11ea-924c-b34d09bbc948_story.html.

reinforce the argument that Mexico is a “failed state” because it cannot exercise control over its own territory.¹⁵ Additionally, acknowledgment of the Drug War as a formal armed conflict would allow the International Criminal Court to scrutinize the conduct of the Mexican military and possibly bring about human rights violation charges.¹⁶ These distinctions could in turn prompt unwanted international intervention. In response to President Trump’s threats to designate the cartels as terrorists himself, President López Obrador stated, “Our problems will be solved by Mexicans. We don’t want any interference from any foreign country... cooperation yes, intervention no.”¹⁷ As such, designation of the cartels as terrorists would threaten both Mexico’s sovereignty and its government’s credibility at home and abroad.

While the Mexican Government does not apply terrorist or insurgent labels to the drug cartels, they have nonetheless applied aggressive military countermeasures. They have employed the full strength of the Mexican military to target cartel leaders which has prompted escalated levels of violence. The military instituted lockdowns on cities, used torture, and has been accused of multiple human rights violations while combatting the cartels.¹⁸ Despite such an aggressive strategy and claims that the cartels lacked a political agenda, 114 politicians and candidates were allegedly killed by crime bosses in an effort to intimidate public office holders leading up to the 2018 elections.¹⁹

In the words of Russian Foreign Minister Sergey Lavrov, “If it looks like a terrorist, if it acts like a terrorist, if it walks like a terrorist, if it fights like a terrorist, it’s a terrorist, right?”²⁰ The drug cartels may not represent an

¹⁵ Support for the drug cartels, particularly in a state like Michoacán, stems from the fact that the cartels provide social services and work actively to keep drugs and violence out of the communities that they protect. This is accomplished through extensive corruption in local police departments. See Canales, “The Deadly Genius of Drug Cartels.”

¹⁶ Ioan Grillo, “El terrorismo en la narcoguerra,” *Letras Libres*, July 10, 2015, <http://www.letraslibres.com/mexico-espana/el-terrorismo-en-la-narcoguerra>.

¹⁷ López Obrador quoted in Córdoba, “Trump Says U.S. to Designate Mexican Drug Cartels as Terrorists.”

¹⁸ Nacha Cattán, “UN Questions Mexican Army’s Role in Drug War,” *Christian Science Monitor*, April 1, 2011, <https://www.csmonitor.com/World/Americas/2011/0401/UN-questions-Mexican-Army-s-role-in-drug-war>.

¹⁹ June S Beittel, “Mexico: Organized Crime and Drug Trafficking Organizations,” *Congressional Research Service*, no. 7–5700 (n.d.): 32.

²⁰ Sergey Lavrov quoted in Don Melvin, Susannah Cullinane, and Mohammed Tawfeeq, “Russia’s Lavrov on Syria Targets: ‘If It Looks like a Terrorist, Walks like a Terrorist...,’” *CNN*, October 1, 2015, <https://www.cnn.com/2015/10/01/middleeast/russia-syria/index.html>.

existential threat to the Mexican State, but their violent actions certainly meet the minimum threshold for terrorism as defined in the Mexican Criminal Code.²¹ They ultimately leverage this violence in order to compel compliance from their communities and undermine the authority of the state. Yet the Mexican government has much to lose by applying the terrorist label, both in terms of loss of legitimacy and possible international intervention. Therefore, as long as Mexican officials are legally able to apply the desired level of force and assets against the cartels without technically calling them terrorists, it is in their best interest to wage their war on drugs without formally designating with whom they are warring.

THE LEGALITY OF MILITARY POLICING

The legality of Mexico's military policing policy is not a given. In the wake of the Porfirio Díaz dictatorship and the subsequent Mexican Revolution during the 1910s, Mexico's concept of national security has been based on protection from both foreign powers and domestic armed movements that could lead to civil war.²² The Mexican Constitution demonstrates caution for executive control over the military and the risk of violent insurrection. While military policing was largely forbidden in the original Constitution, not to mention politically unpopular, every administration since 2005 has upheld or expanded the use of the military in policing.

Articles 13 and 21 of the Mexican Constitution protect against domestic military overreach by banning the use of military tribunals for civilians and guaranteeing the use of the public judicial ministry police to investigate crimes. Article 129 states, "No military authority may, in time of peace, perform any functions other than those that are directly connected with military affairs."²³ The aforementioned articles make it clear that the military has no role in domestic policing. However, while Mexico is not at war, its

²¹ Admittedly, Mexico experiences the same level of disagreement and debate over the definition of terrorism as other countries. While political cartel violence meets the definition for terrorism within the Mexican Criminal Code for the purposes of this paper, it does not mean that all members of the Mexican legal establishment agree with this interpretation.

²² Reyes Ricardo Pérez, "La Ley de Seguridad Interior en México ¿Arma de doble filo?" (El Colegio de San Luis, July 2018), 4, https://colsan.repositorioinstitucional.mx/jspui/bitstream/1013/641/1/La%20Ley%20de%20Seguridad%20Interior%20en%20Mexico_Arma%20de%20doble%20filo.pdf.

²³ "Constitution of the United Mexican States, 1917 (as Amended)" (Washington: Pan American Union, 1961), https://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf.

citizens in violent drug plazas have certainly not lived in a state of peace.²⁴ Between 2006 and 2012, Mexicans lost more than double the amount of lives—security forces as well as civilians—compared to Afghanistan during the same period.²⁵

The government had lost its monopoly on violence and therefore opened an avenue for the justification of military policing. Article 89, Section 6 specifies that the president may “dispose of the permanent armed forces, including the land army, the marine navy, and the air force for internal security and exterior defense of the Federation.”²⁶ The Constitution does not define internal security, however. One can infer from the definition within the Mexican Federal Penal Code, which was written at the same time, that it refers to acts of rebellion or sedition.²⁷ Yet the lack of a clear definition within the Constitution itself allows alternate interpretations that set the stage for the use of the military in the Drug War.

In 2005, the administration of President Vicente Fox passed the “National Security Law” which aimed to reform the jurisdictions and structures of multiple law enforcement agencies on the federal and state level. The main purpose of the law was to expand federal jurisdiction over the states in an attempt to combat widespread corruption. However, in a minor definitional subparagraph, the Fox Administration laid out specific “threats to national security,” including any “obstacles to military and naval operations to combat organized crime.”²⁸ While internal security and national security are not necessarily the same concept, it demonstrates the executive branch’s efforts to reinforce its internal policing power against organized crime and not just rebellion. At the same time, it clearly establishes the possibility of military operations against organized crime factions.

²⁴ A “plaza” is a piece of territory where trafficking, distribution, and other related activities are conducted by a cartel. See Canales, “The Deadly Genius of Drug Cartels.”

²⁵ Campbell and Hansen, “Is Narco-Violence in Mexico Terrorism?”; Neta C. Crawford, “War Related Casualties Afghanistan and Pakistan 2001-2014” (Watson Institute for International Studies at Brown University, May 22, 2015), 8, <https://watson.brown.edu/costsofwar/files/cow/imce/papers/2015/War%20Related%20Casualties%20Afghanistan%20and%20Pakistan%202001-2014%20FIN.pdf>.

²⁶ “Constitution of the United Mexican States, 1917 (as Amended)”

²⁷ Tania Ixchel Atilano, “Cuidado con las Iniciativas sobre Seguridad Interior” (Animal Político, December 27, 2016), 17, https://www.casede.org/BibliotecaCasede/Novedades-PDF/Seguridad_para_quien.pdf.

²⁸ “Ley de Seguridad Nacional” (Cámara de Diputados del Honorable Congreso De La Unión, December 26, 2005).

In 2006, newly elected President Felipe Calderón followed through on “Operation Michoacán,” the military plan of his predecessor, using the military to restore order in the Michoacán province where 500 people had been killed in the past year due to cartel competition.²⁹ For Calderón, the state and local police had failed to stop the cartels from terrorizing the local populace and corrupting the authorities. Therefore, he authorized Operation Michoacán as a joint effort in which the Federal Police would be supported directly by the military. While past Mexican presidents had used military assets for hazardous individual operations in the past, this was the first time the military was continuously deployed in a law enforcement role.

Calderón’s legal justification was not an originalist interpretation of Mexico’s constitutional law. His administration cited a 1996 Supreme Court ruling to circumvent the restrictions imposed by Article 129. The ruling stated that the military could be employed in public security activities at the request of the civil authorities. However, the 1996 ruling also stipulated that the military would serve in an “auxiliary” role, in support of civilian forces and not replacing them. This stipulation has not been adhered to.³⁰ The military has taken the lead in countless law enforcement operations not only in Michoacán but across the nation.

The recent expansion of military policing powers in Mexico has not gone undetected. Watchdog groups such as the Robert F. Kennedy Human Rights Center claim that using the military to combat the cartels is beyond their constitutional role and represents a dangerous step towards unchecked militarization by the executive branch.³¹ Similarly, the United Nations issued a report in 2011 that called on the Calderón Administration to withdraw its military forces from conflict with the cartels after a spike in the amount of human rights abuse claims.³² The Mexican people have borne the consequences of the military campaign. Homicide rates climbed throughout Calderón’s presidency and climaxed at record levels at the end of his term. From 2007-2014, the Mexican military killed at least 3,400 people labeled as

²⁹ “Mexico Troops Sent to Fight Drugs,” *BBC News*, December 12, 2006, <http://news.bbc.co.uk/2/hi/americas/6170981.stm>.

³⁰ Daniel Wilkinson, “Mexico: The Militarization of Public Security,” Human Rights Watch, October 5, 2018, <https://www.hrw.org/news/2018/10/05/mexico-militarization-public-security>.

³¹ Ana Lilia Perez, “Guardia Nacional Militarizada: Un ‘Error Colosal’ de AMLO,” *Newsweek México*, November 25, 2018, <https://newsweekespanol.com/2018/11/guardia-nacional-militarizada-amlo/>.

³² Cattan, “UN Questions Mexican Army’s Role in Drug War.”

“civilian aggressors,” though some figures reach as high as 14,000 as of 2017.³³ There is little, if any, follow up investigation of these killings as soldiers are only tried by military tribunals whose records are largely sealed.

The overstep of the military in a traditionally civil law enforcement arena combined with a worsening public security situation made a pro-military position politically untenable. President Enrique Peña Nieto had campaigned against Calderón’s use of the military against the cartels and instead advocated for a national gendarmerie, or militarized police force. This effort never gained traction as it was crippled by bureaucratic funding issues and pushback from military leadership.³⁴ Despite Peña Nieto’s criticisms of his predecessor, he advanced the mandate of the military police. His 2017 Internal Security Act attempted to formalize the role of the military in protecting internal security rather than relying on executive orders and the constitutional grey area that they had occupied for years. The Act was never implemented, however, because it was struck down by the Supreme Court only a few months later.³⁵

Opponents of military policing had little time to celebrate. That same week, President-elect Andrés Manuel López Obrador, who campaigned on a slogan of “hugs, not bullets,” announced his national security plan to form a civilian “managed” military National Guard to take over the Federal Police. In February 2019, the Mexican Congress amended the Constitution to permit military policing with a five-year limit. Military policing was officially formalized in May 2020 when President López Obrador signed an executive order empowering the armed forces to conduct policing tasks.³⁶ Both Peña Nieto and López Obrador campaigned for curtailing the military’s role in combating the cartels only to reverse this position once in office.

³³ Beittel, “Mexico: Organized Crime and Drug Trafficking Organizations,” 4; José A. Guevara, “Militares, Derechos Humanos y Seguridad Interior” (Nexos, January 9, 2017), https://www.casade.org/BibliotecaCasede/Novedades-PDF/Seguridad_para_quien.pdf.

³⁴ Zosimo Camacho, “La Gendarmería gasta 20 mil millones de pesos,” *Contralínea*, October 6, 2017, <https://www.contralinea.com.mx/archivo-revista/2017/10/06/la-gendarmeria-gasta-20-mil-millones-pesos/>.

³⁵ Maureen Meyer, “One Year After National Guard’s Creation, Mexico Is Far from Demilitarizing Public Security,” Washington Office On Latin America, accessed July 20, 2020, <https://www.wola.org/analysis/one-year-national-guard-mexico/>.

³⁶ “Congressional Decree,” DOF - Diario Oficial de la Federación, March 23, 2019, https://www.dof.gob.mx/nota_detalle.php?codigo=5555126&fecha=26/03/2019; Andrés Manuel López Obrador, “Executive Order,” DOF - Diario Oficial de la Federación, May 11, 2020, https://www.dof.gob.mx/nota_detalle.php?codigo=5593105&fecha=11/05/2020.

Mexico's military policing policy to combat the cartels has proven durable despite its dubious constitutional foundation. Previous officials who wished to use the military without declaring a state of emergency were hindered by post-revolutionary constitutional checks on power. Rather than reform the Constitution, the Fox and Calderón administrations relied on a self-made, working definition of "internal security" in order to legally apply the military in cases where it is usually only justified to employ police forces. When opposing criticism got too strong, the Peña Nieto and López Obrador administrations countered with a proposal to replace the formal military with militarized police forces that function (and are staffed) largely in the same manner. Ultimately, the Mexican government has countered the cartels with military force and has therefore situated its campaign as an appropriate grey zone conflict case study.

CAUSES OF THE MILITARY STRATEGY FAILURE

The counter-narcoterrorism campaign conducted by the Mexican military utilized an aggressive security strategy similar to other asymmetric conflicts. Under the administrations of Presidents Calderón and Peña Nieto, the Mexican military pursued what it referred to as the "Capo Strategy." This strategy was first used successfully by the American Drug Enforcement Agency during the 1990s in order to dismantle the Cali and Medellín cartels in Colombia. The primary concept is to target the leadership of the respective criminal organizations in order to sow chaos and break up their enormous criminal enterprises.³⁷

When considering the objectives of the Capo Strategy, the Mexican military's efforts were mostly successful. Of the 122 high-ranking cartel leaders listed in Peña Nieto's National Security Plan, launched at the beginning of his presidency in January 2013, 107 of them had been arrested or killed by June 2017. These included high profile billionaires Joaquín "El Chapo" Guzmán of the Sinaloa Cartel and Miguel Ángel "Z40" Treviño, of the Los Zetas cartel. The state's success at targeting and neutralizing top-level drug kingpins is important to the stability of the Mexican government because it demonstrates the superiority of the state over criminal leadership, which has not always

³⁷ Gabrielle Acierno and Sarah Kinoshian, "La Estrategia del Capo y la Asistencia de los Estados Unidos a la Guerra Contra las Drogas: Resultados Visibles, Costos Ocultos," *Security Assistance Monitor*, May 11, 2015, <https://securityassistance.org/node/167565?language=en>.

been clear over the past two decades.³⁸ This is essential for their administrations' overall legitimacy on the world stage and in front of their own people. Dominance of military-led engagement over the protections offered by the cartels is certainly essential for the long-term protection of Mexican public security.

Yet the Capo Strategy has not improved the security situation for the ordinary Mexican citizen. The removal of the cartel leaders destabilized their respective organizations and created power vacuums that factions within the cartel have sought to take advantage of. According to the Congressional Research Service, "this [Capo] strategy with political decentralization contributed to violent succession struggles, shifting alliances among the drug trafficking organizations, a proliferation of new gangs and small drug trafficking organizations, and the replacement of existing leaders and criminal groups by even more violent ones."³⁹ Rather than reduce violence through dispersing the organizations, the fragmentation of the cartels caused violence to spike throughout the country. After implementing the strategy, President Calderón's administration watched Mexico's homicide rate double while 68 new drug trafficking groups were established over the course of his term.⁴⁰ Despite the chaos that ensued in the black market, there is no evidence to suggest that drug trafficking rates fell.⁴¹ While the Capo Strategy achieved its immediate goals, the Mexican authorities misunderstood what the fallout of their actions would be.

Considering past success stories of leadership decapitation campaigns such as the cartels in Colombia or Al-Qaeda's current reduced state, it raises the question of why the military-led Capo Strategy backfired in Mexico. Upon analysis, there are three main reasons that the Mexican strategy to counter the narco-terrorists failed compared to the aforementioned cases: the decentralized structure of the cartels, the geographic importance of Mexico within the drug markets, and the profit-driven nature of narcoterrorism.

³⁸ Patrick Corcoran, "Mexico President Reprises Controversial Kingpin Strategy," *InSight Crime*, September 14, 2017, <https://www.insightcrime.org/news/analysis/mexico-president-reprises-controversial-kingpin-strategy/>.

³⁹ Beittel, "Mexico: Organized Crime and Drug Trafficking Organizations," 24.

⁴⁰ Acierno and Kinosian, "La Estrategia del Capo."

⁴¹ Tristan Stratfor, "Mexico's Drug War: A New Way to Think About Mexican Organized Crime," *Forbes*, January 15, 2015, <https://www.forbes.com/sites/stratfor/2015/01/15/mexicos-drug-war-a-new-way-to-think-about-mexican-organized-crime/>.

Following the decapitation of the Cali and Medellín cartels, Colombia experienced a significant drop in cartel violence as smaller, less overt cartels took over the drug industry.⁴² Due to the disruption in the once highly vertically integrated system, overall drug exports were reduced. Mexican cartels do not function in the same way as the Colombians. Unlike the Colombians, the Mexican cartels function in a much more decentralized fashion. Individual Mexican gangs are generally geographically restricted to a particular area. These gangs function as a franchise, or in other words, a cell, for the larger cartel organization. The Mexican cartels function as a network of cooperation between these geographically unique franchises.⁴³ The franchises have their own internal leadership that control the foot soldiers in such a way that they are insulated from the effects of the arrest or killing of top cartel leadership. The franchise leadership may simply make a new deal to stay in business with whoever succeeds the compromised member of the organization. Generally, the more decentralized cartels are more difficult to dismantle.

The second reason that the Mexican conflict differs from that of the Colombians is the geographic importance of Mexico to the drug trafficking industry. The United States is the primary consumer of cartel drugs and other illicit products. The smuggling routes that connect the two countries are an essential piece of infrastructure that the cartels need to function. Smuggling through each respective port of entry and the route to those ports are definitively controlled by each cartel. Control over these routes is essential for the profit margin of the organization due to the ability to move one's own product and charge others for the route's use. Unlike the Colombians, whose shipping routes were generally run by middlemen in Central America and the Caribbean, the Mexicans' smugglers are full-fledged members of the cartels.⁴⁴ There is a much higher incentive to attack competitors in Mexico compared to Colombia because of this competition for profitable turf and gateways. The Capo Strategy harms the overall public peace in these circumstances because, while the removal of a prominent cartel member destabilizes one cartel, it also provides an opportunity for that cartel's rivals to strike. The resulting cartel-on-cartel violence then only worsens the public security situation.

⁴² Beittel, "Mexico: Organized Crime and Drug Trafficking Organizations," 24.

⁴³ "Mexico's Drug War: Not Another Colombia," Council on Hemispheric Affairs, January 17, 2012, <http://www.coha.org/mexicos-drug-war-not-another-colombia/>.

⁴⁴ Ibid.

In order to establish the Mexican narcoterrorism case in the larger context of low-intensity conflict, it is important to note that different organizations face different levels of vulnerability to leadership decapitation such as the Capo Strategy. The Mexican cartels are much less susceptible to leadership decapitation compared to ideologically driven extremist groups because of the differences in the incentive structure and leadership styles between the two types of organizations. According to Lieutenant Colonel Bryan Price, Director of the Combatting Terrorism Center at West Point,

*Decapitation strategies against drug cartel kingpins have been an abysmal failure. Once the kingpin is arrested, there are numerous underlings ready and willing to take his place because the incentives of the job significantly outweigh the risk involved. Leaders in these organizations can count on a steady stream of followers because it is such a lucrative business.*⁴⁵

Price perfectly summarizes the economic problem that the Mexican authorities face. In such an economically depressed country as Mexico, the incentives for filling the leadership void are simply too great to hope to discourage future cartel leaders from taking the helm. Additionally, the leadership in ideologically motivated groups is transformational as opposed to transactional. In other words, the transformational leaders “appeal not only to people’s self-interests but also to their values and emotions,” as opposed to providing fiscal incentives.⁴⁶ The removal of these leaders makes the overall function of the ideologically driven group more difficult. Thus, the decapitation strategies that work against these groups do not correspond to profit-driven enterprises.

Leadership decapitation is an ineffective strategy when combatting the Mexican cartels due to the decentralized structure of the cartels, the geographic importance of Mexico within the drug markets, and the profit-driven nature of narcoterrorism. President López Obrador claims to recognize the shortcomings of the Capo Strategy and has promised to employ a less militarized approach. The past promises of his predecessors as well as the

⁴⁵ LTC. Price’s work was originally inspired by the earlier work of Professor Michael Kenney. See Lt Col Bryan C. Price, *Targeting Top Terrorists: Understanding Leadership Removal in Counterterrorism Strategy* (New York: Columbia University Press, 2019), 54.

⁴⁶ *Ibid.*, 70.

National Guard's performance so far render his claim suspect. López Obrador's latest strategy offers amnesty and legalization for low level drug charges such as marijuana-related crimes, favors targeting the drug cartel infrastructure, seeks to reduce corruption, and includes socio-economic programs to provide alternatives to cartel activity.⁴⁷ López Obrador has currently been in office for eighteen months and his early attempts at reform have been unsuccessful. Programs designed to address economic inequality, such as those for poppy farmers, have been ineffective due to cartel violence and bureaucratic inefficiency.⁴⁸ His programs have done little to stem the violence as homicides within Mexico during 2020 are at an all-time high.⁴⁹

It is difficult to objectively assess López Obrador's performance against his predecessors given his short time in office and the economic depression and instability stemming from COVID-19. However, his shift in dialogue away from heavy-handed enforcement mechanisms bodes well. As we saw with the Capo Strategy, the incentive structure to engage with the cartels is enticing. López Obrador's strategy has the potential to change the calculus around this structure by decreasing the extreme economic inequality used as a cartel recruiting tool, focusing resources on egregious offenders, and targeting the sources of income rather than those who benefit from it.

CONCLUSION

Mexico represents an extreme case in which the liberal democratic values of an established constitutional democracy can be shaken by domestic terrorists. The current international political environment and the possibility of intervention from outside actors makes it unfavorable for Mexican presidents to refer to the cartels as terrorists. While the Mexican State may not be toppled by them, the cartels' actions undermine the authority of the state and strongly influence policy at all levels through their violence. As such, Mexico demonstrates the fragility of constitutional adherence. The post-revolutionary Mexican Constitution included several articles to restrict the use of military

⁴⁷ Vanda Felbab-Brown, "AMLO's Security Policy: Creative Ideas, Tough Reality," *Brookings Institute*, Security, Strategy, and Order, March 2019, 50.

⁴⁸ León Krauze, "Mexico's Drug Policy Is Failing. That's Why the Cartels Are on the Offensive," *Washington Post*, November 5, 2019, <https://www.washingtonpost.com/opinions/2019/11/04/mexicos-drug-policy-is-failing-thats-why-cartels-are-offensive/>.

⁴⁹ Reuters, "Homicidios En México Alcanzan Niveles Récord En Primeros Cuatro Meses 2020," *El Economista*, May 20, 2020, <https://www.eleconomista.com.mx/politica/Homicidios-en-Mexico-alcanzan-niveles-record-en-primeros-cuatro-meses-2020-20200520-0039.html>.

policing, yet despite numerous Supreme Court rulings declaring military policing unconstitutional, the policy has lived on through several administrations, albeit with minor changes. The Mexican conflict demonstrates how an unconstitutional policy can be maintained without institutional norms that enforce constitutional decisions. Despite the widespread use of the military, the ongoing Mexican Drug War indicates that mere force and targeting of leadership is not sufficient to reduce the scope of cartel influence and violence. President López Obrador must follow through and overhaul the entire strategy in order to disrupt the incentives for participating in cartel activities if he hopes to finally curtail the narcoterrorists' influence on his country.

THE AUTHOR

Sean F. O'Brien is a US Army officer who specializes in counterinsurgency and energy security. O'Brien graduated from the United States Military Academy with a BS in Chemical Engineering and Terrorism Studies. He previously worked for the US House Armed Services Committee and the Federal Bureau of Investigation. O'Brien was an Anna Sobol Levy fellow and holds an MA in Government specialized in Counterterrorism and Homeland Security Studies from the Interdisciplinary Center Herzliya.



ICT

International Institute
for Counter-Terrorism
With the Support of Keren Daniel



NEXTGEN 5.0

ABOUT US

ICTR serves as a platform for exchanging research and policy recommendations addressing theoretical, empirical and policy dimensions of international terrorism and other security issues.

FOLLOW US

Facebook: [@ICTRJournal](#)

Twitter: [@ICTR_journal](#)

Linkedin: [@ictr-journal](#)