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The Drug War in Mexico: Consequences for Mexico's Nascent Democracy

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THE DRUG WAR IN MEXICO: CONSEQUENCES FOR MEXICO'S NASCENT DEMOCRACY

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TABLE OF CONTENTS

INTRODUCTION

Over the past few years, brazen and horrific acts of violence by drug trafficking organizations have proliferated enormously throughout Mexico. According to conservative estimates, there were 11,244 nationwide homicides in Mexico attributed to drug trafficking organizations in 2010.[1] These extraordinary numbers of executions by drug trafficking organizations in Mexico are both staggering and deeply concerning. Compared to statistics from other countries, the current annual death rate from drug trafficking violence in Mexico far exceeds the total number of casualties in both Afghanistan and Iraq during 2008.[2] The number of annual drug related homicides in Mexico is also more than nine times greater than the average number of deaths during civil war, which is approximately 1,000 fatalities per year.[3]

Clearly, these figures indicate that the current violence attributed to drug trafficking in Mexico is not insignificant. In fact, hyper-violence by drug trafficking organizations only appears to be growing rapidly within the country. While there were only 1,776 drug related killings in Mexico in 2005, the number of murders by drug traffickers more than quadrupled by 2009.[4] Additionally, while there were fairly low levels of violence among Mexican drug cartels in the past, according to Mexican authorities there have been more than 28,000 deaths related to drug trafficking organizations since President Felipe Calderón took office in 2006.[5] This out of control

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[1] Justice in Mexico Project, *December 2010 News Report* (San Diego: Trans-Border Institute, 2010), 1.
[2] Vanda Felbab-Brown, "The Violent Drug Market in Mexico and Lessons from Colombia," *Foreign Policy at Brookings* 12 (March, 2009): 1.
[3] Ibid., 1.
[4] David A. Shirk, *Drug Violence in Mexico: Data Analysis from 2001-2009* (San Diego: Trans-Border Institute, 2010), 4.
[5] Angelica Duran-Martinez, Gayle Hazard, and Viridiana Rios, *2010 Mid-year Report on Drug Violence in Mexico* (San Diego: Trans-Border Institute, 2010), 2.

escalation in violence over the last few years is only matched by the increased savagery of drug cartel violence. Sadistic executions, such as decapitations, castrations, burning alive, torture, and burning victims in acid have become commonplace among Mexican drug trafficking organizations.[6] While these nefarious acts of violence were previously concentrated among drug traffickers, in recent years high profile law enforcement officers, journalists, and elected officials have become regular victims of drug-related executions.[7] Drug violence in Mexico has even reached such worrisome extremes that innocent civilians within Mexico are increasingly affected. These disturbing levels of violence clearly demonstrate that drug trafficking organizations are a serious problem for Mexico at the present time.

The rapid growth and aggressiveness in Mexican drug cartel violence is significant not only because of the threat it poses to the Mexican society, but also because it has emerged at the same time as tremendous changes are occurring in the Mexican political system. In 2000, Vicente Fox was elected as the president of Mexico. This election was a watershed moment in Mexico's political history because it initiated the transition from authoritarian rule to democracy in Mexico. Vicente Fox's election as the first president from an opposition party ended the reign of the Institutional Revolutionary Party (PRI), which had consistently held power in Mexico since the late 1920's. During its 71-year rule, the PRI regime was characterized by semi-authoritarian and undemocratic practices. Indeed, the PRI's one-party hegemonic regime in Mexico was highly centralized, devoid of ideology, employed the co-option of opponents, and utilized

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[6] George W. Grayson, *Mexico: Narco-violence and a Failed State* (New Brunswick, N.J.: Transaction Publishers, 2010), 4.
[7] Stephanie Hanson, *Mexico's Drug War* (Washington D.C.: Council on Foreign Relations, 2008), 1.

undemocratic strategies to ensure its political dominance. The *dedazo* – the Mexican president's selection of his presidential successor – was possibly the most visible authoritarian practice of the PRI. This practice ensured that the PRI, rather than election primaries, selected the successive political leadership and it maintained a system of loyalty to the PRI party, rather than the Mexican constituency. However, the 2000 elections changed this undemocratic system. Vicente Fox's election demonstrated that the political system that had been dominated by a single party had evolved into a competitive electoral system with the participation of multiple political parties. Thus, this moment was the culmination of Mexico's transition away from the PRI's semi-authoritarian system and towards a democracy.

While Mexico clearly underwent a transition to an electoral democracy in 2000, there still need to be great strides in order for Mexico to fully become a consolidated democracy. This is because a democracy is not just based on free and fair elections. A political system is only democratic when democratic institutions, rules, and practices have become "the only game in town".[8] Or, in other words, a political regime is truly a consolidated democracy when the probability of democratic breakdown is very low.[9] While the transition to an electoral model was the first step in meeting these requirements, Mexico is still in the process of consolidating democratic patterns of behavior. Even though the political system is no longer a PRI regime, many of the PRI's semi-authoritarian practices and culture remain. Therefore, over the past decade Mexico

[8] Juan J. Linz and Alfred Stepan, "Toward Consolidated Democracies," *Journal of Democracy* 7, 2 (1996): 14.

[9] Steve Barracca, "Democratic Consolidation and Deepening in Mexico: A Conceptual and Empirical Analysis," paper prepared for delivery at the 2003 meeting of the Latin American Studies Association, March 27-29, 2003, 3.

has been undergoing a process of adopting democratic practices and institutions so that the country's political system will become a functional, substantive democracy. However, a stable democracy is still a far reach from Mexico's current political system. Although Mexico is currently consolidating its democracy, the future of democracy in Mexico still remains uncertain. Whether the situation in Mexico continues on its democratization path, disintegrates into chaos and violence, or reverts back to authoritarianism is still up in the air.

It is for this reason that the impact of drug trafficking organizations has great significance for democracy in Mexico. In recent years, drug trafficking organizations have generated significant levels of violence and crime throughout Mexico. Expansion of drug trafficking organizations and related violence is threatening to disrupt and destabilize key aspects of Mexican society. Thus, through a unique set of historical circumstances, Mexico is currently confronted with an increasingly powerful and violent organized crime syndicate, at the same time that it is simultaneously attempting to adopt more democratic principles and political structures. The intersection of the rising drug trade and the process of democratic consolidation in Mexico is incredibly significant to the future of Mexico's nascent democracy. This is because, if Mexico is unable to control the devastating impact of drug trafficking organizations, Mexican governance will degenerate into chaos and lawlessness. However, if heavy-handed authoritarian measures are employed in order to control drug trafficking organizations, the Mexican political system will likely revert to authoritarianism. Thus, drug trafficking organizations and counter-drug efforts put Mexico's fledging democracy in a precarious situation. Under these circumstances, how drug cartels and efforts to combat these organizations affect

Mexico will greatly determine the direction of the country's political system. Indeed, the influence of drug trafficking organizations and counter-drug efforts – the two sides of the drug war – will ultimately determine the path and shape of Mexico's democracy. Therefore, a central question this paper seeks to address is: what is the impact of the drug war on the consolidation of democracy in Mexico? Can Mexico sustain its fledgling democracy while drug trafficking organizations and counter-drug efforts are present in Mexico?

In order to assess the consequences of the drug war on the consolidation of democracy, I will focus on the military, the justice system, and the press as important indicators of democratization in Mexico. While there are clearly many other factors that are important to Mexico's democratization, civilian control over the military, the effectiveness of the judicial system, and the strength of the media – the so-called "fourth estate of democracy" – are three central pillars of democracy that will be examined in the following chapters. Only if civil-military relations, the judicial system, and the press are upheld, can Mexico have a strong substantive democracy. These factors indicate, however, that Mexico cannot consolidate democracy while the drug war is sustained. Indeed, it appears that drug trafficking organizations and counter-drug policy weaken civil-military relations, the judiciary, and the press. Since these institutions are essential for democracy, it is evident that the drug war undermines the consolidation of democracy in Mexico.

This paper will begin tracing the influence of the drug war on democratic consolidation by examining the history of drug trafficking organizations in Mexico. It will then describe the current counter-drug policies employed in Mexico and their

origins. The next section will analyze the ways that counter-drug policy can contribute to worsened civil-military relations, thereby undermining democratization in Mexico. The third section of this paper will examine the impacts of the current drug trafficking situation on the strength of the judicial system. The ramifications of drug policy and drug trafficking organizations on the Mexican press will then be evaluated. Finally, the overall effect of the drug war on democratization will be assessed and conclusions will be drawn about the future of democracy in Mexico.

History of Drug Trafficking in Mexico

In order to fully understand the drug war and its impacts on Mexico, one must begin with an understanding of Mexico's history with drug trafficking organizations. In fact, Mexico's current situation with drug trafficking organizations can largely be explained by its historical development. During the 19th century and the beginning of the 20th century, Mexico was only a low level supplier of drugs to the United States, and consumption of narcotics within Mexico itself was moderate.[10] However, by the Mexican Revolution in the early 20th century, Mexico's relationship between the state and drug trafficking began to take form. Beginning in 1909, the United States initiated the control and prohibition of drugs within the States.[11] At the same time that the United States was outlawing drugs, Mexico was deeply engulfed in revolution. During the Mexican Revolution (1910-1929), revolutionary leaders were more concerned with maintaining

[10] Luis Astorga and David A. Shirk, "Drug Trafficking Organizations and Counter-drug Strategies in the U.S.-Mexican Context," in the forthcoming book *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime*, Eric L. Olson, David A. Shirk, and Andrew Selee, eds., (Washington D.C.: Woodrow Wilson International Center for Scholars, 2010), 4.

[11] Luis Astorga, "Mexico: Drugs and Politics," in *The Political Economy of the Drug Industry: Latin America and the International System*, Menno Vellinga, ed. (Gainesville: University Press of Florida, 2004), 86.

their political careers and political stability than they were interested in drug control. Therefore, since drugs were outlawed in the U.S., but there was essentially no regulation of illicit substances in Mexico because of the revolution, these ideal conditions gave rise to drug trafficking from Mexico to the United States.

The majority of early drug trafficking in Mexico was concentrated in Baja California, which was governed by Colonel Esteban Cantú from 1916-1920.[12] Cantú was one of the first revolutionary leaders who used his political power to run an opium trafficking business so that he could buy arms, pay his troops, and fund his government expenses.[13] However, from this point on, the trend expanded throughout Mexico and the drug trade was increasingly treated as a business opportunity that, depending on their ethical leans, politicians would take part in. This de-facto relationship, where the political power cooperated with drug trafficking organizations, was further institutionalized within Mexico when the state party was established in 1929. The state party, which later became the Institutional Revolutionary Party (PRI), was the dominant centralized leadership throughout Mexico for the majority of the 20th century. During the party's 71-year rule over Mexico, the PRI notoriously developed a strategy of making implicit and explicit arrangements with its antagonists in order to maintain order and stability. This system was particularly applicable to the PRI government's relationship with drug trafficking organizations. Indeed, the PRI created a centralized power structure that permitted and protected drug trafficking organizations throughout Mexico.[14] Essentially, political officials from the PRI had a special coalition with drug traffickers that allowed them to

[12] Ibid., 86.
[13] Ibid., 86.
[14] George W. Grayson, *Mexico: Narco-Violence and a Failed State?* (New Brunswick, N.J.: Transaction Publishers, 2010), 2.

operate in relative harmony without a threat from the political authority in exchange for political stability or a portion of drug profits. A telling example of the pact between political authorities and drug traffickers was the situation in Coahuila during the mid-20th century. The governor of Coahuila during this time, Nazario Ortiz Garza, was a close friend of Antonio Wong Yin, one of Mexico's most prominent opium traffickers. Many other illicit traffickers were also known to have close relations with General Jesús García Gutiérrez, the chief of military operations in Coahuila.[15]

These types of government-drug cartel relations were not uncommon. The coordination between politicians and drug trafficking organizations was a pattern that characterized the PRI government's approach towards the drug trade for most of the 20th century. Indeed, many scholars define the history of drug trafficking under PRI leadership as a political-criminal coalition that was maintained by a centralized authoritarian party whose police organizations essentially regulated drug trafficking.[16] This de-facto relationship between the government and drug trafficking organizations was only further emphasized in 1947, when the establishment of the Federal Security Directorate (DFS) founded a structural connection between the state and drug traffickers.[17] Specifically, the DFS was a government institution that maintained control

[15] Astorga, "Mexico: Drugs and Politics", 87.

[16] Luis Astorga provides the most detailed account of the historical relationship between DTOs and the state. See: Luis Alejandro Astorga Almanza, "Traficantes de drogas, politicos y policias en el siglo XX mexicano," in *Vicios publicos, virtudes privadas: La corrupcion en Mexico,* Claudio Lomnitz ed. (Mexico City: CIESAS, 2000); Luis Astorga, *El siglo de las drogas: el narcotráfico, del Porfiriato al nuevo milenio* (Mexico City: Plaza y Janís, 2005); Astorga, "Mexico: Drugs and Politics", and Astorga and Shirk, "Drug Trafficking Organizations and Counter-drug Strategies in the U.S.-Mexican Context". Also see: George W. Grayson, *Mexico: Narco-Violence and a Failed State?* (New Brunswick, N.J.: Transaction Publishers, 2010); Carlos Antonio Flores Pérez, "Organized Crime and Official Corruption in Mexico," in *Police and Public Security in Mexico*, Robert A. Donnelly and David A. Shirk, eds. (San Diego: Trans-Border Institute, 2009); Louise Shelley, "Corruption and Organized Crime in Mexico in the Post PRI-Transition," *Journal of Contemporary Criminal Justice* 17, 1 (August 2001): 213-231.

[17] Astorga, "Mexico: Drugs and Politics", 88.

over illicit drug traffickers and assured protection to these drug organizations in exchange for a portion of their profits.

Not only was the special collaboration between the state and drug trafficking organizations in Mexico distinctive and significant, it also had substantial consequences for the nation. Since drug trafficking in Mexico developed as a business controlled, tolerated, and regulated by prominent politicians, drug trafficking violence was extremely limited and it was primarily constrained to drug cartels.[18] Because the PRI had a monopoly on drug trafficking organizations through these arrangements, it could also determine the territories (known as "plazas") controlled by drug trafficking organizations, when to use force against these illicit organizations, and the ability to grant impunity to specific traffickers. As a result, Mexico had a cohesive network of drug trafficking organizations that worked in relative harmony for decades because it was a market that grew within the official party system of the country.

Nevertheless, even though drug trafficking has existed in Mexico since the 19th century, the most noticeable and significant change in Mexican drug trafficking took place in the 1980s. During this decade there were a few pivotal changes that completely altered the institutional arrangement between the government and drug trafficking organizations. Most significantly, the turning point in the structural connection between the government authority and drug cartels came in 1985 when U.S. DEA agent Enrique Camarena was murdered by Mexican DFS police and drug traffickers.[19] Allegedly, many high-ranking defense and interior ministry officials were involved in the decision to kill

[18] Hanson, 3.
[19] Astorga, "Mexico: Drugs and Politics", 91.

Camarena.[20] This event effectively exposed the corrupt government-drug trafficking coalition, inciting immense pressure for reform from the United States. As a result, the DFS was dismantled, and the protection and containment from the government that drug traffickers had enjoyed for more than five decades was officially terminated.

This completely changed the composition of the drug trade in Mexico. Organized crime networks that previously enjoyed a carte blanche in Mexico now had to fight for their territories of control and work to maintain their access to the profitable U.S. drug market. Thus, these alterations have increasingly led to turf wars and competition among drug cartels in Mexico. Many scholars argue, in fact, that since the power of drug trafficking organizations was previously centralized under the PRI, this corrupt system may have actually led to the relatively limited violence of drug traffickers in the early decades.[21] Currently, however, more violent, fragmented, and unpredictable patterns are emerging among drug trafficking organizations in Mexico than have ever existed in the country. Since the late 1980s, the cohesive network of drug traffickers in Mexico has been replaced by more diverse, highly competitive, and hyper-violent drug cartels.

However, it is important to note that the 1980s were also a critical juncture for drug trafficking organizations and their relationship with the Mexican state because of transformations in the international drug market. During the mid 1980s, drug trafficking shifted to over-land routes in Mexico because of considerable counter-drug efforts in Colombia and the dismantling of Florida drug trafficking routes from the Caribbean and

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[20] Astorga and Shirk, "Drug Trafficking Organizations and Counter-drug Strategies in the U.S.-Mexican Context," 5.

[21] Duran-Martinez, 11. And Maureen Meyer, Coletta Youngers, and Dave Bewley-Taylor, *AT A CROSSROADS: Drug Trafficking, Violence and the Mexican State* (Washington D.C.: Washington Office on Latin America, 2007), 3.

Colombia.[22] Therefore, while Mexico had previously been a supplier of only heroin and marijuana, at this time the country also emerged as a transit point for cocaine from other South American nations because of the redirection of drug flows.[23] These changes in the drug industry are significant because, as a result, Mexican drug trafficking organizations began serving a greater and more profitable role in drug trafficking to the United States. As Maureen Meyer explains, this change in the mid-1980s was a formative shift in Mexico because small-scale drug traffickers suddenly expanded into sophisticated drug trafficking organizations with unprecedented levels of power and an increased ability to corrupt government officials.[24] In addition to the expansion of drug trafficking organizations (DTOs) within Mexico and the dissolution of the DTO-government pact, this time period also coincided with internal destabilization of Mexican drug trafficking organizations. In the latter half of the decade, many drug traffickers defected from their original organizations to form smaller, more fragmented drug trafficking organizations, such as the disintegration of the Guadalajara DTO into the Juárez, Sinaloa, and Tijuana DTOs at the end of the 1980s.[25] These changes contributed significantly to the avaricious, fragmented, and aggressive drug trafficking organizations that exist in Mexico today.

Thus, the elements introduced into Mexican drug trafficking organizations during the mid-1980s should not be overlooked. Indeed, ever since this pivotal moment in history, criminal organizations involved in drug trafficking in Mexico have only gained momentum. While there have many fluid changes in drug trafficking organizations

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[22] Ted Galen Carpenter, *Bad Neighbor Policy* (New York: Palgrave Macmillan, 2003), 169.
[23] Jorge Chabat, "Mexico's War on Drugs: No Margin for Maneuver," *Annals of the American Academy of Political and Social Science* 582 (Jul. 2002): 136.
[24] Meyer, 2-3.
[25] John Bailey, "Drug-Traffickers as Political Actors in Mexico's Nascent Democracy," Working paper, Georgetown University, August 2010, 11.

throughout the 20th century, the mid-1980s were the tipping point that led to Mexico's current ominous drug trafficking dilemma. Indeed, ever since this critical juncture, drug cartels have amassed enough power and political might to overwhelm many Mexican law enforcement and political institutions. Not only that, there has only been increased fighting among drug trafficking organizations for control of Mexico's drug trade, with unprecedented levels of violence developing since the late 1980s. A telling example of the increasing magnitude of drug trafficking and drug-related violence are recent homicide statistics from Mexico. For example, in 2005 there were approximately 1,500 people killed in drug related violence in Mexico, while in 2006, 2,500 individuals were victims to drug violence.[26] Subsequently, in 2010 there were more than 11,244 deaths related to drug trafficking violence; a 76% increase in violence from 2009.[27] Clearly, the pattern of greater violence, scope, and power among drug trafficking organizations within Mexico has only increased in the last few years.

Current Counter-drug Policies in Mexico

In addition to the historical context of drug trafficking within Mexico, the current drug trafficking situation and its impact on the democratization process cannot be understood without an awareness of current counter-drug strategies employed within the country. Mexico's recent counter-drug efforts, however, are fairly complex. Nevertheless, the origins of current day drug policies in Mexico can be traced back to 1987 when De la Madrid was the first Mexican president to declare drug trafficking a national security

[26] Meyer, Youngers, and Bewley-Taylor, *AT A CROSSROADS: Drug Trafficking, Violence and the Mexican State,* 1.
[27] Justice in Mexico Project, *December 2010 News Report*, 1-2.

issue, which expanded drug control efforts significantly more than previous administrations.[28] In addition to expanded drug policy under De la Madrid, his administration also ushered in an era of military involvement in counter-drug efforts. In 1992, the Instituto Nacional para el Combate a las Drogas (INCD) was established and it included representatives from the armed forces, making it the first time that the army was included in counter-drug policy.[29] Following the lead of their predecessors, both the Zedillo administration (1994-2000) and the Fox administration (2000-2006) promised to restore public security threatened by drug trafficking organizations and increased participation of the military in counter-drug operations.[30]

Subsequently, when Felipe Calderón took office in 2006, one of his first actions as president was to deploy thousands of soldiers and federal police to suppress drug-related violence in states severely affected by organized crime. In the nine states where troops were deployed, federal security forces were mandated with eradicating illicit crops, gathering intelligence, interrogating suspects, conducting raids, and confiscating contraband. [31] These initial actions at the beginning of Calderón's presidential term are emblematic of Mexico's current policy towards organized crime and drugs. The main focus of Calderón's approach towards drug trafficking has been the deployment of federal police and military troops to reestablish security in regions seriously affected by criminality and violence from drug trafficking organizations.[32] Heavy reliance on the military is the main component of Mexico's current counter-DTO strategy because, in

[28] María Celia Toro, *Mexico's "War" on Drugs: Causes and Consequences* (Boulder, Co.: Lynne Rienner Publishers, 1995), 30.
[29] Meyer, 5.
[30] Ibid, 5.
[31] Hanson, 1.
[32] Juan Carlos Garzón, *Mafia & Co.: The Criminal Networks in Mexico, Brazil, and Colombia* (Washington D.C.: Woodrow Wilson International Center for Scholars, 2008), 9.

large part, the current police, intelligence, and justice systems within the country are too weak and corrupt to effectively enforce public order and security. Therefore, the goal of this military intensive approach under Calderón is to use the military to directly combat and dismantle drug trafficking organizations so that the government has time to establish an array of institutional reforms.[33] Ultimately, the hope is that, while the armed forces combat specific drug trafficking organizations and dismantle their leadership, Mexico will be able to implement extended reforms and investment in improving the country's police-justice-regulatory system.

As of now, however, this strategy has only been partially implemented. Between December 2006 and July 2009, there have been more than 43,000 members of the federal police and military deployed to ten different regions of Mexico.[34] While military deployment under the Calderón administration has achieved significant tactical victories in its mission against illicit drug trafficking organizations, these have only been short-term achievements because new drug trafficking organizations easily replace expelled traffickers and new law enforcement forces are easily corrupted.[35] Unfortunately, however, the institutional reforms in Calderón's counter-drug policy are limited and they will likely take years, if not decades, to be effectively implemented. Thus, current drug trafficking policy appears to have successfully implemented short-term military solutions, but it still lacks long-term solutions of police and judicial reform needed to effectively combat organized crime in Mexico.

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[33] Bailey, "Drug-Traffickers as Political Actors in Mexico's Nascent Democracy," 4.
[34] Ibid., 10.
[35] Meyer, 2.

In order to fully understand Mexico's drug policy, the country's war on drugs also must be analyzed in relation to the United States. Mexico and the U.S. are two countries that are closely intertwined, particularly in respect to drug trafficking. In large part, Mexican policies towards counter-drug trafficking are tied to policies that are promoted and funded by the United States. The Mérida Initiative, a 1.6 billion dollar program funded by the United States to support law enforcement activities targeted against drug trafficking organizations in Mexico and Central America, is a telling example of the preeminent role of the U.S. in Mexico's current drug policy. Established in 2007, the Mérida Initiative provides funds for law enforcement training, improved intelligence, crime prevention programs, and equipment used to combat organized crime involved in drug trafficking in Mexico.[36] The establishment of the Mérida Initiative was a formative moment in counter-drug trafficking efforts because not only did it represent an unprecedented level of collaboration between the U.S. and Mexico towards the drug war, it also hugely increased the scale and scope of Mexican drug control efforts. Without a doubt, the immense amount of financial and technical support provided under the Mérida Initiative has enabled greatly expanded counter-drug trafficking efforts in Mexico.

While the United States has clearly provided financial support for Mexico's drug policy, it seems that the U.S. government is following Mexico's lead in respect to the formulation of policies towards combating drug trafficking organizations. John Bailey explains that while the U.S. predominantly developed counter-drug policies in countries such as Colombia, Mexican counter-drug strategy has recently been based on

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[36] United States Government Accountability Office, *Mérida Initiative: The United States Has Provided Counternarcotics and Anticrime Support but Needs Better Performance Measures.* Washington D.C.: Government Printing Office, 2010, 1-4.

collaboration between Mexico and the United States.[37] This is significant because it demonstrates that even though the United States promotes certain approaches for combating drug trafficking organizations, ultimately the current government of Mexico controls and creates the strategies that are being implemented throughout the nation. Nevertheless, it appears that the United States has been extremely influential in promoting the military's role in counter-drug policy. According to Maureen Meyer, the United States has encouraged involvement of the armed forces in Mexico's counter-DTO efforts because the military is believed to be less corrupt than the police, and the military is regarded as the only institution with adequate capacity to combat drug trafficking organizations.[38] Since this approach is similar to the Calderón administration's current drug policy, it is difficult to discern the exact extent of the U.S.'s influence on shaping Mexico's drug strategies. But regardless of who has greater influence over current policy, one thing is clear: the financial support and political power of the United States plays a fundamental role in counter-drug trafficking efforts throughout Mexico and its presence cannot be ignored.

[37] John Bailey, "Drug-Traffickers as Political Actors in Mexico's Nascent Democracy," 4.
[38] Meyer, 3.

THE MILITARY AND COUNTER-DRUG POLICY: IMPLICATIONS FOR DEMOCRATIC CONSOLIDATION

The interaction between the military and the political system is one of the central issues faced by consolidating democracies in Latin America. The relationship between the armed forces and civilian government demands significant attention because it plays a major role in the democratization process and it can even determine the survival of a consolidating democratic regime. This is because a true democracy cannot be maintained without civilian control over the armed forces.[39] Only when the civilian government makes or sanctions all actions of the state, including the dealings of the armed forces, can the state truly promote the interests and rights of its citizens. However, when the armed forces are involved with or intervene in the political process, the government cannot effectively exercise its democratic functions.

Fortunately, in the case of Mexico, the country's historical experience has been characterized by military subordination to civilian control and it has largely avoided the negative ramifications of poor civil-military relations, such as military coups. In fact, the civil-military relationship in Mexico is somewhat of an anomaly in the Latin American region because there has been longstanding military subordination to the civilian political authority under the PRI's leadership. Roderic Camp and Jordi Díez attribute this relationship to a myriad of factors including Mexico's atypical past history under the PRI, the degree of interpenetration between the Mexican military and civilian leadership, and

[39] David R. Mares, "U.S. Drug Policy and Mexican Civil-Military Relations: A Challenge for the Mutually Desirable Democratization Process," *Crime, Law & Social Change* 40 (2003): 62.

the Mexican military's view of civil-military relations.[40] Both scholars also describe this relationship as a "pact" between the military and the PRI, where the PRI exchanged institutional autonomy for civilian control over the armed forces and abstention from military intervention in politics.[41] Given that this harmonious and stable civil-military relationship was established and normalized under PRI rule, the political transition that Mexico has undergone in the last decade is particularly relevant to the country's current civil-military relations. With the election of Vicente Fox in 2000 and the subsequent process of democratic consolidation, the traditional PRI framework has been profoundly disrupted in Mexico. The past structures in the political system that enabled civilian control of the military, such as the PRI "pact" with the armed forces, the historical integration of the military into the PRI political regime, and a system of clientelism between these interest groups, no longer exist in Mexico's current consolidating democracy.

With the elimination of the PRI framework that channeled and controlled military demands to the civilian government, the relationship between the armed forces and the political authority is changing. Indeed, the armed forces in Mexico are redefining their roles and are reestablishing their institutional identity in response to the transforming political system.[42] The redefinition of civil-military relations currently occurring in Mexico is incredibly important because it could lead to fundamental changes in the military's traditional subordination to civilian political authorities. Thus, as the new

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[40] Roderic Ai Camp, *Citizen and Military Views of Civil Military Relations* (Claremont, Ca.: Unpublished Manuscript, 2004) and Jordi Diez, "Legislative Oversight of the Mexican Military," *Mexican Studies* (Winter 2008): 113-145. JSTOR. <http://www.jstor.org/stable/30136779>. (accessed Sept. 24, 2010).

[41] Ibid. In particular see: Diez, 118.

[42] Marcos Pablo Moloeznik, "The Military Dimension of the War on Drugs in Mexico and Colombia," *Crime, Law & Social Change* 40 (2003): 111. And Mares, 62.

political system in Mexico establishes new norms and structures, the military is at a critical juncture. Whether the military maintains the tradition of civilian supremacy over the armed forces and how the officer corps reconstructs civil-military relations will play a significant role in determining Mexico's future, especially with regards to the consolidation of democracy within the country.

In light of Mexico's democratization process and the precarious state of civil-military relations, the military's role in counter-drug missions in Mexico is extremely important. As mentioned previously, the military is becoming increasingly involved in the government's counter-drug mission. While the role of the armed forces in counter-drug strategies was limited solely to crop eradication before the 1980s, the military now has greatly expanded responsibilities in combating drug trafficking.[43] As Marcos Moloeznik bluntly explained, the current war on drugs in Mexico is almost exclusively based upon the armed forces.[44] The increasing involvement of the armed forces in counter-drug policy is particularly apparent in the increased number of military troops dedicated to counter-drug trafficking efforts in recent years. For example, under Calderón's administration, the number of military personnel participating in counter-drug efforts increased 133% from Vicente Fox.[45] Funding and training towards military counter-drug operations have also expanded significantly, based in large part upon the 1.6 billion dollar Mérida Initiative. Initiated in 2007, the Mérida Initiative not only provides one of the highest levels of military assistance ever provided to the Mexican armed

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[43] Vanda Felbab-Brown, "The Violent Drug Market in Mexico and Lessons from Colombia," *Foreign Policy at Brookings* 12 (March, 2009): 8.

[44] Marcos Pablo Moloeznik, "The Military Dimension of the War on Drugs in Mexico and Colombia," 108.

[45] Roderic Ai Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," in the forthcoming book *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime*, Eric L. Olson, David A. Shirk, and Andrew Selee, eds., (Washington D.C.: Woodrow Wilson Center for International Scholars, 2010), 4.

forces, it also is the largest U.S. counter-narcotics aid package in the world after Afghanistan and Colombia.[46]

These recent increases in the military's role in counter-drug trafficking are no accident. There is general agreement that the military – perceived to be the best authority to combat drug trafficking organizations because of its immunity to corruption, professionalism, organizational capacity, and resources – should be highly involved in counter-drug efforts. However, even though there is approval for the armed forces' role in combating drug trafficking organizations, military participation in drug operations is undertaken at some risk. Given the vulnerability of civil-military relations and the unstable political consolidation process in Mexico, there can be unintended consequences from the military's expanded involvement in these untraditional missions. Therefore, a central question that comes to the forefront is: what implication does the decision to use the military to combat drug trafficking have on the consolidation of democratic governance in Mexico? Is military participation in counter-drug efforts an obstacle to the democratization process?

It appears that military involvement in drug policy has significant potential to undermine the consolidation of democracy in Mexico. This consequence is particularly evident through the way that counter-drug missions affect the relationship between the military and the state. Civil-military relations theory and recent developments in Mexico all indicate that military involvement in counter-drug efforts challenges democratization because of decreased civilian control over the military and weakened responsiveness of the armed forces to democratic political authority.

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[46] Colleen W. Cook, *Mexico's Drug Cartels: CRS Report for Congress* (Washington D.C.: Congressional Research Service, 2007), 14.

Relevant Scholarly Theories on Civil-Military Relations

Existing scholarly work on civil-military relations provides valuable insight into the effects of drug-related military doctrines on Mexico's consolidating democracy. Most noticeably, there is widespread consensus among scholars that military involvement in drug policy has the propensity to weaken civilian control of the military in Mexico.[47] The fact that scholars agree that counter-narcotics missions expand the military's role in politics is significant because this outcome weakens Mexico's nascent democracy. This is a significant challenge to democratization because increased military autonomy and political influence limits the state's responsiveness to the people and the development of democratic procedures. Military involvement in politics also weakens civilian institutions that are crucial for the consolidation of democracy. While there is general consensus on the negative impact of drug efforts on civil-military relations, how these missions can alter the military's posture towards Mexico's democratizing government remains somewhat ambiguous. Nonetheless, there are a few civil-military relations theories that demonstrate how the Mexican military's current role in the drug war has the potential to affect this relationship.

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[47]One of the most extensive articles on how the Mexican military's role in counter-narcotics efforts increases the armed forces' involvement in politics, and how this phenomenon weakens the process of democratization in Mexico, is David R. Mares, "U.S. Drug Policy and Mexican Civil-Military Relations: A Challenge for the Mutually Desirable Democratization Process," *Crime, Law & Social Change*, 40 (2003), 61-75. Also see: Marcos Pablo Moloeznik, "The Militarization of Public Security and the Role of the Military in Mexico," in *Police and Public Security in Mexico*, Robert A. Donnelly and David A. Shirk, eds. (San Diego: University Readers, 2010); Aleida Ferreyra and Renata Segura, "Examining the Military in the Local Sphere: Colombia and Mexico," *Latin American Perspectives*, 27, 2 (Mar., 2000), 18-35; Laurie Freeman and Jorge Luis Sierra, "Mexico: The Militarization Trap," in *Drugs and Democracy in Latin America: The impact of U.S. policy,* Coletta A. Youngers and Eileen Rosin, eds. (Boulder, Colorado: L. Rienner., 2005); José Luis Velasco, *Insurgency, Authoritarianism, and Drug Trafficking in Mexico's "Democratization"* (New York: Routledge, 2005).

Most notably, existing analyses of militarization and its impact on military expansion into politics provide a clear explanation of the hazards of expanded counter-narcotics military missions in Mexico. A leading civil-military relations expert aptly describes militarization as "a process in which increasing state resources are allocated to the armed forces and/or military related activities".[48] As the Mexican government shifts its resources from political and police institutions to the military in order to fight the drug war, there is clearly increased militarization occurring in Mexico as a result of this mission. In fact, concern over the trend of militarization in Mexico as a result of the armed forces' role in drug policy is common.[49] Increased militarization in Mexico is problematic for democratization because it increases the likelihood of military influence in politics. Augusto Varas explained this potential outcome best when he stated that an overemphasis on the importance of the armed forces in Latin American countries leads to "growing military involvement in, and control of, domestic politics".[50] Thus, the increased dependence on the military that currently exists in Mexico because of the military's central role in counter drug efforts clearly weakens democratic civilian governance. Focusing scarce resources on military missions instead of on the economic, social, and political causes of the drug trafficking problem is also a grave miscalculation for Mexico's consolidating democracy. This is because increased militarization diverts

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[48] Charles Wolpin, "Comparative Perspectives on Militarization, Repression & Social Welfare," *Journal of Peace Research*, 20, 2 (1983), 129-155, 144.

[49] There have been many open discussions in political circles and civil society in Mexico over the last few years about the militarization of public security because of drug trafficking. Marcos Pablo Moloeznik is also a prominent voice of concern over this issue, see: Marcos Pablo Moloeznik, "The Militarization of Public Security and the Role of the Military in Mexico," in *Police and Public Security in Mexico*, Robert A. Donnelly and David A. Shirk, eds. (San Diego: University Readers, 2010). Moloeznik also mentions concern over this trend in Marcos Pablo Moloeznik, "The Challenges to Mexico in Times of Political Change," *Crime, Law & Social Change* 40 (2003): 14.

[50] Augusto Varas, *Militarization and the International Arms Race in Latin America* (Boulder, Colo.: Westview Press, 1985), 26-27.

funds and energy from political and institutional reforms that would develop democracy within the country, and even help to address the drug trafficking issue in the long-term. Therefore, not only does militarization of the drug war divert attention from reforms that would enhance democracy, it also creates greater civil-military tensions and increases the influence of the military institution in the political realm.

The military's involvement in drug policy is also significant because of its internal security focus. Focusing military efforts on the internal security threat of drug trafficking instead of external threats is problematic for the military's relationship with the democratizing government in Mexico. Scholars have warned that internal security missions for the armed forces – such as counter-drug strategies – lead to the expansion of military prerogatives and military encroachment on civilian political affairs.[51] This is because defending internal security is a broad and ambiguous mission that gives the Mexican military substantial freedom. Since the objective of the military is essentially a blank slate, the armed forces enjoy greater military prerogatives. In the case of Mexico, the ambiguous purpose of establishing security in regions affected by drug trafficking essentially gives the military free reign to carry out their missions as they see fit. This increased institutional autonomy for the armed forces is particularly problematic because it easily makes the military unaccountable to the Mexican people. Counter-narcotics strategies also affect military involvement in politics because it gives the military the sense that it is the guarantor of the nation against drug trafficking organizations. When the military perceives itself as the national arbiter, this rationale justifies non-constitutional and undemocratic intervention in order to establish security in a time of

[51] Alfred Stepan, "The New Professionalism of Internal Warfare and Military Role Expansion," in *Authoritarian Brazil,* Alfred Stepan, ed. (New Haven: Yale University Press, 1973), 47-65, 52.

crisis.[52] This not only legitimizes military intervention in civilian politics, it also gives the military superiority over civilian control and establishes a politicized role of the armed forces in Mexican society. Therefore, the emphasis on military involvement in the arena of public safety against drug trafficking in Mexico will likely induce greater military control of the government's political affairs.

Even though the internal security focus of counter-drug trafficking efforts poses a risk to civil-military relations, the consequences of this type of military doctrine may not be as extreme in Mexico. Throughout the last nine decades of the Mexican military's history, the officer corps has been dedicated to internal missions within the country.[53] Therefore, the military's role in counter drug trafficking efforts is not a significant diversion from the domestic missions that have characterized the Mexican military for nearly a century. Indeed, the fact that the military's institutional history of domestic security missions coincides with the tradition of civilian control over the armed forces in Mexico indicates that the internal security focus of drug policy will not substantially alter the military's role within the country. Since the Mexican government has continually maintained its hegemony over the military while the officer corps carried out domestic missions, one may initially assume that the domestic focus of counter-drug trafficking will not induce military encroachment on the political arena. However, because increased counter-narcotics missions for the armed forces have coincided with recent regime change and political transformation in Mexico, the reality within the country may be different than history might predict.

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[52] Adam Isacson, "La Asistencia Estadounidense a la Seguridad," *Colombia Internacional,* 49/50 (2000): 68.

[53] Moloeznik, "The Militarization of Public Security and the Role of the Military in Mexico", 72.

As mentioned previously, democratic political transformation has placed the armed forces at an important crossroads. The shift in political power in 2000 has destabilized the civil-military relationship in Mexico and existing traditions of military subordination to the civilian government are unlikely to continue in the same manner. The process of democratization also increases the likelihood of this outcome because democratic institutions and practices are currently feeble and unstable in Mexico. In countries like Mexico with high levels of political instability and weak institutions, the effects of internal security missions on military engagement in politics are greater. This is because political conditions, such as weak civilian government or ineffectual institutions, predispose countries to military rule. [54] Especially when the organizational resources, effectiveness, and coherence of the military varies greatly from the capacity of civilian government institutions, increased military prerogatives and political influence are more likely.[55] When the Mexican military is given a greater role in domestic counter-drug efforts, this imbalance between the armed forces and the unstable civilian government in Mexico is exacerbated. In consolidating governments, the probability of military intervention is also determined by military officers' perception of whether the civilian government is capable of resolving the nation's problems better than the armed forces. Since counter-drug efforts and public security in Mexico almost exclusively depend on the military, the armed forces will have greater confidence in their ability to lead and fulfill the duties of the state, which makes a military coup a likely phenomenon. Therefore, using the military for internal security doctrines such as the drug war is

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[54] Constantine Danopoulos, "Intervention and Withdrawal," in *From Military to Civilian Rule*, ed. Constantine Danopoulos, (London: Routledge, 1992), 3.

[55] Samuel Fitch, *The Armed Forces and Democracy in Latin America* (Baltimore: Johns Hopkins University Press, 1998), 36-37.

troubling, especially for a country that is precariously transitioning from authoritarianism to a consolidated democracy. Indeed, civilian control over the armed forces in Mexico will probably worsen as a result of the military's role in counter-drug policy, even though these domestic security roles have been common in Mexico's past.

While many other aspects of civil-military scholarship are also applicable to the role of the armed forces in counter drug missions in Mexico, these are some of the main theories that address this issue. From a theoretical standpoint, the previous sections demonstrate that the military's accelerating participation in the Mexican drug war clearly undermines the future of consolidation of democracy within the nation. This is directly due to the fact that military involvement in the drug war increases the likelihood of military expansion into the political arena, or even a military coop. This prospect for Mexico's consolidating democracy is not limited to theoretical speculation. Many changes and tendencies have been recently observed in the Mexican armed forces that demonstrate the erosion of democracy rather than the consolidation of democracy within Mexico.

Recent Experiences and Changes within the Military as a Result of Counter-drug Missions

The most evident indication of the degeneration of democratic consolidation in Mexico as a result of military counter-drug missions is the appointment of active-duty military personnel to civilian government leadership positions. Ever since the role of the military was expanded into greater counter-narcotics tasks nearly a decade ago, there has

been increased staffing of civilian government posts by military officers.[56] Indeed, since the election of Vicente Fox in 2000, the number of active-duty military commanders holding civilian leadership positions has nearly doubled from 4,504 military officers to 8,274 in 2008.[57] Incorporating the military into head government positions, such as the appointment of General Arturo Chávez as the current Attorney General of Mexico, is concerning because it increases the military's influence over politics and it limits responsiveness to the Mexican people. By decreasing democratic accountability and oversight, these military appointments clearly counteract democratizing elements in Mexico's political structure. Therefore, the correlation between the military's increased involvement in the drug war and the presence of military officials in government reveals the corrosive nature of the military's role in counter-drug policy for democratic consolidation.

The appointment of military personnel to civilian government is not the only indicator of the effects of counter-drug policy on the democratization process in Mexico. Public perception and attitudes also have a significant impact on the consolidating democracy of Mexico. In his critical assessment of democratic states, Juan Linz describes political legitimacy as "the belief that in spite of shortcomings and failures, the existing political institutions are better than any others that might be established".[58] This evaluation of legitimate democratic institutions unmistakably reveals the importance of public opinion. The extent to which citizens are satisfied with the performance of

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[56] Laurie Freeman and Jorge Luis Sierra, "Mexico: The Militarization Trap," in *Drugs and Democracy in Latin America: The impact of U.S. policy,* Coletta A. Youngers and Eileen Rosin, eds. (Boulder, Colorado: L. Rienner., 2005), 277.
[57] Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," 13.
[58] Juan Linz, *The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibration* (Baltimore, Maryland: Johns Hopkins University Press, 1978), 16.

Mexico's democratizing state will determine the likelihood that they will support a new or undemocratic political regime.

Currently in Mexico, the primary issue that occupies public opinion is the level of public insecurity from drug violence. According to the Pew Global Attitudes Project, crime is the main concern of the Mexican public, with 81 percent of Mexicans responding in 2009 that it is a very big problem.[59] The role of illegal drugs follows close behind, with 73 percent of Mexicans viewing it as a significant problem in their country, up from 65 percent in 2007.[60] Similarly, in a Global Views survey in 2004, drug trafficking was the top concern in Mexico, with 89 percent of Mexicans agreeing that drug trafficking is a critical threat to Mexican interests.[61] This shows that public insecurity, especially from drug trafficking, is a main factor in the public's view of their democratizing government. Since the military currently has the primary role in guaranteeing public security and combating drug trafficking organizations, the armed forces hold an important influence on public opinion in Mexico. Interestingly, the military's role in counter-drug efforts may both reinforce and weaken democratic consolidation within the country through public perception.

One reason for this contradictory outcome is the public's attitude towards the armed forces. The Mexican military is one of the most trusted institutions in Mexico. A 2009 public opinion survey plainly demonstrates this attitude, with 74 percent of

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[59] Pew Global Attitudes Project, "Troubled by Crime, the Economy, Drugs and Corruption: Most Mexicans See Better Life in U.S. – One in Three Would Migrate," *PewResearchCenter*, Washington D.C., Sept. 23, 2009, <http://pewglobal.org> (accessed Feb. 3, 2011), 13.

[60] Ibid., 13.

[61] Centro de Investigacion y Docencia Economicas, Consejo Mexicano de Asuntos Internacionales, and Chicago Council on Foreign Relations, *Global Views 2004: Mexican Public Opinion and Foreign Policy* (Ann Arbor, MI: Inter-University Consortium for Political Social Research, 2005) <http://www.icpsr.umich.edu> (accessed Mar. 4, 2011).

respondents in Mexico affirming that they have significant confidence in the army.[62] This was one of the highest levels of trust expressed towards a Mexican institution; the military scored only slightly below the church and schools. Since counter-drug policy has increased the military's activities and visibility throughout the country, the strong amount of faith that the Mexican public has for the military may actually improve the public's perception of the current regime. Indeed, there may be greater legitimacy for Mexico's consolidating democracy because the armed forces – an institution that is strongly trusted by most Mexicans – has a prominent role in the government's policies. Especially when 74 percent of the Mexicans trust the army, while only 29 percent trust the police, the military's involvement in drug policy plays a noticeable role in generating legitimacy for the current political system.[63] By shifting responsibility for counter-drug trafficking efforts from the police to the military, the nation's most pressing problem was no longer in the hands of an institution that was barely trusted or respected by its citizens. Instead, counter-drug strategies are predominantly addressed by the military, which increases public approval for counter-drug policy because of the public's faith in the armed forces. As a consequence of this policy change, there will likely be increased legitimacy in the eyes of the Mexican people for the democratizing regime because it gave a highly trusted institution responsibility for combating drug trafficking, a primary concern for this population.

Conversely, however, there are also signs that public opinion towards the military will actually subvert democratic consolidation in Mexico. Respect for the armed forces is so high that the Mexican public may actually prefer military control to the current

[62] Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," 17.
[63] Ibid., 17.

democratic system. In 2009, an average of 64 percent of people in Mexico agreed with the statement "when there is a lot of crime, a military take-over would be justified".[64] This high level of support for an authoritarian overthrow of democracy by the military is both astounding and concerning. Indeed, it was one of the highest levels of public support for a military coup in exchange for public security in Latin America.[65] The Mexican public's willingness to support authoritarian actions by the military is concerning for democratic consolidation because it shows that the Mexican public is not greatly invested in democracy in their country. Since citizens are open to sacrificing democracy in exchange for security, it is clear that the current political regime in Mexico has not generated significant confidence in the Mexican people in its capacity to ensure the basic needs of its citizens. It also reveals that security overrides democratic consolidation in Mexico as a priority in the public perspective. This public attitude is also important because it can influence the actions of the military. If the military perceives public discontent with the government's inability to combat organized crime, the armed forces can use this as a justification for intervention in politics. Since a military coup is one of most undemocratic measures that can be employed in Mexico, an authoritarian overthrow by the armed forces would sever the prospect of the consolidation of democratic governance within the Mexican nation. Therefore, if the current government fails to establish satisfactory security within the country, it will be unlikely that a democratic political system, rather than a military regime, will result.

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[64] Orlando J. Pérez, "Crime and Support for Coups in Latin America," *AmericasBarometer Insights*, 32 (2009): 2.
[65] Ibid, 2.

Corruption within the armed forces is another consequence of the military's role in counter-narcotics missions that undermines Mexico's consolidating democracy. Given the high levels of drug trafficking-related corruption in the police and other federal forces, the military's prominent role in drug policy was promoted because of the perceived incapacity for corruption within the armed forces.[66] The loyalty of the military to the nation and troops' disciplined obedience to a higher chain of command led people to believe that the armed forces are immune to corruption. Ironically, however, increased involvement in counter-drug efforts has led to greater corruption of the military by drug trafficking organizations.[67] The charge against General Gutierrez Rebollo, the Commissioner of the Attorney General's National Institute to Combat Drugs, for being paid off by drug traffickers is just one example of the increasing infiltration of corruption in the armed forces as a result of its involvement in drug policy.[68] Moreover, continued participation of the armed forces in counter-drug efforts will only open the door to increased military expansion into crime.[69]

Collaboration and corruption between drug trafficking organizations and military officials is problematic for a few reasons. Above all, the corrupting influence of drug trafficking organizations undermines democracy because the system of *plata o plomo* makes the military accountable to drug trafficking organizations, not the government or the Mexican people. Indeed, corruption of the armed forces could lead to a narco-state where the military protects and enforces the interests of drug trafficking organizations

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[66] Mares, 63.
[67] Ibid., 71.
[68] Louise Shelley, "Corruption and Organized Crime in Mexico in the Post PRI-Transition," *Journal of Contemporary Criminal Justice* 17, 1 (August 2001): 220.
[69] Raúl Benitez Manaut, "Containing Armed Groups, Drug Trafficking and Organized Crime in Mexico," in *Organize Crime and Democratic Governability*, John Bailey and Roy Godson, eds. (Pittsburgh: University of Pittsburgh Press, 2000), 156.

instead of the welfare of the Mexican citizenry. The expansion of corruption in the armed forces is also concerning because it undercuts the rule of law in Mexico, which is a fundamental condition for democratic consolidation.[70] Without respect for the rule of law, democratic procedures and norms cannot be developed within the country. Additionally, according to Samuel Fitch's conception of civilian democratic control of the military, the armed forces must be subordinate to the rule of law in order to maintain civilian control of the armed forces.[71] This is because corruption of the armed forces generates a political sphere that is not controlled by the democratic political system. Decreased civilian control of the military will weaken Mexican democratization. Corruption is also concerning because it damages the public perception of the armed forces and drug policy. If the Mexican public loses its faith in the military's ability to carry out drug efforts or if they believe that the military is not adequately protecting the public's interests, legitimacy for Mexico's democratizing political regime will be greatly damaged.

In addition to corruption, human rights abuses by military officers during drug missions have also been a major concern for the future of Mexico's democratic political system. The threat to human rights was explained well by Vicente Fox's defense secretary, who actually opposed involvement of the military in the drug war because: "drug work would inevitably discredit the armed forces, and feared that the soldiers would become abusive after months of being stationed in impoverished areas and subject

[70] In their seminal work on consolidating democracies, Alfred Stepan and Juan Linz highlight the necessity of all state actors subjecting to the rule of law in order to consolidate a democracy. Juan J. Linz and Alfred Stepan, "Toward Consolidated Democracies," *Journal of Democracy*, 7, 2 (1996), 14-33, 17.
[71] Samuel Fitch, *The Armed Forces and Democracy in Latin America, 38.*

to elevated stress and boredom".[72] His worry over human rights abuses by members of the military was well founded. Indeed, there have been an increasing number of human rights violations associated with the military's participation in counter-drug efforts. The number human rights complaints against the military at the National Human Rights Commission (CNDH) have dramatically increased from 182 in 2006 to 1,230 accusations in 2008.[73] Human rights organizations have also documented the use of arbitrary detention, disappearances, torture, rape, and extrajudicial killings of Mexican citizens by the military during counter-narcotics efforts throughout the nation.[74] A noticeable instance of military abuse was the arbitrary detention of 36 citizens in Michoacán during an ambush in search of drug traffickers in May of 2007. Military officers illegally held these innocent civilians for up to 84 hours, torturing their captives and even raping four underage girls.[75]

These abuses by the military during counter-narcotics and security operations are worrisome not only because of their sheer brutality, but also because of the larger implications they have for Mexico's political system. Human rights violations by the military during drug missions discredits the current government of Mexico and its policies. Indeed, abuses against the Mexican citizenry by a state institution will likely lead to a crisis of confidence in the current political establishment or even regime de-legitimization. Additionally, many citizens and civil society groups have begun to believe that the Mexican military is not fit to carry out drug efforts because of troops' propensity

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[72] George W. Grayson, *Mexico: Narco-violence and a Failed State* (New Brunswick, N.J.: Transaction Publishers, 2010), 119.
[73] Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," 27.
[74] Tamara Taraciuk, *Uniform Impunity Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations* (New York: Human Rights Watch, 2009), 2-3.
[75] Ibid., 38.

to commit human rights abuses.[76] Skepticism towards the military's participation in drug operations can worsen the Mexican public's perception of a democratic government's ability to effectively fight the drug war. Nevertheless, it is important to note that while the public's view of the armed forces has been damaged by human rights violations, the public still prefers the military to lead counter-narcotics operations over the police. As a matter of fact, 83 percent of Mexicans support using the Mexican army to fight drug traffickers, with only 12 percent opposing their involvement in these missions.[77] Continued support for the military's role in drug operations in spite of evident human rights abuses is probably due to a lack of public confidence in the Mexican police. Thus, it is unlikely that the public will advocate for removal of the armed forces from drug trafficking missions, even though human rights violations have decreased their confidence in the integrity of this counter-drug trafficking approach.

Human rights violations by members of the military during counter-drug efforts also subvert the consolidation of democracy in Mexico in a more unmistakable manner. By acting outside of the law and abusing the country's citizens, the Mexican military is not respecting democratic practices or procedures. Only when state institutions comply with democratic norms can democracy be consolidated. Unfortunately for Mexico's democratization, human rights violations during counter-drug missions demonstrate that respect for democratic procedures and the rule of law is significantly decreasing within the armed forces. Not only that, many human rights allegations against military personnel are never investigated or prosecuted in the military's justice system. Impunity for the

[76] Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," 30-32.
[77] Pew Global Attitudes Project, "Troubled by Crime, the Economy, Drugs and Corruption: Most Mexicans See Better Life in U.S. – One in Three Would Migrate," 14.

armed forces is so extensive that only 37 cases of military abuse in the last ten years have resulted in a sentence.[78] Failure to prosecute human rights violations by military officials makes the armed forces unaccountable for its actions. Thus, human rights abuses by the officer corps demonstrate the military's lack of accountability to the government in Mexico's consolidating democracy. Ultimately, lack of democratic accountability undermines the legitimacy of Mexico's democratic political system, therefore diminishing the likelihood of its survival.

Lastly, national sovereignty is another relevant aspect of the military's role in counter-drug efforts. Through counter-drug policy, the United States has increasingly influenced the Mexican armed forces. By providing funding, equipment, and training to the Mexican military for drug operations through the Mérida Initiative, the U.S. has significantly shaped the military's approach to combating drug trafficking organizations. This is, in large part, due to the fact that military aid from the United States acts as a carrot for the Mexican armed forces to follow the United States' will. Indeed, some observers have noticed that highly visible counter-drug operations, rather than lower profile programs, have been implemented by the military in an effort to seek approval from the United States.[79] Experts have also noticed increased integration, openness, and collaboration between the United States and Mexican militaries as the Mexican military's participation in counter-drug trafficking efforts intensified.[80] The unprecedented integration and influence the United States has over the Mexican military is not inconsequential. Indeed, the U.S.'s power over the Mexican military's role in counter-

[78] Camp, "Armed Forces and Drugs: Public Perceptions and Institutional Challenges," 28.
[79] Shelley, 224.
[80] Ibid, 21.

drug policy may have important impacts on democratic consolidation in Mexico, with potentially unpredictable outcomes. On one hand, increased integration between the two countries' militaries will expose the Mexican military to American democratic norms and the U.S. civilian-led structure of government. Exposure to this system will reinforce democratization in Mexico because it will strengthen the value of democratic and civilian controlled government in the eyes of the armed forces. On the other hand, however, the unprecedented amount of U.S. influence over military operations in Mexico will undermine progress towards consolidated democracy because it weakens Mexico's national sovereignty. The degree of national sovereignty in Mexico is important because it determines the government's ability to mediate between its citizenry and external actors. If the military favors an international actor over the Mexican public for its counter-drug policies, the government's democratic commitment to its citizens is greatly damaged. Additionally, the level to which Mexican citizens view their government's policies to be determined by a foreign power will limit their commitment and participation in such a system. Since the United States' influence over the military's counter drug efforts is highly visible, it is likely that the Mexican public will begin to lose confidence in their government's accountability to its citizens. Therefore, the consequences of the United States' influence on the military's counter-drug trafficking operations are two-fold: they can simultaneously reinforce as well as undermine democratizing processes in Mexico. Currently, however, it remains unclear which aspects of foreign influence on the armed forces will have a greater impact on Mexico's current political system.

Staffing civilian government posts with active-duty military officials, public approval for military coups, corruption, human rights abuses, and decreased national sovereignty are important consequences of increased involvement of the armed forces in drug policy. To one degree or another, all of these results demonstrate a clear decrease in democratic tendencies in Mexico. Indeed, these recent developments regarding the armed forces and its relationship with the state show us that military involvement in drug efforts has undermined democratic accountability and decreased civilian control over the military. As a result, current experiences with the Mexican military imply that democratization of the Mexican political system and military involvement in counter-drug policy cannot coexist. Unless there are significant changes to this approach towards drug trafficking, it appears that the democratization process will be subverted by the armed forces.

Prospects for Democratization

Civil-military relations theory and current experiences with the military in Mexico all demonstrate that military involvement in counter-drug efforts creates significant threats to democratization in Mexico. The previous sections revealed that military-based counter-narcotics policy has the formidable potential to undermine civilian control over the armed forces, weaken democratic institutions, and subvert democratic practices in Mexico. Given the substantial ways in which military involvement in drug policy can be hazardous to democratization in Mexico, the current political establishment should favor another approach to drug trafficking if it wants to uphold Mexico's fledging democracy. Using the Mexican police and judicial system would be a more desirable approach than

the military because these civilian institutions do not pose as many risks to democratic governance in Mexico. While there are drawbacks to any approach toward drug trafficking crime and violence, utilizing Mexico's police-justice-regulatory system to combat organized crime is clearly preferable to the armed forces for Mexico's democratic development. Nevertheless, using the military in the short-term for combating drug trafficking organizations and establishing public security currently appears to be a "necessary evil" for Mexico. Presently, Mexico's police-judicial-regulatory apparatus is incapable of adequately addressing the DTO threat. Therefore, the military will clearly continue to play a central role in Mexico's war on drugs for some time to come. While we cannot predict the extent to which this military-based policy will impact Mexico's nascent democracy, all indications suggest that democratic consolidation in Mexico will be seriously undermined by the military's continued role in counter-drug efforts.

THE JUDICIAL SYSTEM: LIKELIHOOD OF DEMOCRATIC REFORM IN THE FACE OF CHALLENGES FROM THE DRUG WAR

In addition to the role of the military, the judicial system is also a main pillar of democratic consolidation for the emerging political system in Mexico. The judiciary is important in Mexico because effective rule of law is a requirement for democratic governance. Indeed, according to experts on the subject, democratic governability implies that the rule of law is protected and enforced by state authorities according to established rules.[81] However, if a democratic government cannot administer justice throughout a nation's territory, the democratic state is in crisis.[82] The judiciary is also important for democracy because it can play a significant role in balancing the power of other branches of government so that the interests of its citizens are promoted, especially if the executive seeks to take dictatorial measures. Not only does a democratic government need an effective judiciary in order to function, enforcement of the law is also a necessary condition for the continued consolidation of democracy in developing countries. Alfred Stepan and Juan Linz state in their seminal work, *Toward Consolidated Democracies*, that the rights of citizens must be protected by the rule of law to allow the consolidation of democracy.[83] Moreover, there is evidence that the government's ability to achieve rule of law in a country recently undergoing democratic transition determines the legitimacy of a democratic regime. It has been demonstrated that there is a strong correlation between positive perceptions of judicial system performance and support for democracy

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[81] John Bailey and Roy Godson, *Organized Crime and Democratic Governability: Mexico and the U.S.-Mexican Borderlands* (Pittsburgh: University of Pittsburgh Press, 2000), 8.
[82] Carlos Antonio Flores Pérez, *El estado en crisis: Crimen organizado y politica para la consolidación democrática* (México, D.F.: CIESAS, 2009), 4.
[83] Juan J. Linz and Alfred Stepan, "Toward Consolidated Democracies," *Journal of Democracy* 7, 2 (1996): 14.

in Latin American countries.[84] Therefore, the Mexican judicial system's ability to effectively enforce the law is one of the central challenges that Mexican democracy faces today, as well as one of the determining factors in the potential for Mexico's democracy to progress in the future.

Since the judicial system is clearly an important component of democracy, evaluation of its stability and strength is a valuable way to assess the progress of democratization of Mexico's political system. Currently, however, the justice system reflects a dismal status of democracy within Mexico. This is because the Mexican judicial system has largely failed to apply the rule of law within the country. Indeed, the judiciary is such a weak and fragile institution that widespread impunity has abounded throughout the Mexican territory. The average impunity index in Mexico is approximately 98 percent.[85] This high rate of unpunished crimes in Mexico is due to a number of problems in the judicial system. Most significantly, public distrust in the judiciary has resulted in most crimes going unreported. A recent ICESI victimization survey noted that 78 percent of crimes are not reported in Mexico, meaning that less than 22 out of every 100 crimes even come before a justice official.[86] Out of the small number of crimes that are reported, judicial authorities investigate only one out of every five claims against a crime.[87] Furthermore, an even smaller number of these cases that are investigated actually proceed

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[84] According to David A. Shirk's analysis there is a correlation coefficient of .5026 between approval for democratic governance in the Latinobarómetro poll from 2008 and perceptions of the judicial system in the 2007 Gallup survey, which suggests a correlation between the judiciary and democratic legitimacy. David A. Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," in *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime*, Eric L. Olson, David A. Shirk, and Andrew Selee, eds. (Washington D.C.: Woodrow Wilson Institute, 2010), 211.

[85] Guillermo Zepeda Lecuona, *Los Retos de la Eficacia y la Eficiencia en la Seguridad Ciudadana y la Justicia Penal en México* (Guadalajara, CIDAC, 2009), 13.

[86] "Consideraciones acerca de la séptima encuesta nacional sobre inseguridad," *Instituto Ciudadano de Estudios sobre la Inseguridad A.C.* 7 (2010), 20, <http://www.icesi.org.mx> (accessed Jan. 20, 2011).

[87] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector", 208.

to trial and result in a sentence. According to the Mexican government, approximately two out of every ten perpetrators prosecuted for a crime receive a prison term from judicial authorities.[88] Overall, these deficiencies in the justice system mean that only one or two out of every 100 crimes in Mexico are sentenced. Due to these astoundingly high rates of impunity, the Mexican judiciary is obviously not fulfilling its role in enforcing the rule of law.

Nevertheless, in response to these significant flaws in the justice system, there have been a number of reforms implemented over the last decade to strengthen and develop the judicial sector in order to consolidate the process of democratization within the country. In 2008, President Calderón passed the most substantial Mexican judicial reforms to date. The 2008 package of reforms initiated an overhaul of the Mexican judicial system to replace, among many other changes, the secretive, paper-based inquisitorial justice method with an adversarial oral trial model.[89] The federal reforms also improved the rights of the accused through modifications in due process, legal defense and the presumption of guilt. Calderón's reforms also modernized and strengthened the judiciary by altering investigation approaches and creating new criminal codes for organized crime.[90] These changes, intended to improve the administration of justice in Mexico, affect all aspects of the judicial system and are supposed to be fully implemented throughout Mexico by 2016.[91]

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[88] Marcos Pablo Moloeznik, "The Challenges to Mexico in Times of Political Change," *Crime, Law & Social Change* 40 (2003): 11.
[89] Francisco González, "Mexico" in *Countries at the Crossroads 2009: A Survey of Democratic Governance* (Washington D.C.: Freedom House, 2010), 12.
[90] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," 216.
[91] Ibid., 205.

These judicial reforms are important because they have substantial positive implications for democratic governance in Mexico. Many scholars point out that the fragile and weak nature of the judicial system in Mexico is the country's greatest obstacle to democracy.[92] If the 2008 constitutional reforms succeed in developing and strengthening the judiciary, democratization in Mexico will be enhanced, rather than obstructed by this branch of government. There is also widespread agreement within academic scholarship that there need to be changes in the institutional structure, investigative strategies, and culture of the Mexican justice system in order to make the government more accountable to the Mexican citizenry and respectful of the fundamental rights of its citizens.[93] The fact that the 2008 reforms initiate these changes within the justice system demonstrates that there is significant progress towards strengthening the judicial pillar of a democratic political system within Mexico. Additionally, according to Mexican democracy expert Denise Dresser, rule of law is the most important aspect of democratic consolidation in Mexico, and without it democracy cannot flourish.[94] Since Calderón's reforms increase the judiciary's ability to adhere to and protect the rule of law, democratization of Mexico is also significantly enhanced by these alterations. Ultimately, the hope is that Mexican judicial reforms will increase the capacity, transparency, accountability, and effectiveness of the justice system. If the judiciary

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[92] Denise Dresser, "Mexico: From PRI Dominance to Divided Democracy," in *Constructing Democratic Governance in Latin America*, Jorge I. Domínguez and Michael Shifter eds. (Baltimore: Johns Hopkins University Press, 2003), 324. And José Luis Velasco, *Insurgency, Authoritarianism, and Drug Trafficking in Mexico's "Democratization"* (New York: Routledge, 2005), 109.

[93] Joseph S. Tulchin and Meg Ruthenburg, ***Toward a Society Under Law: Citizens and Their Police in Latin America*** (Washington, D.C.: Woodrow Wilson Center Press, 2006) and Nathan Pino and Michael D. Wiatrowski, ***Democratic Policing in Transitional and Developing Countries*** (Burlington, VT: Ashgate Pubishing Co., 2006).

[94] Dresser, 362.

succeeds in achieving these goals, the consolidation of democracy in Mexico will be greatly bolstered.

While there are substantive changes developing within the justice system, the increased presence of drug trafficking organizations and counter drug efforts has greatly impacted these advances. Indeed, the drug war significantly hinders the performance of the justice system in Mexico. Some would even go as far as to say that the threat to the judicial branch posed by drug trafficking organizations is the most conspicuous and detrimental consequence of the drug war in Mexico. This is because the judiciary's ability to successfully punish and control the problem of drug trafficking crime will determine this system's performance. However, there are substantial pressures placed on the judicial system by drug trafficking organizations. For example, judges and other members of the judiciary will be subject to physical intimidation, harassment, and corruption through bribes and other payback schemes from drug trafficking organizations. The increased volume of drug-related court cases increases the burden of work within the judiciary and slows down the administration of justice. The focus on drug-related crimes will detract from the judiciary's ability to enact justice in other important areas of society. All of these factors, as well as many others, may weaken the judiciary at a critical moment for Mexico. If the judiciary is weak, it will be unable to decrease drug related criminality in Mexico, thus creating a vicious cycle of lawlessness that will undermine Mexico's democratic governance. Indeed, illicit drug trafficking and organized crime flourish under the exact conditions that the justice system is trying to fight against: an atmosphere of impunity and the absence of rule of law. Therefore, the Mexican judiciary can only be strengthened if drug-related crime is reduced. Otherwise,

escalating criminality related to drug trafficking will continue to weaken the administration of justice in Mexico's political system. In the face of these formidable challenges from the drug war, it is crucial to assess whether the judicial system and its democratic reforms can be upheld. In light of the significant obstacles from drug trafficking organizations and counter-drug efforts, can rule of law be successfully enforced and developed by the criminal justice system so that the consolidation of Mexican democracy can be upheld? Specifically, can the judicial system fulfill its reforms in tandem with the presence of the drug war?

It appears that the drug war may undermine the judicial system's ability to develop and strengthen. This is because both drug trafficking organizations and current efforts to combat drug trafficking predominantly counteract the positive reforms occurring within the criminal justice system. The following pages will examine the specific manner in which drug policy and drug trafficking organizations impact the judicial system. This analysis will begin by evaluating the impact on the judicial system from drug trafficking organizations, specifically focusing on increased corruption, criminality, and protections for the accused. I will then examine the effects of efforts to combat drug trafficking on the judicial system. Specifically, this section will focus on the organized crime clause, the distribution of resources and training, and extradition as important aspects of counter drug efforts within the judicial branch.

Drug Trafficking Organizations: How they affect the Mexican Judicial System

Drug trafficking organizations are a serious concern for the judicial system in Mexico. Indeed, the fact that judicial reforms coincide with the recent upswing in drug

trafficking power and violence indicates that these illicit actors will influence the administration of justice in a number of formidable ways. Although judicial reorganization will ultimately improve the strength of the criminal justice system, in the short-term this system will be greatly weakened by the numerous and significant changes that are currently taking place. Before the democratic transition in 2000 and the subsequent justice reforms in Mexico, the judicial branch was just an extension of the PRI administration. Thus, for most of Mexico's modern history this branch used institutionalized corruption in order to perform its duties, just like most other state institutions under PRI leadership.[95] With the transition to democracy, however, the PRI's channels of accommodation and co-optation were no longer feasible for the judiciary. This is because the justice reforms implemented by Fox and Calderón eliminated these co-opting networks, and instead initiated changes that would eventually create a fair, efficient, and reliable judicial branch. At the moment, however, the Mexican judiciary is left in a precarious limbo. While the old channels for criminal justice have been discarded, the new organizational structures of the judicial system still have not been realized in most parts of Mexico. Thus, the Mexican judicial system has largely become a weak and vulnerable institution under the new democratic political authority. Some scholars even contend that democratic reforms have the perverse effect of weakening the judiciary because they are simply "window dressings" that corrupt judicial structures rather than reforming old procedures.[96] Regardless of one's faith in these reforms, one thing is clear: as the judiciary is undergoing transformation, this system has become

[95] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," 207.
[96] George W. Grayson, *Mexico: Narco-violence and a Failed State* (New Brunswick, N.J.: Transaction Publishers, 2010), 146. And Bailey and Godson, 27.

increasingly vulnerable. For drug trafficking and organized crime, the current vulnerability of the justice system means that these illicit organizations can more easily influence and disrupt the judicial system. Since drug trafficking organizations benefit from an environment without rule of law, it is likely that drug trafficking organizations will take advantage of this opportunity and strive to subvert the justice system in Mexico.

Recent developments in Mexico since 2000 have demonstrated that drug trafficking organizations have strived to do exactly that. Corruption of justice officials is the most obvious example of drug trafficking organizations' ability to undermine the justice system in Mexico. Even though corruption has always existed in Mexico, over the last ten years drug trafficking organizations have attained unprecedented power to corrupt and control government authorities. For the justice system, Mexican federal and local police officials are the most corrupted aspect of the criminal justice structure. Approximately 319,000 local police officers are believed to be protectors, informants, and executioners for drug trafficking organizations in Mexico.[97] However, since drug trafficking organizations currently have extensive infiltration and control over the Mexican police forces, there is little incentive for these organized crime organizations to target and contaminate the later stages in the justice system. Because a significant number of police are on the payrolls of major drug cartels, graft at this stage in the justice system means that many drug-related crimes will go unreported or uninvestigated, preventing them from ever entering the judicial system.

Nevertheless, there is still significant corruption present in Mexico's judiciary. According to a former administrator of the DEA, drug trafficking organizations have

[97] John Bailey, "Drug-Traffickers as Political Actors in Mexico's Nascent Democracy," Working paper, Georgetown University, August 2010, 23.

increasingly controlled judicial and penal officials over the last 20 years.[98] This is due, in large part, to the numerous channels and pathways for corruption within the judicial branch. There are many steps involved in the judicial system in Mexico. The criminal justice system is an interactive chain that includes police, attorneys, law clerks, judges, and prison authorities. Given the abundance of steps in this system, there are a variety of stages that drug trafficking organizations can disrupt with corruption or intimidation. Recent judicial reforms are significant because they increase the number of these opportunities for organized crime to influence the judicial process. This is because changes, such as greater dependence on evidence, greater involvement of judges, the creation of new justice positions, increased participation of defense attorneys, and expanded procedural measures in Mexico's 2008 reforms create greater bureaucracy and regulation in the judicial system. While these changes can have important benefits, overregulation of the judicial system is problematic because it increases the opportunities for drug trafficking organizations to engage in corruption.[99] Thus, judicial reforms may actually ease drug trafficker's ability to infiltrate and undermine the Mexican judiciary.

Corruption of the judicial sector has been widely observed in Mexico. It is important to note, however, that it is difficult to adequately measure the levels of drug related corruption in the criminal justice system because the innate secrecy of corruption and the widespread complicity of Mexican public officials in corruption. Nevertheless, in 2002 the UN special rapporteur claimed in their report that 50 to 70% of federal judges in

[98] Robert C. Bonner, "The New Cocaine Cowboys: How to Defeat Mexico's Drug Cartels," *Foreign Affairs* 89, 4 (July/August 2010): 38.
[99] González, 16.

Mexico were corrupt.[100] In addition to this, there have been several DTO-related assassinations of judges in recent years.[101] These events only serve to illustrate drug trafficking organization's ability to corrupt or eliminate members of the judicial sector. Similarly, an astounding 36 percent of Mexicans stated that if a criminal is wealthy, they will be declared innocent in the judicial system.[102] Given the large profits that drug trafficking organizations have at their disposal and their immeasurable capacity to intimidate public officials, it is no surprise that they have infiltrated the judicial system. In particular, when drug trafficking organizations do infiltrate the justice sector, their two main targets are usually the prosecutors who select cases to bring to court and court administrators who are in charge of paperwork.[103] Prosecuting attorneys are critical for the judiciary because they determine what cases are seen by a judge and are brought to trial. Since prosecutors are essentially the gatekeepers for the judiciary, many drug trafficking organizations target these officials so that their cases never progress through the judicial structure. Similarly, influencing low-level court administrators is often the easiest and most efficient manner of making a drug-related crime disappear. While corruption has particularly targeted these divisions of the criminal justice structure, drug trafficking *mordidas* and intimidation have emerged among all levels of the judicial system.

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[100] United Nations. *Civil and Political Rights, Including Questions of: Independence of the Judiciary, Administration of Justice, Impunity.* Report of the special rapporteur on the independence of judges and lawyers. Dato'Param Cumaraswamy. Commission on Human Rights Resolution, 2002, 18.

[101] Sara Shatz, Hugo Concha and Ana Laura Magaloni Kerpel, "The Mexican Judicial System: Continuity and Change in a Period of Democratic Consolidation," in *Reforming the Administration of Justice in Mexico,* Wayne A. Cornelius and David A. Shirk, eds. (Notre Dame, Indiana: University of Norte Dame Press, 2007), 213.

[102] Parametría, "¿Presunta justicia?" Mexico, Feb. 16, 2011 <http://www.parametria.com.mx/>. (accessed Jan. 3, 2011).

[103] Bailey, "Drug-Traffickers as Political Actors in Mexico's Nascent Democracy," 24.

Drug trafficking organizations' ability to corrupt the judicial system is of significant concern. As a result of drug trafficking corruption in Mexico's legal system, the impartial administration of justice has been greatly compromised. Corruption of this sector ensures that legitimate sentences are not handed out, and instead impunity is granted to drug traffickers allowing them to act as they please. This consequence makes the judicial system inert and ineffectual because it fails to impart the rule of law in the Mexican territory. Thus, corruption clearly weakens the judicial system in Mexico. Not only that, corruption also directly weakens democratic practices in Mexico because graft makes the judicial system accountable to organized crime groups, not Mexican citizens. By creating a system that does not defend the safety of its citizenry or hold guilty criminals accountable, the judicial system fails to adequately administer justice in Mexico according to democratic norms. Corruption is also extremely concerning because the judicial system has limited transparency, low oversight, minimal accountability, and very little civilian participation. As a result, corruption within the judicial system is especially potent and it can flourish without significant restrictions. Therefore, drug trafficking organizations can more easily control and harm the performance of this government branch than most other state institutions.

Drug trafficking corruption is also relevant to the judicial branch because this sector of Mexico's government is responsible for holding corrupt government officials accountable and punishing them. Drug-related corruption of any government institution, even those not related to the justice system, undermines the rule of law in Mexico. This is because corruption creates unlawful arrangements that give criminal actors impunity. If the judiciary cannot effectively hold these corrupt officials accountable for colluding with

drug traffickers, the judicial institution is incompetent and weak. Since a strong judiciary is an essential requirement for democracy, bribes and coercion from organized crime clearly impede Mexico's democratization. There are also other negative consequences from the judiciary's inability to address corruption in other areas of the Mexican state. Drug trafficking corruption directly undermines democratic governance because it reduces the political authority's accountability to the Mexican people and it represents organized crime, not the Mexican citizenry, in policy making. Organized crime's ability to illegally influence state officials also sabotages democratic values such as accountability, transparency, and equal participation.

Therefore, as Mexico consolidates its democracy, the judicial system needs to act as an enforcer against corruption from drug trafficking organizations. However, it appears that the justice system has been incapable of adequately fulfilling this role. Even though there are widespread accusations of corruption in important state positions, Governor Mario Villanueva of Quintana Roo was the last high-level government official to be convicted for criminal charges.[104] In 2001 Villanueva was charged with aiding in the trafficking of more than 2,000 tons of cocaine and receiving $500,000 in bribes per shipment of cocaine that he permitted.[105] This shows that the judicial system clearly needs to strengthen its oversight, control, and punishment for drug-related corruption. If the judicial sector fails to do so, corruption in the Mexican state will only continue to strengthen drug trafficking organizations at the expense of these institutions. Fortunately, it appears that Fox and Calderón's judicial reforms will give the justice system the

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[104] González, 14.

[105] Maureen Meyer, Coletta Youngers, and Dave Bewley-Taylor, *AT A CROSSROADS: Drug Trafficking, Violence and the Mexican State* (Washington D.C.: Washington Office on Latin America, 2007), 3.

capacity to perform these functions. The judiciary's increased investigative capacities and accountability from recent reforms appears to be an important factor in bolstering the judicial system's ability to control drug related corruption. In this respect, the judicial reforms enacted by Mexico's democratic regime can clearly coexist with Mexico's drug war. In fact, these reforms will actually help to combat the increasing power of drug trafficking organizations in Mexico. Nevertheless, it is important to note that if judicial reforms succeed in making the judiciary a serious threat to drug cartels, efforts to undermine this system will only increase. Predominantly, efforts to corrupt the justice system have been concentrated towards the police because the judiciary was too weak to pose a serious threat to organized crime groups. However, as judicial reforms progress and strengthen the judiciary, we may actually see greater efforts to undermine the judicial system from drug trafficking organizations. This shows how, in many respects, judicial reforms and drug trafficking organizations are at odds. The judiciary and drug trafficking organizations are clearly struggling to maintain their strength at a critical moment in their development. It remains unclear which influence will prevail in this conflict, but one thing is clear: drug trafficking organizations will not aid the progress of judicial reforms. As the previous sections demonstrate, drug related corruption only serves to weaken the judicial sector and create greater challenges for the judiciary to overcome. While there is still hope that judicial reforms can overcome these obstacles, the justice system has demonstrated that it currently does not have the capacity to adequately enforce the rule of law in Mexico in the face of these impediments from drug trafficking organizations.

Corruption is not the only challenge that drug trafficking organizations pose to the judicial system in Mexico. Drug trafficking organizations also strain the justice system

because they increase levels of overall crime in the country. Drug trafficking organizations are not limited to only illicit drug smuggling, they also engage in other types of crime. In Mexico specifically, drug trafficking organizations have expanded into other criminal activities such as kidnapping, human trafficking, auto theft, extortion, counterfeit products, and arms trafficking.[106] These activities clearly contribute to heightened criminality in the Mexican territory. Indeed, one only has to read the headlines from Mexico to notice the accelerating rates of crime affecting the country over recent years. Increasing criminality is problematic for the judicial system because it puts a greater burden on an already weak institution. Experts have noted that since crime and violence mushroomed in recent years, Mexico's justice system has been overwhelmed by an overload of cases.[107] This increased pressure on the judiciary is problematic because the justice system is already incapable of adequately and satisfactorily fulfilling its duties. According to a recent poll in Mexico, 79 percent of interviewees contend that justice in Mexico is not timely, complete, and impartial, with only 14 percent of Mexican's believing that justice is administered fairly and efficiently.[108] This clearly shows that the Mexican justice system is exhibiting some serious dysfunctions in its ability to enforce the law. High rates of impunity (at more than 98%) also support the conclusion that there are serious deficiencies in the Mexican judiciary's administration of justice.

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[106] Garzón provides an extensive description of drug trafficking organizations' criminal activity in Mexico, explaining particularly well the activities these groups are involved in beyond drug production and smuggling. See: Juan Carlos Garzón, *Mafia & Co.: The Criminal Networks in Mexico, Brazil, and Colombia* (Washington D.C.: Woodrow Wilson International Center for Scholars, 2008). David Shirk also cites these expanded operations: David A. Shirk, *Drug Violence in Mexico: Data Analysis from 2001-2009* (San Diego: Trans-Border Institute, 2010), 13.

[107] Bailey and Godson, 14.

[108] Parametría, "¿Presunta justicia?" Mexico, Feb. 16, 2011 <http://www.parametria.com.mx/> (accessed Jan. 3, 2011).

Escalating crimes by drug trafficking organizations will only exacerbate these shortcomings by increasing the number of criminal cases that must be addressed by this weak system. Indeed, significant trial backlogs are one of the main reasons that the judiciary is incapable of effectively and efficiently administering justice in Mexico.[109] In most cases, it can take months or years for a crime to be prosecuted. Approximately 90,000 accused criminals (nearly 40 percent of the prison system) are currently waiting in prison for their final judicial verdict because of case backlogs and inefficiencies.[110] Severe case backlogs can even prevent some crimes from ever being sentenced. More crimes from drug trafficking organizations will only exacerbate trial backlogs as more cases are brought to the judicial system. Thus, the justice system will become even less efficient and productive as a result of these illicit actors. This will not only counteract judicial reform efforts to make the judiciary more effective and efficient, it will also be a significant obstacle that will continue to impede stronger rule of law in Mexico.

The development of greater rights for the accused is also problematic for the judicial system while drug trafficking organizations have a significant presence in Mexico. This may seem contradictory at first because rights of the accused usually imply that the judiciary is strong and democratic. The current reality for Mexico is more complex than this assumption. Greater access to rights for the accused in the judicial system has arisen out of judicial reform efforts to strengthen and democratize Mexico's judicial sector. One of the Mexican judiciary's greatest flaws is its high rate of guilty verdicts once a suspect is identified. In the cases where crime suspects are arrested, 85%

[109] "Deficiencias en impartición de justicia, por falta de tribunales," *La Jornada*, Jun. 20, 2003.
[110] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," 223.

of these defendants are found guilty.[111] High conviction rates are especially likely if the crime is petty or if the suspect is poor. Indeed, one investigator found that more than half of the criminals in prison in Mexico City were serving sentences for robberies valued at less than twenty dollars.[112] Additionally, the pattern of using torture to obtain forced confessions from suspects also serves as a basis for high rates of guilty verdicts in Mexico.[113] In order to correct these flaws in impartial administration of justice in Mexico, Calderón's 2008 reforms create greater rights for the accused. Specifically, judicial reforms in 2008 created the presumption of innocence, due process, and adequate legal defense as important guarantees for suspected criminals.[114] These protections for defendants are important because they allow the judiciary to reach fair, impartial, and legitimate convictions. Ultimately, the Mexican justice system is only effective and legitimate if it is able to fairly apply sentences in this manner.

At the same time, however, increased protections for suspects also create an opening for drug trafficking organizations. Rights for the accused make it much more difficult to convict and try criminals. For example, Mexico's recent judicial reforms call for increased reliance on forensic evidence, limited pre-trial detention, improved legal defense, open trials, and the separation of power of judges in the system. Many of these changes, while important, allow members of drug trafficking organizations to emerge from the judicial structure unscathed. For example, greater emphasis on forensics and evidence is particularly difficult for the judicial system, especially when the Mexican

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[111] Ibid., 210.
[112] Hector Tobar, "Judicial Overhaul in Mexico Okd" *Los Angeles Times*, Mar. 7, 2008.
[113] Ricardo Hernández Forcada and María Elena Lugo Garfias, *Algunas notas sobre la tortura en México* (Mexico D.F.: Comisión Nacional de los Derechos Humanos, 2004),139.
[114] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," 223-228.

police force lacks the professionalism to effectively collect evidence and carry out these tasks. Thus, it may actually be easier for drug traffickers to avoid punishment for their crimes because sufficient forensic evidence is still rare. Similarly, greater regulation by separate judges at different stages of the judicial process also provide greater opportunities for neglect and give organized crime members more openings to corrupt the administration of justice.[115] Thus, judicial sentences against drug traffickers may actually be more lax and ineffective with these reforms. Similarly, open, less secretive public trials for the accused also provide criminal suspects with greater access to the witnesses, prosecutors, and judges ruling against them. This gives the defendant and other members of organized crime greater ability to bribe, coerce, intimidate, and execute participants in the justice system that are working against the accused. Indeed, there are concerns that the reformed judicial system provides insufficient protections for witnesses testifying against members of drug trafficking organizations.[116] Additionally, improved defense attorneys for the accused, while important, may actually increase the likelihood that high profile drug trafficking criminals are not sanctioned. This is because the new adversarial approach opens the door for skilled defense attorneys to subvert the judicial system through technicalities and other methods, thereby allowing guilty criminals to go unpunished. Therefore, recent judicial reforms can increase the chances that drug traffickers are rarely sanctioned.

Clearly, there are many ways that increased rights for the accused can facilitate insufficient administration of justice towards drug traffickers and organized crime groups. In Mexico, the justice system's ability to hold drug trafficking-related criminals

[115] Ibid., 227.
[116] Grayson, 252.

accountable in light of recent judicial reforms has greatly influenced public opinion. The Mexican public has greatly criticized these judicial reforms because they believe that these changes favor criminals instead of victims. This perception is especially clear in a 2011 public opinion survey, where 48 percent of Mexicans contended that current laws in Mexico benefit criminals.[117] Due to the recent explosion of drug violence in Mexico, much of the Mexican public is against rights for the accused because they believe that this strategy excessively benefits criminals at the detriment of the rest of society.[118] This public perspective only serves to weaken the judiciary in Mexico. Negative public perception of reforms can pressure the judiciary to water-down reforms or revert to old practices. Such a result would only serve to undermine democratic accountability in the justice system and weaken the judiciary altogether. Additionally, if the Mexican public believes that the judicial system benefits criminals, such as drug traffickers, over ordinary citizens they will be less likely to report a crime, become involved with a trial, or have any confidence in the justice system. Confidence in the judiciary is important because, ultimately, the public's faith in the judicial system will determine the legitimacy of this institution and the broader democratic establishment in Mexico.

Therefore, the development of these justice reforms during a time characterized by drug trafficking crime and violence is clearly problematic. While these reforms are increasing the strength of the judicial system in many ways, they are also negatively affecting public perception of the judiciary's ability to confront drug trafficking crime. Since high levels of crime and insecurity are one of the main concerns of the Mexican public over the last few years, the judiciary's perceived incapacity to fulfill its

[117] Parametría, "¿Presunta justicia?".
[118] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," 238.

responsibilities could have enormous consequences. Thus, drug trafficking organizations' ability to use rights of the accused to their advantage not only will allow perilous criminals to go unpunished, it will also greatly decrease confidence and public legitimacy towards the judiciary. These outcomes will significantly undermine the consolidation of democracy in Mexico because it severely weakens the Mexican judicial system.

Efforts to Combat Drug Trafficking Organizations and their Effect on the Justice System

As demonstrated previously, the Mexican justice system is clearly threatened by drug trafficking organizations, however it is also an essential component for combating these crime organizations. In order to defeat drug trafficking organizations and organized crime, Juan Garzón has written that there is a need for mechanisms and institutions that can investigate, apprehend, and punish criminals.[119] In Mexico, it is the justice system that plays a central role in fulfilling these requirements. Right now, however, the Mexican judiciary does not adequately investigate, prosecute, or punish such crimes. Widespread impunity for drug trafficking organizations in Mexico has provided ample ground for these criminal groups to flourish. Therefore, only when the justice system can adequately sanction drug trafficking crime, will the drug trafficking problem be reduced. Fortunately, recent reforms in the judiciary have enhanced this system's ability to combat drug trafficking organizations. Many of the judicial changes initiated over the last decade, such as increased professionalism and investigative capacity, for example, have increased the capacity of the judiciary to address drug violence and crime. However, these changes

[119] Garzón, 19.

are not without their consequences. While transformation of the judiciary is essential for combating drug trafficking organizations, they have come at great cost. The strength of the judicial system, and ultimately the integrity of democracy, is undermined by many of the judicial system's efforts to combat the drug trafficking problem.

While there are many different aspects of the judicial system's approach towards drug trafficking organizations, this analysis will focus on the new organized crime clause, the role of resources and training, and extradition as critical components of the judiciary's counter-drug efforts. The organized crime clause, formulated under Calderón in 2008, is the most noticeable judicial effort to address the problem of drug trafficking organizations. The organized crime clause is significant because there clearly is a great need for tougher measures against organized crime in the Mexican justice system. As drug trafficking crime and violence escalated over the past decade, the judicial system proved incapable of adequately prosecuting members of organized crime within the existing framework. The release of four drug trafficking suspects in Monterrey in late 2008 is a good example of the judiciary's inability to address this problem. Even though these suspects had drugs, firearms, Federal Investigations Agency (AFI) uniforms, money counters, and stolen cars in their possession when they were arrested, federal Judge Jesús Salvador Fausto Macareno had to release them.[120] Once released, the men assassinated the police officer that captured them and the local judge who detained them.[121] The organized crime clause was therefore created to enhance the judiciary's capacity to sentence organized crime cases so that similar scenarios could be prevented.

[120] Grayson, 146.
[121] Ibid., 146.

In 2008, the Mexican constitution was amended to include the organized crime clause, which applies special provisions to judicial cases involving drug trafficking and organized crime. Specifically, this amendment allows for the detainment of drug trafficking suspects under *arraigo* for up to 40 days without criminal charges.[122] Under *arraigo* organized crime suspects can be questioned and interrogated, they can be placed in special detention sites or solitary confinement, can be held for an additional 40 days, and judicial proceedings can even be suspended.[123] However, since the suspect is detained without pending criminal charges, under these circumstances the accused is not allowed legal defense or the ability to credit the time they served in detention towards a sentence.

These tools to combat crime syndicates are crucial for punishing drug-related crime and violence in Mexico. As a result of these tougher measures, it will be easier to build a strong case against drug traffickers and much more difficult for drug-trafficking criminals to manipulate and evade the justice system. Nevertheless, these benefits come at a great cost. The organized crime clause is problematic because it undermines both the advancement of the judiciary and the consolidation of democracy. This is because, by applying special provisions towards members of crime syndicates, the organized crime amendment creates an exceptional legal regime for certain individuals. A separate and distinct legal system for some individuals is hazardous because it does not represent or treat all citizens equally. Denying certain citizens rights undermines the principle of equality that democracy is based upon and it promotes undemocratic practices. As a

[122] Shirk, "Justice Reform in Mexico: Change & Challenges in the Judicial Sector," 232.
[123] Ibid., 232.

result, the organized crime clause weakens the process of democratic consolidation in Mexico.

The detention of organized crime suspects without charge is also troublesome because it has the potential to imprison innocent citizens. According to Guillermo Zepeda Lecuona, the greatest miscarriage of justice is when a coercive apparatus of a democratic state denies an innocent individual of their liberty.[124] Thus, in order for a democratic political regime develop, individuals should be presumed innocent, instead of held without charges. Otherwise, the legitimacy of the democratic regime will be seriously questioned. Failure to provide habeas corpus rights and due process threatens the authority and performance of both the judiciary and the democratic political establishment. In addition to this, the organized crime amendment also affects Mexican democratization in other ways. By creating a secretive exceptional custody system, Mexico's organized crime clause opens the door for torture and abuse. Using torture in order to extract forced confessions is likely because, as one scholar explains, authorities have the incentive to use abuse since a confession can be used to bring charges against the suspect and the isolated, secretive location of detainees is conducive for abuse.[125] However, torture by government authorities greatly undermines good governance, accountability to the Mexican people, and democratic practices. Therefore, the judiciary's organized crime clause has the substantial ability to undermine Mexico's democratic consolidation, even though it may aid in counter drug efforts.

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[124] Guillermo Zepeda Lecuona, "La reforma constitucional en material penal de junio de 2008: Claroscuros de una oportunidad histórica para transformar el sistema penal mexicano," *Análisis plural,* Number 3, 2008, *6-7.*

[125] Janice Deaton, "Arriago and the Fight Against Organized Crime in Mexico," Working paper. (San Diego: Trans-Border Institute, 2010), 16.

In addition to the organized crime amendment, the justice system has also been developing its capacity to combat drug trafficking organizations by adopting sweeping changes to Mexico's ailing judicial structure. Indeed, most of the judicial reforms initiated by Calderón and Fox over the last decade have been focused on professionally, procedurally, and structurally developing this framework so that the legal system's ability to combat drug trafficking organizations is inherently bolstered. While a stronger judicial system capable of addressing the DTO threat is ultimately the aim of these procedures, this result is not guaranteed. Recent judicial reforms require enormous tasks to be completed, including the development of new law school curriculums, revised judicial training, altered courtrooms, and an overhauled custody and evidence system. These far-reaching changes will be difficult to achieve. This is especially true because the Mexican justice branch (both federally and locally) lacks sufficient staff, resources, and professional training.[126] For a system that already lacks resources, it will be incredibly difficult to implement judicial changes that require substantial amounts of financing, training, and support. It is also important to note that judicial reforms are expected to be implemented throughout all sectors of the judicial system in all of Mexico by 2016. The Mexican judicial system, however, is fairly extensive. Indeed, the judicial structure in Mexico is three-tiered, with the Supreme Court, 29 circuits (with over 200 circuit courts), and approximately 250 district courts.[127] With the abundant number of courts that must be reformed and the numerous tasks that need to be completed, there is a significant demand for increased resources for the judicial system. Counter-drug efforts, however, substantially limit and even reduce the resources available for these judicial

[126] Bailey and Godson, 14.
[127] Schatz, et. al., 201.

improvements. Military counter-narcotics missions and police efforts to combat drug trafficking organizations divert crucial resources from the judiciary. Additionally, the organized crime clause requires significant resources and training, which diverts funds from general reforms targeted at strengthening the judiciary as a whole. As a result, the concentration of resources towards counter-drug efforts, rather than widespread judicial reforms, may prevent important improvements in the judicial system from being achieved. In some cases, reforms that are only half achieved or partially implemented because of insufficient resources will only make judicial processes weaker. Thus, by diverting vital resources, counter-drug efforts can noticeably undermine the Mexican justice system.

Extradition is another important anti-drug policy that has a significant impact on the judicial system. Extradition is important because many high profile drug trafficking criminals and leaders are not effectively controlled or punished by the judicial system in Mexico. Indeed, many of these criminals have managed to completely continue their operations from jail, escape from prison, or successfully bribe and coerce members of the judicial system in order to avoid prosecution altogether. Since the Mexican justice system is ill equipped to effectively sentence members of organized crime, extradition has been a crucial strategy for containing and punishing drug trafficking criminals. A prime example of this is the case of Osiel Cárdenas Guillén. For years Guillén ran the Gulf Cartel from his cell in La Palma maximum-security prison.[128] However, only after he was extradited at the beginning of Calderón's term were his criminal activities halted and he was finally penalized for his crimes. Even though extradition is clearly an important facet in

[128] Grayson, 105.

combating drug trafficking criminals, traditionally the National Supreme Court of Justice (SCJN) denied the Mexican government the ability to extradite drug kingpins to the United States. This is because U.S. courts apply sentences that are longer than 60 years and they allow the death penalty, both of which are not allowed in Mexico.[129] However, in 2005 the Supreme Court reversed its decision and allowed extradition for the first time. While extraditions were unprecedented for Mexico, there have been a significant number of organized crime defendants prosecuted in U.S. courts. In 2007, Calderón extradited 83 drug kingpins, and 95 drug trafficking leaders were extradited in 2008.[130] However, these extraditions have also incited noticeable criticism. Some people contend that extradition violates the national sovereignty of Mexico's judicial system and it simply makes the judiciary an extension of the imperialist will of the United States.[131] This perception of the judicial system is hazardous because it could negatively affect the public's view of the judicial system and the current political regime. Indeed, if the Mexican public believes that the judiciary or the government is promoting the interests of a foreign power rather than the will of Mexican society, they will be less likely to support this system. Thus, extradition has the potential to undermine the legitimacy of both the judiciary and democracy. Nevertheless, it appears that the Mexican public predominantly views extradition positively, rather than negatively. For the time being this means that extradition does not greatly undermine the justice system or democratic governance. Rather, extradition may actually generate greater legitimacy for the current political regime.

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[129] Ibid., 104.
[130] Ibid., 107.
[131] David Shirk, *The Drug War in Mexico: Confronting a Shared Threat,* Council Special Report No. 60 (New York: Council on Foreign Relations, 2011), 11.

Implications for Democratic Consolidation

It is clear that the drug war affects the Mexican judicial system in a number of ways. Both drug trafficking organizations and efforts to combat these criminal actors noticeably influence the performance and integrity of Mexico's judiciary. The previous sections revealed, however, that the effects of the drug war have a greater potential to harm, rather than strengthen, the judiciary in Mexico. Drug trafficking organizations counteract improvements to the judiciary, undermine democratic practices, and destabilize the legal system in Mexico. These outcomes greatly weaken the judiciary's ability to enforce the rule of law in Mexico. Ultimately, however, the rule of law will be essential for Mexican democracy. Democratic consolidation in Mexico will depend on the government's ability to hold all societal actors – including drug trafficking organizations – accountable to the rule of law.[132] If drug trafficking organizations and counter-drug policy prevent the rule of law from being applied, the process towards democracy will be greatly undermined, if not destroyed altogether. In the end, however, it remains to be seen whether the drug war will succeed in unraveling the administration of justice in Mexico. While drug trafficking crime, counter-drug efforts, and judicial reforms are clearly at odds, the judiciary is still making great strides in its reforms. Mexico's 2008 reforms do provide hope that the judiciary will strengthen in spite of significant challenges from the drug war. Even though this is a possibility, it seems unlikely that the judiciary will emerge stronger in the next few years. This is because judicial reforms are trying to achieve too much, in too little time, and in the face of too many challenges. Therefore, it seems likely that drug trafficking organizations will

[132] Denise Dresser also contends that this is true for Mexico. See Denise Dresser, "Mexico: From PRI Dominance to Divided Democracy," 36.

prevail over the justice system, leaving the rule of law behind. Ultimately, this will greatly undermine Mexico's democratization because it will reduce the democratic establishment's ability to govern. Thus, one thing is clear: Mexico's democratization is undermined by the drug war.

PROSPECTS FOR THE PRESS IN A CONTEXT OF DRUG TRAFFICKING AND COUNTER-NARCOTICS MISSIONS

The press, just like the military and the judicial system, is a central pillar of democratic governance in modern political systems. Often referred to as democracy's "fourth estate", the media is a critical element for a participatory political system that is accountable to its citizenry. This is because the press facilitates two central components of democracy: representation of citizens and government accountability to the public. By providing communication between the government and its citizens, monitoring the behavior of the ruling regime, and providing information from a variety of perspectives, the media fosters a robust form of citizenship that is participatory, open, and responsible. Hence, for a nascent democracy attempting to consolidate mechanisms of representation, participation, and accountability, the Mexican press's ability to provide information to Mexico's citizens is of utmost importance. There is direct evidence that the press plays a fundamental role in facilitating the growth of democracy in Mexico. For example, Chappell Lawson found that at certain moments in Mexico's political transition, the media promoted democratic change within the country by publishing stories that revealed PRI scandals and created an atmosphere of open discussion that was conducive to independent thought in civil society.[133] Similarly, televised news also played a visible role in bolstering Mexico's democratization in the early 2000's by better informing citizen's voting decisions.[134] Given the great influence that the media has had over

[133] Chappell Lawson, *Building the Fourth Estate: Democratization and the Rise of a Free Press in Mexico* (Berkeley: University of California Press, 2002), 125-172.
[134] Sallie Hughes, *Newsrooms in Conflict: Journalism and the Democratization of Mexico* (Pittsburgh: University of Pittsburgh Press, 2006), 20.

democratic changes in Mexico, the press and the information it provides clearly play a fundamental role in the consolidation of Mexico's fledging democracy.

However, even though the Mexican media has had the legally established right to freedom of expression for nearly a century, the Mexican press has only begun to truly exercise free expression recently and very gradually. This is because, under the PRI's previous rule, the Mexican media was simply a mouthpiece for the PRI regime, not a news corps that freely communicated all information relevant to Mexico's citizenry. While the provision or removal of state advertising funds was the primary method that the PRI regime used to control the press during its reign, the government also resorted to coercion and intimidation at times in order to restrict the information provided by the press to Mexican society. However, over the last two decades, the Mexican media has been undergoing a transformation. The press is now emerging as a more autonomous, assertive, and citizen-focused actor, rather than simply being a limited and marginalized producer of news. While biases still remain in major media outlets, journalism is now much more objective and reliable than under PRI leadership. Indeed, ever since the 1990s, the Mexican media's ability to involve and inform the Mexican people, as well as monitor the government, has been progressing gradually.

The development of a vibrant and robust press corps in Mexico over the last decade is significant because it demonstrates that Mexico is indeed transforming to a more consolidated democracy. However, drug trafficking organizations and counter-drug missions have seriously challenged these advances. As the drug war in Mexico has escalated, the strength and freedom of the press in Mexico has exhibited severe limitations. Because of drug trafficking organizations and government counter-drug

forces, the independence of the Mexican journalism is gradually being undermined and press freedom is largely becoming restricted. These changes in the Mexican media are concerning because the erosion of a strong and free press corps severely weakens democratic principles and undermines the country's attempts at democratic consolidation. Given the gravity of these changes in the Mexican press, it is important to examine exactly how and why the media is being limited and marginalized in Mexico.

Recent Limitations on Press Freedom

Violence from the drug war is the single greatest threat to media independence and freedom of expression in Mexico. Ever since drug trafficking organizations and efforts to combat these crime syndicates expanded significantly at the turn of the century, there has been a wave of violence directed against the media in Mexico. Recent drug violence against the media is so great that the murder rate of journalists in Mexico is among the highest in the world.[135] The World Association of Newspapers reported in 2008 that 23 journalists had been killed in Mexico since 2000, seven were missing since 2005, and many others have been harassed or threatened with violence for practicing their profession.[136] These levels of violence against members of the media are only increasing. According to the Committee to Protect Journalists, 2009 was one of the deadliest years for the Mexican press, with the execution of 11 journalists and one disappearance.[137] In 2010 these numbers only rose. This dramatic increase in violence against journalists is

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[135] Vanda Felbab-Brown, "The Violent Drug Market in Mexico and Lessons from Colombia," *Foreign Policy at Brookings* 12 (March, 2009): 1.
[136] "Dozens of Journalists Killed for Their Work in 2008," *International Freedom of Information Exchange*, press release, Jan. 8, 2009. <www.ifex.org> (accessed Dec. 19, 2010).
[137] Committee to Protect Journalists, *Attacks on the Press in 2009,* Annual Report, 2009, <www.cpj.org> (accessed Jan. 8, 2011).

both noticeable and significant. Mexico is now "one of the most dangerous countries for journalists in the world" according to the World Journalist's Report on Press Freedom.[138] While most of this violence originates from the drug war, it is predominately drug trafficking organizations, rather than government counter-drug forces, that pose the greatest threat to Mexican media. A recent statistical analysis of crimes against journalists in Mexico found that 61 percent of the perpetrators of violence were identified as members of organized crime groups, while 22 percent of suspects were military or government officials presumably involved in counter-drug efforts.[139] It is important to note, however, that while drug trafficking organizations are the main cause of serious crimes against journalists, such as murder and forced disappearance, members of government counter-drug forces (primarily corrupt police officials) perpetrate the majority of other non-fatal crimes against members of the press.[140]

As a result of these astounding levels of violence against members of the Mexican media, there have only been a sparse number of journalists who have covered drug trafficking issues for fear of reprisals. Indeed, self-censorship towards drug trafficking or law enforcement matters has become the norm among journalists in Mexico over recent years in order to protect themselves. This has been especially true in states with high levels of drug trafficking violence. The Mexican media's current predicament was described particularly well by a U.S. State Department Human Rights Report, which

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[138] George W. Grayson, *Mexico: Narco-violence and a Failed State* (New Brunswick, N.J.: Transaction Publishers, 2010), 98.

[139] Dolia Estévez, "Protecting Press Freedom in an Environment of Violence and Impunity," in *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime*, Eric L. Olson, David A. Shirk, and Andrew Selee, eds. (Washington D.C.: Woodrow Wilson Institute, 2010), 273.

[140] Article 19 and CENCOs, *Agresiones contra la Libertad de Expresión en México*, testimony at the 138th Period of Sessions of the Inter-American Commission on Human Rights, Organization of American States, Mar. 22, 2010, 7.

stated that "despite federal government support for freedom of the press, many journalists worked in a dangerous environment. Reporters covering corrupt public officials and various organized criminal organizations acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and to their families."[141] As a result, most drug trafficking issues currently go unreported in Mexico and journalists frequently publish crime pieces that are only based on official stories rather than the facts. Alfredo Quijano, the editor of *Norte de Ciudad Juárez*, explained the state of self-censorship in Mexico well when he described his publication's response to the murder of its reporters by drug trafficking organizations: "We have learned the lesson: To survive, we publish the minimum. We don't investigate. Even at that, most of what we know stays in the reporter's handbook."[142] These testimonies clearly show that the Mexican press is severely limiting its freedom of expression in response to the threat of the drug war.

This outcome is significant because it has important effects on the consolidation of Mexico's democracy. Every time a reporter or news outlet engages in self-censorship because of the threat of violence from drug traffickers, the strength of the Mexican press is undermined and citizen's access to information is limited. Only when the press freely distributes information about all events relevant to the Mexican people can there be open political discussion, awareness, and participation in Mexico. However, without a vibrant or free press, autocrats or powerful drug trafficking organizations have the power to shape the Mexican political reality without the input of the nation's citizens, thereby undermining democracy. Therefore, the expansion of self-censorship in the press clearly

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[141] United States Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Report: Mexico*, Mar. 11, 2010. <www.state.gov>. (accessed Mar. 3, 2011).
[142] Mike O'Connor, "Special Report: Reporting, and Surviving, in Ciudad Juárez," *Committee to Protect Journalists*, June 24, 2009, <www.cpj.org> (accessed Apr. 1, 2011).

has negative consequences for the consolidation of a modern democratic state in Mexico. Indeed, one expert summarized this situation best when he stated: "As drug trafficking, violence, and lawlessness take hold, the Mexican media are forced into silence. This pervasive self-censorship is causing severe damage to Mexican democracy."[143]

In addition to the worrisome situation of violence against reporters, widespread impunity for such crimes has only exacerbated the deterioration of press freedom in Mexico. Since the beginning of the war against drug trafficking organizations, not one of the murders or disappearances of Mexican journalists has been brought to justice.[144] Indeed, none of the serious crimes against reporters committed by either side of the drug war have been sentenced since 2000. In an emblematic example, Miguel Angel Villagómez Valle, a newspaper editor who regularly reported on organized crime, corruption, and drug trafficking, was abducted in late 2008 by members of a drug trafficking organization (presumably *Los Zetas*, who had left him a death threat the month before). His dead body was later found in a garbage dump with multiple gunshot wounds. However, the perpetrators of Valle's murder were never found or prosecuted.[145] In a similar case, TV Azteca journalist Gamaliel López and cameraman Gerardo Paredes disappeared in May 2007. In the six months before they vanished, López and Paredes had been reporting on the presence of counter-drug military forces in Nuevo León and the corruption within their ranks.[146] It widely assumed that these two members of the press corps were forcibly disappeared by the armed forces. Nevertheless, there have been no

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[143] "Drug-related violence, endangers media in Reynosa," *Committee to Protect Journalists*, March 11, 2010, <www.cjp.org> (accessed Mar. 15, 2011).
[144] Francisco González, "Mexico" in *Countries at the Crossroads 2009: A Survey of Democratic Governance* (Washington D.C.: Freedom House, 2010), 6.
[145] Grayson, 98.
[146] González, 6.

suspects identified, tried, or sentenced for this crime. These two cases show that, on either side of the drug war, widespread impunity has prevailed for the majority of crimes against reporters in Mexico.

Impunity is problematic because it has succeeded in creating an atmosphere of fear in newsrooms that has reached alarming levels in many parts of Mexico. This culture has only succeeded in further reinforcing self-censorship and limited dissemination of information by the press. As a former *Frontera* reporter explained, "With the level of impunity on crimes against journalists and with the war on organized crime that the government is waging, reporters who cover violence and drug trafficking have, more that ever, the most to lose. There is fear. Fear to write about issues that we know will bring reprisal or death." Thus, failure to administer justice for crimes against journalists only facilitates greater breakdown of the Mexican media. In order for the Mexican press to develop into a strong component of democratic governance, the current political regime needs to take steps to hold perpetrators of these crimes and provide protection for threatened reporters.

It seems, however, that the government is unwilling or unable to take the necessary measures to uphold the integrity of the press in Mexico. The current political establishment has lacked the political will to actively protect journalists from violence or intimidation from the drug war. Instead of adequately addressing the threat against reporters, the government has predominately ignored and even blamed the press for this problem. In fact, President Calderón has openly contended that by reporting on the drug war, the Mexican media has helped drug cartels by distributing their message and has

tarnished the image of Mexico in the international sphere.[147] This negative view of the press is not uncommon in Mexico's government. Many state officials have animosity towards the press because they believe that journalists have sensationalized drug trafficking crime and have overemphasized the government's failures in combating drug trafficking organizations.[148] Most concerning of all, however, the government often justifies its inability to protect journalists from drug crime by contending that murders of journalists who were killed in reprisal to their coverage of the drug situation were actually a result of business deals that went awry or unrelated personal conflicts.[149] While these actions do not mean that the Mexican government is making no efforts to protect journalists in Mexico, they do demonstrate that commitment to freedom of the press is shallow among political authorities and it is democratic value that has not yet been fully ingrained in Mexico's political system. By failing to adequately address or accept the problem and blaming the press for it, the Mexican government is contributing to the erosion of the media in Mexico. Only if the government makes a concerted and effective effort to defend journalists, will democratization be bolstered within the nation. Ironically, however, if the current pattern continues, the Mexican government will be complicit in undermining its own democratic political system. Therefore, the current political authority's resistance to adequately addressing violence against the media is clearly a contributing factor to weakened democratic consolidation in Mexico.

In addition to violence against the Mexican press corps, corruption has also undermined the integrity of the media in Mexico. Corruption from drug trafficking

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[147] Jorge Ramos, "FCH se lanza contra los medios," *El Universal,* February 26, 2010. <www.eluniversal.com.mx> (accessed Apr. 5, 2011).
[148] Estévez, 278.
[149] Ibid., 278.

organizations has been particularly potent in the Mexican press because journalists often work in poor conditions and receive low wages. Monthly wages for journalists at major news outlets in Mexico City are usually between $700 and $1,500 U.S. dollars, while in the providences in Mexico wages usually vary between $300 and $500 U.S. dollars.[150] These low wages, especially in the provinces, are accompanied by poor working conditions. Many Mexican media outlets do not sign contracts with journalists so that they do not have to provide benefits or uphold labor rights. These meager conditions have made reporters increasingly vulnerable to corruption from drug trafficking organizations. Indeed, corruption of the press has been increasingly observed in newsrooms in Mexico. While a few instances of corruption have been documented[151], the decision of *plata o plomo* makes it increasing difficult to ascertain the difference between cases where journalists have been coerced versus reporters who are on the payroll of drug trafficking organizations. Even though corruption is difficult to record, it has undoubtedly affected the Mexican press over the last few years. Corruption is hazardous because, like violence, it limits the integrity and freedom of the press in Mexico. Only when a free press provides Mexico's citizens with the right to information will the consolidation of democracy be possible. As a result, through corruption of the press, drug trafficking has noticeably hindered progress towards a deepened democracy in Mexico.

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[150] Estévez, 284.

[151] Mike O'Connor, "Michoacán Journalists Under Siege with Nowhere to Turn," *Committee to Protect Journalists*, December 7, 2009 <www.cpj.com> (accessed Feb. 17, 2011).

Consequences for the Press and Democratic Consolidation

All of the factors explained above have pointed towards a similar conclusion. By limiting the Mexican media's ability to freely express issues relevant to the Mexican public, the vitality and robustness that the press has been developing over the last few decades has been severely counteracted by the drug war. This conclusion about the press is significant because it demonstrates that Mexico's current trajectory is pointed towards the unraveling of democracy rather than the consolidation of the political system. Only if there are drastic changes that divert Mexico's current path will a rich, substantive democracy become a likely outcome for this country's future.

IMPLICATIONS FOR MEXICO'S FLEDGING DEMOCRACY

The previous chapters demonstrate that the drug war undermines the consolidation of democracy in Mexico. It is clear that, in one way or another, drug trafficking organizations and counter-drug efforts significantly weaken the strength of civilian control over the military, the administration of justice, and press freedom. Since these three components are crucial for democracy, their erosion as a result of Mexico's current drug situation signifies that the process of democratic consolidation will not be upheld in Mexico. Or, at a minimum, it indicates that while the government tries to control drug trafficking organizations, there will clearly be a period of restricted democratic progress in Mexico. Ultimately, what does this mean for the future of Mexico's nascent democracy? Will democracy in Mexico survive these impediments from the drug war in Mexico?

While the consolidation of democracy has clearly been damaged by drug trafficking organizations and counter-drug efforts, this may not completely doom democracy in Mexico to failure. Even though the drug trade seriously threatens democratic progress, ultimately the fate of Mexico's fledging democracy will rest on the Mexican public's perception and belief in the democratic political authority's ability to successfully meet the needs of its citizenry. Since the last decade has been Mexico's first experience with democracy, the performance of the current democratic regime in addressing the issue of drug violence and crime will undoubtedly shape Mexican citizens' faith in a democratic political system. Thus, if the current government fails to establish public security in the face of challenges from drug trafficking organizations, it will be unlikely that the Mexican public will view a democracy positively or support it over

another form of government. Especially with the upcoming presidential elections in 2012, the perceived success of the current government in combating the drug war will determine the political parties and political systems that citizens will support or elect. Interestingly, recent public opinion polls have not indicated that the Mexican public has confidence in the current democratic regime's approach to the drug trafficking issue. According to a survey in March 2010, 59 percent of Mexicans believe that drug trafficking organizations, not the government, are winning the drug war.[152] This negative view of the democratic government's ability to combat drug trafficking reveals that the Mexican people do not have significant faith in the current democratic political regime. How this will play out in the 2012 elections remains to be seen, however it is clear that public support for the current political regime is not improving.

Therefore, overall it appears unlikely that a robust democracy will prevail in Mexico as a result of the drug war and its impact on all segments of Mexican society. This conclusion demonstrates that illegal drug activities and official counter-drug strategies can have significant consequences beyond the traditional problems associated with illegal drug activity alone. Indeed, it becomes apparent that even though drug trafficking organizations do not have outright political ambitions, their presence can nevertheless have a significant and pivotal influence on a political system. Only if there is a greater awareness of the threat that the drug war poses to a democratic system and the collateral damage it can have on the consolidation of democracy in Mexico, can there be real solutions to addressing these consequences. Acknowledging these challenges to democracy is an important first step towards the consolidation of democracy in Mexico.

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[152] "Gana el narco guerra contra el gobierno federal, piensa 59% de los mexicanos," *Milenio,* March 23, 2010 <http://impreso.milenio.com> (accessed Apr. 10, 2011).

Nevertheless, it remains uncertain whether the Mexican government has the strength, organization, and capability to take the remaining necessary steps against drug trafficking organizations in order to protect the consolidation of Mexican democracy. Therefore, one thing is clear: Mexico is at an important crossroads where the future of its nascent democracy is precarious. How the drug war develops in the next few years will determine the state of Mexican democracy for years to come. In this crucial moment for democracy in Mexico, ultimately time will only tell whether the democratic consolidation within the country will continue.

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