

CONTAINING THE SPILLOVER EFFECT: THE USE OF RULE OF LAW TO COMBAT DRUG-RELATED VIOLENCE IN MEXICO

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I. INTRODUCTION

“If you see dust in the air, don’t worry because we are cleaning the house.”¹

The United States leads the world in demand for illicit drugs, with Mexican drug trafficking organizations (DTOs) as its leading supplier.² When Mexico’s ex-President, Felipe Calderón, took office in December 2006, he deployed fifty thousand troops

1. Robert O’Neill, *Mexican President Calderon Highlights Mexican Reforms, Calls for Greater Cooperation*, HARV. KENNEDY SCH. (Feb. 12, 2008), <http://www.hks.harvard.edu/news-events/news/articles/mexican-president-calderon-highlights-mexican-reforms,-calls-for-greater-cooperation> (President Calderón referring to the process of reducing violent crime and waging war on Mexican drug cartels).

2. KRISTIN M. FINKLEA ET AL., CONG. RESEARCH SERV., R41075, SOUTHWEST BORDER VIOLENCE: ISSUES IN IDENTIFYING AND MEASURING SPILLOVER VIOLENCE 3–4 (2011).

to wage war on DTOs in Mexico's most violent cities.³ In November 2012, just one month before Calderón was due to leave office, the death toll related to criminal violence in Mexico had reached a staggering 57,449,⁴ seven times more casualties than endured by all members of the coalition forces in Iraq and Afghanistan since 2001.⁵

Mexico's war against DTOs has been criticized as unsuccessful,⁶ and is expected to mar Calderon's presidential legacy.⁷ Nevertheless, Mexico's newly elected President, Enrique Peña Nieto, has vowed to advance a security strategy against organized crime.⁸ As a result of continued enforcement efforts, cartel violence is expected to plague Mexico and will inevitably impact the U.S. southwestern border and other regions where DTOs are active.⁹

Primarily, this Comment focuses on the use of rule of law as a means of eliminating DTO related violence. Strengthening rule of law and reforming the Mexican criminal justice system is

3. The Economist Intelligence Unit, *Mexico/USA Politics: Changing Tack in Drug War*, VIEWSWIRE (Mar. 25, 2010), http://viewswire.eiu.com/index.asp?layout=VWArticleVW3&article_id=1555326140®ion_id=&country_id=1520000152&channel_id=210004021&category_id=500004050&refm=vwCat&page_title=Article.

4. Rafael López, Melissa Del Pozo & Jessica Guadarrama, *Guerrero Repite Como el Estado Más Violento [Guerrero is Again the Most Violent State]*, MILENIO (Nov. 1, 2012, 4:59 AM), <http://www.milenio.com/cdb/doc/noticias2011/d1da5a413211e7f1e30c99ab4978f4ab>.

5. *See Home and Away: Iraq and Afghanistan War Casualties*, CNN, <http://www.cnn.com/SPECIALS/war.casualties/table.afghanistan.html> (last visited Oct. 21, 2013).

6. *See* Alina Rocha Menocal, *A Requiem for Calderon*, FOREIGN POL'Y (June 18, 2012), http://www.foreignpolicy.com/articles/2012/06/18/a_requiem_for_calderon.

7. *See* Ioan Grillo, *Calderon Passes Mexican Drug War Chaos to Successor*, REUTERS (June 27, 2012, 1:02 PM), <http://www.reuters.com/article/2012/06/27/us-mexico-election-drugs-idUSBRE85Q19T20120627> (reporting that the incessant drug-related violence in Mexico leading up to the presidential election only further tarnished Calderon's war on DTOs).

8. *See id.*; *see also* Aimee Rawlins, *Mexico's Drug War*, COUNCIL ON FOREIGN REL. (Jan. 11, 2013), <http://www.cfr.org/mexico/mexicos-drug-war/p13689> (reporting that Peña Nieto's strategy would focus on reducing violence, which marks a departure from the last administration's goal of capturing cartel leaders and seizing drugs).

9. *See* Rawlins, *supra* note 8.

just one facet of a larger effort to eliminate the threat of DTO violence on both sides of the border, however, other efforts are beyond the scope of this Comment.¹⁰

Part II of this Comment provides a brief background of Mexico's drug-related violence and its effect on U.S. national security interests. It will also consider a new approach to defining spillover violence that is relevant to the threat that DTOs present.

Part III introduces the rule of law concept and analyzes how the implementation of rule of law (or lack thereof) can influence the level of violence in society. These theories are applied to Mexico's criminal law system to examine some of the judicial deficiencies that have weakened rule of law in Mexico and permitted unprecedented violence to flourish.

Part IV examines specific Mexican and U.S. efforts to use rule of law measures to reduce violence in Mexico and ultimately protect U.S. national security. These measures include the 2008 Mexican constitutional reforms that overhauled the criminal justice system and the enactment of the Mérida Initiative, a \$1.9 billion appropriation designated to aid Mexico's drug war and support Mexico's recent constitutional reforms.¹¹ However, an analysis of the societal impact indicates that these approaches are failing.

Part V presents alternate rule of law strategies that combine recent advances made in Iraq, Afghanistan, and Guatemala and are relevant to Mexico's current conditions. This section suggests that implementing these novel initiatives in Mexico may prevent drug-related violence and ultimately contain the spillover effect.

Mexico's inability to defeat DTOs, incessant criminal violence, and weakened judicial processes, directly threatens

10. Other efforts to reduce violence in Mexico include bolstering law enforcement, strengthening border protection, curtailing demand for drugs in the United States, and reducing gun trafficking. *See* Rawlins, *supra* note 8.

11. STAFF OF S. COMM. ON FOREIGN RELATIONS, 112TH CONG., JUDICIAL AND POLICE REFORMS IN MEXICO: ESSENTIAL BUILDING BLOCKS FOR A LAWFUL SOCIETY 1, 4, 11 (Comm. Print 2012) (recommending that the United States continue funding the Mérida Initiative to support judicial reforms among other policy issues).

U.S. national security interests.¹² Recent efforts to transfuse a U.S.-style criminal justice system in Mexico have not been well received and have not shown signs of curtailing DTO-related violence.¹³ This Comment argues that the recovery of Mexico's criminal justice system and the protection of U.S. national security will require the contribution of international stakeholders and the revitalization of rule of law through initiatives that have been proven in comparable countries facing similar crises.

II. DRUG VIOLENCE IN MEXICO AND THE SPILLOVER EFFECT

The ongoing conflict between rival drug cartels and the ensuing Mexican military intervention continue to fuel the Mexican drug war. Drug-related violence has spread throughout Mexico and also presents a non-traditional threat to U.S. national security. It is non-traditional in that the motivation behind the violence is not to attack U.S. assets or citizens for political or social motives.¹⁴ Instead, the goal is simply to get drugs across the border. Nevertheless, the means that Mexican drug cartels use to execute this objective threatens U.S. interests and the safety of its citizens.

A. Mexico's drug violence

The drug-related violence in Mexico originated from seven Mexican DTOs (Sinaloa Cartel, Los Zetas, Gulf Cartel, Juarez Cartel, Beltran-Leyva Organization, La Familia Michoacana,

12. See Bureau of Int'l Narcotics & Law Enforcement Affairs, U.S. Dep't of State, *The Merida Initiative Fact Sheet* (June 23, 2009) [hereinafter *Merida Initiative Fact Sheet*], available at <http://www.state.gov/j/inl/rls/fs/122397.htm> (reporting that a component of the Mérida Initiative is to "strengthen the institutions of justice" to prevent further criminal-organization-related violence from spilling over the U.S. border).

13. See Allegra M. McLeod, *Exporting U.S. Criminal Justice*, 29 YALE L. & POL'Y REV. 83, 88 (2010) (arguing that the use of a U.S.-style criminal justice system as the answer to global crime prevents the development of more effective strategies that are inclusive of the locally affected citizens); CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., R43001, SUPPORTING CRIMINAL JUSTICE SYSTEM REFORM IN MEXICO: THE U.S. ROLE 1, 7 (2013).

14. See *infra* notes 31–32 and accompanying text.

and Tijuana Cartel) battling each other for control over routes and territories to smuggle drugs into the United States.¹⁵ The DTOs also fight within their own ranks when their leadership is eliminated due to death or incarceration.¹⁶ In addition, the cartel violence has continued to spread as these larger cartels splinter into smaller groups, comprising as many as sixty to eighty factions.¹⁷ Mexico's current attorney general, Jesus Murillo Karam, has publicly blamed the Calderón administration's former drug war policies, which targeted cartel leaders, as the cause of this splintering effect.¹⁸

In response to the growing cartel presence, Mexico's ex-President Calderón waged war against the DTOs throughout Mexico, especially in border cities.¹⁹ He began the crusade by deploying fifty thousand soldiers in the ten most violent Mexican states, mainly across the shared border with the United States.²⁰ The areas alongside California, Arizona, New Mexico, and Texas were targeted because they are the principal entry points for illicit drugs into the United States and are among the most dangerous cities in Mexico.²¹ As a means of

15. NAT'L DRUG INTELLIGENCE CTR., U.S. DEP'T OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2, 7 (2011) [hereinafter DRUG THREAT ASSESSMENT 2011], available at <http://www.justice.gov/archive/ndic/pubs44/44849/44849p.pdf>.

16. See, e.g., Tracy Wilkinson, *Leader of Zetas Drug Cartel Seized, Mexico Says*, L.A. TIMES (July 15, 2013), <http://articles.latimes.com/2013/jul/15/world/la-fg-mexico-zetas-cartel-20130716>.

17. E. Eduardo Castillo, *Mexican Drug Cartel Numbers on the Rise*, HUFFINGTON POST (Dec. 18, 2012), http://www.huffingtonpost.com/2012/12/18/mexican-drug-cartel-numbers_n_2324535.html.

18. *Id.*

19. See Sara Miller Llana, *Juarez Residents to Mexico President Calderón: Enough is Enough*, CHRISTIAN SCIENCE MONITOR (Mar. 17, 2010), <http://www.csmonitor.com/World/Americas/2010/0317/Juarez-residents-to-Mexico-President-Calderon-Enough-is-enough> (reporting that in a two year period, ten thousand troops were dispatched to Ciudad Juarez, the deadliest border city in Mexico).

20. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T STATE, 2009 HUMAN RIGHTS REPORT: MEXICO (2010) [hereinafter DOS 2009 HUMAN RIGHTS REPORT], available at <http://www.state.gov/j/drl/rls/hrrpt/2009/wha/136119.htm>.

21. See Ruben Mosso, *PGR: 30 mil 196 Muertos en lo Que va Del Sexenio [PGR: 30,196 Dead So Far During This Six-Year Presidential Term]*, MILENIO (Dec. 17, 2010), <http://www.milenio.com/cdb/doc/noticias2011/1b6bcde8bf538d981ccb8ca58c2649c0>; DRUG THREAT ASSESSMENT 2011, *supra* note 15, at 13.

protecting their yearly drug trafficking revenues, conservatively estimated between \$6.2 and \$6.6 billion,²² the cartels unleashed unprecedented violence that included beheadings, torture, bombings, and the use of war weapons and tactics.²³ DTOs have also attacked Mexican law enforcement officials, incited defections in police departments, and implemented lawlessness in entire Mexican border towns,²⁴ which are used as staging areas for the mass exodus of drugs from Mexico into the United States.²⁵ This ensuing battle between the Mexican government and DTOs has resulted in tens of thousands of casualties in Mexico,²⁶ and possibly as many as twenty-five thousand disappearances.²⁷

22. Eric L. Olson, *Considering New Strategies for Confronting Organized Crime in Mexico*, WOODROW WILSON INT'L CTR. FOR SCHOLARS 3 (Mar. 2012). *But see* NAT'L DRUG INTELLIGENCE CTR., U.S. DEPT OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2009 III (2008) [hereinafter DRUG THREAT ASSESSMENT 2009], available at <http://www.justice.gov/archive/ndic/pubs31/31379/31379p.pdf> (estimating that proceeds for the Mexican and Colombian cartels are as much as \$18 to \$39 billion annually).

23. Ken Ellingwood, *Macabre Drug Cartel Messages in Mexico*, L.A. TIMES (June 11, 2008), <http://www.latimes.com/news/la-me-haven3,0,4674407.story>; Jens Erik Gould, *Mexico's Drug War Turns Into Terrorism After Grenades (Update1)*, BLOOMBERG (Oct. 20, 2008), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=akDCw.fUKYOc&refer=home>.

24. *See Lawless Town Just Across the Border*, FOX NEWS (Feb. 8, 2011), <http://video.foxnews.com/v/4528882/lawless-town-just-across-the-border/>; *see also* Olivia Torres, *20-Year-Old Heads Police in Drug-Plagued Mexico Town*, HOUS. CHRON. (Oct. 20, 2010), <http://www.chron.com/news/nation-world/article/20-year-old-heads-police-in-drug-plagued-Mexico-1694618.php> (reporting that after a border town's police chief was murdered, it was unable to replace him for over one year until a brave twenty-year-old woman volunteered for the position).

25. Fernando Santo, *Immigration in Spotlight as Senators Tour Arizona*, N.Y. TIMES (Mar. 27, 2013), <http://www.nytimes.com/2013/03/28/us/politics/immigration-in-spotlight-as-senators-tour-arizona.html?pagewanted=all>.

26. López, Del Pozo & Guadarrama, *supra* note 4.

27. William Booth, *Mexico's Crime Wave has Left About 25,000 Missing, Government Documents Show*, WASH. POST (Nov. 29, 2012), http://www.washingtonpost.com/world/the_americas/mexicos-crime-wave-has-left-up-to-25000-missing-government-documents-show/2012/11/29/7ca4ee44-3a6a-11e2-9258-ac7c78d5c680_story.html (discussing recently leaked and unpublished Mexican government documents that estimate twenty-five thousand disappearances during the Calderón administration). *But see* Ashley Fantz, *The Mexico Drug War: Bodies for Billions*, CNN (Jan. 20, 2012, 9:03 AM), <http://www.cnn.com/2012/01/15/world/mexico-drug-war-essay/index.html> (reporting

B. DTO-related violence threatens U.S. national security

Although drug-related crimes in Mexico are not dissipating,²⁸ some question whether spillover violence is a potential threat to U.S. national security.²⁹ In an effort to analyze the risk that drug-related violence presents to U.S. national security, it is crucial to first define what constitutes spillover violence. The U.S. Drug Enforcement Agency (DEA) reports that the interagency community has limited spillover violence to:

deliberate, planned attacks by the cartels on U.S. assets, including civilian, military, or law enforcement officials, innocent U.S. citizens, or physical institutions such as government buildings, consulates, or businesses. This definition does not include trafficker on trafficker violence, whether perpetrated in Mexico or the U.S.³⁰

The DEA's statement to Congress goes as far as requiring that violence be comparable to terrorism before it can be classified as spillover.³¹ However, Mexican DTO violence committed on U.S. soil or against American citizens is not considered terrorism because it is not politically or socially motivated.³²

over five thousand missing Mexican citizens during Calderón's administration).

28. See *Enrique Pena Nieto's Drug War Policies Remain Unclear*, HUFFINGTON POST (Jan. 29, 2013, 12:54 PM), http://www.huffingtonpost.com/2013/01/29/enrique-pena-nieto-drug-war-policies_n_2575511.html.

29. GARY J. HALE, JAMES A. BAKER III INST. FOR PUB. POLICY, MEXICO IS A FRIEND, NOT AN ENEMY 3 (2012) (arguing that because spillover violence is confined to the border area and does not compare to the threat that Jihadist terrorism presents, it is not a threat to national security); FINKLEA ET AL., *supra* note 2, at 23 (stating that U.S. government officials have not found a significant rise in spillover violence and evidence suggests that crime has not escalated in U.S. cities where Mexican DTOs are present).

30. Joseph M. Arabit, DEA Special Agent in Charge, El Paso Division, Violence Along the Southwest Border, Statement Before the Subcomm. on Commerce, Justice, Sci. & Related Agencies of the H. Appropriations Comm. (Mar. 24, 2009), available at <http://www.justice.gov/dea/pr/speeches-testimony/2012-2009/s032409.pdf>.

31. *Id.*

32. The U.S. government defines terrorism to include "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, *in furtherance of political or social*

This narrow definition of spillover violence is not inclusive of the totality of violence attributable to cartel activity.³³ The limitations of the interagency definition are evident when one considers second-hand violence that does not directly target U.S. assets for the sake of those assets' nationality or even to directly harm them, but nevertheless, results in jeopardizing their security.³⁴ In Phoenix, Arizona, where many cases of kidnapping involve torture,³⁵ there were two hundred fifty-four reported kidnappings in 2008 and approximately seven hundred kidnappings combined in 2009 and 2010.³⁶ However, it is believed that these statistics do not represent an accurate number of kidnappings, most of which are unreported because the victims are also involved in criminal activity or are undocumented immigrants afraid of deportation.³⁷ Although these types of crimes do not conform to the interagency definition of spillover violence, they pose a threat to the lives of U.S. citizens caught in the crossfire or targeted by drug traffickers due to their familial relationships with other traffickers.³⁸ Excluding trafficker-on-trafficker and second-hand violence from the spillover equation can lead to an inaccurate assessment of threatened security within U.S. borders.

When considering the broader spillover "effect" (instead of the narrower term, spillover "violence"), there are non-violent

objectives." 28 C.F.R. § 0.85(l) (2013) (emphasis added).

33. FINKLEA ET AL., *supra* note 2, at 12.

34. *See id.* at 12, 14–15.

35. Elliott C. McLaughlin, *Torture a Hallmark of Phoenix's Drug Kidnappings*, CNN (May 19, 2009, 3:38 PM), <http://www.cnn.com/2009/CRIME/05/19/phoenix.drug.kidnappings/index.html?s=PM:CRIME>.

36. OFFICE OF THE INSPECTOR GENERAL, AUDIT DIV., U.S. DEP'T OF JUSTICE, GR-60-12-006, REVIEW OF THE PHOENIX POLICE DEPARTMENT'S 2008 KIDNAPPING STATISTIC REPORTED IN DEPARTMENT OF JUSTICE GRANT APPLICATIONS 27 (2012); FINKLEA ET. AL, *supra* note 2, at 15.

37. DRUG THREAT ASSESSMENT 2011, *supra* note 15, at 17.

38. *See* Randal C. Archibold, *Mexican Drug Cartel Violence Spills Over, Alarming U.S.*, N.Y. TIMES (Mar. 22, 2009), http://www.nytimes.com/2009/03/23/us/23border.html?pagewanted=all&_r=0 [hereinafter Archibold, *Drug Cartel Spills Over*] (depicting a story of a young boy who was kidnapped for ransom from a home that was associated with a gang suspected of drug dealing).

factors that threaten U.S. security, but do not fit within the interagency definition of spillover violence.³⁹ One such factor includes the increased corruption among U.S. law enforcement officers.⁴⁰ Recent high-profile cases include the conviction of U.S. Customs and Border Patrol (CBP) officers for aiding drug smugglers and the recent detention of a former U.S. soldier who allegedly agreed to sell military weapons to the cartels, assassinate rivals, and provide tactical training.⁴¹

Another non-violent indicator of the spillover effect that does not fit within the DEA spillover violence model is the active recruitment of U.S. teenagers as cartel hit men.⁴² Dozens of teens from lower-income border communities are lured into cartel factions to kill rivals who are often other U.S. citizens.⁴³ Hand-in-hand with the increased violence experienced in U.S. border cities, are the weakened local law enforcement agencies that have far extended their capacities to respond to crime concerns.⁴⁴ These non-violent factors are evidence that drug-related crime is no longer contained within Mexico's borders, but has spilled over into U.S. territory and poses a significant threat to U.S. national security.⁴⁵

39. See Arabit, *supra* note 30, at 6 (limiting the spillover effect to violent acts).

40. Randal C. Archibold, *Hired by Customs, But Working for Mexican Cartels*, N.Y. TIMES (Dec. 18, 2009), <http://www.nytimes.com/2009/12/18/us/18corrupt.html?pagewanted=all> [hereinafter Archibold, *Hired by Customs*]; Molly Hennessy-Fiske, *U.S. Officials Arrest 6 Men in Mexican Cartel Murder-for-Hire Sting*, L.A. TIMES (Mar. 27, 2012), <http://www.latimes.com/news/nation/nationnow/la-na-nn-texas-drug-arrests-20120327,0,1900576.story>.

41. Archibold, *Hired by Customs*, *supra* note 40; Hennessy-Fiske, *supra* note 40.

42. James C. McKinley, Jr., *Mexican Cartels Lure American Teens as Killers*, N.Y. TIMES (June 23, 2009), <http://www.nytimes.com/2009/06/23/us/23killers.html?pagewanted=all>.

43. *Id.*

44. See Diana Washington Valdez, *Gov. Perry Wants U.S. Troops Guarding Border*, EL PASO TIMES (Feb. 25, 2009), http://www.elpasotimes.com/news/ci_11779431 (reporting that Texas Governor Perry requested the federal government to provide one thousand troops to help secure the Texas border).

45. See Mérida Initiative to Combat Illicit Narcotics and Reduce Organized Crime Authorization Act of 2008, H.R. 6028, 110th Cong. § 101(1), (5) (2008) [hereinafter Mérida Initiative] ("The drug crisis facing the United States remains a significant national security threat [n]arcotics-related activity and expanding cross-border

DTOs potential for inciting violence in the United States is also a threat to national security.⁴⁶ The Department of Justice (DOJ) reports that Mexican DTOs are “an evolving domestic criminal threat” that push drugs in every U.S. region, and have expanded their presence from two hundred thirty U.S. cities in 2008,⁴⁷ to over one thousand in 2009.⁴⁸ There are also signs that DTOs are strengthening their ties with U.S. street and prison gangs in an effort to expand their distribution capacity throughout the country.⁴⁹

Even if the definition of spillover violence is contained to only deliberate attacks on U.S. assets, it is evident that cartels have already met the bar. Among the targeted U.S. victims are CIA operatives,⁵⁰ Immigration and Customs Enforcement (ICE) officers, CBP agents, consular employees, missionaries, border residents, tourists, expatriates, and pedestrians crossing international bridges.⁵¹ U.S. law enforcement bulletins warn that cartels have instructed their members to shoot and kill American officers working in the border area.⁵² The DOJ reports that attacks on U.S. law enforcement are significantly steady along the U.S.-Mexico border, with over one thousand reported assaults on CBP officers in 2009 and again in 2010.⁵³ According to the Department of State (DOS), at least one hundred six U.S.

trafficking is dangerously undermining the security environment of our neighbors to the South, as well as the United States.”).

46. DRUG THREAT ASSESSMENT 2009, *supra* note 22, at III.

47. *Id.* at 45.

48. DRUG THREAT ASSESSMENT 2011, *supra* note 15, at 8.

49. *Id.* at 7.

50. Ioan Grillo, *Mexican Police Attacked CIA Officers, Ambush Likely: Sources*, REUTERS (Aug. 29, 2012), <http://www.reuters.com/article/2012/08/29/us-mexico-shooting-idUSBRE87S19K20120829>.

51. Sevil Omer, *'More Will Die': Mexico Drug Wars Claim U.S. Lives*, MSNBC (Apr. 22, 2011, 10:29 AM), http://www.msnbc.msn.com/id/42232161/ns/us_news-crime_and_courts/t/more-will-die-mexico-drug-wars-claim-us-lives/#.T5PBvO33DR0; Marc Lacey & Ginger Thompson, *Two Drug Slayings in Mexico Rock U.S. Consulate*, N.Y. TIMES (March 14, 2010), http://www.nytimes.com/2010/03/15/world/americas/15juarez.html?pagewanted=all&_r=0.

52. Omer, *supra* note 51.

53. DRUG THREAT ASSESSMENT 2011, *supra* note 15, at 2, 17.

residents were killed in Mexico in 2010 as a direct result of drug related violence,⁵⁴ and that number rose to one hundred twenty in 2011.⁵⁵ In addition, the DOS admits that these numbers are likely understated because they do not track deaths in the United States or the disappearances of U.S. citizens.⁵⁶ Even with a narrow designation of spillover violence, there is ample evidence of a growing threat to U.S. national security.⁵⁷

Instead of a limited measurement of the spillover effect, it would be useful to widen the delineation to include non-traditional threats to U.S. national security.⁵⁸ These threats include second-hand violence, trafficker-on-trafficker violence, non-violent factors, and a DTO's potential for inciting violence.⁵⁹ The inclusion of these indicators would present a clearer picture of how cartels threaten U.S. national security interests.⁶⁰ A broader designation that considers threats as a whole, and in varying degrees, is a more accurate representation of the ever-changing threat to U.S. national security.⁶¹ On the other hand, a narrow definition of spillover violence limits the response capacity of agencies.⁶² Acknowledging the scope of the threat would facilitate the U.S. government in devising the best

54. Omer, *supra* note 51.

55. Laura Bly, *State Department Updates Mexico Travel Warning*, USA TODAY (Feb. 9, 2012, 12:32 PM), <http://travel.usatoday.com/destinations/dispatches/post/2012/02/state-department-updates-mexico-travel-warning/623473/1>.

56. Omer, *supra* note 51.

57. *See supra* notes 50–56 and accompanying text.

58. *See* FINKLEA ET AL, *supra* note 2, at 12–16 (noting limitations of the U.S. DEA's interagency definition of spillover violence and describing the characteristics of spillover violence).

59. *See supra* notes 33–49 and accompanying text.

60. *See* FINKLEA ET AL, *supra* note 2, at 14 (indicating that some experts have suggested that spillover violence is more accurately represented by indicators seen in Mexico, such as murders related to drug trafficking, the brutality of murders, attacks on security forces, and the killing of civilians).

61. *See generally id.* at 26 (identifying critical elements—currently excluded—of spillover violence that should be analyzed when determining the expansion of spillover violence).

62. *See generally* Arabit, *supra* note 30, at 6 (explaining that the appropriation of programs, resources, and operations to spillover-violence efforts is dependent on what actions constitute the spillover definition).

plan of defense (or offense) against DTO-related criminal activity. Whether or not the spillover discussion is inclusive of Mexican drug violence impacting U.S. citizens, DTOs present a threat to U.S. national security deserving of a security response strategy.

III. A WEAK RULE OF LAW IN MEXICO

The ever-present DTO violence is in part attributable to a weak rule of law in Mexico that sustains an unstable, corrupt, and unpredictable criminal justice system. In response, Mexico and the United States have adopted rule of law initiatives as a prominent strategy in combatting the violence that threatens instability on both sides of the border.⁶³ Rule of law is a fundamental principle that is elusive in its nature and implementation.⁶⁴ Before we can explore how DTOs have flourished in the midst of a compromised Mexican judicial system, we must first understand how the rule of law limitations in a particular state can influence the level of violence.

A. *The connection between a weak rule of law and increased violence*

The term “rule of law” is both rich with meaning from diverse legal traditions and evasively difficult to define.⁶⁵ The United Nations’ interpretation is a practical one:

The rule of law . . . refers to a principle of governance in which all persons, institutions and entities, public and

63. See, e.g., STAFF OF S. COMM. ON FOREIGN RELATIONS, *supra* note 11, at 5 (stating that under the Mérida Initiative “the Obama administration significantly increased its funding for rule of law institutional capacity building and training” in Mexico).

64. See BRIAN TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 3–5 (3d ed. 2004), available at <http://abookmedhin.files.wordpress.com/2010/10/on-the-rule-of-law.pdf>.

65. See *What is the Rule of Law?*, UNITED NATIONS RULE OF LAW, http://www.unrol.org/article.aspx?article_id=3 (last visited Aug. 25, 2013); William Hine-Ramsberger, *Drug Violence and Constitutional Revisions: Mexico’s 2008 Criminal Justice Reform and the Formation of Rule of Law*, 37 BROOK. J. INT’L L. 291, 308 (2011).

private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁶⁶

Others have also prominently identified “legal certainty” as an essential element comprising the rule of law.⁶⁷ Legal certainty “permits those subject to the law to plan their lives with less uncertainty. It protects those subject to the law from arbitrary use of state power.”⁶⁸

The connection between rule of law and violence is clearer when we explore the influence of the judicial system over the level of violence in a society.⁶⁹ There is a close causal nexus between a weak rule of law and an unstable judicial system.⁷⁰ Countries such as Mexico overrun with impunity, human rights violations, ineffective governing, and rampant corruption are debilitated and unstable.⁷¹ Faced with such circumstances, a

66. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 6, U.N. Doc. S/2004/616 (Aug. 23, 2004) [hereinafter *U.N. Transitional Justice 2004*].

67. See, e.g., James R. Maxeiner, *Some Realism About Legal Certainty in the Globalization of the Rule of Law*, 33 HOUS. J. INT'L L. 27, 30–31 (2008) (discussing the relationship between the legal concepts of rule of law and legal certainty).

68. *Id.* at 30.

69. See STAFF OF S. COMM. ON FOREIGN RELATIONS, *supra* note 11, at 5 (stating that Mérida’s goal is partly to “institutionalize capacity to sustain rule of law” in order to diminish organized crime). See generally U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 6–7, U.N. Doc. S/2011/634 (Oct. 12, 2011) [hereinafter *U.N. Transitional Justice 2011*] (discussing the importance of rule of law to international peace and security).

70. See Leigh T. Anenson, *For Whom the Bell Tolls . . . Judicial Selection by Election in Latin America*, 4 SW. J. L. & TRADE AM. 261, 262 (1997).

71. See *U.N. Transitional Justice 2011*, *supra* note 69, ¶ 6; SEELKE, *supra* note 13, at 2.

vulnerable citizenry begins to distrust its government when they see cartel members released from jail without charges or observe police officials raid a neighbor's home without a warrant.⁷² DTOs flourish under these circumstances because the public no longer trusts its government to provide protection.⁷³ Crimes are unreported and marginalized groups such as the poor and unemployed turn to criminal activity knowing that the chances of being prosecuted for a crime are slim, whereas the opportunities that criminal organizations present are promising.⁷⁴ While crime, violence, and the influence of subversive groups grow, the government further loses its ability to maintain stability and its authority diminishes.⁷⁵

Conversely, a strong rule of law presence in a society affirms the legitimacy of a state.⁷⁶ A government that provides the same rights and protections to a detainee as it does a representative of the state or a wealthy criminal is providing a predictable judicial system.⁷⁷ This creates a transparent and dependable structure that criminals cannot easily compromise and gives the public confidence to report crimes.⁷⁸ In essence, rule of law is the basis for an effective judiciary that is empowered to curtail criminal activity.⁷⁹

72. See *U.N. Transitional Justice 2011*, *supra* note 69, ¶ 6 (diminishing citizen security may contribute to “distrust or outright hostility” towards the government).

73. See *id.* (explaining how transnational organized crime and increasing instability undermine government competence and legitimacy).

74. See *id.* (claiming that marginalized and unemployed citizens may “challenge the established order through violent means”).

75. See *id.*

76. See Anenson, *supra* note 70, at 262 (explaining that the judiciary reinforces rule of law and serves as a “centerpiece for democracy”).

77. See Luz E. Nagle, *On Armed Conflict, Human Rights, and Preserving the Rule of Law in Latin America*, 27 PENN ST. INT'L L. REV. 1, 18 (2008) (identifying “equality of the law” and “predictable results” as two of the five characteristics of the rule of law under the goal-oriented definition).

78. See *U.N. Transitional Justice 2011*, *supra* note 69, ¶ 6 (discussing the consequences of weak judicial and security institutions).

79. See *U.N. Transitional Justice 2004*, *supra* note 66, ¶ 2.

B. The Mexican criminal justice system

The Mexican criminal justice system is reflective of a compromised rule of law. Under Mexico's inquisitorial judicial system, a judge serves as the inquisitor and decision maker.⁸⁰ Prosecutors work with enforcement authorities to gather evidence that overwhelmingly consists of eye-witness accounts.⁸¹ The defense attorney has no say during the investigative stage, which leaves the accused vulnerable to a biased investigation.⁸² The evidence gathered is included in the case dossier and considered credible, as it is presumed that the prosecutor acted in good faith.⁸³

A defendant's role is limited during this process.⁸⁴ His attorney cannot speak directly to the prosecution's witnesses or cross-examine them, and the contents of the file cannot be questioned.⁸⁵ The judge will base his decision largely on the case file and written evidence, as ninety-three percent of defendants never actually see a judge.⁸⁶ Additionally, judicial proceedings are closed to the public, thereby further cloaking the plenary power of government officials.⁸⁷ In this ineffective judiciary, marginalized citizens are often unfairly punished while wealthy drug traffickers pay off corrupt officials to avoid convictions.⁸⁸

80. Hine-Ramsberger, *supra* note 65, at 293–94.

81. *Id.* at 295; *see also* PRESUNTO CULPABLE [PRESUMED GUILTY] (Abogados con Cámara 2008) [hereinafter PRESUMED GUILTY] (documenting the trial of a man wrongfully accused of murder in Mexico and reporting that in Mexico's criminal justice system, ninety-two percent of accusations are based exclusively on eye-witness accounts without any physical evidence).

82. *See* Zachary J. Lee, Comment, *Wrestling with Mexican Criminal Procedure: How Law Schools in the United States and Mexico Can Team up to Rebuild Mexico's Criminal Trial*, 33 HOUS. J. INT'L L. 53, 61 (2010).

83. Hine-Ramsberger, *supra* note 65, at 296–97.

84. PRESUMED GUILTY, *supra* note 81; *see also* Lee, *supra* note 82, at 61 (reporting that under Mexico's judicial system, defendants cannot challenge evidence or cross-examine witnesses).

85. Lee, *supra* note 82, at 61.

86. *Id.*; PRESUMED GUILTY, *supra* note 81.

87. Lee, *supra* note 82, at 71–72.

88. *See id.* at 63 (stating that poor defendants are almost exclusively presumed guilty while narcotics traffickers, kidnappers, and other criminals are able to pay for

This lack of checks and balances has resulted in diminished trust in the judicial system, little incentive to report crimes, and higher impunity and corruption.⁸⁹

IV. REBUILDING RULE OF LAW THROUGH MEXICO'S CONSTITUTIONAL REFORMS AND MÉRIDA INITIATIVE

Mexico and the United States have each attempted to restore rule of law in Mexico through separate but interrelated approaches. Mexico ratified judicial constitutional amendments in 2008 and the United States provided monetary support through the Mérida Initiative.⁹⁰ This section will analyze how Mérida and Mexico's constitutional reforms attempt to use rule of law initiatives to reduce drug related violence in Mexico and ultimately eliminate the DTO threat to U.S. national security.

A. Mexico's judicial reforms attempt to rebuild rule of law

Mexico's 2008 constitutional reforms directly targeted the systemic failures in their judicial system.⁹¹ The bill was favored by a large margin in Mexico's lower house of Congress and the Senate promptly approved it less than a month later.⁹² Among the most transformative judicial reforms are: (1) the replacement of the inquisitorial system with an adversarial trial system that calls for oral trials; (2) having trials open to the public; (3) the presumption of innocence of the accused until guilt is proven; and (4) the limitations placed on pre-trial

"amparo" which literally translates to protection, and gives them the opportunity to file for release from detainment).

89. See *id.* at 61–63 (reporting that in Mexico more than eighty-five percent of verdicts are convictions); Hine-Ramsberger, *supra* note 65, at 292 (reporting the Mexican criminal impunity rate at approximately ninety-eight percent); see also David Luhnnow, *Presumption of Guilt*, WALL ST. J. (Oct. 17, 2009), <http://online.wsj.com/article/SB10001424052748704322004574475492261338318.html> (mentioning that only twelve percent of crimes are reported to the police and that police officers ask many people who do report crimes to pay or become suspects themselves).

90. Hine-Ramsberger, *supra* note 65, at 315–16.

91. Lee, *supra* note 82, at 55; Hine-Ramsberger, *supra* note 65, at 304.

92. Devin Montgomery, *Mexico Constitutional Reforms to Revolutionize Judicial System*, JURIST (June 17, 2008, 2:29 PM), <http://jurist.org/paperchase/2008/06/mexico-constitutional-reforms-to.php>.

detention.⁹³ The adoption of the constitutional reforms was a well-marked victory for Calderón, whose predecessor attempted to pass such measures through Congress without avail.⁹⁴

The 2008 constitutional amendments were designed to restore rule of law in Mexico on several levels.⁹⁵ One prominent goal was to balance the power of the public prosecutor with the right of the accused to receive a fair trial.⁹⁶ The prosecution would no longer have the privilege to submit evidence under a good-faith presumption.⁹⁷ Instead, each side would now have the opportunity to argue the admissibility of evidence.⁹⁸

Another constitutional aim was to decrease the potential for corruption.⁹⁹ Opening trials to the public and using different judges throughout various stages of a trial would provide additional witnesses to the proceedings, which lessens the possibility of impunity and bribes transacted behind closed doors.¹⁰⁰

The reforms also tackled the controversial treatment of detainees and general human rights abuses attributed to Mexican law enforcement.¹⁰¹ The amendments limited the use of pre-trial detention,¹⁰² established a presumption of innocence, prohibited the use of evidence obtained through the violation of fundamental human rights, and rendered inadmissible any

93. See Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 20, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.) [hereinafter *Constitution of Mexico*]; Lee, *supra* note 82, at 55.

94. Manuel Roig-Franzia, *Mexico Revises Its Justice System*, WASH. POST (June 18, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/06/17/AR2008061702334.html>.

95. Hine-Ramsberger, *supra* note 65, at 302.

96. *See id.*

97. *Id.* at 303.

98. *See id.*

99. *Id.* at 303–04.

100. *See id.*

101. *See generally* HUMAN RIGHTS WATCH, WORLD REPORT 2012: EVENTS OF 2011 266–68 (2012), available at <http://www.hrw.org/sites/default/files/reports/wr2012.pdf> (stating that the 2008 constitutional reforms contain measures that are “critical for promoting greater respect for fundamental human rights”).

102. *Constitution of Mexico*, *supra* note 93, art. 19.

confession not obtained in the presence of a defense attorney.¹⁰³ These expansive judicial changes, along with U.S. economic aid, were intended to fortify rule of law in Mexico and reduce violence.¹⁰⁴

B. The United States' efforts to rebuild rule of law in Mexico through Mérida

Although the United States has at times chosen to dismiss claims that there is a spillover effect from drug-related violence in Mexico, its most prominent response to the violence across the border has been the adoption of the Mérida Initiative to Combat Illicit Narcotics and Reduce Organized Crime Authorization Act of 2008 (Mérida Initiative).¹⁰⁵ Through the Mérida Initiative, the U.S. has thus far committed over \$1.9 billion to defeat Mexican cartels.¹⁰⁶

Originally, Mérida poured the greatest amount of resources into equipment and training in support of law enforcement operations.¹⁰⁷ The second phase of Mérida, known as “Beyond Mérida,” recognizes that merely supporting law enforcement efforts does not significantly influence the social policy changes necessary to eliminate drug trafficking violence.¹⁰⁸

In March 2010, Beyond Mérida adopted four new goals, or “pillars,” to bolster the U.S.-Mexico security partnership.¹⁰⁹ Both countries embraced: “(1) disrupting organized criminal groups; (2) institutionalizing the rule of law; (3) building a 21st century border; and (4) building strong and resilient

103. *Id.* art. 20.

104. Hine-Ramsberger, *supra* note 65, at 315–16.

105. STAFF OF S. COMM. ON FOREIGN RELATIONS, *supra* note 11, at 1 (“The U.S. Government has joined Mexico in its effort to combat organized crime through the framework of the Mérida Initiative”).

106. *Id.* at 4.

107. CLARE RIBANDO SEELKE & KRISTIN M. FINKLEA, CONG. RESEARCH SERV., R41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND 2 (2011).

108. *Id.*

109. *Id.*

communities.”¹¹⁰ Of particular interest is the second pillar, which embodies the shift in Mérida from a security focused program to one that promotes “progress by further institutionalizing Mexican capacity to sustain adherence to the rule of law and respect for human rights.”¹¹¹ The second pillar is also important because it is closely tied to Mexico’s 2008 constitutional reforms, which primarily target judicial and human rights changes.¹¹²

In order to ensure human rights are protected, Mérida has gone as far as requiring that Mexico meet specific human rights standards before disbursing portions of the aid package.¹¹³ In addition, Mérida prohibits aid to Mexican armed forces and law enforcement units if “there is credible evidence that such unit has committed gross violations of human rights.”¹¹⁴ There is an exception only if the Mexican government makes a clear effort to bring the responsible parties to justice.¹¹⁵

American success in preventing a greater influx of violence will directly depend on the rehabilitation of Mexico’s debilitated institutions and the promotion of rule of law.¹¹⁶ The Mexican

110. *Id.*

111. *U.S.-Mexico Security Cooperation: Next Steps for the Mérida Initiative: Joint Hearing Before the Subcomm. on Border, Mar., & Global Counterterrorism of the H. Comm. on Homeland Sec., & the Subcomm. on the W. Hemisphere of the H. Comm. on Foreign Affairs*, 111th Cong. 16 (2010) [hereinafter *U.S.-Mexico Security Cooperation*] (testimony of Roberta S. Jacobson, Deputy Assistant Sec’y, Bureau of W. Hemisphere Affairs, U.S. Dep’t of State).

112. See Lee, *supra* note 82, at 55 (discussing the rebuilding of the Mexican judicial system after the 2008 constitutional reforms); Montgomery, *supra* note 92.

113. HUMAN RIGHTS WATCH, *supra* note 101, at 271 (reporting human rights requirements such as: “ensuring that civilian prosecutors and judicial authorities investigate and prosecute federal police and military officials who violate basic rights, consulting regularly with Mexican civil society organizations on Merida Initiative implementation, enforcing the prohibition on use of testimony obtained through torture or other ill-treatment, and improving transparency and accountability of police forces”).

114. Mérida Initiative, *supra* note 45, § 114(a).

115. *Id.* § 114(b).

116. See Press Release, The White House Office of the Press Secretary, Administration Officials Announce U.S.-Mexico Border Security Policy: A Comprehensive Response & Commitment (Mar. 24, 2009, 10:15 AM), available at <http://www.whitehouse.gov/the-press-office/administration-officials-announce-us-mexico-border-security-policy-a-comprehensive-> (stating that due to concerns about spillover

constitutional reforms and Mérida are an effort to serve that purpose.

V. CONSTITUTIONAL REFORMS AND MÉRIDA HAVE NOT RESTORED RULE OF LAW IN MEXICO

Societal factors in Mexico and the United States indicate that Mexico's judicial reforms and Mérida have not succeeded in reducing the threat that DTOs present on both sides of the border. The goal to revitalize rule of law in Mexico seems even more daunting because the Mexican federal and state governments are required to implement the constitutional changes by 2016.¹¹⁷

A. *Difficulties implementing judicial reforms in Mexico*

While Mexico's constitutional reforms initially received wide support from politicians and the citizenry alike,¹¹⁸ they have proven to be more difficult to implement than anticipated.¹¹⁹ Practical elements such as expanding the size of courtrooms to accommodate public trials and training court personnel, including judges, lawyers, and clerks, are necessary to carry out the changes.¹²⁰ However, this transition faces budgetary restraints.¹²¹ The government must also overhaul its judicial codes and procedures to make the reforms a functional part of the federal and state court systems.¹²²

Aside from logistical groundwork necessary to operate under the new constitutional amendments, the reforms face institutionalized weaknesses that existed prior to the

violence in the United States, Congress has committed funds through the Mérida Initiative to "improve law enforcement, crime prevention and strengthen institution building and rule of law").

117. David A. Shirk, *Criminal Justice Reform in Mexico: An Overview*, 3 MEX. L. REV. 189, 220 (2011).

118. *Id.* at 202–03.

119. Hine-Ramsberger, *supra* note 65, at 307.

120. *See* Lee, *supra* note 82, at 71 ("[T]he need for changes to the Mexican legal education system has never been more urgent.").

121. Hine-Ramsberger, *supra* note 65, at 307.

122. Shirk, *supra* note 117, at 219.

amendments.¹²³ Waning political will, prevalent corruption, and a lack of public trust are among the most formidable challenges to the reforms.¹²⁴ Criminal violence has also proven to be a substantial hindrance to the reforms in unstable cities where many prominent lawyers and judges have been killed or forced out in fear for their lives.¹²⁵

Perhaps the most damaging obstacles are the contradictions that exist within the constitution itself.¹²⁶ While Article 20 of the Mexican Constitution explicitly presumes innocence until a judge declares guilt, Article 16 appears to undermine this presumption.¹²⁷ It states that a person merely suspected of participating in organized crime can be detained up to eighty days without charges in the interest of justice at the request of the Public Prosecution Service.¹²⁸ This is especially dangerous because the organized crime label is broadly applied to any organization comprised of three or more persons whose purpose it is to regularly commit crimes.¹²⁹ As one critique expressed, it is even possible to detain protestors under this sweeping amendment.¹³⁰ It has been reported that an eighty-day detention without charges is “by far, the longest of its kind in any Western democracy.”¹³¹ Further undermining the advances that Article 20 proposes, Article 18 calls for the creation of isolated detention centers with special security measures for

123. See Roig-Franzia, *supra* note 94; Nancy J. Blake & Kathleen Blake Bohne, *The Judicial System in Mexico (part 2)*, OPEN DEMOCRACY (July 8, 2009), <http://www.opendemocracy.net/article/the-judicial-system-in-mexico-challenges-and-prospects-for-reform-part-ii> (arguing that the success of the reforms will depend on whether the “culture of impunity can be dismantled”).

124. Hine-Ramsberger, *supra* note 65, at 307.

125. *Id.* at 306.

126. See *id.* at 305 (discussing the conflict existing between Article 20 and Articles 16 and 18 of the Mexican Constitution); Blake & Bohne, *supra* note 123.

127. Compare *Constitution of Mexico*, *supra* note 93, art. 20 (declaring that a defendant is innocent until proven guilty), with *id.* art. 16 (establishing a conflicting standard for defendants suspected of participating in organized crime).

128. *Id.* art. 16.

129. See *id.*

130. Blake & Bohne, *supra* note 123.

131. Roig-Franzia, *supra* note 94.

those suspected or found guilty of participation in organized crime.¹³² A detainee's communication with any third parties can be completely prohibited except for contact with an attorney.¹³³ In essence, Articles 16 and 18 create a law enforcement approach for those suspected of organized crime involvement, and another for everyone else.¹³⁴ The danger is that this creates two classes of citizens with a subjective metric for determining who is part of an organized crime group and who is not.¹³⁵

B. The Mérida Initiative and the one-size-fits-all dilemma

Mérida provides financial resources to support Mexico's 2008 constitutional reforms targeting the criminal judicial system.¹³⁶ By some accounts, it appears that the United States is providing billions of dollars through Mérida to institutionalize a U.S.-style judicial system.¹³⁷

One downfall of the reforms may be the adoption of an American-style adversarial judicial system without strong consideration for Mexico's history.¹³⁸ The United Nations warns of a "one-size-fits-all formula" when applied to transitional justice in conflict societies.¹³⁹

At the core, these Mexican reforms represent a transition to

132. *Constitution of Mexico*, *supra* note 93, art. 18.

133. *Id.*

134. Blake & Bohne, *supra* note 123.

135. *See generally Constitution of Mexico*, *supra* note 93, art. 16 (defining organized crime with an objective standard, "the organization of three or more people," as well as a subjective standard, "gathered together to commit crimes in a permanent or frequent manner").

136. *U.S.-Mexico Security Cooperation*, *supra* note 111, at 8.

137. *See* U.S. Dep't of State, Bureau of W. Hemisphere Affairs, *The Merida Initiative: Expanding the U.S./Mexico Partnership* (2012), available at <http://www.state.gov/documents/organization/187329.pdf> (stating that since the Mérida Initiative began in Fiscal Year 2008, \$1.6 billion has been appropriated for programs that range from supporting Mexico's implementation of comprehensive justice reforms to delivering aircraft for law enforcement and military entities).

138. *See* McLeod, *supra* note 13, at 88, 90 (arguing that the application of U.S.-style reforms to foreign judicial systems has "little regard for the concerns of citizens of foreign states" and ignores experts who do not accept the adversarial judicial system as superior over other frameworks).

139. *U.N. Transitional Justice 2004*, *supra* note 66, at summary.

an Americanized judicial system.¹⁴⁰ The principles of oral argument, adversarial procedure, and trials open to the public are rooted in common law tradition.¹⁴¹ Much of the recent commentary supports the idea that transitioning the Mexican judiciary from inquisitorial to adversarial will strengthen rule of law in Mexico.¹⁴² It is at this point where this Comment deviates. Choosing to implement common law principles rather than reforming Mexico's existing civil law judiciary makes little sense when we consider the flaws of the exported criminal justice system.¹⁴³ In addition, under a strategy such as this, that replaces the inquisitorial system for an adversarial one, there is an absence of account for cultural and historical traditions deeply entrenched in the existing legal system.¹⁴⁴

A legal tradition has been described as a means of putting a legal system into cultural perspective.¹⁴⁵ In this case, civil law tradition is intricately bound to Mexico's legal foundation and provides the fabric for the operation and application of its legal system.¹⁴⁶ Mexico's legal system is failing not because the system itself is flawed, but instead because of corruption and mismanagement of the system.¹⁴⁷ The answer is not to abandon civil law for common law traditions. The system should be reformed, not replaced.

C. Other factors indicating an evasive rule of law

Mexico's constitutional reforms and Mérida have had four years to take root, yet societal performance measures do not

140. See Lee, *supra* note 82, at 63 (stating that the 2008 Mexican legal system reforms are a significant step closer to resembling the U.S. criminal justice system).

141. See *id.* at 55.

142. Hine-Ramsberger, *supra* note 65, at 303, 307.

143. Nagle, *supra* note 77, at 19.

144. *Id.*

145. JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* 2 (3rd ed. 2007).

146. See *id.* at 2–3.

147. See Lee, *supra* note 82, at 62.

indicate significant progress.¹⁴⁸ The number of U.S. citizens killed in Mexico has steadily risen for the past five years.¹⁴⁹ In the latest travel warning, the DOS reported that in the first nine months of 2011 there were 12,903 drug-related murders in Mexico.¹⁵⁰

There are also serious concerns about human rights violations and impunity for government officials and military personnel who are only tried for offenses in military tribunals instead of civil courts.¹⁵¹ Military and law enforcement personnel continue to enjoy impunity for human rights violations at the cost of damaging the reforms' potential for success.¹⁵² Although the judicial reforms are supposed to be the catalyst for change, most recent accounts indicate that out of the thirty-one Mexican states, only three fully operate under the new judicial reforms and eight have partially transitioned; the other twenty states and the federal district are still using the pre-reform judicial system.¹⁵³

Controversial U.S. anti-drug trafficking operations have also

148. See STAFF OF S. COMM. ON FOREIGN RELATIONS, *supra* note 11, at 10 (acknowledging that judicial reform will likely not materialize for a generation); see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-837, MÉRIDA INITIATIVE: THE UNITED STATES HAS PROVIDED COUNTERNARCOTICS AND ANTICRIME SUPPORT BUT NEEDS BETTER PERFORMANCE MEASURES 15 (2010) (reporting Mérida's various implementation challenges).

149. Phyllis K. Smith, *U.S. State Department Issue Mexico Travel Warning*, CBS DFW (Feb. 10, 2012, 10:45 AM), <http://dfw.cbslocal.com/2012/02/10/u-s-state-dept-issues-mexico-travel-warning/>.

150. *Id.*

151. DOS 2009 HUMAN RIGHTS REPORT, *supra* note 20 (reporting that only one of 174 military human rights abuse cases reported in a two year period had resulted in a conviction and that conviction is under appeal; also reporting that most disappearances attributed to army and police officers occurred in the course of anticrime operations).

152. HUMAN RIGHTS WATCH, *supra* note 101, at 266 (reporting that military personnel are rarely brought to justice when they violate the human rights of civilians).

153. Ruben Torres, *Para Nuevo Sistema de Justicia Penal, \$65,000 Millones*, ECONOMISTA (Dec. 3, 2012, 11:13 PM), <http://eleconomista.com.mx/sociedad/2012/12/03/nuevo-sistema-justicia-penal-65000-millones> (reporting that Chihuahua, the state of Mexico, and Morelos have completely transitioned and that Baja California, Durango, Guanajuato, Nuevo León, Puebla, Oaxaca, Yucatán, and Zacatecas have partially transformed).

proven to be a setback.¹⁵⁴ In May 2010, U.S. authorities detained and questioned the primary target of a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) gun smuggling investigation.¹⁵⁵ Even though the suspected gun-smuggling ringleader had seventy-four rounds of ammunition and cellphones hidden in his vehicle, ATF agents released him, likely in hopes that he would lead them to leaders of the Sinaloa cartel.¹⁵⁶ Instead, in the nine months that followed in what became known as Operation Fast and Furious, the suspect went on to smuggle over one thousand seven hundred guns into Mexico.¹⁵⁷ Many of those marked weapons have turned up at Mexican crime scenes and two were notoriously found at the site where a CBP agent was killed.¹⁵⁸

Public support for the declared war on DTOs is waning in Mexico.¹⁵⁹ Upon the discovery of the ATF gun-running operations organized under two U.S. presidencies, some outcry has even called for the suspension of Mérida.¹⁶⁰ Suspicion has escalated and skeptical citizens perceive the United States' conduct as collusion with drug traffickers and as an attempt to

154. Richard A. Serrano, *Gun-Tracking Operation Caught Top Suspect, Then Let Him Go*, L.A. TIMES (Mar. 19, 2012), <http://articles.latimes.com/2012/mar/19/nation/la-na-fast-furious-20120319>. For an in-depth official report on Operation Fast and Furious, see JOINT STAFF REPORT, 112TH CONG., THE DEPARTMENT OF JUSTICE'S OPERATION FAST AND FURIOUS: FUELING CARTEL VIOLENCE (2011), and Sari Horwitz, *Earlier ATF Gun Operation "Wide Receiver" Used Same Tactics as "Fast and Furious"*, WASH. POST (Oct. 6, 2011), http://www.washingtonpost.com/politics/earlier-atf-gun-operation-wide-receiver-used-same-tactics-as-fast-and-furious/2011/10/06/gIQAuRHIRL_story.html (reporting on a U.S. gun-walking operation that allowed hundreds of guns originating in the United States to enter Mexico during the Bush administration).

155. Serrano, *supra* note 154.

156. *Id.*

157. *Id.*

158. *Id.*

159. See EU: *¿Aliado o Enemigo? [The U.S.: Friend or Foe?]*, JORNADA (Oct. 15, 2011), <http://www.jornada.unam.mx/2011/10/05/edito> (explaining how it is difficult for Mexican citizens to understand why Mexico is committing to a security enforcement and crime-fighting partnership with an unreliable ally that is aiding the very DTOs it purports to combat).

160. *Id.*

destabilize the Mexican government.¹⁶¹ A recent survey report shows that less than half of Mexicans believe that their government is winning the war against the DTOs.¹⁶²

There are clear indications that the Mexican constitutional reforms and the Mérida Initiative have not done enough to restore rule of law, reduce drug violence, or decrease the flow of illicit drugs into the United States,¹⁶³ thereby adding to the growing threat of a greater spillover effect into the U.S. border.¹⁶⁴ Mexico has already adopted the constitutional changes; therefore, practical rule of law recommendations need to work within the limits of the reforms.¹⁶⁵ The following section suggests adopting innovative strategies from other regions facing similar rule of law challenges to contribute to the strengthening of rule of law in Mexico.

VI. REVISITING RULE OF LAW: LESSONS LEARNED FROM TRANSITIONAL JUSTICE MODELS

While it is important not to fall into the one-size-fits-all trap, it is still beneficial to analyze key advances made in other countries that face similar challenges.¹⁶⁶ This section will review the role of international stakeholders, “green zones,” and Judge Advocates (JAs) in Iraq and Afghanistan in establishing rule of law. In addition, it will analyze the structure of the Guatemalan

161. *Id.*

162. GLOBAL ATTITUDES PROJECT, PEW RESEARCH CENTER, CRIME AND DRUG CARTELS TOP CONCERNS IN MEXICO 1 (2011), available at <http://www.pewglobal.org/files/2011/08/Pew-Global-Attitudes-Mexico-Report-FINAL-August-31-2011.pdf>.

163. See DRUG THREAT ASSESSMENT 2011, *supra* note 15, at 2 (reporting that in general, drug availability in the United States is increasing).

164. *Id.* at 1.

165. See Lee, *supra* note 82, at 55 (stating that Mexico has recently passed an amendment that drastically changed Mexican criminal procedure).

166. See Andrew Hudson & Alexandra W. Taylor, *The International Commission Against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms*, 8 J. INT'L CRIM. JUST. 53, 55 (2010) (arguing that the International Commission Against Impunity in Guatemala is a model worth replicating in other states. The investigative organization's general mission is to combat impunity and corruption, strengthen rule of law, and promote judicial reform while operating under Guatemalan law and participating in the criminal prosecutions of high profile and sensitive cases).

International Commission Against Impunity and how a program modeled after it can be applied to the Mexican judicial system. Together, these approaches represent the potential for rule of law advances in Mexico, and ultimately, a decrease in the threat of spillover violence into the United States.

A. The Middle Eastern model: The use of international partners, green zones, and judge advocates

A significant strategy in the development of rule of law in Iraq and Afghanistan has been the involvement of international stakeholders.¹⁶⁷ In order for policies to take root, international partners and local leadership must offer their support to legitimize the policies.¹⁶⁸ In Iraq, the United Nations has partnered with the Iraqi Higher Judicial Council and the European Union to lead rule of law training efforts for over 400 Iraqi Judges and legal officials.¹⁶⁹ In Afghanistan, this was accomplished through programs such as the NATO Rule of Law Field Support Mission (NROLFSM), which assumed the leadership for rule of law initiatives that a U.S. mission formerly provided.¹⁷⁰

Similar NATO initiatives can be introduced in Mexico. With the support of national actors, organizations modeled after the Iraqi Higher Judicial Council and the U.N. Development Programme can be granted authority to implement rule of law

167. *See Enforcing the Rule of Law in Iraq: Training for Judges and Legal Officials*, U.N. RULE OF LAW, http://www.unrol.org/article.aspx?article_id=155 [hereinafter *Enforcing the Rule of Law in Iraq*] (last visited Oct. 14, 2013) (reporting that the European Union and the U.N. Development Programme are collaborating with the Iraqi government to strengthen rule of law in Iraq); *see also* NATO, *NATO Rule of Law Field Support Mission* (2011) [hereinafter *NROLFSM*], available at http://www.nato.int/nato_static/assets/pdf/pdf_2011_06/20110609-Backgrounder-Rule_of_Law-en.pdf (reporting that Afghanistan and its international partners supported the creation of the NATO Rule of Law Field Support Mission in Afghanistan).

168. *U.N. Transitional Justice 2011*, *supra* note 69, ¶ 15 (declaring that the participation of the United Nations, its member states, and national stakeholders is crucial to the success of rule of law initiatives).

169. *Enforcing the Rule of Law in Iraq*, *supra* note 167.

170. *NROLFSM*, *supra* note 167.

initiatives.¹⁷¹ Of particular significance, is the collaboration that can develop between Mexican and international experts in areas including procedural law, investigations, anti-corruption, human rights and judicial ethics.¹⁷² This international approach will also help reduce anti-American sentiments when it comes to questioning the nature of U.S. involvement in fighting Mexican narco-violence.¹⁷³ A collaborative approach that includes the crucial involvement of judicial experts from Mexico is important to consider in an effort to revitalize a debilitated Mexican judicial system.¹⁷⁴

The use of “green zones” has also been vital in establishing rule of law in rural areas of Iraq and Afghanistan.¹⁷⁵ Green zones have been described as a hub-and-spoke judicial system, by which rule of law is implemented in high-violence areas with the assistance of courts located in safer regions, local law enforcement, and military units.¹⁷⁶ This linkage provides access to investigative and prosecutorial assistance, and general judicial field support.¹⁷⁷ The Mexican government can benefit from a green zone system to implement rule of law in border town areas that have been cut-off from state judiciaries and are

171. See *Enforcing the Rule of Law in Iraq*, *supra* note 167 (reporting that with the support of Iraqi leadership, the UNDP Iraq developed Iraqi-centered training courses that support judges and judiciary staff members in their effort to promote justice in their country).

172. See *id.* (describing the Iraqi judges’ and officials’ collaboration with international experts).

173. See *supra* text accompanying notes 160–62.

174. See *Enforcing the Rule of Law in Iraq*, *supra* note 167 (attributing the involvement of the Iraqi Higher Judicial Council and the Iraqi Ministry of Justice for the successful completion of their goals to “improve the efficiency of the Iraqi justice system in order to provide greater court transparency, accessibility and accountability, and to strengthen the capacity of key government rule of law institutions, as a way [of] promoting a higher standard of justice”).

175. See Mark Martins, Brig. Gen., Rule of Law in Iraq and Afghanistan?, Remarks at the Harvard Law School Dean’s Distinguished Lecture Series (Apr. 18, 2011), in HARV. NAT’L SEC. J. FORUM 13 (2011), http://harvardnsj.org/wp-content/uploads/2011/04/Forum_Martins_.pdf.

176. See *id.*

177. See *id.*

ruled by DTOs.¹⁷⁸

For Mexican citizens, the biggest change can potentially come from the role of JAs.¹⁷⁹ In Iraq, JAs ensure that military and law enforcement respond with appropriate force.¹⁸⁰ JAs are trained soldier-attorneys who understand the local law and combat procedures.¹⁸¹ They review incidents in which soldiers used force and determine whether the law and rules of engagement were followed.¹⁸² Most importantly, they are available in real-time to answer questions about the legality of an operation or decision in the field.¹⁸³ They train law enforcement and military personnel, and provide uniformity in implementation of the law.¹⁸⁴

In Mexico, accessibility to JAs can provide the military and local police the needed training and guidance to orchestrate planned responses to violence that adhere to the rule of law.¹⁸⁵ This can also make a significant impact in the continuity of law throughout judicial and enforcement infrastructures, and influence a decrease in the number of government human rights abuses.¹⁸⁶

B. The Guatemalan model: The case for hybrid tribunals

While Middle Eastern justice models may prove most effective in lawless towns throughout Mexico needing immediate short-term intervention, there are other judicial efforts that can have an enduring impact on Mexico's criminal justice system.

178. CONSULATE GEN. OF THE U.S. GUADALAJARA, MEX., CONSULAR TRAVEL WARNING (2011), available at http://guadalajara.usaconsulate.gov/tw_042211.html.

179. See generally Jack Ohlweiler, *Rebuilding the Rule of Law in Iraq*, UVA LAW., Spring 2009, at 38, available at http://www.law.virginia.edu/pdf/alum/uvalawyer_spr09.pdf (detailing a JA's personal account of his experience implementing rule of law in Iraq).

180. *Id.* at 39.

181. *Id.*; Martins, *supra* note 175, at 5.

182. See Ohlweiler, *supra* note 179, at 39.

183. *Id.*

184. See *id.*

185. See *id.*

186. See *id.* at 40–41.

Mexico currently faces threats of organized crime violence, impunity, judicial ineffectiveness, and human rights violations.¹⁸⁷ These threats are identical to those that Guatemala faced when the United Nations answered its request for aid with the creation of the Guatemalan International Commission Against Impunity (known by its Spanish acronym as CICIG).¹⁸⁸ It is the first institution of its kind to collaborate with national actors to investigate and prosecute organized crime groups, and confront impunity while building up the nation's judicial system through the rule of law.¹⁸⁹ CICIG is a provisional organization that works within the existing criminal law system in Guatemala and is financially supported by the United Nations.¹⁹⁰ A discussion of CICIG practices and how they can be applied in Mexico would serve to illustrate that international partnerships can help diminish violence more suitably than the intervention of a solely invested country such as the United States.¹⁹¹

CICIG is considered a hybrid institution on many levels.¹⁹² First, it combines *tribunal* investigative and prosecutorial powers with the *commission* characteristic of having “ultimate deference” to the domestic judicial system.”¹⁹³ Second, CICIG uses private prosecutors, but has the financial backing of a public source, access to government records, and works

187. See generally HUMAN RIGHTS WATCH, *supra* note 101, at 265–72 (reporting on societal conditions in Mexico for 2011).

188. *Background*, INT'L COMM'N AGAINST IMPUNITY IN GUAT., <http://cicig.org/index.php?page=background> (last visited Sept. 3, 2013).

189. INT'L CRISIS GRP., LEARNING TO WALK WITHOUT A CRUTCH: THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA 6 (2011) [hereinafter LEARNING TO WALK WITHOUT A CRUTCH], available at <http://www.crisisgroup.org/~media/Files/latinamerica/36%20Learning%20to%20Walk%20without%20a%20Crutch%200%20The%20International%20Commission%20Against%20Impunity%20in%20Guatemala.pdf>.

190. *Id.* at 5.

191. See Hudson & Taylor, *supra* note 166, at 57 (describing the level of violence in Guatemala and the need for assistance from the international community).

192. LEARNING TO WALK WITHOUT A CRUTCH, *supra* note 189, at 5.

193. Hudson & Taylor, *supra* note 166, at 55; LEARNING TO WALK WITHOUT A CRUTCH, *supra* note 189, at 7.

alongside the public prosecutor.¹⁹⁴ Third, CICIG has a combined role of seeking criminal prosecutions and promoting institutional reforms.¹⁹⁵ Fourth, it is an international body conducting criminal proceedings in national courts within the domestic legal system.¹⁹⁶ These hybrid characteristics have led to giving CICIG the legitimacy that it needs to promote public policy changes while it combats crime through the prosecutions of criminals and corrupt officials.¹⁹⁷

Seeking the creation of a temporary international institution such as CICIG, could be the first step in Mexico publically recognizing that its constitutional reforms and the Mérida initiative are not enough to bolster its weakened judicial system. Allowing a CICIG-type organization to take root within the Mexican judicial system will promote international initiatives within the national context.¹⁹⁸ International actors can encourage legal reforms as private prosecutors work with local leaders and train personnel through the steps of the prosecution process.¹⁹⁹ This dual role of prosecutor and reformist is crucial because as prosecutors, they see first-hand the obstacles that impede justice, and as reform advocates, they can promote capacity building.²⁰⁰

Some potential challenges Mexico may face will likely be similar to those encountered in Guatemala. It will be crucial to establish a witness protection program and possibly seek the aid of other nations in providing refuge for witnesses.²⁰¹ It is also necessary to limit the types of cases that the international

194. Hudson & Taylor, *supra* note 166, at 55.

195. *Id.* at 54, 69.

196. *Id.* at 55.

197. *See id.* at 58.

198. *See* LEARNING TO WALK WITHOUT A CRUTCH, *supra* note 189, at 6 (discussing CICIG's ability to propose institutional and legal reforms).

199. Hudson & Taylor, *supra* note 166, at 55.

200. *See* Megan K. Donovan, *The International Commission Against Impunity in Guatemala: Will Accountability Prevail?*, 25 ARIZ. J. INT'L & COMP. L. 779, 818 (2008) (discussing CICIG's role in recommending public policy changes and institutional reforms).

201. *Technical Assistance*, INT'L COMM'N AGAINST IMPUNITY IN GUAT., <http://cicig.org/index.php?page=technical-assistance> (last visited Nov. 9, 2013).

organization can investigate.²⁰² This is to ensure that efforts are concentrated on the primary sources that debilitate the judicial system: drug-related violence, corruption, and impunity.²⁰³ The local judiciary should also not be an obstacle to the private prosecutor.²⁰⁴ If the power of the international actor is severely limited, it may lead to minimal success.²⁰⁵ However, this can be remedied if the goals and parameters of the international commission are clearly defined and implemented.²⁰⁶ These combined initiatives will also encourage public confidence in the authority and power of the state.²⁰⁷ The international judicial organization does not take over the judicial system; rather it operates under its leadership to bolster the existing system.²⁰⁸

VII. CONCLUSION

Mexican drug-related violence presents a growing threat to U.S. national security.²⁰⁹ As Mexican DTOs continue to attack one another and retaliate against Mexican law enforcement, the violence escalates and is spilling over the border and into the

202. LEARNING TO WALK WITHOUT A CRUTCH, *supra* note 189, at 10 (discussing the case selection criteria that CICIG applies).

203. See *Two Years of Work: Our Commitment is to Justice*, THE INT'L COMM'N AGAINST IMPUNITY IN GUAT. (2009), <http://cicig.org/index.php?page=two-years-of-work>.

204. See Hudson & Taylor, *supra* note 166, at 67 (describing how CICIG faced a magistrate who obstructed justice by attempting to prevent the participation of CICIG as a private prosecutor during the trial of the ex-president of Guatemala).

205. See *id.* at 66–67 (discussing the importance of “equipping international criminal justice mechanisms with a broad range of tools to counteract their limited enforcement powers” such as when charges are brought against high profile government officials including an ex-senior prosecutor and an ex-president).

206. See *id.* at 67 (stating that CICIG’s clearly defined role as private prosecutor and its authority to report and demand the removal of personnel that impede judicial reform have enabled the international organization to compensate for its limited enforcement powers). *But see* LEARNING TO WALK WITHOUT A CRUTCH, *supra* note 189, at 10 (stating that CICIG has received criticism for not clearly communicating its case selection process).

207. See Hudson & Taylor, *supra* note 166, at 62.

208. See Donovan, *supra* note 200, at 817–18 (identifying CICIG’s objective in part as supporting, strengthening, and assisting Guatemalan institutions responsible for investigating and prosecuting crimes).

209. See *Merida Initiative Fact Sheet*, *supra* note 12.

United States.²¹⁰ Mexico's deteriorating judicial system is overrun with impunity and corruption, and is not equipped to contain the ensuing violence.²¹¹ Although Mexican constitutional reforms and the U.S. Mérida Initiative have attempted to strengthen rule of law in Mexico, these efforts have fallen short of reinforcing Mexico's judiciary.²¹²

If a \$1.9 billion initiative is not enough to combat an increasingly violent border and influx of drugs, what is a more appropriate response to rebuild rule of law in Mexico and in turn protect our nation? Recent history in other hostile territories has shown that rule of law initiatives require the involvement of international actors.²¹³ Also crucial is direct field assistance such as through the guidance of judge advocates.²¹⁴ Another vital component is the assistance of in-house counsel that can instruct vital players through the judicial process and also promote policy changes needed for tangible reforms.²¹⁵ In this case, the United States' best response is to encourage Mexico to seek the aid of international stakeholders to support rule of law initiatives and capacity building in Mexico.

Not all rule of law strategies can be identical. Although the U.S. criminal justice system embodies rule of law, infusing Mexico with U.S.-style reforms has not proven to be the best approach.²¹⁶ Rule of law does not take the same shape in every society.²¹⁷ It is a fluid concept that is not a mirror image of itself in every place.²¹⁸ It may best be represented in one criminal justice system through the use of common law practices that includes jury trials, while in another society it may serve best

210. See Archibold, *Drug Cartel Spills Over*, *supra* note 38.

211. PRESUMED GUILTY, *supra* note 81.

212. HUMAN RIGHTS WATCH, WORLD REPORT 2013: MEXICO 246 (2013); Stephanie Erin Brewer, *Rethinking the Merida Initiative: Why the U.S. Must Change Course in its Approach to Mexico's Drug War*, 16 HUMAN RIGHTS BRIEF 9, 10 (2009).

213. Hudson & Taylor, *supra* note 166, at 57.

214. See Ohlweiler, *supra* note 179, at 38, 40.

215. See Hudson & Taylor, *supra* note 166, at 55.

216. See Nagle, *supra* note 77, at 19.

217. See *id.*

218. See *id.* at 19–20

through a three-judge panel. Rule of law is best applied when it is free to mold itself to the society it inhabits.²¹⁹ Perhaps a rudimentary analogy is that of an organ transplant. It is not sufficient to have a healthy organ donated. Instead what a patient needs is a healthy organ that comes from a body similar to his own. Such is the delicate and intricate process of transplanting a rule of law mechanism so that it is not rejected. If it is to take root, rule of law must be adaptable to the beneficiary's particular circumstances, culture, and history.

Mexico and the United States are at a crossroads. The United States must decide whether it will continue to fund rule of law vestiges from Western law or whether it will encourage the participation of international partners with approaches not practiced in Western criminal justice systems. Mexico must also decide whether it should continue to accept funding if the aid is dependent on the adoption of the donor's process.

At the center of this rule of law debate is Calderón's metaphorical "house." After six years of sweeping, there is still suffocating dust in the air. There is a growing number of casualties, billions of dollars invested, and no end in sight. In order to "clean the house" and eliminate rampant drug-related violence, Mexico will need the assistance of actors who have experience with comparable houses and tools.

219. *See id.* at 19.