

Mexico, The “War on Drugs”

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Neither Rights Nor Security

[**Source:** “Neither Rights Nor Security. Killings, Torture, and Disappearances in Mexico’s ‘War on Drugs’”, in *Human Rights Watch*, November 2011, available on https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf]

It has been nearly five years since President Felipe Calderón declared “war” on organized crime in Mexico. In the time since, the country has experienced a staggering rise in violence. After declining steadily for nearly two decades, the overall homicide rate grew by over 260% percent from 2007 to 2010. The government counted nearly 35,000 deaths related to organized crime from December 2006 to the end of 2010, with the number of killings increasing dramatically with each passing year, from 2,826 in 2007 to 15,273 in 2010. There have been more than 11,000 drug-related deaths reported in the Mexican press so far in 2011. This dramatic surge in violence has been driven in large part by the struggle between and within powerful cartels to control the drug trade and other lucrative illicit businesses such as human trafficking. These groups have committed serious crimes against one another, as well as against members of the security forces. Their illegal activities have also touched virtually every sphere of public life, from extortions of small businesses to blockades of major highways; from closures of schools to nighttime curfews; from mass kidnappings to assassinations of public officials. They have used public displays of violence—from depositing severed heads in town squares to hanging mutilated bodies from overpasses— to sow terror, not only among their rivals, but also within the general population. The impact on Mexican society has been profound. [...] When President Calderón took office in 2006, he inherited a country whose cartels were growing in strength, and whose security forces—both military and civilian—had a long track record of being both

abusive and ineffective when it came to fulfilling this crucial function.

Rather than taking the necessary steps to reform and strengthen Mexico's flawed law enforcement agencies, Calderón chose to use them to launch a "war" on Mexico's increasingly powerful criminal groups. He made the military the centerpiece of his public security strategy, which was almost entirely focused on confronting the cartels with force.

More than 50,000 soldiers are currently involved in large-scale counternarcotics operations across Mexico. In the places where they are deployed, these soldiers have taken on many of the responsibilities of both police and prosecutors—from patrolling neighborhoods to responding to shootouts, from investigating individual crimes to gathering intelligence on criminal groups—even as civilian oversight of the military's operations has been reduced. The Armed Forces have been joined in their efforts by thousands of officers from the newly reconstituted Federal Police, and more than 2,200 separate state and municipal police forces, though cooperation between these security forces is often limited or superficial. [...]

Widespread Human Rights Violations

Human Rights Watch found evidence of a significant increase in human rights violations since Calderón launched his "war on organized crime." In the five states examined, members of security forces systematically use torture to obtain forced confessions and information about criminal groups. And evidence points to the involvement of soldiers and police in extrajudicial killings and enforced disappearances around the country. [...]

Torture

Human Rights Watch obtained credible evidence of torture in more than 170 cases across the five states surveyed for this report. The tactics we documented—which most commonly included beatings, asphyxiation with plastic bags, waterboarding, electric shocks, sexual torture, and death threats—are used by members of all security forces.

The apparent aim of such tactics is to extract information about organized crime, as well as to elicit forced confessions that not only accept guilt but also a posteriori conceal the abuses by security forces leading up to and during coercive interrogations. Torture is most often applied between the time when victims are arbitrarily detained and when they are handed over to prosecutors, a period in which they are often held *incommunicado* on military bases or other illegal detention sites.

Enforced Disappearances

Human Rights Watch documented 39 "disappearances" where evidence strongly suggests the participation of security forces. Although witnesses saw security forces carry out the abductions in these cases, state officials denied having detained the victims or ever having held them in custody.

In addition to cases we documented, the increasing number of cases reported to the UN Working Group on Disappearances, the national and state human rights commissions, and Mexican human rights groups all point to a rising incidence of the practice across the country. However, the crime's prevalence is obscured by government officials' classification of nearly all disappearances as *levantones*, or abductions by organized crime, before cases have even been investigated. And tracking its occurrence has further been obstructed by the fact that 24 of Mexico's 32 states do not criminalize enforced disappearances.

Extrajudicial Killings

Human Rights Watch obtained credible evidence in 24 cases that security forces committed extrajudicial killings, and in most of these cases took steps to conceal their crimes. These killings fall into two categories:

civilians executed by authorities or killed by torture; and civilians killed at military checkpoints or during shootouts where the use of lethal force against them was not justified.

In the majority of these cases soldiers and police tampered with crime scenes, either to falsely present victims as armed aggressors or to cover up their excessive use of force. And in some cases, investigations strongly suggest that security forces manipulated crime scenes to present the impression that extrajudicial killings were executions perpetrated by rival drug cartels.

The Scale of the Abuses

The rising prevalence of torture, enforced disappearances, extrajudicial killings, and other serious abuses is reflected in official statistics.

The National Human Rights Commission has received an increasing number of complaints of human rights violations committed by federal security forces over the course of the Calderón administration [...]. For example, the commission received 691 complaints of human rights abuses committed by soldiers against civilians from 2003 to 2006; the number increased to 4,803 complaints in the 2007 to 2010 period.

In a similar vein, the number of investigations opened by civilian and military prosecutors into crimes committed by security forces against civilians has increased significantly in recent years. According to the Army, for example, military prosecutors opened 210 investigations into crimes committed by soldiers against civilians in 2007, 913 in 2008, and 1293 in 2009.

Finally, international human rights institutions, such as the UN Working Group on Enforced Disappearances, as well as human rights defenders and civil society groups, have also received rising numbers of complaints of human rights violations. All of this evidence, together with the findings detailed in this report, point to a continuing rise in human rights violations by security forces.

Why these victims?

[...] Our investigations found that, in nearly all cases, the only evidence offered by authorities of suspects' guilt was incriminating statements given following torture or other abuse. There appeared to be no independent evidence to corroborate these coerced statements and it is not clear what evidence established reasonable suspicion about the individuals prior to their detention. To the contrary, the evidence in several of the cases we researched strongly suggests that authorities erred in targeting these particular individuals. For example, court records establish that a victim of torture who was accused of kidnapping a civilian was not even in Mexico when the alleged kidnapping took place. In other cases, victims have been vindicated by courts, or government bodies have issued statements affirming their innocence.

We wish to emphasize that we are not in a position to determine what factors existed in each case that may have led these victims to be targeted by the security forces. But even assuming that some of the victims whose accounts are provided in this report were criminally culpable, the abuse and litany of serious violations to which they were subjected are unacceptable in any circumstances, categorically prohibited under international law, and must be investigated and punished.

Moreover, while in some cases people accused of serious crimes may have incentives to provide false information, Human Rights Watch has only included cases in this report where victim's account is corroborated by the testimony of eyewitnesses who saw the abuses take place or attested to other elements of the victim's account; by medical documentation; by similar patterns in the accounts of different individuals who had no connection with one another; or by investigations by state officials or credible third parties supporting elements of the victim's account.

Failure to Investigate Human Rights Violations

Military and civilian prosecutors consistently fail to conduct thorough and impartial investigations into cases where evidence suggests civilians have been subjected to grave abuses. Human Rights Watch documented systematic flaws in the investigations into torture, enforced disappearances, and extrajudicial killings which prevent soldiers and police from being held accountable.

Impunity for Torture

[...]Justice officials do not exclude confessions obtained through torture, nor do they collect evidence that is crucial for prosecuting soldiers and police who use abusive tactics. Instead, prosecutors and in some cases judges dismiss victims' claims as cynical ploys to evade punishment, and systematically classify cases of possible torture as lesser crimes such as "injuries" without adequately investigating the allegations.

Impunity for Enforced Disappearances

[...]Justice officials routinely reject requests by victims' families to open investigations in the immediate aftermath of alleged abductions perpetrated by state officials and sometimes even refuse to register official complaints. Instead, justice officials often direct families to police stations and military bases to see if the victim is in their custody, and make them wait several days before registering an official complaint.

Government officials reflexively claim such cases are levantones, or abductions perpetrated by rival cartels, and in many cases accuse victims of having been targeted because they were involved in criminal activities—all prior to conducting an investigation. If and when investigations into disappearances are eventually opened, they are marked by serious shortcomings, such as not interviewing the state officials allegedly involved or tracing calls from victims' cell phones after their abductions.

Impunity for Extrajudicial Killings

Despite the growing numbers of casualties in "confrontations" between security forces and alleged criminals, most killings are not investigated. In the rare instances in which investigations into such cases are opened, justice officials fail to take basic steps such as conducting ballistics tests or questioning the soldiers and police involved. Rather than question official reports—many of which are marred by inconsistencies and challenged by witness accounts—prosecutors accept security forces' reports as fact and overlook evidence of excessive use of force or torture leading to death. Furthermore, in more than a dozen cases, families of the victims of killings told Human Rights Watch they had been pressured by the Army to sign settlements agreeing to abandon all efforts to seek criminal punishments for soldiers in exchange for compensation.

Military Justice

Nowhere is impunity more pronounced than in the military justice system. In our 2009 report, *Uniform Impunity*, Human Rights Watch documented the lack of impartiality and independence that results when the military investigates itself, and recommended that Mexico reform its Military Code of Justice to ensure that all cases of alleged human rights violations committed by the military against civilians be investigated and prosecuted in the civilian justice system. Since that report was released, both the Inter-American Court (in four recent rulings) and Mexico's Supreme Court have issued judgments that call for such cases to be excluded from military jurisdiction. Yet the practice remains unchanged, as do the results: complaints of human rights violations continue to be sent to the military justice system, where they still go unpunished. In the five states surveyed for this report, military prosecutors have opened 1,615 investigations since 2007 into human rights violations allegedly committed by soldiers against civilians, according to data obtained through public information requests. Not a single one of those military investigations across all five states has resulted in a soldier being convicted. [...]

B. Los Zetas – Group Profile

[Source: "Zetas", Group profile established by InSight Crime, available on <https://www.insightcrime.org/mexico-organized-crime-news/zetas-profile/>]

Beginning as a group of deserters from an elite unit of the armed forces at the service of the Gulf Cartel, the Zetas would go on to become one of the most powerful and feared cartels in Mexico before infighting and the loss of leaders started the organization's decline.

The Zetas started out as an enforcer gang for the Gulf Cartel predominantly made up of former soldiers with specialized training. Their military background and unbridled ferocity proved an underworld game changer, with the US Drug Enforcement Administration (DEA) describing them as perhaps "the most technologically advanced, sophisticated and violent of these paramilitary enforcement groups."

The Zetas broke away from the Gulf Cartel in the mid-2000s to become its own group, and launched an offensive that would see them expand throughout Mexico and Guatemala. The group employed a new model of organized crime, based on violently seizing and holding territory, using fear rather than corruption as a first resort.

However, after rising to the point where they could compete with the mighty Sinaloa Cartel, the Zetas are now a fragmented force, held together by little more than a name and increasingly dependent on local criminal revenues rather than the transnational flow of drugs for their income.

History

In 1997, 31 members of the Mexican Army's elite Airborne Special Forces Group (Grupo Aeromovil de Fuerzas Especiales - GAFES) defected and began working as hired assassins, bodyguards and drug runners for the Gulf Cartel and their leader Osiel Cardenas Guillen. The original leader of the armed group, Lieutenant Arturo Guzman Decenas, alias "Z1," was killed in 2002. After the arrest and extradition of Gulf Cartel leader Osiel Cardenas Guillen, the Zetas seized the opportunity to strike out on their own. Under the leadership of Heriberto Lazcano, alias "El Lazca" or "Z-3" the Zetas, numbering approximately 300, set up its own independent drug, arms and human-trafficking networks.

The group's logistical sophistication helped catapult the Zetas to power. It is known to use state-of-the-art weapons and communications technology, and employs military-like discipline for planning operations and gathering intelligence.

Unlike other cartels, the Zetas did not buy alliances so much as terrorize their enemies. They tortured victims, strung up bodies, and slaughtered indiscriminately, as was brutally illustrated in August 2010, when the Zetas killed 72 migrants and dumped their bodies in a hole in Tamaulipas. The Zetas preferred to take military-style control of territory, holding it through sheer force and exploiting its criminal opportunities. Although their military training was diluted over time, their brutality was not. Rival cartels struggling against the Zetas began to adopt some of their tactics, further ramping up violence in the country.

By 2010, the Zetas had established a presence in 405 Mexican municipalities, over twice as many as their

nearest rivals. They had also moved into Guatemala, seizing strategic drug trafficking territories with their trademark violence. However, they were in nearly constant war with the Gulf Cartel over control of the key border state of Tamaulipas, especially the cities of Matamoros, Reynosa and Nuevo Laredo, as well as the key economic hub of Monterrey. The Zetas also became embroiled in numerous other cartel wars across the country, including taking on the might of the Sinaloa Cartel.

[...]

Despite their rapid ascent, by 2012, the Zetas were beginning to crack, sparking a process of fragmentation and atomization that continues today. It was becoming increasingly difficult to coordinate all of the local factions centrally, but the fault line that would ultimately cause a split was the deteriorating relationship between the Treviño brothers, Miguel, alias “Z40,” and Alejandro, alias “Omar” or “Z42,” who divided into rival factions — the Northeast Cartel (Cartel del Noreste) and the Zetas Old School (Los Zetas Vieja Escuela).

[...]

With no clear national, centralized leadership, the Zetas have broken into splinter groups and largely independent local factions, each with their own operations, priorities and alliances. The breakup of the organization’s national cohesion, in addition to a huge loss of influence in Central America, has made transnational drug trafficking increasingly difficult, and local factions now often rely more on profiting from crime in territories they hold than from international drug trafficking. Still, smaller, more localized cells that once assumed the Zetas’ brand continue to operate throughout much of the Zetas’ former territory.

[...]

Prospects

The Zetas’ days as Mexico’s most feared cartel and a drug trafficking organization with a vast transnational reach are now over. However, this does not mean the name will fade any time soon. Instead, they are likely to continue the process of fragmentation, and splinter cells like the Northeast Cartel will continue to operate with an increasingly local focus on their criminal activities.

C. Mexico’s Drug War

[Source: “Mexico’s Drug War”, in *Council on Foreign Relations*, 11 January 2013, available on <https://www.cfr.org/>]

Introduction

[...] While the United States has supplied funding and labor to increase Mexico's institutional capacity to address drug trafficking, its primary focus has been on cross-border policing and targeting U.S. drug users. Analysts differ on how to address Mexico's growing internal strife, but a growing number agree that the U.S. war on drugs is a failure and necessitates a new approach. Enrique Peña Nieto, who succeeded Calderón as president in December 2012, has announced intentions to shift Mexico's drug war strategy to quell violence against civilians rather than targeting cartel leaders. [...]

Mexico's Drug Trafficking

[...] Mexico is a major supplier of heroin to the U.S. market, and the largest foreign supplier of methamphetamine and marijuana. Mexican production of all three of these drugs has increased since 2005, as has the amount of drugs seized at the southwest border, according to the U.S. Department of Justice [...]. Overall, the U.S. State Department found that U.S. drug users send between \$19 and \$29 billion annually into the coffers of Mexican drug cartels. [...]

U.S.-Mexico Cooperation

In a 2009 speech, Secretary of State Hillary Clinton acknowledged the U.S. role in fueling Mexico's drug violence, and said the United States had a responsibility to help address it. In February 2011, the *New York Times* reported that the United States began sending unarmed drones to collect intelligence on traffickers. In August, the *Times* reported that the United States had expanded its role in cross-border raids, sending CIA operatives and retired military personnel to a Mexican military base, while training federal agents to assist in wiretaps, interrogations, and running informants. The United States has also ramped up security on its own side of the border, spending approximately \$3 billion annually on patrolling the border.

In 2008, the United States instituted the Merida Initiative, which designated nearly \$1.4 billion in U.S. funds for Mexico, Central America, Haiti, and the Dominican Republic. The bulk of the money went to Mexico, with a mandate to "break the power of organized crime, strengthen the U.S. southern border, improve Mexican institutional capacity, and reduce the demand for drugs," according CFR's O'Neil [...]. In March 2010, this partnership was renewed with *Beyond Merida*, which expanded the program to also target judicial and political corruption. [...]

Discussion

A. Classification of the situation

1. What distinguishes a non-international armed conflict from internal disturbances and tensions? Or should we talk about internal strife? Urban violence?
2. Can we talk, in IHL, about an overall "war on drugs", as President Calderón does politically? Or should we verify the existence of an armed conflict with respect to each individual drug cartel? If one cartel can be considered as an armed group sufficiently organized and using violence of a sufficient level to make the IHL of non-international armed conflicts applicable, is this sufficient to automatically consider that all the cartels are parties in the conflict? If not, under which circumstances is their fighting against each other or against governmental forces nevertheless governed by IHL?
3. a. Can criminal groups be considered as armed groups if the situation in which they are involved reaches the required levels of organization and intensity? Even though these criminal groups do not have any political motivation whatsoever?
b. Is political motivation of an armed group a requirement for the existence of a non-international armed

conflict? From a policy perspective, what arguments can be made in favor of and against such a requirement?

4. Can a group be considered sufficiently organized for the purpose of applying Protocol II even though its strategy is to have a fragmented and unstable hierarchical organization?

5. In the present case, how would you qualify the situation between the Mexican government and the Zetas? Is it a non-international armed conflict under Article 3 common to the Conventions? Under Protocol II? What about the fighting between the drug cartels? (GCI-IV, Art. 3; PI, Art. 1)

6. Are the rules of IHL of non-international armed conflict applicable to situations of urban violence? If not, is there a need to create a body of law covering this kind of internal violence? Or is another body of law already applicable to such situations?

7. a. What is the U.S.' role in the "war on drugs" in Mexico? Is the U.S. a party to the conflict?

b. How would you classify this situation if the U.S. government were helping the Mexican government to target and kill drug cartel members in Mexican territory? As an international police operation? An international armed conflict? A non-international armed conflict?

B. Classification of the persons and conduct of hostilities

8. Assuming that IHL applies to the situation in Mexico, how can the principle of distinction be effectively applied? Do the members of drug cartels have the obligation to wear identifiable uniforms? (PII, Art. 13(2); CIHL, Rule 1)

9. a. Who may be directly targeted in a non-international armed conflict? May anyone who belongs to an enemy armed group be attacked in a non-international armed conflict?

b. Under what circumstances can a member of a drug cartel be directly targeted? If IHL applies, may all members of a drug cartel be targeted? Only members of the armed wing of a drug cartel? Only members of the armed wing of a drug cartel while they directly participate in hostilities? (PII, Art. 13, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities)

10. Can drug dealing amount to direct participation in hostilities? Does it become direct participation in hostilities when some of the proceeds are used to finance a party to the conflict? In your view are all drug producers and dealers in the present case directly participating in the hostilities?

11. Who may be detained in a non-international armed conflict? On which basis and for which reasons? May drug cartel members be detained without trial? If they were part of the security branch of their cartel? If they

were dealing drugs in the streets? If they were marijuana cultivators? When do each of these persons have to be released from detention? Does each of these persons have a right to have the legality of their detention reviewed?

12. a. What is a military objective?

b. Can a narcotics facility be considered as making an effective contribution to military action? If its profits are partly or exclusively used by the drug cartels?

c. Would a positive answer to (b) automatically turn all of narcotics facilities into military objectives? Is your answer affected by the fact that drug dealing is unlawful under Mexican law and under international law? (PI, Art. 52(2) and (3); CIHL, Rule 8)

C. Massive violations of IHL and international human rights law

13. Does torture in times of international armed conflicts constitute a violation of IHL? A grave breach? A war crime? Does your answer vary in situations of non-international armed conflicts? In times of internal disturbances? In peace time? (GCI-IV, Art. 3; GCI, Arts 12(2) and 50; GCII, Arts 12(2) and 51; GCIII, Arts 17(4), 87(3), 89 and 130; GCIV, Arts 27, 31-32 and 147; PI, Art. 75(2); PII, Art. 4(2); CIHL, Rule 90; ICC Statute, Arts 8(2)(a)(ii) and (iii) and (c)(i))

14. Do the practice of enforced disappearances and the failure to investigate and provide information on missing persons constitute violations of IHL? War crimes? (GCIV, Arts 26 and 137; PI, Arts 32-33; ICC Statute, Arts 7(1)(i) and 7(2)(i))

D. Relationship between IHL and international human rights law

15. Assuming that IHL does not apply, which body of law protects civilians against acts committed by the state or its agents?

16. Is the deliberate killing of a drug dealer lawful under IHL? Under international human rights law? Under which conditions? Does your answer vary for members of drug cartels exclusively engaged in the security of the cartel's other members?

17. May the Mexican government detain members of drug cartels without trial?

18. How do you determine whether IHL or international human rights law should be the *lex specialis*?

E. Policy issues

19. a. From a policy perspective, and taking the rules of IHL and of international human rights law into account, what are the advantages and disadvantages of classifying the situation in Mexico or parts of it as an armed conflict?
- b. Do you think that the application by analogy of the IHL rules to this kind of situation would reduce suffering?
- c. What kind of other solutions do you suggest?