

Border Security: From a Bilateral to a Truly Bi-national Policy Process

Bernardo González-Aréchiga
Dean, School of Public Administration and Public Policy
Tecnológico de Monterrey

and

Chris Bronk
Fellow, Baker Institute for Public Policy & Lecturer, Department of Computer Science
Rice University

Presented at the Inaugural Meeting and Conference of the Puentes Consortium
Houston, TX
January 14, 2010

Border Security: From a Bilateral to a Truly Bi-national Policy Process¹

Abstract

This study advocates for a transformative expansion of collaboration between the governments of Mexico and the United States directed at enhancing security on the border region. Protecting security on both sides of the border should be the top priority of all collaboration efforts. With a binational narco-crisis and the border functioning as a buffer zone, there is a need to bring new ideas forward in ameliorating the externalities produced by the international narcotics and weapons trade. That said, the authors argue there is no lesser crime and all illegal activity ends up strengthening organized crime. Identified within are major security issues, prior attempts at remedy and a roadmap to shared work in formulating and implementing prescriptions. Advocated here is a need for strong border coordinators in each country, based on the border, but reaching into their national capitals, who shall share staff, resources, planning responsibilities and intelligence.

Introduction

For nearly two centuries, the U.S.-Mexico relationship has been marked by security considerations. The tone, the content and, in many ways, the future of the relationship will be defined by a new diplomacy of national security, intelligence and law enforcement. Already underway is the drafting of an agenda at the strategic and tactical levels, marking a new diplomacy between the two countries. This could be accomplished by deliberate action or by simple omission.

In the U.S.-Mexico security relationship, border security replicates and magnifies all the major challenges of bilateral security. Borders are by their own nature conflict zones and they are often required by policy to act as buffer zones.² As with others, the different policy objectives of development, competitiveness and security for the U.S.-Mexico border region will have to be balanced. New solutions are needed to soften the tradeoffs created by traditional approaches based upon self-reliance. Problematically, there is a loaded discourse concerning border security with a narrow view of security as defined by national security and law enforcement and a relative neglect of the economic, social and cultural foundations of illegal activity. As a result, there remains weak institutional response to the overarching security challenges.

¹ We appreciate the able assistance of Gabriel García, Ana Gabriela Santana, Nestor Guerrero and Steve Young. In addition, Dr. Bronk wishes to dedicate this work to the memory of William Holt Weeks.

² Briscoe, Ivan. "Trouble on the borders: Latin America's new conflict zones". FRIDE. July, 2008. http://www.cries.org/boletin/COM_Borderlands_Americas_ENG_jul081.pdf

The North America Leaders Summits, the Merida Initiative and the Security and Prosperity Partnership have advanced the principles of shared responsibility, strengthening of national institutions and respect for national legal frameworks. Due to the current international security environment, there is unprecedented information exchange, technical assistance and coordination at the federal-level between the U.S. and Mexico. The many programs include: Smart borders; FAST and SENTRI lanes; posting of U.S. officers at Mexican airports; and enhanced liaison between law enforcement agencies. The new leadership of President Obama in the U.S. and the commitment of President Calderon to reinforce public safety and engage in combat against organized crime create an opportunity to move to the next step of coordination, collaboration and redefinition of policies.

Border specific institutions such as the International Boundary and Water Commission (IBWC-CILA) and other bi-national entities have played a technical and constructive role of coordination that might be replicated and enlarged. The recent establishment of bi-national port security management committees by Secretaries Carstens and Napolitano might be a change in the right direction.³ The Conferences of Border Governors and Border Congresses and the regional Bi-national Commissions (e.g. Arizona-Sonora) have created a dynamic environment for the exploration of new forms of collaboration. Border security remains central to these efforts.⁴

Unilaterally, each country has carried out significant actions. The Obama Administration recently launched its National Southwest Border Counternarcotics Strategy.⁵ Paying heed to Mexican concerns, it places renewed emphasis on the issue of demand reduction for drugs at home as well as continuing commitments on cooperation with Mexican law enforcement and investments with border security agencies.

There is commitment by the Mexican federal government to neutralize organized crime, especially at the border. These activities are breaking new ground, have challenged the status quo of organized crime and also incurred high costs. In Mexico, the expectation is to generate a big push capable of breaking the deadlock and changing the dynamic of the narco-conflict. For this to occur, collaboration among Mexican agencies and with the U.S. as well, is needed.

The challenges are many. Drugs, arms and bulk-money smuggling; narcotics consumption; organized crime related violence; and violations of law and order are among the border

³ Secretaría de Hacienda y Crédito Público. "Firma Carstens y Napolitano acuerdo bilateral para fortalecer el comercio." Presidencia de la República, June 15, 2009. <http://www.presidencia.gob.mx/prensa/?contenido=45822>

⁴ An example is the Border Enforcement Security Team, known as BEST, in the Texas-Tamaulipas area.

⁵ Office of National Drug Control Policy. "National Southwest Border Counternarcotics Strategy". June, 2009. http://www.whitehousedrugpolicy.gov/publications/swb_counternarcotics_strategy09/swb_counternarcotics_strategy09.pdf

region's acute problems. Some problems are likely worsening, with effects felt asymmetrically on each side of the border. Other perceived threats to security such as terrorist attacks against border critical infrastructure and the clandestine border crossing of terrorists are still perceived as significant by some. There is a fragile balance to be found between the assurances of public safety and the continued economic competitiveness of the region. If this balance is not found, economic loss, damaging both sides of the border, will be the likely outcome.

The environment seems to be ready for significant action; policy options have been presented while dissatisfaction at the region is mounting. Some call for:

1. The creation of a strategic partnership involving security cooperation, economic integration, immigration and border management.⁶
2. The movement towards strategic governance of border security that will incorporate a trans-border evaluation of programs and bi-national planning to assure joint progress in both development and security.⁷
3. The movement towards a continental security regime based upon a shared cartography of risks and capable of shifting from "barricaded borders" to the "growing 'governmentalization' of human and material flows."⁸
4. The integration of a truly bi-national and systemically coordinated Border Management System.⁹
5. The construction of a true North American Community based upon a shared vision, a sense of community and a strategy to confront regional problems.¹⁰
6. The integration of non-binding Strategic Guidelines for the transborder region that promotes public safety under the paradigm of mutual responsibility in the context of the systemic promotion of infrastructure and innovation for competitiveness, environmental protection and health care.

⁶ Woodrow Wilson Center. "The U.S. and Mexico: Towards a Strategic Partnership. A report of four working groups on U.S.-Mexico relations" Mexico Institute., January 2009, <http://www.wilsoncenter.org/topics/pubs/The%20U.S.%20and%20Mexico.%20Towards%20a%20Strategic%20Partnership.pdf>

⁷ Ramos, J. and Escamilla, P. "Relaciones México-Estados Unidos: Retos y Oportunidades fronterizas bajo la administración del Presidente Obama", COLMEX, April 9, 2009, <http://www.colef.mx/coyuntura/3.asp>

⁸ Morales, Isidro, "Post-NAFTA North America: Reshaping the Economic and Political Governance of a Changing Region". (United States:MacMillian, 2008).

⁹ Bronk, C. and Payan, T. "Developing the U.S. Mexico Border Region for a Prosperous and Secure Relationship. Managing the U.S.-Mexico Border: Human Security Technology", Baker Institute April 1, 2009, <http://www.bakerinstitute.org/publications/LAI-pub-BorderSecBronkPayan-040109.pdf>

¹⁰ Pastor, Robert, "El Futuro de América del Norte", en *Foreign Affairs Latinoamerica*, January 2009. This community would also undertake the negotiation of a customs union and an investment fund, as well as an independent commission to integrate standards and plans for the region.

This report sets a tone of urgency while reinforcing a perception that there is an opportunity to build from previous experiences and to profit from the current political environment. If the implementation of new policies, even of an incremental nature, may occur in the narrow window of the next 18-24 months, the opportunity will be created for deepening coordination between the United States and Mexico on policy for our shared borderland.

Section 1: Definition of Border Security and Basic Questions:

Border security regarding Mexico and the United States 1954-mile long boundary is a complex concept. It involves four related areas: the public safety of border populations and the rule of law at the region; the security of international human, trade and investment flows; the national security considerations of each Country, and the collaboration with the national security interests of the other.

Public safety is associated with the protection of the physical integrity of people, their property and their rights as well as the preservation of freedom, social order and peace. It involves the protection against crime, the transgression against administrative rules and antisocial conduct as well as protection in case of natural disasters and catastrophes. It is associated with the preservation of the rule of law and the protection of human rights. Public safety as a process entails: prevention, prosecution, reaction, investigation, punishment and imposition of sanctions, custody in correctional institutions, protection of victims, and population support.

Protection of human, trade and investment flows at the border is a specialized activity that chiefly engages federal authorities at both sides of the border. It deals with migration, customs and the protection of patents, industrial rights and other related interests. Some of these flows are deeply associated with social and economic activities usually protected by regular state and local police corporations. They are also closely linked with national security considerations in a time when national security is a rapidly evolving construct. This translates to a need for coordination that is very significant, both at the local and international levels.

National security has to do with the broad protection of the nation-state as defined by sovereignty, independence, and integrity of territory. It is oriented to protect constitutional order and democratic institutions. It responds to clearly defined threats such as: organized crime; rebellion; genocide; foreign intervention in national affairs; traffic of nuclear, chemical, biological and mass destruction weapons; counterintelligence operations; terrorist activities. It is designed to protect strategic and military infrastructure; air, sea and land transportation; diplomatic personnel of third countries; and critical institutions of the country.

Effort by Mexico to protect U.S. national security interests and the collaboration of the U.S. in the protection of Mexican national security interests are critical challenges of border security. Allies do help each other and “exchange security services.” The terms and scope of this “barter” are always a source of deep negotiation and information exchange and are also subject to political pressure and even blackmail. Bringing the national security considerations might provide needed resources and bring top class expertise to create synergies with local forces.

Border security is, therefore, a question of balance among competing goals. It is also a matter of allocating resources and to develop capacities and competencies. Strategies and tactics are essential in this process. Three elements are critical. The first is the coordination of the different actors of public safety in the Mexican side of the border. The second is the translation of Mexican broad national security considerations into well-structured local police, border, immigration and custom operations. The third is the creation of a functional public policy processes capable of generating a dialogue and negotiation space to agree on shared priorities, strategies and programs with the U.S. These too would have to be translated into concrete ground level programs.

1. What happens if the two countries do not collaborate?

When neighbors do no collaborate in border security they fail to complete the public policy process that leads to coordination and can therefore cancel out the possibility of exchanging security services that may generate synergies and mutual benefits. It is clear that self-reliance might have some short term advantages and generate apparent benefits such as to preserve the integrity of intelligence and critical information, the preservation of independence in the attention of critical national security considerations, the avoidance of administrative resistance of agencies that might object collaborations with foreign actors and the desire to preserve well known forms of operation.

In the long run, eschewing collective approaches for self-reliance leads to the loss of opportunities to improve security. It might be associated with the potential loss of effectiveness, the increase of security costs, the unnecessary exposure to risks of corruption and institutional failure, lack of benchmarking and best practice identification opportunities and reciprocal peer evaluation. A final cost of an inadequate strategy would be paid in loss of well being of the population at the border and an overall loss in economic opportunities and competitiveness.

Politically, law enforcement and security institutions might miss the opportunity to profit from a new leadership in the U.S. and to assure a larger commitment from Mexican leadership in this critical area. Additionally, if the U.S.-Mexico security relationship does not deepen, there is a

potential missed opportunity regarding improved collaboration in security matters with Canada and other countries in the Central American and Caribbean regions.

2. Why is there insecurity regarding collaboration?

The main reason behind the reluctance to collaborate is the cost-benefit assessment of agencies in terms of the risk of being infiltrated, diluted or compelled to adopt wasteful or grossly ineffective strategies of collaboration. Potential gains might be perceived small as compared with the costs. Mistrust on the U.S. side may be a major factor, but this is to some degree reciprocated by Mexican agencies.

There may be other obstacles such as conflict of interest (agencies making the assessments are the same ones that will bear the cost of any strategy change); understandable differences in security priorities in Mexico and the U.S.; and misplaced sovereignty considerations on both sides. Other factors might be the lack of consensus among leaders of opinion in the U.S. concerning the usefulness of an association with Mexico on security matters, the perception of ineffectiveness of the programs undertaken in the past, the lack of generally accepted principles and key programs for collaboration, outright fear of security breaches and mistrust, perception of asymmetric institutional development (sense of institutional superiority in the U.S. side). There is a perception in the Mexican side that U.S. wants to export repression to Mexico and free ride on efforts by Mexico to control organized crime. There is also a perception that the U.S. wants to use the Mexico border region as a convenient "buffer zone" for its own security.

3. What are the obstacles to collaboration?

A significant obstacle is that the natural mistrust and operational concerns are not directly addressed and solved in a reliable public policy process. Compounding this problem, we have multiple processes that create conflict and overlaps. The constituency of government agencies associated with border security is large in number, widely dispersed and involves a diversity of agents. Among them there is no common understanding of the problems or a shared perspective for a solution at either the strategic or tactical level.

The challenges produced by differences of language, legal systems, institutional arrangements and culture are not compensated for through a shared understanding of critical roles, functions and modes for information exchange and coordination. There is also serious under-funding, understaffing and under-investment in immigration, customs and other border institutions, although the United States has dramatically upped its investments in this area, producing new asymmetries between the two countries. There is insufficient training in the execution of the joint programs as well as insufficient system support. There is also lack of follow up and continuity regarding joint efforts.

There are also structural challenges. It is worth mentioning two of them. First, the intelligence and the foreign affairs establishments of the two countries face extraordinary difficulties and resistance in working with law enforcement officers. Second, no formal mechanism or binational authority with sufficient monitoring, evaluation and problem solving functions currently exists. This gap is particularly critical in the border security context.

To address these issues, a long-term strategy of harnessing the joint efforts of Mexican and U.S. officials for further development should be implemented. Joint response to the initial outbreak of the H1N1 influenza strain gave officials in Washington and Mexico City the opportunity to work on a pressing matter other than the drug issue. When such incidents occur, both countries should work to maintain linkages and engage in planning for future collaboration.

4. What are the options when priorities are not shared?

Whenever priorities are not shared, discussion and negotiation should set in.¹¹ One of the critical tasks of any public policy process is to address differences in the priority list. Effort is required to determine how those differences impact strategy. This activity also makes incumbent that all perceptions of threat by any party should be regarded as legitimate by all involved.

Policy makers of the two countries need to manage a dual process that maps out areas of collaboration as well as areas of independent action. Priorities cannot be imposed. They should understand the systemic relationship among potential actions and impact on the priorities of the two partners. The next step is preparing to negotiate or exchange priority attention. That might imply to “buy” or “pay for” support. Evaluation of the potential impact of policies should be fact-based, objective, and wherever possible, exhaustive, particularly in areas where priorities are not shared.

Section 2: Compared Views on Border Security

The dominant assessment of the Mexican border is that there is a security crisis occurring in a dynamic economic region of the country. This duality presents a paradoxical disconnect and unstable equilibrium. It responds, on the one side, to the strong and changing impact of organized crime and other illicit activities and, on the other side, to the actions of different government agencies hard pressed to respond to competing demands for public safety, internal security, unhindered economic activity and the interests of the United States.

¹¹ Negotiation is a critical element in the public policy process. Classical approach is provided by Olson, Mancur (1965). *The logic of collective action; public goods and the theory of groups*. Cambridge, MA: Harvard University Press. Also see Schelling, Thomas C. *The Strategy of Conflict*. Harvard University Press, 1981.

There are many signs that confirm the security crisis: the 11,000 organized crime related killings in the last 3 years; the presence of 7,500 Mexican soldiers¹² and 17,200 U.S. national guard troops¹³ assigned to the border region; the estimated annual flows of \$1.3 billion of illegal drugs¹⁴ and \$335.5 million¹⁵ of bulk money and 20,000 illegal weapons.¹⁶ Basic security has not been granted for local population. Some Mexican border cities experience high levels of crime and there is a broad perception of insecurity along the Mexican side of the international boundary.¹⁷

In spite of the security and the economic crisis, the border region remains a leader in innovation, economic growth and standards of living in Mexico. Despite the security issues, Mexico's border states remain some of the country's wealthiest. The region is a magnet for foreign direct investment, world-class firms and labor migration. It is also a significant player in global supply chains in the electronic, telecom and auto part industries. Some of the areas (particularly the Tijuana-Tecate corridor) have consolidated as a dynamic regional innovation system, integrated with higher-level education and with high value added jobs.

There are radically different understandings of some of the most significant border processes. Most Mexicans view migration as a social and economic process rather than a criminal activity. The prospect of immigration reform in the U.S. is consistent with this explanation. Each year some 400 million people cross the international border. There are half a million arrests associated with illegal migration and there were and 472 deaths between 1999 and 2005.¹⁸ There are serious human rights concerns and social considerations for migrant populations and their communities. Experts contend that organized crime exploits many sources of illegal income, not least migrant smuggling.

¹² AFP, "Mexico envia 5,000 soldados mas a frontera con Estados Unidos para lucha antidroga" Terra, February 2009, http://www.terra.cl/actualidad/index.cfm?id_cat=303&id_reg=1131940

¹³ AP, "Discrepancias sobre el uso de la Guardia Nacional en la Frontera" Telemundo, August 2009, <http://www.telemundo51.com/noticias/20373705/detail.html>

¹⁴ <http://www.reforma.com/edicionimpresa/paginas/20090720/pdfs/rNAC20090720-004.pdf>

¹⁵ Gonzalez, Maria de la Luz, "Suman 10 mil 475 ejecuciones en esta administracion: PGR". El Universal, March 2009, <http://www.eluniversal.com.mx/nacion/166613.html>

¹⁶ <http://www.reforma.com/edicionimpresa/paginas/20090619/pdfs/rNAC20090619-009.pdf>

¹⁷ According to the Instituto Ciudadano de Estudios sobre la Inseguridad, A.C. (ICESI), Chihuahua has the highest level in the insecurity index in the country in 2009. And it has increased in the last year. Baja California is the third, Sonora the seventh and Nuevo Leon the tenth. "Sexta encuesta nacional sobre seguridad. August 2009.

<http://www.icesi.org.mx/documentos/encuestas/encuestasNacionales/ENSI-6.pdf>. At the level of the 15 most violent cities, the highest incidence in Mexico, D.F. The ranking of border cities is: Chihuahua 2, Mexicali 4, Tijuana 6, and Ciudad Juárez 10. Crime level has increased sharply in Chihuahua, decreased in Tijuana and remain roughly stable in Ciudad Juárez. "Sexta Encuesta Nacional sobre Inseguridad: 14 Zonas Metropolitanas. August 2009.

http://www.icesi.org.mx/documentos/encuestas/encuestasNacionales/ENSI6_urbana.pdf

¹⁸ Roman, Jose Antonio, "Fiscalia del congreso estadounidense duda que el muro fronterizo funcione", La Jornada, October 2006, <http://www.ime.gob.mx/noticias/lazos/2006/826.htm>

Given the hypothesis that there is no “lesser crime” and that all sources feed into the same bucket and the perception that most federal efforts are devoted to organized crime, border residents consider that there is a relative neglect of public safety in order to pursue the national security considerations of both countries. In consequence, there is an unfair cost transferred by national authorities to local populations that specially impact the Mexican side.

The costs for local communities can be measured in terms of an increased number of petty crimes, gang-related violence, increasing drug pushing and drug consumption. Furthermore, violence and criminality on the Mexican side clamps down licit traffic at the border crossing points. A COLEF study estimates that the total economic loss generated by tighter and slower border crossing conditions was \$7.54 billion for 2007. The challenges are very significant and cannot be downplayed.¹⁹ At the same time, the California-Baja California border generates 40% of the total volume of narcotics confiscated in the U.S. There appears to be a serious unbalance between security and prosperity considerations.

On the border, as with the entire Mexican state, security is the main demand of the population and a very central part of political campaigns and policy debate. Although municipalities, the states and federal agencies have made significant investment in public safety and security, it is likely that the current security situation requires much more than larger police forces and better-equipped agents. What is needed is a major change in the structure and coordination of all the law enforcement, security and judicial institutions. This change is already in progress. A major nationwide reform started in June 2008 with a change in the Federal Constitution that will produce structural reform of all state-level legislation related to police, prosecution and judicial institutions and processes.

Most economic and social activities could likely operate with relative independence of organized crime. There is nevertheless an underlying risk of suffering catastrophic effects of conflict, violence and predatory practices of organized crime. This probability is not perceived as negligible but as sufficiently low to profitably continue with economic activity. Risks appear to be very different across the board (among different border towns and economic activities, and in different areas within cities). According to the Citizen Board for Social Security in Ciudad Juarez, that city was the most violent in the world with 130 violent deaths per 100,000 inhabitants in 2008²⁰ some 100 times the level of its northern neighbor, El Paso.

¹⁹ Gustavo del Castillo, Armand Peschard-Svendrup and Noe Aron Fuentes. “Estudio de puertos de entrada México-Estados Unidos: Análisis de capacidades y recomendaciones para incrementar su eficiencia, resumen ejecutivo.” El Colegio de la Frontera Norte, December 2007,

http://www.economia.gob.mx/pics/pages/5200_5205_base/Resumen_ejecutivo.pdf

²⁰ In this account based on newspaper articles, Tijuana would be the fourth most violent city in the world with 73 violent deaths for each 100,000 residents, after Caracas and New Orleans.

(http://www.juarezpress.com/not_detalle.php?id_n=14440). Hard data from INEGI (National Institute of Statistics

As a result, most organizations incorporate risks and direct expenses as part of the general cost of doing business. It certainly lowers economic performance, profits and wages. As a result, it might dynamically affect the level and quality of investment. But it also inhibits social potential and affects quality of life, well-being and some forms of freedom. There are cases in which the costs of crime reach extraordinary levels for individuals, families and communities. Frequent incidents of kidnapping, protection racketeering, extortion, outright harassment and threats, vandalism and property destruction, and ultimately serious wounds and murder weigh heavily on Mexican border residents.

Most Mexican residents in the region are acutely aware that they are likely to be hurt by any change in the perception of U.S. public and the U.S. government concerning the potential threat of the Mexican border on the US national security. Rhetoric emerging from the closing weeks of the George W. Bush administration regarding the possibility of a failed state scenario for Mexico underscores this potential for the U.S. policy to exert considerable influence in the border region. This contention was harshly rebutted by Mexican officials. In spite of the unprecedented measures designed to enhance public safety, such as presence of the army and federal forces, there is a systematic failure to achieve results in terms of stated security goals of criminal activity. The perception of insecurity of the local population remains unchanged.

There is special concern with money laundering activities, since they have the potential to infiltrate licit activities and endanger lawful citizens. This laundering represents a clear example of where the U.S. market provides the ultimate incentives for the operation of organized crime in the border region. Differences in prices and regulations create large rents that are captured by arbitrage, rent seeking and various forms of corruption and illicit activities. Lawful competitive advantage-based activities flourish in manufacturing and services. Local governments and entrepreneurs strive to strengthen regional competitiveness, but these opportunities can also be captured by highly corrosive illegal activities exposing perpetrators to varying levels of risk.

The values of shared responsibility, institutional development and respect for the respective national legal frameworks, heralded by the three North American Leaders in the Guadalajara Summit of August 2009, have not become an operational reality. Instead, the two nations practice self-reliance, conformism and some degree of finger pointing. There remains a wide gap to bridge. This is simple a blunt manifestation of the failure of the entire chain of law enforcement in both sides of the border and in the world supply chain of illegal products and services. So far, borders are condemned to bear the costs. National governments have not

and Geography) is readily available for the State of Chihuahua. The homicide rate for the state is 42.1 deaths per 100,000 populations.

created an effective mechanism to compensate for such negative systemic effects. This situation has to change.

The effectiveness of the strategy of pursuing US national security interests by controlling the borders has not been proven. It is an act of faith that has engaged sizable resources of the US and Mexico alike. The problem is that if needed complementary actions are not taken, the failure of the strategy is bound to have an effect not only in the national security establishment of the US but also in Mexico. In fact, Mexico might be more vulnerable and an event of this nature might heavily damage other, perhaps better engineered and more effective, common security actions. Working at the border is necessary; but sealing the border is not an integral approach and it has to be complemented with critical non-border-related security strategies.

To end this account on the Mexican views of border security, it is worth adding that there is a mixed perception on the status of security at the U.S. side of the Border. On the one side, U.S. communities face a better situation in terms of crime and violence, lower costs of self-protection and benefit from stronger institutions. As a result, many Mexicans escape violence and insecurity by moving their families and activities to the U.S. side of the border. This shelter also benefits organized crime perpetrators. Well known in Mexico is that criminal activities engage nationals from both countries. The asymmetry of violence cannot be taken as a reliable indicator for the relative levels of engagement. Drug dealing is not a purely Mexican activity. There is a network that goes far beyond. For many, the U.S. is the prime beneficiary of an unfair division of labor, Mexico border acts as a buffer.

There is a promising note in all of this. There is potential for collaboration and joint activities. U.S. law enforcement, intelligence and security organs could significantly help promote security south of the border. Collaboration has increased in the last years in the context of federal, state and local government collaboration. The Security and Prosperity Partnership (SPP)²¹ and the Merida Initiative are the best examples. But opportunities should not be wasted. Lack of attention or mishandling of Mexico's border security might increase the chance of violence in the U.S. side. It is fair to say that Mexican citizens demand results in terms of border safety and security and they might contribute to the solution.

Two major issues have dominated U.S. political discourse on the frontier with Mexico for decades: narcotics trafficking and illegal immigration. This pair of policy problems was joined after the September 11, 2001 Al Qaeda attacks, by that of terrorism. Because the United States' land borders are generally viewed as porous, they were viewed as a certain vector for terror group entry into the country. With this addition, the major policy issues with regard to

²¹ SPP defined three major areas of concern: security measures and preparedness against external threats and against threats coming from the region and securing low risk traffic at the shared border.

Mexico and the land border have become terrorism, narcotics and immigration.²² This change has brought redoubled resources to the border missions of the U.S. government, now largely managed by a single agency, the Department of Homeland Security.

Newest of the border security concerns for the United States is the use of the borderland as an entry point for terror group operatives. Some posit that Latin America already hosts Al Qaeda “sleeper cells” ready to be inserted via the border²³ while others view the issue as overblown.²⁴ Considerable numbers of non-Mexicans choose to enter the U.S. via the southern border, including many third country nationals, arriving from Central and South America, Eastern Europe, Asia and the Middle East. In regard to those attempting to illegally enter from the Middle East, their identity is often broadly brushed to equate with potential terrorist.²⁵ The number of cases supporting the possibility of such an Al Qaeda terror pipeline is small, although the details of the Salim Boughader illuminate that Middle Easterners have been systematically smuggled into the U.S. via Mexico.²⁶ That said, speculation, often by anonymous sources, alleges a fusion of activity between terror and narcotics organizations.²⁷ One “war” merges with another.

That conflict, kicked off with Richard Nixon’s June 1971 declaration of a “war on drugs”²⁸ has led to a forty-year effort in which the United States spent billions in counter-narcotics operations around the globe, but largely centered in Latin America and increasingly Mexico. Critics point to the meager achievements produced for substantial and sustained investment on counter-narcotics affairs,²⁹ and refreshingly, the Obama administration has signaled its unwillingness to continue with business as usual on this front. In his first interview following confirmation to become head of the Office of National Drug Control Policy, former Seattle

²² Discussions between the authors and U.S. Department of Homeland Security officials generally cast the issues in that rank order of importance.

²³ Thomas, Greg, “Posse Comitatus and the Use of the Military in Denying Terrorist Access to the United States Along the Border with Mexico,” U.S. Army War College, Carlisle Barracks, Penn., March 18, 2005.

²⁴ Ackleson, J. and Heyman, J, “U.S. Border Security after 9/11,” in *Transforming Borders in the Al Qaeda Era*, eds. John A. Winterdyk and Kelly W. Sundberg (London: Ashgate, 2009).

²⁵ Coman, Julian, “Arab terrorists ‘are getting into the US over Mexican border,” *The Telegraph* (UK), August 15, 2004.

²⁶ Salim Boughader, a Mexican national of Lebanese descent, was arrested in December 2002 after a lengthy investigation by U.S. and Mexican immigration officials and was ultimately convicted of alien smuggling in the U.S. He smuggled some 200 Lebanese nationals into the U.S., including several with known links to Hezbollah. See – Arrillaga, Pauline and Olga Rodriguez, “The terror-immigrant connection: Illegal immigrants from nations with terror ties channeled to U.S.,” MSNBC, <http://www.msnbc.msn.com/id/8408009//>; and Dibble, Sandra, “Smuggling boss sentenced to one year: Tijuana restaurant owner admits guilt,” *Union-Tribune*, June 20, 2003.

²⁷ “Terrorists teaming with drug cartels,” *The Washington Times*, August 8, 2007.

²⁸ “Timeline: America’s War on Drugs,” National Public Radio, April 2, 2007, <http://www.npr.org/templates/story/story.php?storyId=9252490>

²⁹ And have been for some time, see – Buckley, William F., “The War on Drugs is Lost,” *National Review*, February 12, 1996.

police chief Gil Kerlikowske signaled an end to war rhetoric on the topic, changing the landscape for the drug issue.³⁰ A top national security priority immediately following the cessation of the Cold War, international narcotics policy has shifted downward in Washington's priorities.

While estimates on the number of unauthorized immigrants³¹ residing in the United States vary widely, the Department of Homeland Security's most recent figure stands at 11.8 million as of January 2007, a slight rise over the prior year.³² More than half are believed to be Mexican nationals, the largest single country cohort by far. Although George W. Bush attempted, in his second administration, to produce immigration reform, bi-partisan congressional opposition blocked the initiative. With the U.S. economy in a decided downturn, the numbers of unauthorized immigrants residing in the U.S. may fall as the quantity of remittances to Mexico and elsewhere already have. Disappointingly, these economic migrants are conflated into what has become a national security problem, which lumps them in with the narco-trafficker and would-be terrorist. This is a common perception, and one unhealthy to reasonable policymaking.

Section 3: What the Binational narcotics issue means for U.S.-Mexico border security

Difficult to disconnect for Mexico are the terms national security and narcotics. Even including the impact of the post-September 11, terrorism-orientation in U.S. national security policy, and its concomitant influence on security thinking in Los Pinos, the internal security problems for Mexico produced by the country's role in the illegal narcotics trade continue to dominate its security agenda. Mexico's federal police are largely considered to be "drug police," handling the counter-narcotics portfolio of law enforcement. With the deployment of considerable numbers of Mexican troops to combat narco-trafficking organizations across the country, but most significantly in the border cities, the role of internal security on the Mexican side of the border has increasingly become a military, rather than police issue.

The fighting is over the collection of an enormous markup on illegal controlled substances to be sold by an enormous, loosely confederated set of distribution networks across the United States. Multiple cartels struggle to control pieces of the cross-border narco-trafficking business and the smuggling routes across the length of Mexico that feed it, with alliances, truces, and

³⁰ Fields, Gary, "White House Czar Calls for End to 'War on Drugs,'" *Wall Street Journal*, May 14, 2009.

³¹ While the terms illegal or undocumented alien are often used in discussion within the U.S. immigration debate, the authors choose to use DHS's preferred unauthorized immigrant.

³² Hoeffler, Michael, Nancy Rytina and Bryan Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007," Office of Immigration Statistics, Department of Homeland Security, September 2008.

mob wars punctuating the news reports of the country's tabloids and serving as thematic fodder for the *narco-corridos* of Norteño musical groups. Because of the great profit to be had in getting drugs over the border, the cartels have exhibited a consistent behavior of employing new tactics and dedicating additional resources to gain market share, as expressed in access to cross-border ports of entry and trafficking routes.

This has driven a militarization of narco-cartel methods. Nothing more clearly illustrates this phenomenon than the formation and actions of *Los Zetas*, the most well-known criminal mercenary paramilitary force of the Mexican drug war. Mostly formed by deserters from the Mexican Army's *Grupo Aeromóvil de Fuerzas Especiales* (GAFE), the initial cadre of Zetas, numbering perhaps two-dozen officers and men, served Osiel Cardenas Guillen's Gulf Cartel until his arrest in 2003. With its initial cadre likely trained in part by the U.S. military, *Los Zetas* have grown in number, and become synonymous with militarization of the drug cartels, which traditionally employed *pistoleros* or *sicarios*, professional criminal-bodyguards. They may have incorporated Guatemalan members,³³ and are armed with military weapons including anti-tank rockets and grenade launchers as well as assault rifles and long-range 0.50 caliber sniper rifles, many of which are purchased on the open gun market in the United States.³⁴

Meeting the problem, Mexico has been driven to meet force with force. Nowhere is the militarization of internal security more profoundly visible than in Ciudad Juárez, Chihuahua. Home to thriving border commerce (truck traffic at the El Paso Port of Entry is routinely the highest of all the southern land border ports) and the largest U.S. Consulate General in the world,³⁵ Juárez is a center of the border narcotics trade. The illicit traffic has led to gross instability in the city, which holds the highest homicide rate in Mexico. But at a fundamental level, the violence in Juárez is almost directly attributable to the battle over control of the drug trafficking corridor into El Paso via what Mexicans refer to as the "plazas," a euphemism for the multiple border crossings that constitute the El Paso Port of Entry.

Instability in Juárez has drawn increased attention from Mexico City. With violence against civic leaders and police officials commonplace, the Calderon administration has deployed a large contingent of federal police and army troops, numbering in excess of 10,000 to the city.³⁶ Despite the presence of this significant force, Mexican federal authorities have had little success in stemming the violence. With more than 1,100 people killed in Ciudad Juarez this year and some 2,900 lives lost to drug-related violence since 2007 in the state of Chihuahua,

³³ Becerra, Oscar, "A to Z of crime – Mexico's Zetas expand operations," *Jane's Intelligence Review*, January 30, 2009.

³⁴ Becerra, Oscar, "Firing Line – Tracking Mexico's illegal weapons," *Jane's Intelligence Review*, May 15, 2008.

³⁵ Reza, Virginia, "World's largest U.S. consulate opens across border from Fort Bliss," www.army.mil.

³⁶ "Mexico troops enter drug war city," BBC, <http://news.bbc.co.uk/2/hi/americas/7922982.stm>

the central northern border region of Mexico clearly remains the epicenter of narco-violence in the country.

Unclear is whether the intervention has had a meaningful impact beyond Ciudad Juárez. While the deaths continue, sometimes 30 a day across the country, Mexico's former attorney general Eduardo Medina Mora reports that the country is less violent than it was a decade ago. This paradox is explained by the concentration of violence. It is true that the number of homicides has increased 40% in the State of Chihuahua, but it is also true that the homicide rate (intentional homicides per 100,000 populations) has fallen from 17 to 12 homicides per 100,000 people from 1997 to 2008 at national level.³⁷ This might be at odds with conventional wisdom that often portrays an undercount on the murder rate, with official statistics merely reflecting a lower bound that may actually exceed the figure by a third or more³⁸. Despite Medina Mora's claims, the Mexican public, particularly in areas of operation for trafficking organizations, is witness to a continuing epidemic of violent crime.

For Mexico's military and federal police agencies, dogging questions linger. Has the mass intervention had an impact? Is there an exit strategy designed to get the troops off the streets of Ciudad Juárez and other Mexican cities? And finally, has military intervention come at the cost, as some allege, including U.S. senator Patrick Leahy, of human rights violations? There is fear, for good reason, that a militarization of the Mexican narco-conflict may produce the hallmarks of Latin America's gruesome dirty wars. This is for good reason; some allege that veterans of those ugly campaigns, in Guatemala and El Salvador, are already well-represented in the ranks of the trafficking organizations.

It is the opinion of the authors that military intervention in the narco-conflict is both well intended and necessary but also displays the hallmarks of incomplete strategic vision and tactical limitations produced by professional and resource constraints.³⁹ Although moves in both Washington, which sought to hold up Merida Initiative aid, and Mexico City, where opposition leaders, particularly in the left, gave considerable thought to returning the troops to their barracks, have been averted, the rising body count produces considerable pressure.⁴⁰

³⁷ Ellingwood, Ken, "Mexico violence is actually down, the numbers show," *Los Angeles Times*, August 22, 2009.

³⁸ Monthly data reveals a 40% increase in the number of homicides in the State of Chihuahua in the last year (January to June 2009).

<http://www.prominix.com/sblock/admin/images/Semaforo%20Nacional%20PLUS%20VC.pdf>

Yearly data for the Country and the individual States is provided by the Sistema Nacional de Seguridad Pública (The National System of Public Security).

<http://www.icesi.org.mx/estadisticas/estadisticas.asp>

³⁹ See: Phillips, Kelly, "In Mexico, Outgunned and Underpaid," *New York Times*, August 14, 2009.

⁴⁰ Booth, William and Steven Fainaru, "New Strategy Urged in Mexico," *Washington Post*, July 28, 2009.

Strategies of judicial deterrence have failed to stem the drug violence. Despite the arrest of some 76,000 suspected drug traffickers since the beginning of the Calderón administration,⁴¹ and even with the application of gradually-increasing military force, the enormous profits of the narcotics market continue to lure new entrants into it. With no exit strategy in sight, we must then consider what additional options exist for a binational counter-violence strategy that meets the rhetoric of hemispheric politics.

A number of possibilities are forwarded here, with the caveat that each one will produce discomfort or otherwise disturb the status quo of the narco-conflict. Among them are: (1) enhanced Intelligence, Surveillance, and Reconnaissance (ISR) collaboration and technology deployment; (2) a technical overhaul of border entry process designed to interdict southbound gun and northbound narcotics traffic; (3) increased pressure on international money laundering with enhanced cooperation between Mexico's *Hacienda* and the U.S. Department of Treasury; and (4) an enhanced commitment on the U.S. side of the border on interdiction efforts designed to disrupt narcotics distribution networks.

Already underway as part of the Mérida Initiative, a comprehensive upgrade of the Mexican ISR capability may permit the country's military and police to exercise power more effectively and selectively. While this paper does not seek to mate lessons from Colombia's narcotics fueled insurgency with prescriptions for Mexico, success in stemming violence there has largely been a product of enhanced intelligence efforts undertaken jointly by the U.S. and Colombia. Unfortunately, Mexico appears willing to accept U.S. hardware, but not necessarily, "technical advice on intelligence gathering, institution building and reform."⁴² In practice, Mexican Government openness might depend upon the level of commitment and the strategic and practical depth of the "shared responsibility" agenda agreed upon by the U.S.

On the matter of improved border exit/entry controls, we have witnessed some significant measures, but criticisms of the process remain. Addressing dire U.S. security concerns regarding Weapons of Mass Destruction Terrorism (WMD-T), the two countries have worked closely on fielding advanced radiological detection hardware on both sides of the border. Other technologies designed to x-ray cargo trailers and rail cars also have been fielded, but the narcotics trade pursues profit via any possible avenue. With regard to arms, enhanced measures for weapons detection on southbound traffic should be undertaken binationally, however with exit control from the United States into Mexico still unachieved, this mission would fall almost entirely Mexico's customs and immigration services. Outside of the ports of entry technology may be employed for border interdiction, with ground penetrating radar now

⁴¹ Booth, William and Steven Fainaru, "New Strategy Urged in Mexico," *Washington Post*, July 28, 2009.

⁴² Felbab-Brown, Vanda, *The Violent Drug Market and in Mexico and Lessons from Colombia*, Brookings, Policy Paper Number 12, March 2009, p. 20.

employed to detect illicit border tunnels, but marks for the performance of the Department of Homeland Security's Secure Border Initiative Network (SBI Net) remain less than stellar.⁴³

On the topic of cross-border money laundering, Jesus Blancornelas, the deceased editor of Tijuana's newsweekly *Zeta*, often made remarks regarding the shadowy big players of the drug trade on the U.S. side of the border. Although evidence of the existence of such kingpins is incomplete at best, the authors do not doubt that additional effort could be undertaken in interdiction of illicit money flows. The Mexican Servicio de Administración Tributaria and U.S. Treasury Department would need to intensify their level of cooperation and also dedicate considerable resources in coordinating activity with the federal judicial and law enforcement entities of their respective countries. As the IMF has indicated, Mexico, largely spurred by the specter of terrorism, has significantly ramped up efforts to crack down on money laundering related to terror groups, however, it is likely any financial activity regarding the narcotics trade dwarfs that of groups whose sympathies lie with violent transnational terror organizations.⁴⁴ Nonetheless, reports of significant activity on this front achieved through binational cooperation would likely be heartening news, especially on the Mexican side of the border.

Finally, there is the question of how U.S. authorities may apply resources to combat drug trafficking inside its borders. This is perhaps the stickiest point of the four forwarded here, as the enormous U.S. prison population, largely composed of offenders of drug or drug-related offenses, indicates that the United States has dedicated significant effort to the counter-narcotics mission. That said, unlike Mexico, the United States does not maintain the nationwide network of military and police checkpoints that Mexico continues to manage. With the U.S. FBI heavily tasked with the counter-terror, internal security mission, news of massive narcotics seizures does not appear as frequently as during the 1980s crack cocaine epidemic. The appointment of Gil Kerlikowske to the top position at the ONDCP indicates, however, that change is likely afoot on policy regarding drug possession, leaving the decision to the states. Likewise in Mexico, small quantity possession is increasingly viewed as an annoyance for a law enforcement establishment coping with what is likely the most violent piece of the global narcotics trade.

Summing up, U.S.-Mexico border security issues are inextricably linked to the continuing activities of the narcotics trade. There exist deterrence options, what the authors refer to as "hammers," for demonstrating force to the narcotics cartels, but with each employed there is a concomitant risk of failure. Such failures viewed under light of day might only further embolden the drug trafficking organizations and worsen the internal security situation in

⁴³ Lipowicz, Alice, "DHS orders work to stop on SBI Net," *Federal Computer Week*, August 19, 2008.

⁴⁴ *Mexico: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, International Monetary Fund, September 11, 2008

Mexico. Worse, intensification of the application of force may result in spill-over to the U.S. particularly disturbing on this front is the killing of Jose Daniel Gonzalez in El Paso, Texas in August 2009. Gonzalez, an informant for the Department of Homeland Security's Bureau of Immigrations and Customs Enforcement was shot dead in his residence in an upscale neighborhood of the city. One of the alleged triggermen is Michael Jackson Apodaca, an active-duty U.S. Army private first class stationed at nearby Fort Bliss.

Section 4 – Mechanisms for Security in a Binational Narco-Crisis

The changes in the international order, marked by a decline of state sovereignty and the rise of non-state actors, necessitate change in the instruments employed by Washington and Mexico City in providing security to its citizens. Both countries have written laws and developed state capacities to cope with external and internal threats. Today, however, an increasing number of threats are "intermestic" in nature.⁴⁵ U.S. citizens rise to become top assassins for Mexican drug gangs south of the border while Mexican nationals partner with Central Americans to set up organized crime syndicates in U.S. cities. This is the reality of the security framework, one which must become nimble enough to cope with small, but organized criminal elements, and strong enough to break up organizations which threaten the function of civil society.

Discussions on forging a security partnership between Mexico and the United States would not be underway if not for the shift in U.S. policy on confronting the spiraling narco-violence problem in Mexico. At issue is to what degree Mexico shall be called upon, in practice, to re-write her laws and alter the function of her public institutions to work effectively with the U.S., and what accommodations may be made by Washington.

Clearly, there is pressure to "Americanize" the Mexican legal system in the interest of harmonizing practice between the countries.⁴⁶ This has been achieved, to some degree, in commerce, with the NAFTA accords driving change in both Mexican and U.S. law.⁴⁷ However, in the U.S.-Mexico security relationship, there are numerous areas in which substantial difference exists in what is considered legal activity and what is not, including in the areas of narcotics, firearms and alien smuggling. Going further in harmonization would be subject to a cost-benefit evaluation on the Mexican side and to the willingness of the U.S. to negotiate with Mexico on what may be perceived at home as a surrender of sovereignty.

⁴⁵ See – Lowenthal, Abraham, "The Intermestic Hemisphere," *New Perspective Quarterly*, Vol.9, No. 3, 1992.

⁴⁶ Zamora, Stephen, "The Americanization of Mexican law: Non-trade issues in the North American Free Trade Agreement," *Law and Policy in International Business*, Vol. 24, No. 2, 1993.

⁴⁷ Westbrook, Jay Lawrence, "Legal Integration of NAFTA Through Supranational Adjudication," *Texas International Law Journal*, Vol. 43, Iss. 3, 2008.

Desired is a framework in which Mexico and U.S. may work together on confronting the issue of the day, the deteriorating public safety situation in Mexican communities drawn into the international narcotics trade. This has been the key issue of the Calderon administration, and the U.S. has begun supplying aid to combat the problem under the auspices of the Merida Initiative. However, despite dedicating significant resources, it is unclear that any measurable progress has been made, with the homicide rate in Ciudad Juarez still roughly the same in 2009 as it was for the first six months of 2008, despite the presence of more than 10,000 troops and thousands more federal police.⁴⁸ With public safety concerns paramount in Mexico and worries of spillover into the U.S. growing, the question remains as to what bi-national tools exist to cope with the violence problem.

Some policy actors in the U.S. see answer in how Colombia has confronted its narcotics trade and insurgency. Doubtless, there are lessons to be learned from the Colombian experience, however, the absence of a broad, ideologically based insurgency populated by powerful military forces along the lines of the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) or *Ejército de Liberación Nacional* (ELN). These groups, although fueled by drug funds, ostensibly hold political objectives, however, Mexico's instability is produced by drug syndicates seeking to thwart government action regarding their trade.

Section 5: From Bilateral to Binational – A Framework for Mexico-U.S. Security

Clearly desired is a means by which Mexico can reduce the overall level of violence, but also a reinvigoration of the U.S.-Mexico policy process on a number of fronts. Certainly, security issues remain of utmost importance to leaders on both sides of the border. At the Guadalajara summit of the North American leaders, Presidents Calderon and Obama, along with Prime Minister Harper, made public pronouncements on a number of fronts. Response to the A H1N1 influenza and the economic crisis felt "from Toronto to Toledo to Tijuana"⁴⁹ were identified as important. Likewise, energy, climate change, democracy and human rights, trade and immigration reform were marked as issues of substance by the troika of North American leaders. There exists no shortage of major agenda points, however, operationalizing policy response is an area in need of significant attention.

Between the U.S. and Mexico, priorities differ. In the statements of the three leaders in Guadalajara on August 10, Calderon chose to lead with mention of his country's security crisis, while Obama selected to identify the economic crisis first. This speaks to realities in both countries. As of July 2009, according to the U.S. Bureau of Labor Statistics some 14.5 million

⁴⁸ Cardona, Julian, "Army feeble as murders surge in Mexico drug war city," *Reuters*, July 8, 2009, <http://www.reuters.com/article/worldNews/idUSN0150483820090708>.

⁴⁹ Brandon, Katherine, "The North American Leaders Summit", The White House Blog Post, August 2009, <http://www.whitehouse.gov/blog/The-North-American-Leaders-Summit/>

Americans were out of work. Meanwhile Mexico’s Procuraduría General de la República (PGR) reported in March that some 10,475 Mexicans had been killed in violence related to narcotics activities, nearly a thousand of them public servants, since President Calderon’s inauguration on December 1, 2006.⁵⁰ These figures underscore the often-marked asymmetry of interest in the Mexico-U.S. relationship.

It is a relationship shifting from a bilateral nature, characterized by negotiation based on national stake and interest to one of a more binational character. Since 1889, the two countries have maintained the International Boundary Commission, re-titled the International Boundary and Water Commission in 1944. With headquarters in Ciudad Juarez and El Paso, it is a narrowly focused organization, but characterizes itself as binational in nature.⁵¹ Its business is maintaining the international boundary, the very marking of the border, as well as overseeing water distribution and quality issues along it.

Other issues related to the border, from customs and immigration control to transportation infrastructure and trade issues are handled by bilateral mechanism. It is an international relationship undertaken by a host of agencies on both sides of the border. The U.S. State Department and Mexico’s Secretaría de Relaciones Exteriores maintain a network of consulates along the border, with Mexico holding 12 diplomatic missions in the state of Texas alone.⁵² The consular corps maintains a Border Liaison Mechanism for bilateral discussion on border issues. Both militaries are also on the border in significant number, but joint activity seldom occurs in the border region. Overlaid on the border are a host of federal civilian security agencies representing both sides, reporting to a variety of different departments, with varied missions and responsibilities as well (see figure).

U.S. and Mexican Border Security Agencies

<i>Agency</i>	<i>Reports to</i>	<i>Agency</i>	<i>Reports to</i>
Customs & Border Protection	Department of Homeland Security	Instituto Nacional de Migración	Secretaría de Gobernación
Border Patrol	Department of Homeland Security	Aduana México	Servicio de Administración Tributaria

⁵⁰ Gonzalez, Maria de la Luz, “Suman 10 mil ejecuciones en esta administracion: PGR”, El Universal, <http://www.eluniversal.com.mx/nacion/166613.html>

⁵¹ International Boundary Water Commission, “Strategic plan FY 2008- FY 2013, December 2008, http://www.ibwc.state.gov/Files/Strategic_Plan.pdf

⁵² Secretaria de Relaciones Exteriores, “Directorio Consulados”, <http://www.sre.gob.mx/acerca/directorio/consulados/dirconsulados.htm>

Drug Enforcement Agency	Department of Justice	Grupo Beta	Secretaria de Gobernación
Immigration & Customs Enforcement	Department of Homeland Security	Centro de Investigacion y Seguridad Nacional	Secretaría de Gobernación
Federal Bureau of Investigation	Department of Justice	Agencia Federal de Investigación Policía Federal	Procuraduría General de la República Secretaría de Seguridad Pública

The selection of civilian police agencies must coordinate with one another, along with state and local authorities in six Mexican and four U.S. states. This enormous cast of players, which expands rapidly when matters of infrastructure or public health enter the picture, must work across significant bureaucratic, linguistic and cultural barriers. While some accommodation may be found at the local or regional level, border practitioners from both sides can at times perceive their national capitals to hold incomplete perceptions of the border situation and produce policy out of tune with local reality.

Section 6: Towards a new Public Policy Process:

As discussed above, border security challenges are multifaceted, complex and deeply rooted. This section deals with the contribution that a public policy process could made in the definition of a renewed set of practices to better confront these challenges.

We start by identifying a hierarchy of needs and potential ways in which they could be communicated to facilitate negotiation among policy relevant actors. We continue by identifying the various uncertainties of the policy process in this bilateral and institutionally complex environment. This is followed by an identification of options in the public process to creatively address the institutional complexity. We end up suggesting a series of principles for planning in this context. We propose ten elements associated in three broad categories that require increasing levels of collaboration. At the bottom of the pyramid we have the infrastructure and capacity building category. There are four distinct needs that tend to be unilateral and that create a reliable environment to perform more demanding functions. Technical assistance, training and sharing of standards and practices might be the most significant means of collaboration in this category.

The first set of needs in the infrastructure and capacity building category are crime prevention activities, promotion of economic opportunities and social capital formation. Those are related with economic and social development and with the full respect of human rights. It is the area recently labeled as “prosperity” in the context of US-Mexico relations. The second set of needs are “cleaning the house” to be prepared to confront deep causes of institutional dysfunction and corruption. Capacity building is related to organization, policy protocols, databases and communication capacity. It also refers to adequate organization schemes and pay scales. The fourth set of needs, last one in this first category, is institutional strengthening and this is currently associated with the major initiative for reforms currently in progress in Mexico tied to policing, law enforcement and judicial system reorganization and reform.

The second category is relational in nature and refers to the primary mechanisms of collaboration. It is represented by three elements. The first is information sharing, the precursor activity for analytical collaboration. The second element, outcome based policy evaluation, is a major tool for incorporating internationally accepted standards, to benchmark performance, generate reliable indicators, conduct mutually acknowledged analysis and incorporate public participation.

The third and last category is related to the systemic generation of synergistic relationships for border security engaging institutions of both countries. It cultivates deeper and wider forms of collaboration and also the willingness to redesign programs as collaboration becomes cooperation and leads to joint planning. They require going from bilateral to truly bi-national programs and policies.

Leveraging collaboration entails the detailed knowledge of actions of agencies in the other country and the willingness to respond to requests of operational adjustment or the performance of special functions or operations. This may lead to the joint execution of programs. There are already some examples of this including the posting of Mexican intelligence officials in U.S. Northern Command, the Operation *Armas Cruzadas*, “a bi-lateral law enforcement and intelligence-sharing operation to thwart export of arms from [the] U.S. into Mexico,”⁵³ and training from the U.S. Department of Treasury for Mexican government officials financial analysis and investigation of drug cartel activities. Other forms of joint execution have been discussed such as joint patrolling and integrated law enforcement units. A final element is outright coordinated priority setting and full scale planning. The public policy process can be independent or can take the form of newly appointed joint authorities or joint supervisory bodies to monitor, evaluate, review programs and set priorities.

⁵³ <http://www.ice.gov/pi/news/newsreleases/articles/080609houston.htm>

The capacity building needs described in the border security pyramid are very different for the two countries and vary widely across regions. In spite of this, it is desirable to have basic standards that are routinely evaluated. The last two categories of collaboration and of systemic relationship generation are equally demanding for both countries and they might be more difficult for agencies that are particularly entrenched. It is fair to say that neither country performs the kind of coordinated bi-national planning among agencies outlined here as a routine form of operation. Still heavily siloed, agencies on both sides of the border tend to concentrate in their own responsibilities and act with a high level of autonomy. Much more efficiency is lost at the bi-national level. Collaboration would be demanding for players and leadership and vision would prove critical to achieving it.

The capacity to move upward in the hierarchy of security needs requires communication and the trust resulting from the certainty that commitments will be fulfilled. Communication should be direct and straightforward, as it will also be demanding. Each participant should know the key priorities, actions and goals of other partners (the “must do list” list). Each should be also capable of requiring the other partners to perform needed actions and functions based on human rights and national security agreements (the “you must do” or the “I demand you to do” lists). There should also be relational commitments in terms of assistance, integrated work and joint action. (Lists might fall under the general headings “let me help”, “let’s do it together” and “let’s set the system in motion.”) In sum, it is critical that such lists do exist and that they be known and discussed among partners.

Communication and reliability is important because virtually every form of coordination confronts uncertainty. There are many players involved in border security and there is no unified line of hierarchy in either country. Presidents have constitutional power in the U.S. and Mexico to represent their country, but any formal agreement needs to be ratified by the senate in each country. The number of bilateral agreements for security and the formal mechanisms for information exchange and coordination are very limited. This lack of formal mechanisms hampers the adoption of institutional arrangements, since there are significant differences across countries in terms of functions and powers. Many agencies do not have explicit powers to enter into binding agreements with international actors. Informal agreements are flexible but do not necessarily assure the availability of resources and permanence of programs and commitments.

Given this environment of needs and institutional arrangements, we should explore the different options for a public policy process to confront uncertainty.

1. Undertake a full-fledged planning exercise involving stakeholders on the border itself that might lead to coordinated border management security services.

2. Conduct of a series of focused independent planning processes associated with critical security functions.
3. Promote a "the more the merrier" strategy for the integration of broad sets of ready-made solutions drafted with an underlying strategy in mind.
4. Creation of a surrogate public policy process that would replicate some critical phases outside of a formal process.⁵⁴
5. Target the micro- and meso-planning processes to determine critical actors and policies for shared revision and planning, including identifications of constituencies that could promote the process and lobby strategies.

Current literature debates policy options and collaboration potential for border security. There is no agreement. Given this situation of scope and process uncertainty, there might be sensible to suggest some principles that could be helpful in the planning of the public policy process. The principles are:

1. Governments and agencies have to accept (or seek) criticism and suggestions from other actors,⁵⁵
2. There is a need for formal bi-national assessment and evaluation mechanisms;
3. If the ideal process cannot be set in motion, there is a need to select a "second best."⁵⁶
4. Keep an eye for heterodox thinking;⁵⁷

⁵⁴ Some of the critical functions that could be replicated are: priority setting; identification of policy options; selection of measurement indicators to help monitor results; tradeoffs and conflicts; evaluation of current policies; outcomes based evaluation, and negotiation among relevant agents. The promotion of large lists of ready-made-solutions is a very valuable form of a synthetic planning process.

⁵⁵ There should be a strategic dialogue in terms of basic priority lists including own independent actions, demands posted by some agencies to another and the willingness to collaborate. The "do not be afraid, I am in command syndrome" should be utterly eradicated.

⁵⁶ The authors emphasize that it is better to attempt a second best than to give up the idea of planning, but the determination of that alternative scenario requires three considerations. The first one is the pragmatic approach. The second is that among the partial public policy processes, the ones that have potential for creating deeper synergies should be preferred. Finally, whenever there is a risk that the promotion of formal public policy process could result in failure or deadlock, then it is desirable to seek sequential or incremental coordination, the pragmatic promotion of ready-made solutions, and the target of processes that could have potential catalyzing effects.

⁵⁷ "Out of the box proposals" have the potential to create long lasting impact and to appropriately challenge the system.

5. Whenever possible, try to move from bilateral to bi-national, from soft coordination to institutionalization, from particular to general, and from sector specific to integral solutions;
6. Maintain a well-integrated set of “ready-made solutions” to aid all actors in identifying policy options and in creating a common language;
7. Collaboration should be based upon solid incentives;⁵⁸ and
8. Technical processes should be promoted as means to bring objectivity and avoid short-term political considerations.

The high costs and low impact of current policies and practices indicate that is worthwhile to promote a systemic revision. The above principles should be of help in this process.

Section 7: Basic strategies

Bilateral Mexico-U.S. border security is under very grave stress. Given the uncertainty as to what kind of policy processes are feasible, it is reasonable to identify alternative mechanisms as suggested in the principles outlined above. This diversity of options could help to assure that the process to seek for a better situation would not stop. We propose six strategies for coordination and the creation of synergistic security cooperation.

1. Commission a full-fledged system for the border security public policy.

As discussed above, the best option, the “first best” strategy is to have the two governments agree to realize a broad, integrated, high level process for truly bi-national border security. The process should be self-sustained and create meaningful internal checks and balances and facilitate open, reciprocal evaluation of participants.

The scope is to be determined as part of the process. There are at least three options. In a grand scheme, it could be overarching, encompassing security and prosperity with a broad view of continental integration. In the middle ground, it could also be limited to bilateral or North U.S. security. At a focused level, it could be oriented towards the creation of a Mexico-U.S. border security ecosystem or a border security management regime.

The process is critically defined by the actors. It should incorporate federal, border state and local governments. It should engage customs, immigration, law enforcement, police,

⁵⁸ Autarchy and self-reliance are always an open fallback strategy. Countries should collaborate as long as it is helpful for the fulfillment of their own goals and as long as it constitutes a rational way to pursue long-term effectiveness.

intelligence and national security agencies of both countries while also embracing state, local and tribal authorities concerned with the borderland.

2. Adoption of structural changes that would change the rules of the game and force coordination.

There are obvious examples such as the joint definition of a North American security perimeter, the creation of a North American Tariff Union; the ratification of a broad national security treaty for North America; or the merger of customs infrastructure for simultaneous operation.⁵⁹ A related line of action might be to review the entire set of bi-lateral agreements signed by Mexico and the U.S. dealing with border security and related security areas. A final example might be the adoption of a bi-national integral monitoring technology strategy to re-engineer flows of people and goods across the border.

Each one of the above has the potential to challenge the status quo and force an in-depth revision of vision, goals, language, approach and preferred tools for border security. They would have a tickle-down effect in terms of forms of operation. They would create a necessary environment for planning and operational overhaul.

3. Undertake a synthetic public policy process oriented towards critical shared security considerations.

A rational way to proceed will be to rely on our current understanding of risks, opportunities and priorities for border security to set in motion detonators for change in critical areas. Some of them are to obstruct the flows of money for organized crime and money laundering activities, privilege capacity building in law enforcement south of the border and across the border, combat corruption all over the board to shelter critical functions such as prosecution, the judiciary, jails and penitentiaries. Other critical areas are intelligence sharing among selected participants from the two countries and the harmonization of legislation and standards convergence (in health, sanitation, labeling and food and produce safety).

The surrogate public policy process should facilitate effective feedback mechanisms, policy evaluation, benchmarking and identification of best practices, the adoption of a reliable system of indicators and the strengthening of accountability mechanisms. An excellent example of a synthetic public policy process is the indicative planning for border states with regard to bi-national consistent policies and programs.

4. Shot-gun approach based upon the “more-the-merrier” way to create a snowball effect:

⁵⁹ Security and Prosperity Partnership of North America, “Prosperity Working Groups”, http://www.spp.gov/prosperity_working/index.asp?dName=prosperity_working

A detailed catalogue of potential actions is under construction. The Merida Initiative, the Security and Prosperity Partnership, the bilateral and trilateral agreements, the Organization of American States, and the unilateral programs drafted by both countries supply very valuable information. Among the relevant documents we could cite the Mexican National Development Plan, the National Public Security Program, the commitments of the judicial reform, the renewed national security system and the national agreement for peace, justice and legality. The U.S. Department of Homeland Security's *U.S.-Mexico Border Security Policy: A Comprehensive Response & Commitment* approaches the issue from a border-centric perspective, but debate surrounding Merida funding will likely lead to more comprehensive policy announcements from Washington touching the Departments of State, Justice, Defense and Treasury.⁶⁰

Most of the policy challenges addressed are discussed in broader literature and relate to money laundering,⁶¹ prevention programs for drug consumption and violence,⁶² disrupting weapons trafficking, intelligence sharing, technical assistance, institutional strengthening, among others. Additional work is needed to provide a broader perspective and to further explore the best ways to integrate actions into meaningful strategies.⁶³

5. Embrace heterodox proposals to challenge the system:

Embracing unorthodox proposals might be a significant way to challenge the system and to rise in practice the level of expected results of traditional policies demanded by the population. The limited results obtained in the past, open very wide space for nontraditional analysis and proposals.

We would like to list a few that deserve attention and careful analysis. Some of them are: legalize consumption and distribution of marijuana;⁶⁴ decongest border crossing points and customs to facilitate the operation of customs, drug and weapon inspections; seal cargo inside of the Mexican territory in in-land customs and confined assembly plant operations in order to

⁶⁰ The wider public list available is contained in the Woodrow Wilson Center report "The United States and Mexico: Towards a Strategic Partnership." The authors have carefully identified more than seventy policy options for security cooperation, immigration and border investment with direct impact on border security.

⁶¹ Caulkins, Jonathan P.; Pacula Liccardo, R.; Paddock, S.; Chiesa, J. "School-Based Drug Prevention. What Kind of Drug Use Does It Prevent?" Drug Policy Research Center, RAND, 2002.

⁶² United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank, "Ch. 10 Public Policy of Crime and Violence Prevention: Regional and National Approaches", Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean, Report No.37820, March 2007.

⁶³ The Instrument for Pre-Accession Assistance (IPA) is a tool used by the European Union to assist countries that aspire to join the European Union. Multi-annual indicative planning is used for strategic planning. It includes cross-border cooperation. http://europa.eu/legislation_summaries/agriculture/enlargement/e50020_en.htm

⁶⁴ Leuw, E.; Marshall, I. Haen, eds, "Between Prohibition and Legalization. The Dutch Experiment in Drug Policy", Studies on Crime and Justice a Series from The Research and Documentation Centre. Kugler Publications, 1996. Wodak, A.; Owens, R., "Drug Prohibition: A Call For Change", University of New South Wales Ltd. 1997 reprint

reduce border located administrative burden; select border crossing points for high volume and high efficiency in addition to the current FAST and SENTRI⁶⁵ lanes.

An interesting potential solution would be the deregulation of international trade flows and progressive elimination of all remaining import permits, compensatory quotas and tariffs in order to radically reduce customs procedures.

A different approach could be to appoint one person in each country responsible for border security or the creation of some critical border truly bi-national institutions such as: binational intelligence unit; bi-national chief of police and sheriff association; bi-national prosecutors forum or a brand new money laundering agreement and tax coordination agreement; a Bi-national Border Commission or some form of a border bi-national authority.⁶⁶

6. Identify Shortcuts for improving coordination:

Policy makers have the power to create shortcuts for coordination. In this activity, the aim should be to define, at the highest possible level, a broad shared definition of goals concerning border security.

This process could build on existing programs such as the Security and Prosperity Partnership and the Merida Initiative at the federal levels or the state level programs. An alternative starting point could be the critically review the legacy of bilateral agreements signed between U.S. and Mexico to find ways to improve formal communication channels, facilitate information exchange and set ordinary practices that could be measured to seek increasing efficiency. All of these could benefit from any effort to strengthen formal communication channels and build a network within each country to peddle policy changes derived from discussion and agreements.

Section 8: Final comments and conclusions

The main objective of border security coordination is to improve the societal well-being and protect human rights as well as to reduce the transaction costs and the risks of a catastrophic security failure associated losses for people, families and businesses. Also desirable is dismantlement of the current status of the border as a buffer zone and to eliminate the negative effect of current policies on the border population. In a truly democratic and human rights-oriented policy environment, avoidance of any unfair allocation of costs and benefits

⁶⁵ FAST – Free and Safe Trade program and SENTRI – Secure Electronic Network for Travelers Rapid Inspection. Both programs emerged as part of the “smart borders” initiative between Canada and the U.S. in 2001. They were extended in 2005 to Mexico in the context of the Security and Prosperity Partnership.

⁶⁶ If possible, the authors suggest vehicles for deeper U.S.-Mexican collaboration outside of the borderland, including undertaking peace and nation-building operations jointly, perhaps outside the hemisphere.

among different populations that result from public policies should stand paramount. A third major goal of border security is to generate a big push capable of breaking the deadlock and effectively containing organized crime. It is critical to reconstitute the social basis for law enforcement and the protection of human rights.

Behind every line in this document was an underlying doubt concerning the feasibility of generating a true bi-national public policy process, concerning the realistic expectations for bilateral coordination. The authors posit that it is convenient for both countries to seek profound collaboration and acknowledge that the shadow of failure is omnipresent and that the danger of premature reversion to self-reliance is always present. It is not the prospect of one failed state with which we should be concerned, but rather a much larger specter of two states that fail to confront the risks of supporting a proud but perhaps decaying set of institutions.

The goal of conducting a truly bi-national public policy process for border security should not be discarded. Institutional arrangements for border security coordination should be strengthened. A constructive and optimistic outlook should be adopted. There are many ideas; many of them are very promising. Bringing them to practice is challenging but as we build confidence and set in motion change we will be able to create a more conducive environment for deeper coordination. Both countries are well advised to base actions on current understanding of the priorities and capabilities. But this very understanding needs to be challenged. This document suggests alternative means to accomplish that goal. The key element for change should be an encompassing planning process.

We mention many options to reinvent the border and to soften the tradeoffs between security and the desires for commerce, interaction and integration. The ideas contained here stretch from the enormous, for instance, a North American security perimeter, to the fine-grained, such as a move to inland customs inspections away from the border. We propose that we need to learn to work together. We suggest five actionable ideas to foster collaboration, information exchange, and joint operations. They are:

1. Appoint and empower a border security coordinator in each country to monitor set goals, define a system of indicators, monitor progress and write an annual report on the state of border security and security collaboration. That would enlarge the current mandate of Alan Bersin as Border Czar and would require that a counterpart be appointed in Mexico with a similar function. These appointees would profit from the tradition and logic of The International Boundary and Water Commission (IBWC-CILA).
2. Work simultaneously at two different levels:

- a. Strengthen national level security programs such as the Merida Initiative and the Security and Prosperity Partnership and draft border chapters with specific instruments, commitments and goals.
 - b. Invest in infrastructure and capacity building in police, immigration and crime prevention agencies in Mexican border cities to facilitate information sharing and policy coordination.
3. Adopt formal processes for policy evaluation of unilateral and bilateral border related security institutions and programs. Institutions that should be evaluated are custom, immigration, drug and police agencies. Relevant programs should be evaluated by a broad range of stakeholders using both national and border specific security criteria.
4. Lay emphasis in the coordination of social, infrastructure and drug consumption prevention programs with direct public security and national programs.
5. The intelligence sharing and coordination efforts to confront organized crime should focus in the obstruction of illegal money flows and money laundering activities as well as in the disruption of narcotics and weapons trafficking.

The time has come to build new strategic infrastructure in order to lower costs for collaboration and to enlarge security controls.

We endorse the idea to engage, whenever possible, in multilateral consultations with Canada and with other Caribbean, Central American and with other Organization of American States partners. Such actions will be superb investments in broader strategies for producing wider and deeper hemispheric security, increased societal well-being and more robust democratic institutions.