

The Evolving Role of Mexico's Military in Public Security

Summary

In 1996, concern about production and transshipment of illegal drugs in and through Mexico have captured the public's attention. At the same time, debates within Congress and the Administration about Mexico's efforts to combat the flow of illegal drugs to the United States have failed to take into account new developments in Mexico's public security and antinarcotics policies with potentially serious human rights implications. New laws that expand the role of the Mexican military in public security matters, and proposed laws to weaken due process protections may undermine civilian institutions and contribute to already serious human rights problems in Mexico. Together these laws would give the Mexican military a role in internal security matters (including anti-crime and antinarcotics policies) for the first time without creating appropriate accountability mechanisms to civilian authorities. U.S. pressure on Mexico to be aggressive in its antinarcotics efforts may be indirectly contributing to a policy with serious human rights ramifications. By emphasizing the military's role in antinarcotics efforts, and providing training and sophisticated equipment to Mexico's military for counter-narcotics programs, the United States may be strengthening the role of the Mexican military at a time when they are becoming increasingly involved in civilian functions. The United States should carefully weigh the evolving role of Mexico's military and its implications for human rights and democracy before agreeing to further antinarcotics aid to Mexico.

Recommendations

The United States should guarantee that its antinarcotics aid to Mexico does not contribute to increased human rights problems by:

- insisting on adequate end-use monitoring of all antinarcotics assistance, and ensuring that training, assistance, and equipment is not used for counterinsurgency activities;
- terminating IMET and antinarcotics training programs that would deepen the involvement of the Mexican military in law enforcement activities;
- supporting reform of the Mexican police and offering assistance to improve the human rights practices and integrity of civilian institutions.

BACKGROUND

Military involvement in antinarcotics efforts is not new in this hemisphere. Both the U.S. and Latin American militaries have been involved in combating drugs since the late 1980s. In its 1991 publication *Clear and Present Dangers*, WOLA found: The drug war has replaced the Cold War as the central U.S. military mission in the hemisphere. As part of President Bush's "Andean strategy" --a multi-faceted effort to reduce the flow of cocaine into the United States -- the Pentagon has launched a massive anti-narcotics program which begins in the Andes and then moves to Central America and the rest of South America. In 1990, the Panama-based U.S. Southern Command (SouthCom) declared drugs its "number one priority," (p.1) Despite the involvement of U.S. and Latin American militaries in antinarcotics efforts, and U.S. expenditures of approximately 3 billion dollars a year for border and international drug control programs, there is no solid evidence that fewer drugs are crossing U.S. borders. According to the Administration's own statistics, metric tons of coca leaf produced between 1989 and 1994 remained essentially stable, decreasing a mere 1.03 percent. The Drug Enforcement Administration estimates that Columbian drug mafias are using Mexico as a cocaine safe haven to store 70 to 100 million tons at any given time, with 70 percent of all cocaine entering the U.S. now passing through Mexico.

Instead of stopping the flow of drugs, U.S. international narcotics efforts may be doing more harm than good. In Peru and Colombia, the U.S. government has allied itself with two of the region's most brutal military and police forces, fueling human rights violations. In Bolivia, U.S. insistence that coca eradication targets be met before U.S. economic assistance moves forward has exacerbated social unrest and political upheaval. Conflict between antinarcotics forces and coca growers last year left nine dead (including a six-month old baby and a 13-year old girl), scores wounded and hundreds arrested.

While abuses related to antinarcotics efforts are not commonplace in Mexico, cases of human rights abuses by the military have been well documented. Consequently, changes in laws that increase the role of the military in public security, antinarcotics efforts and combating terrorism present very real risks for human rights.

Mexico's Counter Narcotics Policy

In October, 1995 Mexican President Ernesto Zedillo Ponce de Leon unveiled a new five-year antinarcotics strategy called, "National Drug Control Program, 1995-2000 ." In the introduction to his plan, President Zedillo called drug trafficking, "...the most serious threat to (Mexico=s) national security, society's health, and civic peace." The plan called for an "integrated strategy" to combat all aspects of the drug problem including consumption, production, and trafficking. Zedillo's plan laid out an ambitious strategy involving thirteen Cabinet Ministries including the Attorney General's Office, the National Defense Secretariat, the Public Education Secretariat, and the Environment, Natural Resources, and Fisheries Secretariat.

Under Zedillo's plan, Mexico's Federal Attorney General's Office, or Procuraduria General de la Republica (PGR), has been given overall responsibility for coordination of antinarcotics programs. Within the PGR, the National Institute to Combat Drugs (INCD) has been reorganized to play a principle role in the antinarcotics strategy. The INCD focuses specifically on combating "organized crime" (primarily drug trafficking organizations) and has become more operational and less administrative in its antinarcotics activities.

Zedillo's plan also expanded the role of Mexico's armed forces in antinarcotics programs by involving them in interdiction efforts. Mexico's army has participated in eradication programs at the local level for over twenty years, but the armed forces's involvement in interdiction has, until now, been very limited. Zedillo explained that the primary objective of the National Defense Secretariat was to, "contribute to a reduction in violence generated by organized crime related to illegal drug trafficking, precursor drugs, and weapons by intensifying efforts to search for, locate, and destroy drug plantations and conduct areal and land interception of illegal drugs."(pg.55)

The National Public Security System

A month before announcing the National Program to Combat Drugs, President Zedillo proposed two major legal reforms in his first State of the Union address that provide a legal framework for his national drug strategy. The first proposal, which has now become law, created a National Public Security System (NPSS) to coordinate public security matters, including anti-crime and anti-drug efforts, among the nearly 2,000 police forces in Mexico. In his address, President Zedillo said the NPSS would establish a mechanism for effective coordination among governmental agencies to jointly design and apply a comprehensive public safety policy. (p.21 of English translation) The second proposed reform, which is currently before the Mexican Congress, is the "Federal Law Against Organized Crime." Although Zedillo did not elaborate on this proposal in his speech, he explained that the objective of the proposed legislation is, "to reinforce the fight against this evil [drugs] that jeopardizes individual will, damages the integrity and credibility of institutions and spreads corruption..." (p. 22)

Human rights implications of the NPSS

Only when the content of these proposed laws was made public did it become evident that they have troubling implications for civilian institutions and human rights in Mexico. The proposal to establish the NPSS included the creation of a National Public Security Council that would include several ministries, including the National Defense Secretariat and the Navy. This reform would, for the first time, give Mexico's military a role in decision making and policy-setting in important domestic public security matters.

A broad spectrum of legal scholars and human rights activists, including the government's own human rights ombudsman, have pointed out several potential risks with the National Public Security Council. First, they have questioned the constitutionality of including the armed forces in the Council since Article 129 of the federal constitution limits the role of the armed forces to matters of national security. The Council gives the armed forces a direct role in setting policy and priorities for public security and antinarcotics efforts in Mexico, which, until now, has been an exclusively civilian responsibility.

A second concern is that the armed forces have not generally been accountable to civilian authorities when questions of human rights abuses arise. The U.S. State Department's annual Country Reports on Human Rights Practices, 1995 found that, "The (Mexican) military continues to deny any responsibility for abuses committed during the early stages of the Chiapas rebellion in 1994. The authorities have failed to sanction any military personnel or government officials for committing abuses, although the CNDH [the government's human rights commission] issued an interim report in May 1994 finding that there was reason to believe that the military had injured or killed civilians in aerial attacks, and that there were summary executions, illegal detentions, and instances of torture." In most cases involving military abuses, the armed forces have insisted that human rights problems be dealt with in military tribunals rather than civilian courts.

Finally, human rights groups fear that the participation of the military in public security matters, together with the proposed weakening of due process protections contained in the law to combat organized crime, increases the potential for the military to become involved in combating political opposition within the country. The organized crime law, which is discussed in more detail below, is designed to combat, among other things, drug trafficking and terrorism. Terrorism is not clearly defined in the law, and human rights groups are concerned that the government and the military will use the law as one way to deal with political opponents. A troubling example of potential abuse came in early May, 1996 when two alleged members of the Zapatista Army of National Liberation (EZLN) were given long sentences for being terrorists. The convictions in these cases were questioned by human rights groups since the government's key witness did not testify in court, and cannot be located by authorities. Human rights groups fear that the government may try to use the organized crime law to label as terrorists all civilian groups advising the Zapatistas in the Chiapas peace talks. Their fears seemed to be justified when the government threatened to arrest all Zapatistas for terrorism after the Zapatistas threatened to break off peace talks with the government in protest over the conviction of the alleged Zapatistas. The government's apparent willingness to use anti-terrorism legislation as a political tool is cause for major concern for human rights advocates who have been accused of opposing the militarization of antinarcotics policies and government policies in Chiapas.

Despite these concerns, the Mexican Supreme Court ruled that participation of the armed forces in public security matters is constitutional because it is at the request of civilian authorities. The court's ruling left open the possibility that the armed forces could become involved in almost any aspect of public security so long as it is at the request of civilian authorities.

The National Public Security Council is now operational. On March 1 and 2, 1996, at the same time President Clinton was announcing his decision to certify Mexico as fully cooperating with

antinarcotics efforts, the Mexican army and PGR undertook a massive operation to locate and arrest drug traffickers in Tijuana and Mexico City. While the operation did not turn up the suspects, 20 houses were searched and areas of the town cordoned off by military units.

As this example suggests, the military's role in public security matters goes well beyond advisory and coordination functions, and included operations and law enforcement aspects. A March 29, 1996 article by the U.S. Information Agency quoted Deputy Assistant Secretary of Defense for Drug Enforcement Brian Sheridan as saying that the U.S. would give 12 weeks of training to 15 Mexican officers, "in how to use their weapons in support of police, as opposed to using them in standard military ways. They also will be instructed by (U.S.) law enforcement officers in how to search vehicles, boats, and buildings. They will learn not only how to conduct a proper search, but also how to protect a crime scene, how not to disrupt evidence, and other skills they will need. We hope they emerge from this with enhanced skill so they can help the police enforce the law in Mexico."

The Public Security Council is being replicated at the state level as well, where local military commanders are meeting with police and judicial officials to map out a public security strategy. No state has gone further in this area than the state of Chihuahua. There the State Public Security Council has been in operation for two years with communication and coordination between the police and armed forces well established.

In Chihuahua the Federal Judicial Police are increasingly made up of officers with a military background, either on leave from active military duty or recently discharged. On April 19, 1996, the *Diario De Chihuahua* quoted the head of the PGR's office in Chihuahua, Hernan Rivera Rodriguez as saying that 50% of the federal police force in Chihuahua is made up of officers with a military background. (pg.24) This was confirmed by a state government official who estimates that most of the federal police in Chihuahua are on a leave of absence from the military. Bernardo Espino del Castillo, the PGR representative for the Central and Northern Zones of Mexico, was also quoted in the *Diario* as saying that Chihuahua is the "test case" for a pilot project to incorporate personnel with military training into the Federal Judicial Police. Mr. Espino went on to say that the Chihuahua program will "permeate" other states. (pg.24) Former Chihuahua State Attorney General, Francisco Molina, who oversaw the creation of Chihuahua's pilot project for use of the military in combating drugs and the formation of the State Public Security System, became the director of the National Institute to Combat Drugs (INCD) in April, 1996, reinforcing the impression that Chihuahua is a model for the national approach to be taken.

Law to Combat Organized Crime

A second significant legal reform with potentially serious human rights implications is the proposed Law to Combat Organized Crime. Action on the organized crime bill is pending the adoption of several constitutional amendments that will alter basic due process guarantees, and make constitutional several of the provisions contained in the organized crime bill. For example, an amendment to article 16 of the federal constitution would for the first time grant federal authorities the right to petition a judge for permission to engage in "espionage", including the "intervention of private communications" such as correspondence, telephone communication, and other forms of surveillance. This reform may make it possible for the armed forces to legally engage in domestic spying to combat drugs, terrorism, and common crime.

The constitutional amendments have now been passed by both chambers of the Mexican Congress, and are awaiting passage by state legislatures, where they are expected to pass quickly since the ruling PRI party and the conservative PAN party control all the state legislatures. Meanwhile, Congressional debate has already begun on the organized crime bill, and it is expected to be approved by the Mexican Congress in the coming weeks.

The organized crime law contains several other troubling provisions. Of greatest concern are the new powers that would be granted to the Ministerio Publico (MP), or District Attorney, to investigate organized crime. Organized crime is defined as crimes related to terrorism, counterfeiting money, drug trafficking, money laundering, arms trafficking, trafficking in migrants, kidnaping, and car theft rings. The proposed law would give the MP the authority to start an investigation based on an anonymous complaint and conceal the identity of the accuser. The MP would also be able to detain a suspect under house arrest for up to 90 days while they carry out an investigation. (Current law allows for 30 days with the possibility of renewal for another 30). Once an investigation is begun, the MP can seek approval from a judge to engage in surveillance of a suspect, infiltrate their organization, and monitor their personal communications including telephone and correspondence. The law would also confirm the probative value of statements made before the police in criminal investigations. Human rights groups are concerned that these provisions greatly weaken due process guarantees, and increase the potential for human rights abuses by authorities engaged in fighting organized crime.

UNITED STATES ROLE

In the past few months the United States has held several high level meetings with Mexican officials to discuss cooperation on combating drugs. To work on various dimensions of bilateral antinarcotics cooperation a "High Level Contact Group" made up of officials from both governments has been established. According to one U.S. official, cooperation between both countries has improved dramatically during the Zedillo administration. Bilateral military cooperation related to combating drugs is taking place in two areas: training done by the Department of Defense under the International Military Education and Training program and the antinarcotics training program, and modernization of equipment for combating drugs. A third area, cooperation in intelligence gathering and information sharing related to combating drugs, is still being discussed. Bilateral working groups have been established to discuss these issues with the Pentagon and Department of State participating for the U.S., and the National Defense Secretariat, Navy, and Foreign Relations Secretariat participating for Mexico. Thus far it appears that Mexican demands that U.S. personnel not be directly involved in antinarcotics operations in Mexico have been respected by the United States. Nevertheless, the United States is clearly supportive of the Mexican military's involvement in anti-narcotics efforts, and has offered both training and equipment to make this possible.

U.S. officials justify the use of the Mexican military in antinarcotics efforts in two ways. First, they argue that the Mexican police (especially the Federal Judicial Police) are very corrupt and compromised by drug money, while the military represent a clean alternative without the dismal human rights record. Yet, there is no evidence to suggest that the Mexican armed forces are less susceptible, or immune to the corrupting influence of drug money, and there are well documented cases of human rights abuses committed by the military. The experience of the Andean countries suggests that these problems may in fact worsen if the military is given a greater role in antinarcotics work.

Officials also argue that the Federal Judicial Police do not have the equipment or capacity necessary to carry out sophisticated air and marine interdiction operations. The use of jet aircraft, including 727 aircraft, to transport drugs far outstrips the limited capacity of the Federal police to monitor and intercept. They favor equipping the Mexican military with sophisticated hardware, to give them the capacity to combat the drug cartels on an equal footing. As part of this strategy, the U.S. Defense Security Assistance Agency notified Congress on May 1 of its intent to transfer twenty excess UH-1H helicopters to the Government of Mexico for use in antinarcotics operations.

The risks of U.S. equipment being misused for counterinsurgency efforts are very real, since a major focus of Mexico's antinarcotics efforts is in Chiapas, often in areas of conflict with the Zapatistas. The agreement to send helicopters to Mexico includes some end-use monitoring

requirements, and prohibits misuse of the helicopters for non-narcotics related operations. In practical terms, however, it will be very difficult to determine if misuse has occurred given the proximity of the government's antinarcotics efforts to the areas of primary ty. For example, in April, 1996, the Mexican army carried out an antinarcotics operation in the community of Oventic, in the heart of the conflictive zone, reportedly to destroy marijuana plantations. The government has never accused the EZLN of engaging in drug trafficking, yet the military entered the conflictive zone, exacerbating an already tense negotiating environment for the peace talks with the Zapatistas.

CONCLUSIONS

The recent increase in drug production and transshipment in and through Mexico has by all accounts been dramatic, and poses troubling consequences both for Mexico and the United States. (See, for example, WOLA's May, 1995 round table discussion on, "Drug Trafficking in Mexico: International Dimensions and Implications for the United States.") Rather than building up the Mexican military's law enforcement capacity and role in combating drugs, however, the U.S. should place greater emphasis on dealing with the problems of impunity, supporting reform of the Mexican police, and strengthening the rule of law in Mexico. The proposed weakening of due process protections, and the expanding role of the Mexican military in public security matters is cause for concern. Mexico has enjoyed a long history of civilian control over the military, and opening the door to greater military involvement in civilian functions such as public security undermines that control. It also threatens to increase already serious human rights problems in Mexico by broadening the role of an institution already implicated in human rights violations.

The lessons learned from the failures of antinarcotics strategies in the Andean countries, and lessons from Central America and Haiti, where the United States has invested substantial resources to help build civilian police forces independent of the military, should be instructive. The military's involvement in public security in these countries was an obstacle to democracy and protection of human rights. Congress should weigh carefully any requests for military equipment and military training for Mexico's antinarcotics programs, and support programs aimed at strengthening civilian law enforcement and judicial institutions.

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