

Deepening U.S.-Mexico Security Cooperation:

As NAFTA's anti-narcotics apparatus focuses on public security, human rights activists grow worried

Contrary to complaints from Beltway pundits regarding Mexico's "tepid" response to the September 11 attacks in the United States, the United States' southern neighbor has quickly jumped on board U.S. President George W. Bush's anti-terror bandwagon. Though Mexico has declined to participate in overseas actions, it has taken a number of steps to beef up security on the home front and on its borders. But what effect will spreading the United States' new, post 9-11 U.S. security consciousness south of the border have on human rights and rule of law in Mexico?

By Kent Paterson

Besides pledging unconditional political support for its northern neighbor in the wake of the September attacks, Mexico sent police and soldiers to fan out across the country to secure strategic facilities, public transportation centers, and border crossing points. In Ciudad Juárez, sub-machine gun toting officers from the Federal Preventive Police (PFP) have even patrolled the city's bus station. On the U.S.-Mexico dividing line, inspections of persons entering Mexico have doubled. And Mexico is paying more attention to its southern border than ever before, including deploying military personnel in support of immigration officials there.

The trend was well in place prior to the September attacks, having picked up speed after the signing of 1994's North American Free Trade Agreement (NAFTA) and, more recently, being reinforced as part of Mexican President Vicente Fox's pitch to relax migration controls between the two countries. While the official binational focus prior to September 11 was on drug trafficking and organized

crime, an infrastructure was quietly being built that permits easily shifting the mutual security priority toward fighting terrorism.

In a Tijuana speech in early October, Fox outlined the legal mechanisms in place to accomplish this goal. "We consider the struggle against terrorism to be part of the commitment of Mexico with Canada and the United States to build within the framework of the North American Free Trade Agreement a shared space of development, well-being and integral security," Fox declared.

Playing a central role in the massive and largely unpublicized expansion of joint U.S.-Mexico law

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enforcement initiatives is the Mexico-U.S. Plenary Group on Law Enforcement, created in 1995. Coordinated on the U.S. side by the Department of Justice, at least 19 federal Mexican and U.S. agencies now participate in regular gatherings of the group. Joint activities include the training of Mexican police, intelligence sharing, and forming cross-border task forces to fight money laundering and other crimes. Meeting frequently in 2001, U.S. Attorney General John Ashcroft and his Mexican counterpart Gen. Rafael Macedo de la Concha have personalized this new commitment to a joint law enforcement strategy.

Another outcome of the deepened crossborder security relationship: In a cooperative spirit previously unimaginable, fugitives from both countries are now regularly whisked back home for prosecution.

Spreading U.S. Policing Strategies Overseas

Sensitive to criticisms that Mexican police are corrupt and inefficient, high-level Mexican politicians from across the political spectrum are supporting foreign police training of their own cops in the name of professionalization. In addition to North Americans, French, Israeli and Cuban nationals are reported to be instructing Mexican police at all levels.

With a long history in Mexico, the United States Federal Bureau of Investigation (FBI) is a key player training Mexican police forces. One FBI trainer interviewed for this story, Special Agent Raul G. Salinas, estimates that he has trained about 4,000 Mexican police from federal, state and local forces in the last two years alone. A typical course given by Salinas might cover topics like advanced anti-kidnapping and interrogation techniques.

Besides the in-country training offered by bureau personnel like Salinas, Mexican officers and prosecutors attend FBI courses in the United States under the auspices of the Mexican American Law Enforcement Training Program.

Mexico is but one country where the FBI's international presence expanded dramatically in recent years. In 1998 testimony to the U.S. Congress, then-FBI Director Louis Freeh estimated that the agency had trained 13,000 foreign law enforcement personnel from more than 60 countries during the preceding three years.

Some Mexican sources report that the FBI has gone beyond mere training and become directly involved in kidnap investigations. Insisting that his

agency is respectful of Mexico's sovereignty, Salinas declined to comment on the reports. In earlier decades, FBI agents stationed in Mexico were frontline soldiers in J. Edgar Hoover's anti-communist crusade.

For now, at least, the FBI's major influence in Mexican affairs appears to be inspirational. As part of a plan by Mexico's Attorney General of the Republic (PGR) to reign in the corruption-tainted Federal Judicial Police (PJF) and restructure Mexican law enforcement, Fox officiated over the first graduating class this fall of the new Federal Agency of Investigation (AFI), an institution largely regarded as being modeled upon the FBI. According to Mexico's *Proceso* magazine, the 3,500-strong AFI receives training from the U.S. Drug Enforcement Administration and the French National Police. Among the skills learned by the first 543 AFI graduates were firearms handling, explosives, and urban combat.

Historically viewed in a negative light in Mexico, the United States Border Patrol is another U.S. agency that is at the forefront of the training boom. Launched in 1998, the Border Safety Initiative between Mexico and the United States was set up to warn illegal immigrants of the hazards of crossing a treacherous border. U.S. Attorney General John Ashcroft recently announced that 400 Mexican officers were trained last year by the Border Patrol's Search, Trauma, and Rescue Teams (BORSTAR) as part of the initiative. This year, Border Patrol teachers in El Paso expanded the training program when they instructed Ciudad Juárez police, Chihuahua State Judicial Police and other authorities in water rescue techniques to save migrants who sometimes get trapped in deadly waterways. In the Rio Grande Valley of Texas, Border Patrol agents this year trained officers from the Mexican PFP in highway checkpoint and border control.

According to El Paso Sector Border Patrol spokesman Doug Mosier, his agency's relationship with Mexican police goes beyond emergency rescue work and encompasses criminal investigations involving drug and immigrant smuggling. Mosier says the Border Patrol's Mexican Liaison Unit works directly with its Mexican counterparts. "We've gotten very good cooperation on a local level in working with Mexican police in trying to stop some of the international criminal activity along the border, and again with the emphasis on border safety," says Mosier. "We hope the sky is the limit. We feel like Mexico is very receptive to the idea of working with us as we have seen here locally, and we think that will continue to flourish."

Apart from the federal U.S.-Mexico police programs, state and local agencies are getting in on the act. For instance, the Arizona Highway Patrol recently trained Sonora state police, while the El Paso Police Department advised officers from Casas Grandes, Chihuahua.

Because no reporting to Capitol Hill lawmakers is currently required of the training programs, it's difficult to total how much U.S. tax money has been spent on training Mexican police forces. Some funding, however, is being drawn from the Department of State and the Department of Justice.

Eric Olson, senior Mexico program associate with the non-profit Washington Office on Latin America, says the love affair between Mexican and U.S. cops is a dramatic departure from just two years ago, when the Mexican Congress was in a nationalistic uproar over FBI agents digging up a suspected narco-grave in Ciudad Juárez. Despite the historic change, few in the U.S. Congress really know the details of the programs.

"It's hard to know who and what they are training for and under what program," says Olson, "They all have one piece of the pie and are touching part of the elephant."

The Leahy Law

A thorny issue tied to the U.S. police training is the Leahy Amendment of the Foreign Operations Act, which bars U.S. assistance to security forces that engage in human rights violations and don't punish the responsible individuals.

Since virtually all of the Mexican agencies presently being trained by U.S. law enforcement authorities have long records of human rights violations, including torture and murder, some question whether the Leahy Law is being enforced south of the border.

For instance, activists say that human rights complaints involving the FBI-trained Guerrero State Judicial Police (PJE) could fill volumes. Although the Guerrero State Attorney General's Office publicly stated that it sacked 200 agents last year for human rights violations and corruption, statistics compiled just in the Acapulco area during the first six months of 2001 by the official Guerrero State Human Rights Commission (COD-DEHUM) show that citizen complaints against the PJE accounted for 29% of grievances.

CODDEHUM officials say that in spite of some improvements, the PJE still engages in a systematic pattern of human rights violations including torture, illegal searches and detentions and harassment of suspects' relatives. And like their

counterparts elsewhere, members of the Guerrero PJE have been implicated in stolen car and kidnap-for-profit rings, not to mention drug trafficking, raising questions regarding how skills acquired via U.S. police training are being put to use.

The Miguel Agustin Pro Juárez Human Rights Center, one of Mexico's leading independent human rights organizations, characterizes the police situation in Guerrero and neighboring Morelos state as "being the tip of the iceberg" of a national scandal. Indeed, throughout 2001, border communities like Ciudad Juárez have been plagued by constant administrative and political turmoil over police linked to illegal drugs, assassinations, torture and more. A mountain of troubles surround Mexico's police in spite of human rights training at police academies, anti-corruption campaigns and stricter recruiting requirements phased in over the years.

In Ciudad Juárez, where local police collaborate with the U.S. Border Patrol, recurring allegations of human rights abuses by officers make frequent headlines. A binational citizen's initiative sponsored by the Immigration Law Enforcement Monitoring Project (ILEMP) of the American Friends Service Committee and the Paso del Norte Regional Citizens' Council documented 16 alleged violations of the Universal Declaration of Human Rights by Juárez city police mainly during a period from October to December 2000.

Notwithstanding the preponderance of complaints against Mexican police, the U.S. Department of State annually issues a Mexico country report on human rights that ritually proclaims the Mexican government as generally being in line with international standards. Yet these same reports consist of multiple pages recounting rampage after rampage by police.

Macedo de la Concha peppers his speeches with human rights rhetoric, but following this year's murder of prominent human rights attorney Digna Ochoa and the subsequent slew of death threats against other well-known leaders of Mexico's human rights movement, non-governmental organizations now worry that the clock is being turned back to the time when a dirty war was waged against dissenters with absolute impunity.

And although the Mexican government's own National Human Rights Commission recently held government security forces responsible for a large share of forced disappearances during 1970s counterinsurgency operations, no member of

WEB SOURCES:

Comisión Nacional de los Derechos Humanos de México

www.cndh.org.mx

Procuraduría General de la República

www.pgr.gob.mx

Red Nacional de Organismos Civiles de Derechos Humanos "Todos Derechos Para Todos"

www.redtdt.org.mx

Sistema Nacional de Seguridad Publica

www.seguridadpublica.gob.mx

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either the police or military ever has been charged with a crime stemming from those actions.

Quite arguably, few if any Mexican police units would be eligible for training under a strict interpretation of the Leahy Amendment. But Mexico, like Colombia, sidesteps the question by selecting for training only individuals from tainted units instead of having entire units trained.

Even with such loopholes, some consider the Leahy Amendment too burdensome. One of the trial balloons to float from the Bush White House after September 11 was a proposal to scrap the Leahy Amendment together with eliminating prohibitions on CIA involvement in overseas assassinations. While Langley has since been turned loose, the Leahy Amendment survived—at least for another year—when it was included in the Foreign Operations Act for Fiscal Year 2002.

Tom Hansen, who was once deported from Mexico for his support of indigenous communities in Chiapas and who now coordinates the non-profit Mexico Solidarity Network, contends that the Leahy Amendment is simply not enforced in Mexico. “Our argument is that if the law is on the books in the U.S., our embassy should follow the law,” says Hansen.

To further compliance with the Leahy Amendment, the U.S. Embassy in Mexico City maintains a database of alleged human rights violators used to weed out nefarious individuals before they are trained. Additionally, the specific U.S. agency involved in the training is supposed to run separate criminal background checks on potential trainees in order to make sure they don’t have records. The question was posed to the FBI trainer Salinas: “How do you know you are training the right people?” His students, replies Salinas, are carefully selected, given strong human rights and anti-corruption messages and taught the importance of “wearing a badge.” Nevertheless, admits Salinas, “one never knows how someone is going to turn out.”

Information entered into the embassy database reportedly comes from Mexican media and human rights organizations. However, several leading human rights advocates in Mexico from both governmental and non-governmental organizations, including representatives from the All Rights for All National Human Rights Network, the Guerrero State Human Rights Commission, and the Guerrero State Congress Human Rights Commission stated in separate interviews conducted in mid-2001 that they never had been per-

sonally approached by the embassy for input or their views on the current human rights situation.

Joy Olson, the director of the Latin America Working Group, a Washington-based think tank, says she grew concerned that the embassy database was incomplete soon after it was created in 1999. Says Olson, “I don’t think they were collecting the sort of information that needs to be in the data base.” Olson and her colleagues submitted a list of names of known human rights violators to the embassy. According to one U.S. State Department source, at least two potential trainees were turned down this year by the embassy after a red flag went up.

Michael Chamberlin, an internationally-recognized Mexican activist who has coordinated the All Rights for All National Human Rights Network, Mexico’s largest grouping of non-governmental human rights organizations, criticizes the U.S. Congress for dropping the ball when it comes to security training and human rights. Recalling the state of Oaxaca, where Chamberlin claims U.S.-trained special Mexican army units “devastated” indigenous communities during counterinsurgency campaigns against the Popular Revolutionary Army (EPR) in the 1990s, the human rights advocate fears similar violations will occur in the wake of stepped-up U.S. police training. Characterizing the U.S. Congress as “schizophrenic,” Chamberlin says lawmakers north of the border have pressed Mexico to respect human rights while at the same time approving more military aid and passing laws like Leahy that “don’t have a real effect.”

Militarization of Policing

Consciously or not, U.S. support for current Mexican law enforcement strategies bolsters the ongoing militarization of police work south of the border, a trend which picked up speed after Mexico’s 1995 approval of a new national security law. The most visible military representative in Mexican law enforcement is Attorney General Macedo de la Concha, but there are numerous others scattered across the nation. Retired military officers were recently appointed to head state police forces in Chihuahua and Guerrero, as well as the municipal police of Ciudad Juárez. Some activists say the PFP could be viewed as a military unit disguised as police. Formed in late 1998, the PFP was initially made up of several thousand military and security personnel borrowed from the Mexican Armed Forces and CISEN, Mexico’s version of the CIA.

Once praised by former U.S. President Bill Clinton, the PFP—like today’s new AFI—was offi-

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cially introduced as an elite strike force targeted at drug lords, kidnappers and other villains of the underworld. Accordingly, the PFP received U.S. training with financial support from the U.S. State Department and other agencies. But the agency soon presented another face, making its mark by arresting and allegedly torturing suspected guerrilla leaders, breaking the student occupation of the national university in Mexico City, invading indigenous communities in Chiapas, and arresting anti-globalization demonstrators in Cancun.

Under the Fox administration, the PFP's political profile has been lowered and supervision for the force was transferred from the historically political Interior Ministry to the new Ministry of Public Security. Francisco Barrio, an ex-Chihuahua governor who is currently Fox's anti-corruption czar, recently has been investigating whether former directors of the controversial police force mis-spent public money on luxury jets, helicopters, and informants.

On a daily basis, Mexican police work is now militarized through the posting of soldiers at highway checkpoints. The troops board and search vehicles, sometimes demanding that passengers produce identification. Likewise, the Mexican Army participates in the Mixed Operation Bases (BOMS) program. BOMs unite soldiers, judicial police and other forces in one single anti-crime fighting unit. Even before September 11, heavily armed Mexican soldiers in armored vehicles sporadically patrolled main thoroughfares in Ciudad Juárez, Tijuana and other cities.

Tacit U.S. support for such initiatives flies in the face of a 1998 recommendation from the Inter-American Commission on Human Rights of the Organization of American States that urges Mexican soldiers to return to the barracks. But after September 11, soldiers are likely to be more utilized in police work on both sides of the border.

North American Security Relations at the Crossroads

As Washington overhauls its own law enforcement apparatus to fight the "war against terrorism," it remains to be seen how far Mexico City will go with the new war and to what degree the two governments will redefine and restructure their police training and cooperation programs to fit the U.S. policy. Certainly, while the Fox administration appears willing to deepen North American security collaboration and is struggling to demonstrate staunch support for the Bush administration's anti-terrorism campaign, the Mexican public is not as enthusiastic.

Another important question is whether the existing infrastructure, and the skills transmitted by U.S. police trainers, will be turned against armed Mexican insurgent groups. Will groups like the EZLN or the EPR be painted with the terrorism brush of Washington? Although none of the existing insurgent groups are on the U.S. State Department's terrorist list, Washington has signaled its willingness in the past to help combat the EPR. Other developments could well forebode the extension of the war against terrorism to Mexico.

In Mexico, meanwhile, some high-ranking politicians and generals are taking pains to clearly distinguish between insurgency and terrorism, both at home and abroad. Adolfo Aguilar Zinser, Fox's national security adviser, is quite comfortable backing the Bush administration when it comes to Al-Qaeda, but departs from Washington's analysis of the Colombian conflict. For his part, former Mexico City police chief and current Public Security Minister Alejandro Gertz Manero has said that the gravest threat to Mexico's internal security continues to be "common" crime, not terrorism. So despite the current unprecedented collaboration between U.S. and Mexican police, the current focus of U.S. foreign policy might well be sowing the seeds for a future tension between Washington and Mexico City over security priorities.

Nonetheless, for the moment official Mexico seems intent on reactivating migration talks with the United States by folding the discussion into negotiations on shared security strategies. In early October, Aguilar said that Mexico was working towards "interdependent security" with its NAFTA partners, including more coordinated customs procedures and increased intelligence gathering and sharing. Mexico also plans to create a national criminal database by next year, install a national high-tech passport verification system and identity database like that employed in the United States, and raise airport security measures to a par with U.S. measures effected after September 11. Additionally, Fox has said he plans to present a new intelligence gathering law to Mexico's Congress.

While Prime Minister Jean Chretien has been sour on the notion, Canadian businessmen and analysts in Mexico and the United States have suggested the creation of a North American security perimeter around the entire NAFTA zone. On a trip to Spain in mid-October, Fox told the Spanish media that he had proposed a NAFTA security plan to Bush. During a radio address a few days later he predicted that Canada, Mexico and the United States would deepen coordinated action against

WEB SOURCES:

Human Rights Watch
www.hrw.org

La Neta: Derechos Humanos
derechoshumanos.laneta.org

Security in Latin America: Mexico
www.us.net/cip/bibliogr/mx.htm

U.S. Foreign Military Training Activities
www.state.gov/www/global/arms/fmtrain/toc.html

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Guidelines For International Calls

To call Mexico from the U.S., dial: 011-52 (city code) + the number

To call the U.S. from Mexico, dial: 001 (area code) + the number

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Cámara de Diputados, Commission on Population, Borders, and Migration

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This congressional commission (lower house) was reconfigured under the new administration to help formulate border policies related to a number of issues, including narcotics trafficking, public security, and migration.

Cámara de Senadores, Commission on Border Affairs

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Among other issues this senate commission deals with matters related to narcotics, security, and migration policy on Mexico's borders.

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The center's work includes in-depth research on the U.S.-Latin American military relationship and security developments in the region. CIP recently collaborated in the publication of the report *Just the Facts—U.S. Security Assistance to the Western Hemisphere*. The report, online at www.ciponline.org/facts, includes extensive information on U.S. security assistance to Mexico.

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Nongovernmental organization working on human rights issues in Mexico's northern and southern border areas.

Comisión de Solidaridad y Defensa de Derechos Humanos, A.C. (COSYDDHAC)

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Since 1994 COSYDDHAC has worked on militarization issues in northern Mexico. The group publishes bulletins and reports and has joined other social justice organizations in protesting human rights abuses that occur during military inspections.

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The Mexico Solidarity Network is a coalition of over 80 organizations struggling for human rights, economic justice, and democracy in the United States and Mexico.

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 Web: <http://www.usembassy-mexico.gov/>

The embassy houses the human rights database used to apply the Leahy Law. Its website also provides information on the U.S.-Mexico relations, including law enforcement and anti-narcotics cooperation.

Washington Office on Latin America (WOLA)

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 Contact: Eric Olsen
 Tel: (202) 797-2171
 Fax: (202) 797-2172
 Email: wola@wola.org
 Web: <http://www.wola.org/>

Websites**Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State**

http://www.state.gov/www/global/narcotics_law/

Center for Defense Information

<http://www.cdi.org/>

Leading nonprofit think tank working on international security issues. Website includes information on shifts in international security policies following the Sept. 11 attacks in the United States, as well as some information related to U.S. overseas military aid.

Comisión Nacional de los Derechos Humanos de México

<http://www.cndh.org.mx/>

DEA International Training Program

<http://www.dea.gov/programs/training.htm>

FBI Academy, International Training Program

<http://www.fbi.gov/hq/td/academy/academy.htm>

Foreign Military Training and DoD Engagement Activities of Interest in Fiscal Years 1999 and 2000

U.S. Department of Defense and U.S. Department of State
<http://www.state.gov/www/global/arms/fmtrain/toc.html>

Human Rights Watch

<http://www.hrw.org/>

INS Global Reach Initiative

<http://www.ins.gov/graphics/publicaffairs/factsheets/globalreach.htm>

"Militarizing Latin America Policy," Foreign Policy In Focus, vol. 6, no. 21, May 2001.

<http://www.fpif.org/briefs/vol6/v6n21millat.html>

Procuraduría General de la República

<http://www.pgr.gob.mx/>

Red Nacional de Organismos Civiles de Derechos Humanos "Todos Derechos Para Todos"

<http://www.redtdt.org.mx/>

Resource Center of the Americas

<http://www.americas.org/>

School of the Americas Watch

<http://www.soaw.org/>

Security in Latin America: Mexico

Center for International Policy
<http://www.us.net/cip/bibliogr/mx.htm>

Sistema Nacional de Seguridad Publica

<http://www.seguridadpublica.gob.mx/>

Responsibilities of this recently created cabinet-level agency include developing and coordinating Mexican public security policies and professionalizing Mexico's public security personnel.

"The Slippery Slope: U.S. Military Moves Into Mexico"

<http://www.globalexchange.org/campaigns/mexico/slope/>

"U.S. Military Training for Latin America," Foreign Policy In Focus, vol. 2, No. 48, October 1997

<http://www.fpif.org/briefs/vol2/v2n48mil.html>

border briefs

Fortress America?

In response to increased insecurity in the United States after the September 11 terrorist attacks, state and federal governments are considering the deployment of military personnel at U.S. border crossings with Mexico and Canada.

On Oct. 5, Arizona Governor Jane Hull ordered 45 national guardsmen to man border crossings at Douglas, Naco, Nogales, Sasabe, Lukeville, and San Luis. Hull said that increased security measures are putting a stranglehold on commercial business with Mexico and that she fears that if crossing times aren't reduced it will have dire consequences for local economies. Hull has also held talks with the U.S. Customs Service about deploying Arizona military reservists to help customs agents expedite crossings.

The Arizona governor says that the measure is not an attempt to deter people from crossing the border, but rather aims to keep trucks moving across efficiently. Just over a year ago, the National Guard was deployed at the Mariposa border crossing at Nogales to help with customs inspections, but were later withdrawn after the hiring of more customs personnel and Border Patrol agents. Immigration and Naturalization Service (INS) director for the southeast region, Johnny Williams, said the agency is also considering deploying the National Guard to help with vehicle inspections and reduce waiting time for crossings. According to Williams, their presence could help at checkpoints to open additional lanes that have been closed due to lack of personnel to carry out more elaborate searches and security measures since the terrorist attacks. Williams said the strict security measures will remain in effect for at least several more months.

Under the FY2002 Defense Authorization Act, members of the armed forces can be assigned to assist in "border patrol and control" operations at the request of the Attorney General or the Secretary of the Treasury if the request is certified by the president. Members of the armed forces participating in border patrol activities would be required to undergo special training prior to deployment and once on duty would be accompanied by an INS or Customs officer at all times. Under

the bill, authority to assign or continue such operations terminates in Sept. 2004.

Military patrols on the border have been halted since the 1997 shooting of a Texas highschooler by a Marine surveillance unit. A Marine investigation conducted after the shooting revealed a series of serious errors and mission procedural violations, including inadequate mission training and poor and inaccurate prior intelligence briefings, which border human rights activists say illustrate the pitfalls of using forces trained for military operations in domestic policing roles.

On a related front, Senators Joseph Lieberman (D-CT) and Arlen Specter (R-PA) have introduced a bill proposing to expand the recently created Office of Homeland Security into full-fledged, cabinet-level Department of National Homeland Security. Responsibility for planning and coordinating domestic security operations, including border security, would be assigned to the new department—as would all authorities, functions, personnel, and assets of a number of existing government agencies, including the U.S. Customs Service and Border patrol.

Metalclad-16 million, Mexico-Zero

Mexico has paid the U.S.-based Metalclad Corporation a \$16 million to settle a lawsuit filed under NAFTA's Chapter 11.

The company has been seeking legal redress from the Mexican government since 1995, when Mexican officials blocked the company from opening a hazardous waste processing facility in the central Mexican state of San Luis Potosi after an environmental impact study discovered that the plant site was located directly above an aquifer.

Metalclad, alleging that it had already obtained all the necessary permits for the facility and invested more than \$20 million in the project, cried foul. The company filed one of the first complaints to be heard under the NAFTA Chapter 11 dispute resolution process, which is intended to protect international investors in Mexico, the U.S., and Canada from expropriation of assets. According to Metalclad, Mexico's decision to zone the site as an ecological preserve effectively amounted to seizure of the property.

A secret three-member NAFTA tribunal decided the case in favor of Metalclad, awarding the corporation \$16 million in compensation. Mexico appealed the decision, and the appeal was heard in a Canadian court, which again ruled in the Metalclad's favor.

In June, Mexico offered to settle the case by paying \$15.6 million and \$2,559 a day in interest beginning June 1. Company officials said that Mexico had promised to pay by Sept. 28; when that didn't happen, Metalclad took additional legal action.

Mexico made payment to the company on October 26. Metalclad's victory was widely interpreted by environmentalists and others as drastically weakening the rights of state and local governments in the NAFTA zone to set environmental and other social policies.

FYI and Miscellany

Readers may find the following recently published articles and publications to be of interest: "Beating Border Barriers in U.S.-Mexico Trade," *Southwest Economy*, Sept.-Oct. 2001 (Dallas: Federal Reserve Bank of Dallas), online at dallasfed.org/htm/pubs/swel/9_10_01.html • "The Free Trade Area of the Americas: Negotiators Move Toward Agreement That Will Have Benefits, Costs to U.S. Economy," GAO-01-1027 (Washington: USGAO, Sept. 7, 2001), online at www.gao.gov • "Missing Water: The Uses and Flows of Water in the Colorado River Delta Region," (Oakland, CA: Pacific Institution, October 2001), available online at www.pacinst.org • Demetrios Papademetriou and Deborah Waller, *Caught in the Middle: Border Communities in an Era of Globalization*, (Washington, DC: Migration Policy Institute, Oct. 2001) available online at www.ceip.org/files/Publications/CaughtinMiddle.asp • Robert Pastor, *Toward a North American Community: Lessons from the Old World for the New*, (Washington, DC: Institute for International Economics, August 2001), online at www.iie.com/publications/pub.cfm?pub_id=331.

The next public meeting of the board of directors of the North American Development Bank (NADB) will be held Dec. 13, 2001 in San Antonio, Texas at the University of Texas San Antonio. For more information, visit www.nadb.org.

The Border's Troubled Waters

Second in a two-part series

by **George Kourous**

Water management on the Texas-Mexico portion of the U.S.-Mexico border involves a complex set of laws and institutions as well as highly charged policy debates. Relevant laws include the Rio Grande Compact, the Pecos River Compact, Texas surface and groundwater statutes, Mexican federal water law, and the 1906 and 1944 water treaties between the U.S. and Mexico.

The 1906 convention requires that the United States deliver 60,000 acre-feet/year (AF/yr) of Rio Grande water to Mexico just above Ciudad Juárez, Chihuahua. This water comes from the upstream Elephant Butte and Caballo reservoirs, and has generally been used for irrigation in the valley south of Juárez. Given the extensive drawdown of local aquifers, it is likely that Juárez will soon seek to shift this water to municipal use.

The 1944 treaty cedes to the United States all waters reaching the Rio Grande from the Pecos and Devils rivers, Goodenough Springs, and Alamito, Terlingua, San Felipe, and Pinto creeks as well as half the flow of the river below Falcon Reservoir. The United States also has rights to one-third of the flows reaching the Rio Grande from the Rios Conchos, San Diego, San Rodrigo, Escondido, and Salado as well as the Las Vacas Arroyo, provided that this third shall not be less than 350,000 AF/yr averaged over five-year cycles.

In turn, under the treaty Mexico has rights to all waters reaching the Rio Grande—known in Mexico as the Río Bravo—from the San Juan and Alamo rivers, half the river's flow below Falcon Reservoir, and two-thirds of the flow reaching the river from the Rios Conchos, San Diego, San Rodrigo, Escondido, and Salado as well as the Las Vacas Arroyo, subject to the U.S. right to an average of at least 350,000 AF/yr.

Each country also has rights to half of all other flows in the river not otherwise allotted, including contributions from unmeasured tributaries between Fort Quitman and Falcon Reservoir.

Deepening Binational Tension over Water

The 1944 treaty has worked reasonably well and disputes between the U.S. and Mexico over division of the waters of the Rio Grande have been

minimal—until recently. Persistent drought in southeastern Texas and northeastern Mexico, coupled with rapid population growth and increased use of the region's water supplies, has led to significantly less water reaching the main stem of the Rio Grande/Río Bravo—in particular from Chihuahua's Río Conchos, which in normal rainfall years is the source of most of the river's flows downstream of El Paso. In fact, flows have been reduced such that since 1992 Mexico has been in a deficit situation with respect to the 1944 U.S.-Mexico water treaty.

At the close of the five-year cycle that ended on October 2, 1997, Mexico owed the U.S. approximately one million AF of water. This is more than double the deficit incurred by Mexico during the drought of the 1950s, which is the only other time Mexico has failed to meet the minimum flow requirements during a five-year cycle. To date, according to figures from the International Boundary and Water Commission (IBWC), Mexico's combined water deficit for the 1992-97 cycle and the 1997-2002 cycle is 1.4 million AF.

According to Article 4 of the 1944 treaty, flows from Mexico can average less than 350,000 AF/yr over a five-year cycle without Mexico being in violation of the treaty—if there is a situation of “extraordinary drought.” In such a case, the treaty allows Mexico to make up the deficit in the subsequent five-year cycle. However, the treaty fails to define what exactly constitutes an “extraordinary drought.”

In the past few years, intensifying pressure on border water resources, Mexico's growing water deficit, and gaps in the treaty—like the lack of a clear definition of “extraordinary drought”—have forced the U.S. and Mexico to scramble to negotiate ad hoc agreements for resolving immediate crises, generally under the auspices of the IBWC. These negotiations have focused almost exclusively on short-term solutions rather than on developing medium- to long-term basin and drought management plans. In 1995, for example, the IBWC responded to urgent conditions on the Mexican side of the Rio Grande by negotiating Minute 293, an emergency water loan to Mexico to meet municipal needs.

IBWC Minute 307—one of the tangible outcomes of the first face-to-face meeting between

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Texas Water Information Network

www.texaswaterinfo.net

U.S.-Mexico Water Treaties

www.ibwc.state.gov/FORAFFAI/treaties.htm

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U.S. President George W. Bush and Mexican President Vicente Fox last February—is the most recent such short-term accord. In Minute 307, Mexico promised to release 600,000 AF of water—just over half the amount it owes for the 1992-97 cycle—by July 31 in order to provide enough water for Texas farmers to irrigate during the summer growing season. The two countries also agreed to develop some type of drought response and “sustainable management” plan for the Rio Grande/Río Bravo (RG/RB) basin.

Between September 2000 and March 3, 2001 Mexico had already released 232,674 of the 600,000 AF. However, after initially releasing an additional 87,000 AF between March and June, Mexico missed the July deadline.

Part of the water to be paid by Mexico under Minute 307 came from the runoff of unmeasured Rio Grande tributaries. According to the 1944 treaty, the two countries split that runoff, but under Minute 307, 100% of it was assigned to the United States in order to pay part of the 600,000 AF transfer specified by that accord. Under a contingency mechanism outlined in Minute 307, the arrangement was to be extended through September if Mexico missed the July 31 deadline. On July 21, Mexico suspended crediting that runoff to the United States due to a Mexican court injunction filed in response to complaints by Mexican farmers.

Since July 31 Mexico has managed to transfer just over 25,000 AF to the United States.

Irate U.S. farmers in the Lower Rio Grande Valley say that the drought has not been so severe as to justify Mexico’s withholding of waters. Some estimates for crop losses resulting from the lack of water in south Texas this year run as high as \$400 million—and tempers are running high as well. Area growers and Texas state officials, including Gov. Rick Perry and Texas congressional representatives, have been outspoken regarding the situation. Some have even suggested that the United States withhold payments of Colorado River water to Mexico required under the 1994 treaty as a bargaining tool.

For their part, farmers in northeastern Mexico appear to be every bit as concerned about the current situation as farmers north of the line. In June, 15,000 Mexican farmers filed suit against Mexico’s federal water authority, the National Water Commission (CNA), demanding \$110 reimbursement for every acre of crops lost due to the ongoing water shortages. Mexican growers and their families have even taken over local CNA offices

and blocked reservoir gates to protest water payments to the U.S.—prompting the Mexican government to take legal action against them.

Similarly, representatives of Mexico’s border livestock industry have been vocal in demands for a revision of the 1944 treaty, and Mexico’s multi-stakeholder Consejo del Río Bravo (Rio Bravo Basin Council) has openly criticized Fox, the CNA, and the Ministry of Foreign Affairs for agreeing to make payment on Mexico’s water debt to the United States during a period of drought.

A recent water conservation proposal by the Fox administration that would double water fees for agricultural users and eliminate water subsidies for certain industries has also fueled unrest.

The Current Situation

Mexican officials have repeatedly said that although Mexico would like to fulfill the terms of the 1944 treaty, for the moment it doesn’t have enough water to do so. Texas farmers, however, say that during the 1992-97 period Mexico’s Conchos basin received about 80% of its normal rainfall, and that because flows in Mexican tributaries did not cease entirely the drought has not been “extraordinary.” Some also say that Mexico is ignoring the treaty in order to ensure water for its own border agricultural industry.

Mexico counters that the lower levels of rainfall do constitute an extraordinary drought—an assertion that is at least partially supported by the fact that only during the late 1940s and early 1950s was average annual rainfall in the Conchos basin less than it was during the 1995-99 period. According to Alberto Székely, an adviser to Mexico’s government regarding binational water issues, over the summer of 2001 Mexico only received half the rainfall it had projected under a worst-case scenario developed earlier this year.

“The extraordinary drought has lasted almost ten years now,” he says. “The reserves in Mexican reservoirs have dropped 81%, and this year, the worst year of the drought so far, it has rained half of what it did in 2000, which was at the time considered the worst year.”

Officials with the CNA add that though there is some water in Mexico’s border reservoirs, the storage capacity of those reservoirs is less than assumed by the United States, due to sedimentation. Mexico also contends that under the 1944 treaty it is entitled to withhold enough water in reservoir storage to meet water demands in the Conchos basin before water is released to the Río Bravo to satisfy treaty requirements, as long as it pays back the water in the subsequent five-year cycle.

Complicating matters, say experts, is the fact that even if water were transferred en masse from reservoirs in the Río Conchos basin to meet needs in the Río Grande basin, estimates are that as much as half of it would be lost to evaporation and seepage during transfer.

The two presidents and members of their cabinets discussed the current imbroglio during the Bush-Fox meeting this past September but did not come up with a concrete plan for resolving it. According to a joint statement issued afterwards, the two leaders “had a frank discussion about water resources and the importance of living up to our mutual treaty obligations” and agreed that “this could be well served by greater cooperation aimed at more effective watershed management and improved infrastructure, including formation of a joint advisory council.”

Sources in Washington indicate that negotiations have reached a temporary impasse. Mexico insists that it will repay the water it owes as required under the treaty by the end of the current five-year cycle, which comes in October 2002, but that it cannot release any water at this time.

“The government of Mexico has reiterated and will continue to reiterate that it is going to live up to its obligations under the treaty. As soon as there is precipitation, there will be transfers accordingly,” says Székely.

Meanwhile, the IBWC continues to lead discussions regarding the possibility of diverting water from alternate Mexican reservoirs. Language in Minute 307 specifies that should Mexico miss the July 31 deadline, “consideration could be given” to transferring water from four reservoirs in Mexico’s interior to resolve the situation. According to the IBWC’s U.S. section, there is sufficient storage in Mexico’s reservoirs for “some” of that water to be released.

At the same time, sources at the IBWC say they expect the court injunction preventing Mexico from delivering runoff from unmeasured Río Grande tributaries to be lifted soon. According to Sally Spener, an agency spokesperson, the U.S. section has received verbal indications from Mexico that once that happens an additional volume of approximately 80,000 AF would be credited to the United States. That amount is equivalent to 100% of the water from unmeasured tributaries that would have been delivered between July 21 and September 30 under Minute 307 had the Mexican court injunction not been filed.

Additionally, says Székely, the two countries are organizing a binational congress as a first step in implementing the sustainable management plan for the RG/RB basin called for under Minute 307. The

negotiator adds that the National Drought Mitigation Center at the University of Nebraska has been enlisted to develop a long-term binational drought management plan for the RG/RB basin and that experts with the Department of Civil and Environmental Engineering at the University of Washington in Seattle have been contracted to help Mexico develop an emergency plan for managing the current drought.

Charting the Future

Water management policy is one of this desert region’s thorniest issues. Water politics in the Texas/Mexico Río Grande basin involve many different and sometimes powerful interests, and often these interests are in direct competition, leaving only a narrow middle ground.

This wide variety of interests and the tendency for water issues to become highly politicized pose substantial barriers to progressive changes in water management policy in both Texas and Mexico.

Another obstacle to change is the lack of political will on the part of decisionmakers to confront the many complex and controversial issues surrounding water management policy in the Texas/Mexico Río Grande basin. Political will often requires a broader public awareness and knowledge of the issues than generally exists relative to most water management issues. In most areas of the basin—except during severe drought periods—discussion of water management issues is often confined to professionals, government officials, and interest groups, instead of occurring in newspapers, on television, or in other spheres of general public participation.

This situation is beginning to change somewhat. Examples include the relatively high profile of water issues in the El Paso/Juárez area and the widespread publicity given to the demands of farmers in the Lower Río Grande Valley that Mexico repay its debt under the 1944 water treaty. The latter situation has yet to move beyond accusations and finger pointing, but that may change in the near future. South of the line, Mexico’s traditional centralization of water management authority in the federal government leaves states and local governments, water users, and other interests fighting for a voice. On paper, the Río Bravo Consejo de Cuenca provides one potential venue for more non-federal involvement, but it has not materialized as an active or influential forum. Still, the creation of basin councils in Mexico is a positive development.

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Finally, as the current controversy surrounding Mexico's recent inability to make partial payment under Minute 307 suggests, fundamental problems related to binational water management mechanisms need to be addressed. Clearly, at a minimum there is a need for the two countries to better define the term "extraordinary drought" and, possibly, to clarify other provisions of the treaty. Additionally, it is highly likely that in the future there will be increasing controversy over the use of transboundary groundwater stores, but the 1944 Treaty is silent on that matter.

Despite these formidable obstacles, there are some prospects for progressive change on the horizon. Though the recent drought in northern Mexico has caused devastation to many farmers and ranchers and has ignited a war of words on the part of Lower Rio Grande Valley farmers, it has also had the effect of elevating Rio Grande basin water management issues on the binational, nation-

al, and state policy agendas. This has coincided with a national, and even global, focus on freshwater supply issues that provides an important backdrop. The central challenge is to maintain this level of interest and engagement even if the immediate effects of the drought subside in the next few years. 


George Kourous directs the IRC's BIOS program. Parts of this article were adapted from two reports, Water Management in the Binational Texas/Mexico Rio Grande/Río Bravo Basin, by Mary Kelly (publication pending) of the Texas Center for Policy Studies and El Agua en La Frontera, issued by el Centro de Estudios Fronterizos y Promoción de los Derechos Humanos, A.C. in July 2001. For more information on the TCPS and CEFPRODHA, visit www.texascenter.org and www.giga.com/~cefprodh/, respectively.

Correction: In part one of this article, we incorrectly attributed the U.S. obligation to release 60,000 AF of Rio Grande water to Mexico to the 1944 U.S.-Mexico Water Treaty. In fact, that requirement is outlined under the 1906 Convention between the United States and Mexico on Equitable Distribution of the Waters of the Rio Grande. We regret the error.

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terrorism, including intelligence sharing, aviation security, and customs inspections.

While it has yet to be seen how the Bush administration will react to Fox's proposal, the president's October 29 "Homeland Security Presidential Directive to Help Combat Terrorism" does order the U.S. secretaries of State and Treasury and the U.S. Attorney General to "increase the sharing of customs and immigration information with Canada and Mexico, and work with our

neighbors to develop a shared immigration and customs control database." And in early November, U.S. ambassador to Mexico Jeffery Davidow told the Mexican press that high level binational meetings scheduled for mid-November between Mexican National Security Adviser Aguilar and U.S. Homeland Security Czar Tom Ridge would focus on ways to create a regional "security bubble" and the possible "harmonization" of customs procedures. 

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