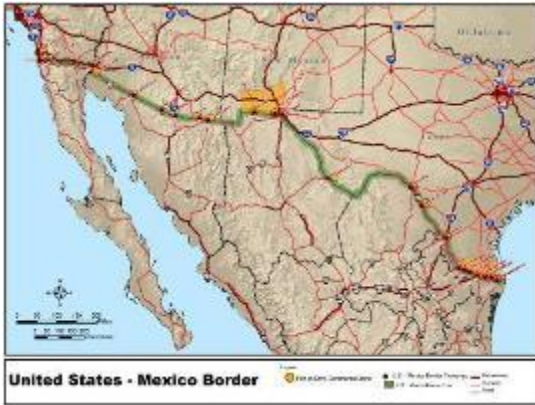


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Exclusive: Alternatives for the U.S. Should Mexico Face the ‘Worst Case Scenario’

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This essay examines the current trouble in Mexico in terms of the failed state concept and discusses alternatives, including possible military intervention under established international law, if a worst case scenario should develop south of the border.

In 1837 an armed clash on the Niagara River, known as the Caroline Affair, provoked an international incident whose resolution one hundred and seventy two years ago may well have implications for the United States in the near future. The problem today lies not on our northern border (the Niagara River separates the United States from Canada) but on our border with Mexico and, more importantly, in the Mexican interior, where southward spreading violence is terrorizing the population and threatening the viability of the Mexican state.

This is not idle speculation. Such concerns were expressed in a sober assessment by the United States Joint Forces Command, one of the ten combatant commands of the Department of Defense, in a document dated December 4, 2008 titled “Joint Operating Environment Report,” a strategic evaluation of possible threats and challenges to the United States. The report warns that “In terms of worse-case scenarios for the Joint Forces and indeed the world, two large and important states bear consideration for rapid and sudden collapse: Pakistan and Mexico.” The effect of such a collapse, or even the further weakening of the Mexican state, poses hazards for the United States that no American government could ignore. It is under such conditions that the resolution of the Caroline Incident, now a part of international law might eventually come into play.

The Right of National Self-Defense

The incident began when American sympathizers provided aid to insurgents during a rebellion against British rule in Upper Canada (today Ontario). The Americans ferried men and supplies to the rebels from the US side of the river on the steamboat SS Caroline. A military force under the command of a loyalist militia officer and an officer of the Royal Navy crossed the river, seized the Caroline while it was moored at Fort Schlosser, New York and destroyed it. Parts of the wreckage eventually went over the falls. One American was killed in the action.

The U.S. government protested, accusing the British of violating American sovereignty. The British responded by invoking the right of self-defense, a long established principle of customary law. International customary law is comprised of a set of legal norms, also called peremptory norms (also known as “compelling law” or *jus cogens*) that have developed over time in the course of the customary interactions among nations. These norms, in which “no derogations are permitted,” are recognized as comprising the main source of international law and are therefore fundamental to the law of nations.

The force of compelling law is such that Article 53 of the 1969 Vienna Convention on Treaties states that if any written treaty “conflicts with a peremptory norm” of customary law, that “treaty is void,” and Article 64 of the convention states “If a new peremptory norm of general international law should arise, any existing treaty which is in conflict with that norm becomes void and terminates.” In the 20th century, the ancient customary right of self-defense was codified in Article 51 of the United Nations Charter, thus entering international treaty law, a body of written agreements that, along with customary law, constitutes the law of nations.

The kind of self-defense the British invoked in the Caroline Incident, however, goes a step further than just striking back when attacked, for the British defended their action by invoking the doctrine of *anticipatory self-defense* which permits a country to strike the first blow under threatening circumstances. This principle, also a long established part of customary law, was formally articulated by Hugo Grotius (one of the founders of the international legal system) in his 1625 treatise *The Law of War and Peace*. The Webster-Ashburton Treaty of 1842, which resolved the Caroline Incident, established this doctrine in international treaty law as well.

In the words of the treaty, a country may take military action before it is attacked, “in advance where the deed may be anticipated” and when the threat is “instant” and “overwhelming.” The strict criteria under which this right may be invoked has entered into relevant international disputes ever since. What makes the contemplation of anticipatory self-defense thinkable today in regard to Mexico is the tide of violence that has risen throughout that country, and the danger it poses to the United States.

Endangered States

The reason why the Joint Forces Command regards Mexico and Pakistan as “two large and important states” in danger of collapse is that powerful non-state forces are waging war against the state in both countries, threatening the viability of those states in much the same way. In both countries underlying causes of the crisis are weak institutions, political corruption and a disparity between rich and poor that the elites have done little or nothing to address. Also in both countries the epicenter of the danger is a border region, in Pakistan the long restless Northwest Frontier with neighboring Afghanistan, and in Mexico its northern border with the United States. A snapshot of the fast moving situation in the spring of 2009 will show why the Joint Forces Command and many others fear the collapse, or the severe weakening of the Pakistani state.

The area adjacent to Afghanistan, known as the Federally Administered Tribal Area, is nominally a part of Pakistan but not under its effective control. Terrorists such as Osama bin Laden have found safe haven there. The area also serves as a base for radical elements operating in Afghanistan. Violence has spread from the tribal area to the adjacent Northwest Frontier Province where government forces are battling the Pakistani Taliban and other radical groups, a combination of forces that has been described as “as an increasingly overlapping spectrum of extremist groups, some of whom have enjoyed official support” (AP 5/5/09). Most prominent among supporters inside the Pakistani government is the Inter-Services Intelligence Directorate, the Pakistani intelligence service. It is said that many in the army have also been reluctant to fight their own citizens and fellow Moslems.

The center of the battle has been the Swat Valley, an administrative area of the Northwest Frontier Province, where for the last two years radical forces have waged a campaign of terror against the government and the people. The well armed extremists have blown up some 200 schools, butchered civilians, looted homes and banned girls from education and women from the market. One of their favorite tactics is beheading their enemies mostly police and soldiers. People would wake up in the morning to find decapitated corpses lying in the open. The government’s effort to gain control of the situation ended in failure when in February 2009 the government capitulated by agreeing to a truce whereby the army was withdrawn from the region, Pakistani law was dropped and Sharia law was imposed in its place, as the radicals had demanded. With this opening, an unknown number of insurgents moved from the Tribal Area into Pakistan proper.

The truce fell apart three months later and the militants, regrouped and rested, have become even stronger, openly carrying weapons in violation of their agreement with the government, terrorizing residents, sending armed masked men to patrol the streets of the district capital, occupying public buildings and private homes and setting up road blocks only 100 miles from the national capital of Islamabad. The chief administrator of Swat said in April 2009 that the Taliban is laying land mines, and eye witnesses there told the Associated Press that in the main town of the district, Mingor, militants roam the streets and man positions on high buildings while security forces were barricaded in their bases.

The militants are also spreading out within the province. In April 2009 the Taliban moved into Bahrain, a small town 40 miles north of the administrative center. A Taliban spokesman claimed at that time that his forces controlled 90 percent of the Swat Valley. Also in April militants appeared in the adjacent district of Buner, 60 miles from the capital where Pakistani forces were trying to dislodge them, and where they were reportedly holding the entire population of the village of Sultanwas captive.

Pakistan is also faced with a refugee problem. Hundreds have already fled the Swat Valley along with hundreds of thousands who have fled the fighting in other parts of the northwest. The government feared in May that some 50,000 people would be displaced as the violence increases. Refugee camps were already being set up to deal with those who have fled the danger zones. By the beginning of July 2009 the battle for control of Pakistan was in full swing and the refugee problem has become of major significance in the country. Some observers doubt a positive outcome for the Pakistani state, and many abroad are concerned that the Pakistani nuclear arsenal might fall into the hands of the radicals.

Meltdown in Mexico

In Mexico, the epicenter of violence and the center of concentration of the drug cartels (the non-state forces besieging the state) is Mexico’s border with the United States. From there, the violence is spreading into the interior. Forty-five thousand troops and five thousand

federal police have been deployed in eighteen states across Mexico to resist the power of the cartels. Five hundred of them have been killed as of this writing. The total among both government forces and civilians who have been killed throughout the country between 2006 and the first months of 2009 is estimated at 10,560. American fatalities in the Iraq War over a six year period are fewer than 4,300. Incidences of violence throughout Mexico are too numerous to enumerate and describe here. One example, however, the case of Nuevo Laredo, will serve to illustrate the nature and the gravity of the situation.

Nuevo Laredo lies just across the Rio Grande (the international boundary) from Laredo, Texas the city where US Interstate 35 begins. I-35 is a major freeway that runs the length of the United States from Laredo north to Duluth, Minnesota at the tip of Lake Superior. Drugs come across the border and are transported to Dallas and other cities where they are distributed to Atlanta, Chicago, the Northeast and elsewhere. Powerful drug cartels vied for control of the lucrative approaches to that corridor, turning Nuevo Laredo into contested ground.

Local police were targeted in an intensification of the old Mexican practice *plata o plomo*, 'silver (the colloquial word for money) or lead'. Policemen were bribed, *plata*, murdered, *plomo*, or intimidated into looking the other way as the bitter and bloody struggle among the cartels escalated. Innocent by-standers were gunned down in the streets, and in June 2005 the police chief Alejandro Dominquez was murdered after having been in office for only seven hours. The mayor fired half of the 700 member municipal police force for complicity with drug dealers. In 2006 Dominquez's successor Omar Pimentel resigned eight months after entering office.

Under the administration of Vicente Fox the government began a serious crack down on the cartels prosecuting drug smugglers and drug lords and ending the former policy of refusing to extradite drug smugglers and drug lords to the United States. Violence escalated under government pressure and in territorial struggles among cartels. As the situation worsened and as local governments were increasingly subverted, the federal government began to realize that well funded, well armed groups were growing as powerful, or in some places even more powerful, than the state itself. Felipe Calderón, elected in 2006, decided to fight back. In so doing he provoked resistance and retaliation from the cartels with a fury that no one had expected.

In June 2007 a shoot-out in Nuevo Laredo between city and federal police resulted in the critical wounding of a federal agent. After blocking off the streets that lead to municipal police headquarters, heavily armed federal and state police entered and occupied the three story building complex. Forty-one city police officers were arrested with the help of the army and were flown to Mexico City for investigation. Thirteen were already under criminal investigation by federal authorities.

In July 2007 the violence reached battle ground proportions with machinegun fire and explosions erupting in a residential section of the city. Grenades and rocket launchers were found afterwards in streets that were described as resembling a war zone. The US Consulate in Nuevo Laredo was temporarily closed for reasons of security. Heavily armed Mexican federal police and soldiers patrolled the streets. By 2009 the violence had subsided in Nuevo Laredo but has increased alarmingly elsewhere along the border and throughout the country.

Similar situations have occurred in other Mexican border cities such as Matamoras across from Brownsville, Texas, Reynosa across from McAllen, Texas, Nogales across from Nogales, Arizona and most notably Tiahuanaco just across the line from San Diego, one of

the most violent cities in Mexico where 1,200 assassinations occurred in 2008 and where at least 3,000 families have reported missing persons. Violence is also spreading throughout the entire country blanketing Mexico with what has become a civil war among the drug cartels, between the drug cartels and the state and within the state between those levels and branches of government loyal to the state and those bought or compromised by the cartels.

The cartels, like the Taliban in Pakistan, use terror tactics decapitating soldiers and police, employing the internet to intimidate the authorities, money to bribe them and accumulating field grade weapons to fight them. (See the appendix for other incidents in this nation-wide pattern of violence). Drug cartels are popular in some places where drug lords show concern for the population, presenting a Robin Hood image that appeals to some. Also it is said that one powerful gang, La Familia, in the state of Michoacan, has a personal code of conduct that prohibits its members from taking the drugs they sell and from drinking alcohol, claiming that their mission is to protect Michoacan from other violent cartels.

As the violence intensifies complaints have surfaced of government brutality and torture further clouding the otherwise sharp distinction of agents of law and order versus criminal gangs. Such blurring almost always appears in wars of this kind further complicating the moral issues and thus jeopardizing public support for the state under siege.

Corruption and the Mexican State

Complicating support for the state even further is the problem of corruption, long a plague in Mexico, which reaches into the highest levels of the government and hinders the state's ability to resist the cartels. Attorney General Eduardo Medina admits that the cartels have "enormous economic power to corrupt and intimidate." In some smaller communities the entire police force has been recruited to act as guards and hit men on behalf of criminal elements. In an attempt to stop the corruption federal police and the army have been arresting public officials suspected of cooperating with the cartels. As of June 2009, 10 mayors had been arrested in Calderon's home state of Michoacan. And during the first two weeks of June 2009 in the state of Nuevo Leon, where Monterrey, Mexico's third largest city is located, soldiers and federal police had raided police stations in 18 towns arresting seventy-eight police officers.

Angry at seeing their colleagues humiliated by being disarmed, handcuffed and taken away, municipal police in Monterrey on June 8 protested by blocking off streets and confronting federal agents. Mexican newspapers ran photos of the local police pointing guns at masked federal agents. The Mexico City daily *La Reforma* showed a dramatic picture of a state officer holding his gun against the head of another officer. Bystanders scrambled for cover but there no were shots fired. The state police safety-department reported that seven people were arrested but no information was given as to who was detained.

In Michoacan in September 2008, drug hit-men threw two grenades into a crowd celebrating Mexico's independence day, and in July 2009 5,500 troops were deployed to the state by air, land and sea after La Familia targeted federal police when one of its top members was arrested. Ten municipal policemen were seized in the surge accused as accomplices of the gang. La Familia has grown in power in Michoacan, with its drug farms and laboratories and its infiltration of local government, a region that has become a center of drug activity in Mexico and of conflict between powerful cartels and the state.

Trouble is found not just on the municipal and state levels. In 1997 General Jesus Gutierrez Rebollo, director of the National Institute to Combat Drugs was arrested on charges that he was protecting the Juarez Cartel. Recently one of Calderón's body guards was indicted on

charges of spying for the Beltran-Leyva cartel for a retainer of \$100,000 a month. Also men dressed in military clothing, armed with military weapons, driving military vehicles and operating in military fashion have entered the United States numerous times guarding drug shipments across the border, even firing on U.S. law enforcement when challenged. Mexican authorities claim that those armed groups are not Mexican Army personnel, but rather mercenaries working for the cartels. Others think differently.

Violations of American Sovereignty

A U.S. National Guard Corps of Engineer officer tells of a conversation he once had with a lieutenant from the Mexican Army while working on the road that runs along the border in California. The lieutenant drove by on his side of the line and the two struck up a conversation “uniform to uniform” as the American officer put it. When the American asked the Mexican lieutenant about armed Mexican troops crossing the border, the lieutenant answered, “I send them out. When they get back, I don’t ask what they did while they were gone.”

Border Patrol agents and border sheriffs know all too well what some of them do. In 2000, 16 Mexican soldiers in two humvees chased a Border Patrol agent near Santa Teresa, New Mexico, while another agent came under fire. Backup arrived and the soldiers were detained. The Mexican government said the soldiers got lost. The U.S. State Department ordered them sent back to Mexico along with their weapons.

Other incursions by Mexican troops are well known to the U.S. government. For example, a Department of Homeland Security document, with an accompanying map, identifies over 216 incursions over a nine year period between 1997 and 2006. Also, the U.S. Border Patrol issued plastic wallet-sized cards to its agents in its [Tucson](#) Sector with instructions on what to do if they encounter Mexican army units on the U.S. side of the border. The card advised that intrusive Mexican soldiers are trained, heavily armed and dangerous and in essence that agents should stay out of their way.

Texas border sheriffs are also very well aware of the problem. Sheriffs Leo Sameniego of El Paso County, Arvin West, Hudspeth County, Rick Flores, Webb County and Sigifredo Gonzales, Zapata County have told the press and the U.S. Congress of numerous incidents in which their deputies have been confronted, and in some cases even fired upon, by Mexican military personnel. Mexican soldiers perform “flanking maneuvers” says Sheriff Sameniego, forcing deputies into defensive positions when they try to interdict drug smugglers.

Sheriff West said in a congressional hearing that Mexican troops forced his deputies to break off a pursuit of drug smugglers and Sheriff Gonzalez told the press that in July 2005 some 300 to 400 rounds were fired across the border from the Mexican side in neighboring Hidalgo County. The National Guard has also encountered Mexican troops on U.S. soil in Starr County, Texas and in June 2005 two Border Patrol agents were ambushed and wounded on the US side of the line near Nogales, Arizona by what to all appearances was a military style ambush. The wounded agents had to be evacuated by Blackhawk helicopter.

A Border Patrol agent, speaking on the condition of anonymity, told the *Inland Daily Bulletin* (January 15, 2006), “We’ve had showdowns with the Mexican army. These aren’t just ex-military guys. These are Mexican army officials assisting drug smugglers.” T. J. Bonner, president of the Border Patrol Counsel, the union that represents Border Patrol agents, said in reference to the Santa Teresa incident, “If [Mexico] is going to put military across our

border to threaten our guys, and if their own government can't control it, then we should be treating this as an act of war.”

That is only a small sample of news accounts about military incursions into the United States from Mexico. Notice of such incursions is also on record in official documents. A report on security threats on the southwest border by the House Homeland Security Committee's Subcommittee on Investigations refers to a growing nexus of criminal gangs, drug cartels and the Mexican army. Also, members of the House of Representatives have made their own investigations and have spoken about the results to the press and on the floor of Congress. By simply going along the border and talking to the people who live there, one can collect numerous stories about similar, previously unreported incidents. When asked about military incursions, Mexican government spokesmen say that the armed men encountered are not Mexican soldiers. Some spokesmen say they are mercenaries dressed like soldiers and others claim they are criminals in fake army dress.

Military incursions are increasing, as is border violence in general, according to a United States Customs and Border Protection report titled “BorderStat Violence, FY 2008 Year in Review.” The report was obtained and posted on its website by a watchdog group, Judicial Watch, after that organization filed a Freedom of Information Act lawsuit against the Department of Homeland Security, says the government report, went from 37 in FY (fiscal year) 2007 to 147 in FY 2008 an increase of 359%, along with increased attacks on US Customs and Border Patrol personnel. This matches the pattern of violence within the Mexican interior, and further indicates that the grip of the Mexican government on its military and law enforcement agencies, and on its territory, is slipping further away.

According to Mexican congressman Robert Badillo some 150,000 soldiers have deserted the Mexican Army over the last six years. How many of them have enlisted as mercenaries for the cartels, is unknown. The best known case is that of the Zetas, a unit originally trained at Fort Bragg North [Carolina](#) to combat drug trafficking. The Zetas went over to the other side, to become an enforcement branch of the Gulf Cartel, some says they have set up business on their own. Whatever the case may be; active duty military and police working for the cartels, whether the armed and uniformed men are military-trained mercenaries, or more likely both, whatever the case, the Mexican government has a serious problem of control.

Heavily Armed Challenge to the Mexican State

The problem of control also holds for arms and ammunition, for it appears that weapons are leaking from the Mexican Army and police into the hands of the drug cartels as a result of corruption and the vast sums of cartel money in circulation. In October 2007 report from the non-profit global intelligence group Stratford states, “As in other criminal enterprises in Mexico, such as drug smuggling and kidnapping, it is not unusual to find police officers and military personnel involved in the illegal arms trade.”

The *Los Angeles Times* reports that Mexican “traffickers have escalated their arms race, acquiring military grade weapons, including hand grenades, grenade launchers, armor-piercing munitions and anti-tank rockets far beyond the assault rifles and pistols that have dominated their arsenals.” Such firepower, along with the abundance of ammunition at the disposal of the cartels, indicate that the importance of American small arms smuggled into Mexico, billed by the Mexican government as the cause of violence, is exaggerated. In fact, only 17 percent of the weapons recovered by Mexican authorities at crime scenes from 2007 to 2008 could be traced to the United States. Sixty eight percent of the recovered arms were not even sent to the United States for checking since it is obvious by their markings that they

came from somewhere else. In all, some 83 percent of such weapons were not traceable to this country (Foxnews.com 4/02/09).

The ATF (Bureau of Alcohol, Tobacco, Firearms and Explosives) says that weapons may also have gotten into the hands of the cartel through the international weapons black market, for weapons manufactured in South Africa, Spain, Russia, China, and elsewhere have been found at the scenes of clashes with the Mexican authorities. If many of the weapons and ammunition used by the cartels come from the international black market, the points of entry into Mexico are numerous; the same routes across Mexico's southern border used to bring drugs through the country on their way north to the United States, the same route as stolen cars and other goods, or through small ports along Mexico's long coast lines or through major ports in bulk, with the collaboration of corrupt Mexican officials.

The very abundance and nature of the weapons and ammunition used against the Mexican state indicate that the state does not control its borders and coastline well enough to prevent entry of the kind of firepower that has made the war against it so lethal. Blaming the flood of weapons on the United States, therefore, is a diversion.

Crime, the Economy and Civil Society

Rumors work to the advantage of the forces of disruption. Thus accurate and honest coverage of the facts by a free press is an essential element in the fight against the enemies of order and the rule of law. Also, a free press is a vital part of a democratic civil society. The press in Mexico is also under attack, for not only are police and soldiers targets of cartel violence but journalists are as well. Mexico is the most dangerous country on earth for journalists according to the Committee to Protect Journalists. Since 2000, 25 have been murdered and since 2005, seven have disappeared. Many reporters refuse to put their bylines on their stories and many newspapers have simply stopped reporting on the gangs and cartels, which of course is what the cartels want. The forces that are laying siege to the Mexican state, are thus also laying siege to Mexican civil society.

As law enforcement is stretched to meet the challenge of drug cartel violence, fewer resources are available to deal with other kinds of crime. As a result crime is on the rise. This includes kidnappings for ransom across the country targeting anyone with money. In August 2008 Fernando Martí, 14-year-old son of a Mexican sporting goods chain, was kidnapped and murdered after his father had paid \$500,000 ransom to the abductors. Citizens took to the streets when authorities arrested the alleged ring leader, a former Mexico City police detective. The number of abductions and the fear of being next is driving a growing number of middle class and wealthy Mexicans into the United States, many leaving their businesses behind and opening up new ones on this side of the border. That is not always a solution to the problem. Marco Polo Cortéz, president of the San Diego Hispanic Chamber of Commerce says that there are instances of people snatched on this side of the border and driven back to Mexico in the trunk of a car (*Forbes* October 2008).

Truck high jacking and assaults on remote facilities, such as mines, are also on the increase. One tactic is to target critical employees for information on the movement of valuable goods. Criminal organizations also post spotters at loading docks to discover which trucks are transporting valuable items then swarm them on the road with pick-up trucks filled with armed men. The drivers are dragged from the cabs of their vehicles and beaten and their cargos stolen. Some trucking companies have installed GPS to monitor the movement of their vehicles as well as "panic" buttons that drivers can push if attacked. Many companies have begun sending their trucks out in convoys.

One of the many installations affected is a mine, which belongs to the Coeur d'Alene Mines Corporation, located in the northwest Mexican state of Chihuahua near the state of Sinaloa. Mine personnel have been waylaid, robbed and beaten by heavily armed assailants and the mine itself has been turned into an armed camp. The compound is described as resembling a military outpost in Iraq with spools of Cortina wire atop 10 foot fences, with 15 guards each 12 hour shift in camouflage armed with R-15 assault rifles at a cost \$536,000 a year – more than all the other operations combined (*Forbes* 5/25/09).

In sum, white and blue collar workers along with the wealthy and journalists, police, soldiers and unlucky people on the streets are all potential victims of the increasing criminal violence that the Mexican state is unable to contain. George Friedman who heads Stratford, the global intelligence firm, says that “we are still throwing cops at the problem that is well beyond that.” Now it is “a major geopolitical problem. We’ve been moving into a situation where the Mexican government is no longer the most powerful force in Mexico.”

A Lucrative and Diversified Industry

At the center of the non-state forces challenging the Mexican state is a diverse, flexible and brutal set of parallel, overlapping and interpenetrating illegal enterprises that have grown into a thriving transnational industry. This industry is involved in money-laundering and in the smuggling not only of drugs and guns but of people as well, anything that brings a profit. In 2007 a Congressional Research Service report said that cartels now operating in the United States “maintain some level of co-operation among their various operating areas, moving labor and materials to various sites, even across the country as needed.”

In Arizona in 2008 the cartels grossed roughly two billion dollars in human trafficking alone. In this regard Arizona Attorney General Terry Goddard said in a Senate hearing that smuggling into his state “is really a four-part trade, and it has caused crime throughout the United States” (3/23/*LA Times*).

The operation of this transnational industry along the border had part of its beginning with human trafficking. As the migratory flow increased, so did the need for guides to lead illegal migrants through unfamiliar territory. Soon, transportation networks and safe houses developed on the U.S. side of the line to facilitate the flow and to maximize the profits. Some reluctant, and often terrified migrants, have been forced to act as “mules” to transport drugs illegally across the border. One border resident in Arizona tells of a frantic knock on his door at night. An Argentine illegal border crosser asked that he call the police. He was afraid of the people he had hired to smuggle him across the border when they demanded he carry a load of illegal drugs.

When it became apparent that the southern border was an easy entryway into the United States, people from other Latin American countries, mainly from Central America, but also from as far away as Brazil began to take advantage of the possibility as did people from elsewhere around the world. The Border Patrol reports the apprehension of OTMs (Other Than Mexicans) illegally crossing the border from Eastern Europe, Asia and the Middle East as well as from Latin America.

As the international drug trade, with its main entry point in Miami, was brought under control in that city, Mexican organizations took over the drug trade using the border as its entryway into the United States. The narco-traffickers followed the lead of the human trafficking business, absorbing much of it in their own enterprises to create a sophisticated, well organized and flexible criminal industry. This lucrative and powerful industry is by now so

well established and so wealthy that it can afford to resist any attempts to put it out of business, to the point of threatening the viability of the Mexican state.

An Open Door to the North

The borderlands on both sides of the line have become dangerous for both Americans living there and for illegal migrants passing through it, a state of affairs created by the lawlessness that has resulted from both the sheer volume of illegal migrants and the criminal elements that use the migrants as cover for movement back and forth across the border. Multitudes of migrants tramp across the countryside on the American side damaging environmentally fragile regions, often walking past the front doors of isolated homes, leaving gates open for livestock to stray, leaving water spigots running with a loss of valuable water in an arid land and in some cases, breaking into houses when the owners are not at home. There have also been carjacking and murders as a result of criminals moving with the unregulated flow of migrants. Overall crime has increased as a result of the northward trek, and many rural dwellers go about their daily activities armed. Back roads have become dangerous, as smugglers drive at night without lights, and sometimes the wrong way on freeways.

Migrants, known in the trade as *pollos*, “chickens,” often find themselves victims of predatory Mexican police and some on both sides of the line are forced into servitude and prostitution by the criminals who exploit the illegal migration in any way they can. The “chickens” are also often victimized by their guides, called coyotes, who sometimes rape and rob them and in some cases abandon them in the desert without water, provisions and adequate clothing and with no idea where they are.

As the tide of illegal migration rises so too does the number of criminals swimming like sharks in the migratory stream. In the calendar year 2005 the General Accounting Office showed a 15 percent rise in the number of incarcerated criminal aliens in federal custody since 2001. State figures show increases as well. In 2008 the National Research Council published *The New Americans: Economic, Demographic and Fiscal Effects of Immigration 2007-2008* by Edwin Rubenstein. According to the statistics reported there 46,000 criminals who entered the country illegally were incarcerated in federal facilities. There were 74,000 in state prisons and another 147,000 in local detention centers. These “criminal aliens,” says the report “are not casual law-breakers. Most are recidivists or career criminals.” Relying on General Accounting Office analysis of 55,000 arrest records of convicted criminal aliens, Rubenstein reports that the average criminal alien has had 13 prior arrests, that 12 percent were arrested for major crimes such as murder, assault, robbery and sexually related offenses and that only 21 percent were arrested for immigration violations. The numbers are rising. The GAO reports that 81 percent of the arrests of criminal illegal aliens occurred after 1990.

The Immigration and Customs Enforcement service ICE initiated a special project, Operation Community Shield to root out such elements in the immigrant population. Between 2005 and 2008 they arrested 8,000 gang members from 700 gangs concentrated mainly in the South and the East as far north as New England. The numbers of immigrant gang members is also growing, swelling in numbers to nearly a million, up 200,000 since 2005, with 900,000 “within local communities across the country”, and another 147,000 in prison. Those gangs, says a report from Department of Justice’s National Gang Intelligence Center, account for 80% of the crime reported.

The report says that the gangs operate as “primary retail-level distributors of most illicit drugs” and that some are competitive with well established drug traffickers. Moreover, gangs are “seemingly intent on developing working relationships” with Mexican drug dealers and

other criminal enterprises. The report also says that gangs of all kinds are spreading. Fifty-eight percent of local law enforcement agencies report an increase in gang activity in their jurisdictions in 2008, up 45 percent from 2004. Gang activity is also beginning to appear on the campuses of both rural and suburban schools. It is also expanding geographically to almost every state and into Canada. United States and Canadian authorities, says the DOJ report, are beginning to co-operate in an effort to deal with the problem.

Bruce Ferrell, chairman of the Midwest Gangs Investigations Association, an organization that monitors gang activity in ten states, told *USA Today* (1/30/09) that he believes the number of gang members is even higher than that reported by the DOJ. He also says that gangs are growing in numbers. "We have seen an expansion for the last 10 years" he said and "Each year the numbers are moving forward."

Especially disturbing are violent gangs like MS-13, Sureños-13 and the 18th Street gang that have embedded themselves in immigrant enclave communities, and that have been described as "shockingly brutal." MS-13, according to the FBI, is more brutal than the old Mafia ever was. Law enforcement officials say that the brutality that characterizes MS-13 makes it difficult for them to penetrate and crack the organization.

The MS-13 is transnational in nature and to a degree in its operation with chapters in nearly all the states and in Toronto, Montreal and Vancouver, Canada, in Mexico and in Honduras, Guatemala and El Salvador. The gang deals in all kinds of crime and is becoming increasingly well organized. It is also associated with the Sinaloa Cartel in Mexico, providing retailing operations in the drug trafficking network in the United States. And as MS-13 grows law enforcement says that it is becoming increasingly competitive with the other smuggling organizations.

The National Youth Gang Survey 1999-2001, published by the Department of Justice, says that at the time of their study half of the gang members were Latinos. Among the criminal aliens arrested by ICE in Operation Community Shield 60 percent were Mexican, 17 percent were from El Salvador and 5 percent from Honduras. Also immigrant enclaves provide cover for the operation of Latino gangs where they can hide "in plain sight." Immigrant communities also provide sources of recruitment and the law abiding citizens within them the most convenient targets of extortion, home invasions, robbery and rape.

The explosion in the size of gangs, say law enforcement officials, is due partly to gaps in border security, which permit gang members to move freely back and forth across the border. It is also partly due to a shift in focus on the part of law enforcement away from gangs to terrorism. Local authorities also play an important role in fostering the growth of gangs by shielding them from federal immigration authorities through official sanctuary policies, policies that not only help illegal immigrants violate federal law, but which also create a comfort zone for criminals in which they exploit the very people the sanctuary policies are designed to shield.

The cartels are also expanding their operations into cities like Atlanta and Houston, St. Louis and Milwaukee. An Associated Press story of March 29, 2009 cites a Justice Department's National Drug Intelligence Center document reporting that cartels have established distribution hubs or suppliers to local distributors in 230 American cities such as Twin Falls, Idaho, Billings, Montana, Wichita, Kansas, etc.

Also kidnappings associated with the drug cartels are on the rise on this side of the border. In 2006 armed men attacked a ranch near Laredo, Texas and abducted customs broker Librado Piña, Jr. and his son together with David Mueller, whose family owns a sheet metal

company in Ballinger, Texas. They were released soon afterwards. In July 2008 two American citizens, Javier Francisco and Pedro Vargas, were kidnapped in Austin, Texas and moved to Dallas by men who authorities believe were members of the Zetas. Dallas police were able to rescue the victims. And in Phoenix, the nation's fifth largest city, have risen to 1,000 over the three year period between 2006 and 2009 related to border smuggling.

As the Latino population increases in the United States drug dealers find it easier to "blend in" and expand their trade inside ethnic enclaves, says the AP, in such places as Memphis, [Tennessee](#), Atlanta, Georgia and Birmingham, Alabama where the cartel members "don't stand out" as they once would have.

Cartel business is also expanding, and with this expansion the United States is taking on a more central geographic position in the illegal international trade. According to the Justice Department's latest Drug Threat Assessment, Italian crime syndicates, after a lull in activity, are once again operating in the United States. According to the assessment, Italian syndicates are found now in nineteen American cities and in partnership with Mexican drug distributors and Colombian drug producers. According to the *Dallas Morning News* (4/20/09) the cities of Dallas and Houston are becoming logistic centers for coordinating operations from Mexico and Central America on the one hand and the Italian syndicates on the other, to feed the growing European demand for drugs where the price of cocaine is three times higher than in North Texas.

Expanding Corruption in the United States

Another disturbing result of the northward expansion of the cartels is that corruption has seeped across the border into the United States. This is to be expected, given the money involved and the way the United States has for years mismanaged the border. For example, Rey Guerra, sheriff of Starr County, Texas, pled guilty in 2009 to charges that he exchanged information to drug traffickers for money and gifts. And on a federal level a U.S. customs memo of June 29, 1990, obtained by Narco News and published in 2004, tells of corruption that even then was said to have reached "crisis proportions" in Arizona border communities.

The memo, written by John Juhasz, leader of a border corruption task force in Arizona known as Firestorm, says in part "...Current investigative information indicates heavy involvement in the corruption of two customs employees by an organization in Cochise County (Arizona) which is believed to include law enforcement and court officials. There are strong indications of the same type of activity in Santa Cruz County, which, like Cochise County, is adjacent to the Mexican border." The document also says, "Other federal agencies in Arizona implicate the same organizations as being part of the drug smuggling problem."

That was in 1990. More recently, James Tomscheck, assistant commissioner for internal affairs at Customs and Border Protection, told *USA Today* (4/25/09) that an increasing number of Customs and Border Patrol agents are being arrested for corruption, an alarming trend, he says, about which they are "deeply concerned." In 2004, 84 agents were arrested and 62 convicted. Twenty-one were arrested in the fiscal year ending in September 2008, up from eight the previous 12 months. Another agency, the Office of Inspector General of the Department Homeland Security reports an increase in corruption along the border. Another troubling trend, says Tomscheck, is infiltration into border law enforcement agencies of people sent by the cartels for that purpose an effective tactic used to compromise police agencies in Mexico. Tomscheck says that since 2007 at least four agents were arrested who are believed to have been sent by the cartels to infiltrate the Customs and Border Protection agency.

There are indications that corruption goes higher up the ladder of the decision and policy making hierarchy than just line agents, up to the highest levels of the executive branch of the federal government and among elected officials from border areas. The Firestorm task force was suddenly ended, "shut down overnight as a result of one phone call", says a U.S. customs agent and member of the task force. This happened when a list of suspects slated for investigation included the name of a U.S. Senator. The Senator says the appearance of his name on the list name was politically motivated. No one was allowed to find out if this was true, since the project was subsequently cancelled. Other elected officials in other cases also appear suspicious yet no one in authority is willing to ask relevant questions.

The justice system also appears to have been affected – not with bribes but with a corrosive culture derived from obstruction of justice, the wrongful prosecution of agents and cover-ups of official misconduct, some in order to accommodate the interests of foreign powers. One result has been the demoralization of agents and a reluctance on their part to take initiative, preferring to remain reactive, more afraid of their superiors, says one former federal law enforcement agent, than of bin Laden, and in some cases even willing to accept bribes, all to the detriment of proper law enforcement and of national security (see "Unjustifiable and Impeachable: Friend's of the Border Patrol's Report on the DHS, DOJ and the Courts" www.fobp.us).

Security Threats to the United States

Terrorism is another important factor among the potential threats from south of the border. On July 2, 2005 Pauline Arrillaga and Olga R. Rodriguez filed an Associated Press story based on a review of "hundreds of pages of court indictments, affidavits, congressional testimony and government reports" as well as interviews in both the United States and Mexico. That material documents the extent of hemisphere-wide smuggling operations and shows how it works. Their report also indicates the involvement of a growing number of people from "special interest countries." "Special interest" refers to countries that harbor or sponsor known terrorist groups.

In 2005, then assistant secretary for ICE Michael Garcia told Congress that "the threat remains that any criminal organization that exploits our border for profit could, for the right price, bring in terrorists or bring in components of weapons of mass destruction." In 2005, a Drug Enforcement Agency document reported that terrorist cells within the United States, in order to raise money for their activities, are co-operating with smuggling cartels. Some radicals tied to the Islamic Brotherhood, says the DEA report, are operating on the border, fluent in Spanish and camouflaged as Latinos to avoid detection. A 2006 Department of Defense document also reports that al Qaeda has attempted and is planning to use the U.S.-Mexico border as a point of entry into the United States, and Steve McGraw, head of the department of Texas Homeland Security told the North Texas Crime Commission in a speech in September 2007 that individuals with connections to Hamas, Hezbollah and al-Qaeda have been arrested on the border, noting that the "porous border ...without question is a national security risk." Similar observations have been made by former head of the DEA Asa Hutchinson and by Mike McConnell, retired vice admiral who headed the National Security Agency between 1992 and 1996 and who served in 2008 as a principal presidential advisor on security matters.

Muslim enclaves have been growing in Colombia, Brazil, Bolivia and other Latin American countries, including Mexico where missionary work is said to be underway. Among the newcomers to those enclaves are Jihadists who are apparently becoming active in the drug trade. Most recently Michael Braun, former chief of operations of the Drug Enforcement Administration says that the Iran-backed Lebanon-based terrorist organization Hezbollah

works closely with smugglers on the U.S.-Mexico border. He says that Hezbollah, in order to raise money from drug sales in the United States, relies on “the same criminal weapons smugglers, document traffickers and transportation experts as the drug cartels.”

Mark Juergensmeyer, director of the Ortalen Center for Global and International Studies at the University of California Santa Barbara, told the *Inland Daily Bulletin* in 2007 that the 2005 DEA document reveals information on a new evolution of terror tactics that pose serious security concerns for the United States. “In some ways,” he said it is “even more frightening to think drug trafficking organizations in Mexico may adopt Jihadist ideology. If it’s an ideology being adopted by a drug culture then that makes the situation very dangerous.” One thinks of Afghanistan and Pakistan in that regard. Much more likely, and equally as dangerous, is the adoption by the jihadists of the business practices, organizational skills and methods of the drug traffickers, a phenomenon seen among ideologically motivated groups in other parts of the world.

Complicating the matter is the increasing threat from nuclear weapons of mass destruction. So concludes the bi-partisan Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism established by Congress in 2007 on recommendation of the 9/11 Commission. After six months of work, the commission, chaired by Bob Graham (D-FL), said in its preliminary report in February 2008 that the odds at that time were better than even that a major city would be attacked using a nuclear weapon. The report warned that such a weapon would be used somewhere in the world by 2013. The commission advised then President-elect Obama to take “decisive action” since “no mission could be more timely.” The commissioners went on to say, “In our judgment, America’s margin of error is shrinking not growing.” The source of this growing danger, they say, is rogue states and the spread of material and technology in the Third World nuclear smuggling networks.

Numerous other experts have testified to Congress, and have gone on record elsewhere, saying that conditions on the border and in Mexico pose a security threat to this country. Among them was Admiral James G. Savridis, commander of the U.S. Southern Command who told the House Armed Services Committee at the end of March 2009 that the nexus between illicit drug trafficking and “Islamic radical terrorism” is a growing threat to this country.

These warnings are ominous in the light of the already developed black market for weapons that is apparently operating in Mexico, along with the fact that well established smugglers, who run the highly effective cross border flow of drugs, guns, money and people, have no loyalties and will do anything for money. The threat is further compounded by the presence of terrorist networks around the world with the money to buy their services. Warnings such as these become even more unsettling when we think of the possible failure of the state in Mexico and the resultant conditions that would develop along our southern flank.

In this regard an unnamed U. S. Department of Defense official told the *Washington Times* (5/28/09) “We’re going to have to pay very, very close attention to Mexico.” His remark was made in the context of a report issued in early May 2009 by the United States Army’s Asymmetrical Warfare Group. That group had been conducting joint intelligence operations in the San Diego area with Joint Task Force North (part of the Defense Department’s counternarcotics and counterterrorist operations), Customs and Border Protection, the United States Coast Guard and local law enforcement with the purpose of observing “asymmetrical infiltration operations and emerging asymmetrical threats” from the cartels.

A Failing State?

Not only is the Joint Forces Command concerned about the viability of the Mexican state, so are a number of experienced participants in the wars on drugs and terrorism. Former drug czar, General Barry McCaffrey says “Mexico is not confronting dangerous criminality – it is *fighting for survival* against narco-terrorism” (italics added). Another former drug czar, John Walters has said, “the consequences if president Calderón and the institutions of government, at least in the northern part of the country, become controlled by terrorist mafias – well, we worry about ungoverned spaces far away from the U.S. and this is right next door.”

And in February 2009 the new U.S. director of National Intelligence, former navy Four Star Admiral Dennis Blair reported to Congress that “the corruptive influence and increasing violence of Mexican drug cartels impedes Mexico City’s ability to govern parts of its territory.” On March 26th, Admiral Blair backed down from those remarks saying that Mexico is in “no danger of becoming a failed state.”

One reason for his reversal may be the reaction of the Mexican government to any reference to Mexico as a “failed state.” Mexican ambassador to the United States, Arturo Sarukhan, says that calling Mexico a “failed state” is a very “irresponsible remark.” And President Felipe Calderón dismisses such statements as “absurd.” Also, some American observers regard the possibility of Mexico failing as “farfetched.” It seems that such pundits believe that Mexico is too big to fail. But can it? And just what is a failed state? And can that term describe Mexico or the direction in which it is headed? And if so what might be the response of the United States to the dangers such dissolution would pose on its southern border?

According to the Global Policy Forum, failed states are those that “can no longer perform basic functions such as education, security, or governance, usually due to fractious violence or extreme poverty.” Some of the conditions that bring about such a breakdown are the operation, within the territory, of informal markets beyond the state’s ability to tax and regulate along with banditry, the activity of warlords whose power in some regions outweighs that of the state, terrorist activity, etc. Those factors are exacerbated or caused by endemic weakness of governing institutions such as political corruption, judicial ineffectiveness and ineffective bureaucracies.

Those features are all present in varying degrees in Mexico, and to one degree or another always have been. It is not a matter of whether Mexico is now a failed state - as if “failed state” were a single bound category with, say, Somalia as its defining example – but rather to what degree is Mexico failing, in what parts of the country and how far along the road it has gone toward the kind of collapse feared by the Joint Forces Command? The important questions, therefore, are not whether the Mexican state is failing in the most extreme version of that category, but rather can the slide be halted and how?

A Narco-State?

Cartels use bribery, intimidation and force to resist state control of their criminal activities. They can also employ other ways of achieving those goals such as the infiltration with their agents of state institutions and by active participation in the political process in the form of financial support of pliable candidates and running their own candidates for office. If those measures allow drug interests to gain influence over the state, to the point where the government ends up supporting rather than suppressing their illegal activities, then we have what has been called a narco-state.

Mexico could become a narco-state by either reaching a point where subversion and coercion eventually work, or the state may become weary of the struggle, deciding that the

interest of peace and stability accommodation is more practical than suppression. In either case the cartels would become stakeholders in the process of governing.

That kind of accommodation has already occurred. In fact the decision of Fox and Calderón to resist the cartels is seen by some as a break with the kinds of accommodations that the former regime had made with illegal drug interests in their effort to maintain power. The difference between the former ruling party, the Party of Institutional Revolution, PRI, and the administrations of Fox and Calderón is the intensification of the flow of drugs northward and the greater threat it presents to the viability of the state.

Subversion of the political process goes beyond bribery in the current administration to include support for candidates in both the leftist parties that might regard such co-operation as a means of replacing the current administration. What is certain is that the conditions that make such scenarios possible, are unfortunately endemic not only to Mexico, but to Latin America in general, conditions that also account for the weakness of state institutions that threaten state failure, but that also retard economic development.

Mexico's Endemic Problems

Mexico has shown remarkable economic progress over the last 15 years, with a growth in GDP per capita that has risen to the highest in Latin America and five times that of China, the world economic power house. Similar booms, however, have occurred in the history of Latin America but boom followed by economic downturn. The assault on the state now underway in Mexico, along with the global recession, indicates that this cyclic process is not over. Another major factor in Latin American history, and a major reason for its inability to mobilize the manpower and resource for economic development is the corruption that is endemic throughout Latin America, and the deep distrust of formal institutions on the part of the citizenry, both factors associated with state failure.

One source of the problem according to some observers lays in the fact that in Latin America the economy and the state have never been properly separated, thus turning public service into a vehicle for private gain with the results that the purpose of institutions have been diverted, a culture of laxity, inefficiency and dishonesty has been created all of which has prevented the kind of economic development seen in the rest of North America and in Europe.

In his book, *The Other Path* Hernando de Soto, economist and former director of Peru's Central Reserve Bank, calls this lack of separation of the state and the economy "mercantilism" defined, as a "bureaucratized and law-ridden state that regards the redistribution of national wealth as more important than the production of wealth." By "redistribution," De Soto means not spreading the wealth to those who live in poverty, but rather "the concession of monopolies or favored status to a small elite that depends on the state and on which the state itself is dependent."

In his book *Liberty for Latin America* Peruvian born intellectual and journalist, Alvaro Vargas Llosa, says that this pattern has led to what he describes as corporatism, state mercantilism, privilege, elite-driven wealth redistribution and political law (laws designed to protect the elite and the way it does business rather than to provide for the general good). Development economist Peter Bauer calls this the "politicization of society" in which everyone seeks favors from the government, where public service becomes a vehicle for patronage, in which appointments, where the awarding of contracts, granting licenses, etc. are seen as opportunities for profit, and where corruption finds easy access from low level bribes, the

mordida, “the bite,” as it is called in Mexico, to major accommodations between the political and economic elites who dominate the country.

Under such a system the proliferation of laws also imposes a cumbersome burden that retards the growth of small business, the kind of enterprise that in capitalist societies accounts for employment and job creation and economic growth. In such an encumbering and parasitic state, says Vargas Llosa, the mechanisms of government become instruments of predation against productive individuals, thus constituting the most important inhibitor of development in Latin America

This traditional arrangement, going back to colonial times, was not mitigated as the world economy developed in the latter half of the nineteenth century and as wealth from international trade flowed into Mexico. Instead, the traditional pattern was reinforced, for private interests had to accommodate to the proximity of their enterprises to the state and to those who profited by the arrangement. Thus the positive effects of economic growth were felt only by the elites, a situation that eventually led to revolution.

The Mexican Revolution, however, did not lead to the emergence of the kind of society and economy where opportunities were opened up across the population and up and down society; where wealth could be generated anywhere and could diffuse naturally through the population as it did in the United States, Canada and Western Europe. Instead, a system was reconstituted in which the interventionist state closely interacted with new interest groups in an artificially constructed economy, creating a subsidy-dependent system of rent-seekers rather than capital growth industries. The system was held together by the Institutional Revolutionary Party, PRI, by means of an elaborate system of payoffs to different interest groups in the form of subsidies or dispensations that kept the PRI in power for 71 years. Instead of releasing economic forces within Mexico the old system of patronage and corruption was reinstated, an arrangement that has held the country back.

Thus, despite an enterprising population, vast natural resources and plenty of outside money, Mexico did not develop in the same way as did successful capitalist countries. All the while, the redistributive system continued to funnel revenues from oil and foreign loans to the elite. Some people got rich. Many others stayed poor, corruption and poverty persisted and the economy stagnated.

Mexico exhibited all the symptoms of a blocked economy – budget deficits, high inflation, a mushrooming foreign debt, a burgeoning underground economy, high interest rates, heightened instability and a loss of confidence among the elites themselves who sent some \$60 billion out of the country between 1974 and 1982. The social contract that supported the PRI regime was a guarantee by the party of a minimum level of subsistence and political stability in exchange for political support. It all worked – until the party could no longer keep its end of the economic bargain.

When oil revenues fell and foreign loans dried up, Mexico could no longer pay the interest on her debt. President Lopez Portillo did what he said he would not do. In February 1982, he devalued the pesos by 40 percent, sending shock waves and panic across the country. In the process, the banks were nationalized. It was an election year and doling out subsidies for an electoral victory trumped budget cuts. By August of the same year, Mexico defaulted on international loans sending shock waves around the world. The United States had to bail it out. The Americans had to come to Mexico’s aid again with another rescue in 1995 (Mexico was too big to fail). In the next election cycle, 2000, the PRI was defeated in the first truly democratic elections in over seven decades.

Even before the change of administration, the Mexican elites had taken steps to adapt to the times. In response to the surge of globalization that swept the world, and after the debt default and the U.S. bailout, the policy of economic nationalism was abandoned and the government adopted the neo-liberal policies in vogue at the time. The political leaders sought an open market with the United States and Canada in the form of the North America Free Trade Association, and the state divested itself of top-heavy and inefficient state owned companies, except for Pemex, the government-owned oil industry that functions as much as a national symbol as an economic enterprise.

Divestiture, however, resulted in what Vargas Llosa calls “crony privatization,” in which state enterprises were sold to interests already within the system. Again, there was no transition to the kind of liberal open economy that would have allowed the takeoff of a sound economy. Instead, there was a reshuffling of elements along traditional lines. The state reaped short term profits in the sell-offs, while special interests acquired lucrative companies without the benefits filtering down to the rest of the population. Vargas Llosa remarks that the old pattern of corporatism, state mercantilism, privilege, wealth redistribution and political law “keeps recurring all the way into the twenty-first century.”

Reform, of course is possible. Vargas Llosa, among many others, suggests that the first step in meaningful and liberating reform is “cleansing the law” – that is, reviewing the cumbersome jumble of rules, regulations and laws that act as a bottle-neck to the establishment and the operation of small business so that entrepreneurial energy can be released on the local level that creates jobs, wealth and a more equitable distribution of incomes. And secondly, change the exploitative and unfair nature of the judiciary system.

Either the elites in Mexico do not believe such reforms are practical or they are afraid to take the risk; they regard any such reforms as a threat to their privileged position or perhaps ideas like this simply have never occurred to them: Whatever the reasons, the Mexican elites prefer to blame others for the poverty of their country rather than to explore ways out of the problem themselves.

For example, the Mexican government blames the United States for the present high level of violence in its country because of an *American* appetite for drugs and *American* guns. The fact is that drug addiction is like a virus, it infects individuals one at a time, expanding to epidemics regardless of borders, states or nationalities. Mexico is not immune. It has been reported that the number of known addicts in Mexico has doubled in the last six years to 307,000. Experts say that the number is dramatically undercounted.

As for the guns: Despite the blame laid at the feet of the United States for the gun violence in Mexico, Mexican authorities are reluctant to share necessary information with the United States. For example, in November 2008 a cache of weapons was found in Reynosa that was associated with the Zetas. Due to the reluctance of the Mexican government to allow the ATF timely access to the serial numbers of the weapons, a report on the provenance of the weapons did not appear until March 2009. Of the 540 rifles investigated by the ATF, 383 were from firearms dealers in the United States. The others were from elsewhere. Weapons submitted to the ATF are also highly selective. One wonders if this selectivity is designed to emphasize those guns that come from the United States while keeping in the shadows the many more that arrive in Mexico from other sources or from corrupt military and police officials.

This selectivity is well known on this side of the border. In an April 2009 field hearing of the Senate Foreign Relations Committee in El Paso, Texas committee chairman Sen. John Kerry said, “Only about one out of every four weapons seized by Mexican authorities last

year was submitted to the ATF so they could be traced back to the purchasers and sellers in the United States. The Mexican government should provide the ATF with fuller access to these weapons.”

Another example of the “blame others” attitude is the recent flu scare that began in Mexico and spread from there to other countries. In April 2009, when a Mexican citizen visiting Hong Kong proved positive for the swine flu, all the guests in the Hong Kong [hotel](#) where he was staying (200-350 people) were quarantined for seven days along with 100 members of the hotel staff. Foreign minister Patricia Espinoza complained of “discriminatory measures” and the Mexican embassy in Beijing sent a circular to all its citizens in China telling them that China had imposed “measures of unjustified isolation” in response to the epidemic. It is not known how many of the guests in the quarantined Hong Kong hotel were Mexican, but it is highly unlikely that they all were, as it is also far from likely that the hotel staff that was also quarantined was from Mexico.

The Chinese government quarantined [travelers](#) from other nations as well. One should also keep in mind that the World Health Organization had raised the threat level for the possibility of a pandemic, and that that Hong Kong was badly hit by the bird flu SARS virus in 2003. The bird flu is endemic in Asia, and viruses have a way of borrowing from one another when they come in contact. World health officials worry that a combination of the swine flu, the bird flu and the ordinary flu might increase the ease of transmission of the bird flu and the ordinary varieties, along of the deadly effect of the bird flu and the swine flu, resulting in a potentially deadly epidemic. Perhaps the Chinese response was excessive in its caution, yet the reaction by the Mexican foreign minister did not reflect the potential seriousness of the situation.

Espinoza also criticized China, Argentina, Ecuador, Peru and Cuba for suspending commercial flights to Mexico for fear of bringing the epidemic to those countries. And President Felipe Calderón went so far as to say “some countries and places are taking repressive and discriminatory measures” in response to the epidemic, and that “there are always people who are seizing on the pretext to assault Mexicans, even just verbally.” All the while, the Mexican government was closing down schools and universities, businesses and restaurants, cancelling the largest Cinco de Mayo celebration in the country along with other holiday events, while soccer teams played before empty stadiums as ordered by the government – all in an attempt to contain the virus, also the motivation of China and the five Latin American countries criticized by Mexico.

The Mexican government took the spread of the virus so seriously that it allocated \$15 million for detergent, bleach and soap to clean school buildings, a difficult task since 12 percent of Mexico’s schools (30,000 out of a total of 250,000) have no running water or bathrooms. The Mexican government’s reaction to attempts by other countries to contain the pandemic by quarantines and travel bans is a political response mouthed with political clichés; a reaction to what is seen as a personal offense, rather than as way of trying to deal seriously with a potentially dangerous public health problem. This personal and political reaction to a public health problem of potential global proportions reveals an attitude that underlies the way the Mexican political elite thinks about, and deals with, other important matters as well.

Mexico’s Safety Valve

One way out of the problem of an “excess” and “dangerous” population, as the Mexican elites see it, is to export that problem to the United States in the form of the massive illegal immigration. This has been described by American and Mexican critics as a safety valve for

the Mexican elites. The “excess population” they are exporting was produced ironically by economic advancements during the latter half of the 20th century. Advances in agriculture, mechanization and “the green revolution,” dissolved traditional agrarian ties and dislocated vast numbers of unskilled, uneducated rural dwellers who migrated from the country-side to the cities, a process seen not only in Mexico but in the rest of Latin America and throughout the Third World, indeed a pattern that also characterized economic development in the now wealthy countries in the course of their own histories. Growing industries in Mexico, however, were not able to absorb those people. Sprawling slums grew up around the cities, filled with a population that was not able to participate in the benefits of economic expansion whose benefits they saw around them.

Some, like De Soto and Vargas Llosa, argue that along with the problems of rural-urban migration there are also opportunities. After all, the developed countries got through similar phases in their own histories of economic development. Despite the humble origin and low skills and educational levels of the migrants, there is resilience and energy in that population. De Soto, looking at migrants from the Peruvian [highlands](#) to the coastal cities shows that, on their own initiative, many have build the kinds of networks and associations that can lead to a vibrant civil society – and that within their ranks entrepreneurs have emerged to develop the opportunities for economic success, small at first but with potential for growth, even despite the bottle-necks of the current regime that choke off opportunity. If the system were more open, say those observers, natural forces would be released that could benefit the society as a whole and the economy.

The Mexican elites (as well as their counterparts elsewhere in Latin America) do not see it that way. For, as Vargas Llosa puts it, the elites perceive the migrants as “dark-skinned intruders” with predatory instincts that threaten their privilege and wealth. Thus, instead of fashioning new policies to adjust to new realities – thereby harnessing its energy for the betterment of the nation as a whole – the elites chose to exclude those sectors of their population by avoiding meaningful reform and in the case of Mexico, by preferring to export their problem to the United States. In so doing, the elites in Mexico have turned on its head the old adage, “Poor Mexico, so far from God and so close to the United States.” This failure to address the fracture in society, says Vargas Llosa, is “the greatest flaw of Latin American reform.”

In 1981, economist Niles Hansen predicted in *The Border Economy: Regional Development in the Southwest* that with increasing economic development in Mexico, the government would eventually regard the emigrating population as a resource that should be retained. This, he said, is what happened in post-war Western Europe when Mediterranean countries, at first eager for guest worker programs in northern Europe eventually took steps to keep their workers home.

This, of course, did not happen in Mexico, even though the growth in the Mexican population has fallen. Instead Mexico took steps to facilitate the outflow of those “dark skinned intruders” by among other things organizing a special police force, Grupo Beta, to protect the migrants from predatory Mexican police and from the hostile natural environment on their way to breaking the immigration laws of their neighbor. The government has even issued manuals on how to make the illegal crossing into the United States, thus violating both bilateral and multilateral treaties designed to curb the smuggling of drugs and people. Former President Vicente Fox has extolled as “heroes” those Mexicans fleeing the failure of their own country. Many ordinary Mexicans, however, know very well what is going on, saying that Mexico is a rich country, rich in natural and human resources that could be developed with the right kind of leadership which, unfortunately Mexico does not have.

There is a certain element of adventurism in this policy as well, for the Mexican elites are attempting to employ the Mexican expatriate population in the United States to influence American political policy. In 1990, Mexico's Five Year Plan declared that the Mexican nation extends beyond its borders into the United States. The government has begun to treat the large population of Mexican expatriates accordingly. Also, Mexican consulates have been charged with advancing this policy in a way that would be bitterly condemned as an infringement of sovereignty if it were the other way around.

Mexican support of NAFTA is also an instrument to consolidate and expand the power of the Mexican elite. On numerous occasions, former President Fox extolled the virtues of the European Union and called for the creation of such a borderless association in North America, a "North American Community." Such an arrangement would assure the outflow of Mexico's "dangerous" population by "regularizing" illegal immigration into the United States, while placing the Mexican elite in a power position that extends beyond the borders of a struggling Third World country.

Enablers in the United States

The United States is also complicit in the creation of the destructive criminal enterprise that has developed along its border with Mexico, both by tacitly accepting violation of American sovereignty, and by accepting the Mexican elites' safety-valve solution with no thought of the eventual consequences for both countries. Mark Reed illustrates this complicity in his congressional testimony delivered on May, 2005 (the Senate Judiciary Committee's subcommittee on Immigration, Border Security and Citizenship and the Subcommittee on Terrorism, Technology and Homeland Security). Reed is a former INS commissioner for the central states, with jurisdiction at that time over the Mexican and Canadian borders and within all the states between within his district.

Reed told the senators about a high level strategy meeting he attended in the mid 1980s along with representatives from federal law enforcement, the State Department and the Department of Defense. The meeting had been convened to discuss the urgency of sealing the Mexican border to stop drug smuggling in response to the president's widely touted War on Drugs. The Department of Defense representatives said that the DOD was capable of detecting and interdicting any intrusion across the border but could not distinguish between groups of migrants and drug smugglers until interdiction. At that point "the dialogue became difficult," said Reed. "When the DOD refused to entertain the idea that they should only detain drug smugglers upon interdiction, the meeting was abruptly ended." Reed added "The safety valve that illegal immigration provided toward the stability of Mexico seemed to be a more compelling national security priority than drug smuggling." As we now know, "drug smuggling" has evolved into a larger geopolitical problem than had been imagined at that time.

In 2005, Reed said that "Alien smuggling organizations and networks are well established and prospering," that "identity fraud has exploded with the proliferation of document vendors in virtually every community" and that "It is easy to enter the country unlawfully, gain a false identity and move around among us without threat of detection," adding that, "It took us a long time to dig ourselves into a hole."

One might argue that the problem began, in incremental fashion, with the dishonesty, or short-sightedness or mistaken assumptions – or all three – that led to a historic change in immigration policy in the 1960s, a change in the terms of legal immigration and a shift in attitudes on the part of a growing number of American elites, a shift that would later feed into and support illegal immigration.

In 1965, Congress passed an immigration act that reversed a policy that had been enforced since the 1920s. That policy had restricted immigration, and dictated the nature of the flow by means of quotas that favored Europeans. That system had kept immigration relatively low, and as economist George Borjas shows in his book *Heaven's Door*, had maintained a high level of education and skills among the newcomers. The ending of high volume immigration in 1922 and 1924 also gave the offspring of the immigrant millions time "settle in" and assimilate.

In the 1960s, the country went through a period of reevaluation and social experimentation, a part of which was the government initiative known as the Great Society. One of the revolutionary changes made at that time was a revision of the immigration laws. Quotas favoring immigrants from Europe were ended and, under the rubric family unification, immigrants, once they had attained citizenship, were allowed to bring in their relatives, thus initiating a pattern of increasing immigration that historians and social scientists call chain migration. The results were a change in the kind of immigrants entering the country and their relationship to the economy and to the national culture. Above all, it meant the increase in the inflow of immigrants which, in the 1990s, reached historically high proportions. In the process decisions on who gets in had been taken out of the hands of the authorities and placed in the hands of the immigrants.

An observer in 1982, Theodore White, no conservative, said in *America in Search of Itself: The Making of the President 1956-1980*, "The immigration Act of 1965 changed all previous patterns, and in so doing, probably changed the future of America ... [it] was noble, revolutionary – and probably the most thoughtless of many acts of the Great Society." The bill's Senate manager Ted Kennedy was either thoughtless in his support or disingenuous when he said at its signing that this "is not a revolutionary bill," that "our cities will not be flooded with millions of immigrants ... the ethnic mix of the country will not be upset," it "will not inundate with immigrants from any one country or area, or the most populated or economically deprived nations ..." President Lyndon Johnson repeated these claims at the signing ceremony assuring the nation that it "is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives..." Not only did it work in the opposite manner, but the growth of immigration on that scale also created conditions that would eventually play a part in the increase of illegal immigration.

The United States has an enormous absorptive capacity, having absorbed millions from abroad in the past. Conditions, however, change over time and with it the kind of immigrants needed for the national economy. Today there is no longer an advancing agricultural frontier or a growing smokestack industrial complex that require a massive number of unskilled and semi-skilled laborers. Such workers are still needed to some extent in certain sectors, but the center of gravity has shifted to the need for workers with higher skill levels.

The unrestricted importation of low-wage workers thus exceeds the need for this kind of labor, depressing the wages of workers at the lower end of the pay scale (including the children of immigrants). This fact was clearly seen by the legendary founder of the United Farm Workers union, César Chávez. Such a steady influx into the labor market also discourages innovations in agriculture and industry. In this regard, Phillip Martin, agricultural economist at the University of California Davis, has observed that innovation has historically occurred at times of labor shortage, and economist William Hawkins warns that an addiction to cheap, exploitable labor tends to depress an economy.

Democrat Sen. Eugene McCarthy, who challenged Johnson from the left in the 1968 presidential campaign, saw the economic consequences of the historic 1965 revision of the

immigration laws when he wrote, "The United States cannot regain its competitive standing in the world by importing low wage workers from other countries." Such a policy, he adds, "engenders conditions this country cannot and should not tolerate" for "in the modern age a nation's wealth and prosperity is secured by high productivity and capital investment, not by the availability of low-wage labor."

There is also a price to pay in national cohesion, for given the sheer numbers, the reduced economic opportunities and a "multicultural" mentality among the American elites, we are building with the current flow of immigration a permanent underclass at the same time we are working so hard to incorporate the native underclass into the mainstream. By accepting the Mexican elite's safety valve, we are creating economic and social problems for ourselves, and as Samuel P. Huntington clearly shows in *Who Are We? The Challenge to America's Identity* we are also placing in jeopardy our collective identity and national cohesion.

At the same time that legal immigration was changing the nature and the size of the influx from abroad, mass illegal immigration was also getting under way creating a chain migration of its own to compound the effects of the 1965 Immigration Act.

Mexican migration into the United States is a 20th century phenomenon, although its beginnings were discernible near the end of the 19th century. Mass migration, however, only took off in the late 1970s or the early '80s, gaining momentum and reaching historically high proportions in the 1990s as millions illegally crossed the border.

In August of 1942, the United States and the Mexican government agreed on the terms of a guest worker program designed to fill the labor needs of the United States during the Second World War. This arrangement, known as the Bracero Program, familiarized many workers from Mexico with the United States, partially laying the groundwork for later illegal immigration. The Bracero program was ended in 1964. Soon afterward the Mexican government, in an attempt to absorb the excess labor, put into effect a plan to development the border.

Under that plan, United States firms could establish subsidiaries on the Mexican side of the boundary in order to take advantage of the cheap labor there. Those plants, called *maquiladoras*, took advantage of provisions in the U.S. tariff code that allowed American-owned plants abroad to assemble materials and parts from the United States then import the finished product to American consumers with duties imposed only on the value added. Proximity to U.S. markets made this arrangement more cost effective than locating such plants in Asia where labor costs were even lower.

By 1985, *maquiladoras* were Mexico's second source of income after oil and by 2006, although many plants had closed in the face of competition due to globalization, *maquiladoras* still accounted for 45 percent of Mexico's exports. The industry was originally intended to absorb workers from the Bracero Program. The majority of the workers, however, are female – since women are said to be more manageable in that kind of work than men and since their wages are lower than those paid to men. One result of the economic growth in border cities was that development leapfrogged other areas of the country. The borderlands thus became a magnet for internal migration like the urban centers of the interior.

A thriving economy in the United States and American business's thirst for cheap labor drew the internal migration further northward across the border and into the United States. By the 1980s, immigrant enclaves had become established in the United States adding to the magnet by creating daughter communities in this country. People in the home communities

received news about employment opportunities in the United States from the daughter communities, and newcomers found support in the U.S. enclaves upon arrival. Thus bridges developed between home towns in Mexico (and later Central America) and the daughter communities in the United States in a classic pattern of expanding mass migration well known to historians and social scientists.

By the early 1980s, the stream of illegal entrants had increased to the point that the public and policy-makers had become aware of it. The solution, it was thought, lay in a one-time amnesty and subsequent strict enforcement of the immigration laws in order to keep the problem under control. In 1986, the Reagan administration enacted the Immigration Reform and Control Act that granted amnesty to some 2.7 million illegal residents.

Officials were surprised at the number of people applying for amnesty, far higher than they had expected, partly due to their lack of knowledge about how many were really here and also due to massive fraud. Also, the enforcement provisions were unworkable, for Congress refused to require the INS to develop a verification system to insure the identification of the legal status of job applicants. This could have been done by using Social Security or INS data bases for verification. Instead, employers were expected to verify themselves the legal status of employees from false documents submitted. At the same time, companies stood in danger of civil rights law suits if they asked too many questions. The 1986 amnesty thus increased the pull of the magnet, and the flow of illegal migration not only continued but increased.

In 1990, Congress created a commission, the United States Commission on Immigration Reform, to carefully examine immigration and to make recommendations for subsequent legislation. The Commission was chaired by respected former member of Congress the late Barbara Jordan (D-TX). The commission submitted and published a series of interim reports from 1994 until the final report was presented to Congress in 1997.

The recommendations were summarized by Congresswoman Jordan in testimony before Congress on March 29, 1995. Among the recommendations she emphasized at that hearing, were improvement of border management to prevent illegal entry, enhancement of the enforcement of immigration laws in order to reduce the magnet that draws people across the border illegally, and removing eligibility for public benefits for illegal aliens. Taxpayers, she said, should not be responsible for supporting people in the country illegally. Also, aid should be given by the federal government to local and state governments to help them deal with problems in their jurisdictions caused by illegal immigration. The Jordan Commission and its recommendations were ignored.

Mark Reed told the Senate committees in 2005 that the “call to arms” to secure our borders after the amnesty, led to no sustained effort to do so. In 1995, the American side of the border south of San Diego became virtually a part of Mexico as squatters moved in, soccer field and all, along with a massive influx of transient migrants. Border crime increased. Migrants, more than the American residents of the area, were the primary victims. The Border Patrol has a video of a rape committed on the U.S. side of the line, in which a man is beaten to death in front of the U.S. authorities when he tried to protect two women from assault. A picture of what it was like then is painted by Joseph Wambaugh in his 1984 book *Lines and Shadows*, the true story of San Diego Police Department undercover squad that tried unsuccessfully to deal with the problem.

The San Isidro port of entry, San Diego, where I-5 begins, was the scene of nightly “bonsai runs” when as many as 200 people would gather and simply run through the port of entry into the United States. Signs were posted on I-5 warning drivers to be careful of people

running across the freeway, as signs are posted elsewhere warning of deer crossings. Press coverage was too much for the government to ignore. Eventually measures were taken to close off such embarrassingly easy entry points at highly visible place. "Operation Hold the Line" was initiated in El Paso in 1993 and "Operation Gatekeeper" in San Diego the following year. The result was to push illegal immigration away from visible points of entry and further into the countryside and more and more into the hands of the growing smuggling industry that would eventually be absorbed in part by the drug cartels.

Authorities devised a sound plan to take control of the border sector by sector in what Reed describes as a "marching strategy." The plan, the Southwest Border Initiative, was to be backed up by attacking smuggling corridors and by aggressively enforcing the immigration laws in the interior to stop the northward pull of the magnet. Attention to smuggling corridors never materialized and under the Clinton administration, work place enforcement dwindled and under Bush virtually disappeared. Eventually the Southwest Border Initiative was abandoned.

In its place a passive policy was initiated that prohibits agents from pursuit, "sitting on Xs" as they call it, along with a reduction, to the point of ineffectiveness, of check-points on roads beyond the border, while retaining a showy Border Patrol presence at visible heavily traveled border crossings. Instead of "a comprehensive law enforcement strategy [that] must be part of our national security strategy," as Reed describes it, we have an expensive exercise in political theater creating a situation that Reed says is "inherently dishonest, and in today's world dangerous."

This obvious undermining of proper border management is the result of determined interest groups which influence both political parties. One such group consists of business interests that want to keep the stream of cheap exploitable labor flowing whether it is legal or not. In fact, the Chamber of Commerce, among others, strongly resists the E-Verify program now ready for operation, a program that would keep track of worker eligibility the way private companies now keep track of your credit card account. Such business interests are supported by backers at the libertarian extreme whose interest in open borders is ideological, the flip-side of statist who want an open border for quite different reasons. There are also some, like the Council on Foreign Relations that agree with Vicente Fox in calling for open-borders like those of the European Union. Their plan is called the North American Community and one of its elements is the free flow of populations across the border.

Left-wing political groups, immigration advocates and ethnic entrepreneurs see the influx as a way of increasing their client base and thus augmenting their power and influence. The motive of some on the left is eventually to alter the nature of the population and thus change the political culture of the nation in the interest of their own agendas. Labor unions seek new members and Democrat Party operatives want to encourage immigration – for they believe, and the statistics indicate they are correct, that once newcomers become citizens they are far more likely to vote for Democrat rather than Republican candidates. Both sets of open-border interest groups control the two political parties, thus leading to a gap between the electorate, which wants border control and a rational immigration policy, and the politicians and their supporters who, for their own disparate reasons, do not.

Thus, both the United States and Mexico have allowed a thriving transnational criminal industry to grow in size and wealth, to expand geographically and to diversify to the point at which the Mexican state is fighting for its life, and to the point that the United States is faced with increasing problems of crime and heightened security risks. The primary duty of government is to protect its citizens from destructive elements both domestic and foreign. If the government refuses or is unable to perform that duty it loses its legitimacy. The United

States by refusing to enforce its own law and Mexico by encouraging its citizens to violate the law of its neighbor, have both undermined the rule of law in general and have allowed a lawless zone to emerge on their common border. In that sense, both the United States and Mexico are failed states. Mexico, however, is coming close (and is in some places already arrived) to the condition most usually understood by that term, which brings us back to the Caroline Incident.

Historical Precedence for Military Intervention

In October 1993, at the request of Congress, the Foreign Affairs and National Defense Division of the Congressional Research Service of the Library of Congress published a report titled "Instances of Use of United States Forces Abroad, 1798-1993." The report contains a list, and brief explanation, of 234 situations that occurred between those years when American armed forces were used in situations of conflict or potential conflict, or for other than normal peacetime purposes.

Most relevant are those incidents in which American armed forces were deployed on foreign soil not pursuant to treaties made between the two countries, but rather to suppress banditry, piracy and the slave trade, or to protect American lives, property and diplomatic missions, or in retaliation for depredations on American citizens and American interests. Such grounds for intervention are covered by the peremptory norms of customary law.

Peremptory norms have not been specifically enumerated and catalogued by any authoritative body, but they include the protection of a country's citizens abroad, its property and agents when there is no government able to perform its functions, as well as suppressing such universally condemned violations as piracy and slavery. In the case of the failure of the Mexican state to maintain law and order in its territory, to the point where those norms are violated, the United States has the right to intervene militarily under established international law backed by precedence. The United States already has the right to intervene militarily in Mexico under Article 51 of the United Nations Charter in response to the numerous deliberate incursions by units of the Mexican army and police into the United States. If conditions should worsen, that record of violations would bolster an already sound case for a U.S. military response.

Worst Case Scenarios

The Joint Forces Command's report expresses the fear of a possible "rapid and sudden collapse" of the Mexican state. This is a worst case scenario indeed. However, it need not go that far before presenting the United States with situations in which some "deed may be anticipated" in which cross border military action under the doctrine of anticipatory self-defense would be warranted. For example, Mexico City's control in the north might become so tenuous that "ungoverned spaces" might appear "right next door," in which "terrorist mafias" or powerful drug cartels might represent the only power in the zone, or if the local government was infiltrated, or even taken over by non-governmental forces. If under such conditions facilities, analogous to *maquiladoras*, were established, facilities that took advantage of conditions in Mexico and proximity to U.S. markets, or U.S. targets, then the United States could invoke anticipatory self defense and move militarily to eliminate those bases. The latest case of American attacks across a border of an allied state is the use of predator air strikes by both the Bush and Obama administrations from American bases in the United States against terrorist bases in the tribal area of Pakistan.

The protection of human rights is another reason for possible military intervention. Humanitarian Intervention does not yet carry the same weight as peremptory norms, but is

fast joining the ranks of that category. Many think that humanitarian intervention is of recent vintage. Yet it has precedence going back to the nineteenth century when states militarily intervened in other countries in the name of “liberty and civilization”, “humanity rights” and eventually “humanitarian rights.” In 1989, the United States under George Bush 41 invaded Panama and seized its de facto head of state Manuel Noriega for trafficking in drugs. That invasion was justified on the grounds of safeguarding and protecting American citizens in Panama and to stop harmful illegal activity. In addition to those traditional justifications, the United States further justified its action on the grounds of protecting democracy and human rights.

The development of human rights as a justification for intervention was strengthened in the 1990s with American multilateral involvement in the Balkans and with President Clinton’s unilateral invasion of Haiti in 1994. Humanitarian intervention in such cases was tacked onto other grounds thereby building precedence for the emergence of a new peremptory norm. A major advance in establishing this justification came in the Clinton-led NATO invasion of Serbia in the case of Kosovo. That action was taken not as a counter move against an enemy as in the Cold War, like the 1983 American invasion of Grenada. Nor was the attack against Serbia intended to defend NATO citizens, property or interest, or to stop piracy or banditry in an ungoverned space. Instead, the campaign against Serbia was carried out in the name of human rights. In this regard the Kosovo action, with its bombing of cities and resultant civilian casualties, was precedence-setting, moving the idea of human rights towards further acceptance as a peremptory norm.

This justification was eventually formulated as a doctrine labeled Responsibility to Protect or R2P and designed to establish a legal and ethical basis for humanitarian intervention. It first appeared in December 2001 in a document prepared by the International Commission on Intervention and State Sovereignty (ICISS) organized by the Canadian government. The ICISS argued that the international community had a responsibility to protect the population of a state if that state engaged in action against its own people, or if that state was unable or unwilling to prevent such abuse. The ICISS broke R2P down into three responsibilities; the responsibilities to prevent, to react and to rebuild. This doctrine entails what has come to be known as “extraterritoriality” and “universal jurisdiction.”

The UN had been completely bypassed by the Clinton invasion of Kosovo. In 2004 UN General-Secretary Kofi Anan, attempting to insert the United Nations into the evolving norm, took up the case of R2P. In 2004, he established the High-Level Panel on Threats, Challenges and Change, a body that published in the same year a report titled *A More Secure World: Our Shared Responsibility*. In this document R2P was referred to as an “emerging norm” and was fully supported by the panel. The document says in part, “... there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community in a continuum of action “involving prevention, response to violence, if necessary, and rebuilding shattered societies.”

In September 2005, the 60th session of the UN General Assembly with 191 heads of state and government representatives unanimously passed a Resolution that supported that doctrine. The World Summit of the General Assembly further endorsed the idea in 2005 as did UN Resolution 1674 in 2006 and again in Resolution 1706 in 2009 in reference to peacekeeping in Darfur. Thus the United Nations is fully behind what has been called a new global moral compact between states and the populations of the earth. Under this “emerging norm” the old principle of sovereignty is further eroded, providing a moral and legal justification, backed by precedence, for possible intervention in a Mexico weakened by

internal strife and marred by civilian casualties. Mexico, therefore, is faced not only with a challenge from non-state powers within its territory, but also by the possibility of intervention by state powers from abroad sanctioned and supported in principle by other countries and international bodies.

For example, if Mexico were to experience a serious crisis, large numbers of Mexicans would naturally seek refugee status in the United States, as refugees from the northwest frontier region are now seeking sanctuary in the Pakistani interior. This is what happened during the Mexican Revolution. With today's large population along the border and with a more integrated border, the numbers entering the United States would be even greater. What would the United States do in such a case? One immediate solution would be to handle refugees on American soil the way people dislocated by natural disasters are handled, but in an unprecedented manner since those under U.S. protect and receiving American aid would not be American citizens.

Another possibility is to cross the border and create safe-havens for refugees in their own country, requiring an American military presence on Mexican soil in the name of humanitarian intervention. This kind of intervention, if it should come, would not look at all like the American pursuit of Pancho Villa in 1916 when General Pershing marched into Chihuahua in pursuit of the *caudillo* who had killed eighteen Americans and burned the town of Columbus, New Mexico in a predawn raid. In the spirit of R2P, to "prevent, react and rebuild," the American military in Mexico would be accompanied by civilian contingents to care for the displaced population.

The core of a combined civilian-military mission of this kind is already in place for a different part of the world. Africom, with its present base at Djibouti, is half civilian and half military, including representatives from the Departments of State, Treasury and Health and Human Services. If the American military were to be deployed in Somalia, for example, and if Africom were to be sent to that country, the FBI would also be included in the mission. There is precedence for this kind of joint military-law enforcement effort in campaigns to combat drug cartels in South and Central America. The mechanisms are known, tried and proven. The only difference in the case of a failed Mexican state would be the location.

Intervention is a drastic move and if the United States were ever to resort to such measures the provocation, or the threat to this country, would have to be dire indeed. Yet if the need should arise, the United States has ample right to intervene militarily under the law of nations and its many precedents. The challenge at this point, however, is to help the Mexican government regain control of its territory so that such situations do not occur. There is precedence here as well.

The Colombian Example

The massive transnational trafficking of drugs is like any other industry. It has its points of production, its transportation routes, its networks of distribution and its costs of doing business. One such cost is neutralizing governments that obstruct its operations. In the case of cocaine and heroin the point of production is the Andean Highlands, most importantly the Republic of Colombia.

Throughout the 1990s, the Colombian government found itself in a desperate struggle against its own drug producing cartels and against a powerful, well-armed Marxist guerilla force, FARC, funded in part by narco-trafficking. Complicating the situation were paramilitary units established by the government to augment the Colombian army but which in some cases became brutal forces of their own, taking over the drug trade in some places and

alienating the population through its brutality as much as did the criminal and the Marxist groups that it opposed.

Authority of the government in Bogota was in practical terms restricted to the high mountain plateau. Guerillas and the cartels divided the rest of the country, isolating regions from one another, blocking farmers from markets and interfering with the tourist trade along the Caribbean coast. Violence was wide-spread and vicious. Eventually the armed forces were able to assert the authority of the state beyond its earlier abilities, disbanding the paramilitary units, driving FARC back into the jungle where it began, and breaking up the large drug enterprises.

Cocaine production, however, continues. Tons are produced and exported every year, but now by smaller more flexible enterprises aided by Colombia's Marxist neighbors. A top FARC commander was killed in 2008 inside Ecuador in a Colombian cross-border air strike and on Colombia's eastern border Hugo Chávez, who has stopped co-operating with the drug enforcement effort, is reportedly letting FARC control the routes across the Venezuelan-Colombian border. According to a July 2009 report by the U.S. Government Accountability Office, the Venezuelan government provides FARC with "a life-line" of support and refuge in Venezuela.

Venezuela under Hugo Chávez is fast becoming the major hub for cocaine trafficking in the Western Hemisphere with more than a fourfold increase of shipments according to the GAO from 60 metric tons in 2004 to 260 in 2007. The reason, says the report is, "a high level of corruption within the Venezuelan government, military and other law enforcement and security forces [that] contributes to the permissive environment." Although corruption is found at all levels in Venezuela, the report says that the one that "poses the most significant threat" is the Venezuelan National Guard controlled by Chavez and in charge of the countries borders and sea ports and airports.

The Colombian countryside is quiet now, the towns safe, kidnappings have nearly disappeared and the economy is improving after a long and very trying ordeal. The United States played a large role in this victory, supporting and strengthened the Colombian army with the help of billions of dollars in American aid in the form of military hardware and training, not all of it, by the way, wisely spent, but ultimately with a positive outcome, for Colombia in the end did not become a narco-state.

Uneasy Neighbor – Reluctant Ally

Mexico may well come out of its present time of trouble in the same way, or hopefully better. There are, however, differences between the two situations. First, the Colombians started with a weaker position than did Mexico. For example, Mexico does not need to rely on paramilitary forces that, as in Colombia, can drift out of control. And although Mexico also has its own Marxist guerillas to contend with in the southern part of the country, they are nowhere near the problem that Colombia faced and still faces with FARC.

The Mexican cartels, however, are powerful and sophisticated and may have infiltrated Mexican institutions more than their counterparts did in Colombia. The level of corruption in Mexico may also be higher and thus more corrosive than in Colombia. If so, the Mexican state is more compromised and its more advantageous position, as opposed to Colombia, weakened or even neutralized.

Another difference is the relationship between those two countries and the United States. The United States and Colombia are separated by thousands of miles while the United

States and Mexico share a common border and a history of strife which is by no means forgotten among the Mexican elite and by many others in the country. For example, in a Zogby International poll taken in Mexico in 2002, 58 percent of the respondents agreed with the statement “the territory of the United States Southwest rightfully belongs to Mexico.”

Mexican elites are also unhappy that the United States has not more formally supported their safety valve policy by “regularizing” the emigration from Mexico and by not promoting the Mexican policy of a North American EU-like arrangement more forcefully. In more recent turn of events, the Mexican government was angered when the Obama administration, under pressure from one of its key constituents, labor, refused to allow Mexican trucks to operate in the United States in accordance with a prior agreement. The Mexican government imposed a tariff to show its disapproval. And then there is the question of how much the United States and Mexico can co-operate with one another to any meaningful degree given the refusal of those who run Mexico to accept any responsibility for their short-comings and failures and for the results of their weak institutions and their chronic corruption.

Despite the urgency, the Mexican government is unwilling to co-operate with the United States on other fronts as well. For example, on March 30, 2009 President Calderón said in a press conference, during a state visit to London, that Mexico would share intelligence with the United States. “We do have to work together”, he admitted, “but that does not imply the joint participation in military operations or even a joint participation of law enforcement agents” on the border. Thus the Mexican president, for whatever reason, has ruled out an effective way of dealing with what the Mexicans themselves claim as the root of the problem, illicit drugs going north and guns going south. If the Mexicans are unwilling to co-operate even there, can we expect much anywhere else?

One thing the Mexican government will accept is aid in the form of money and military hardware. The United States under the provisions of Plan Merida has offered Mexico \$1.4 billion over three years to fight the drug cartels, a package proposed under the Bush administration and designed to supply Mexico with Blackhawk helicopters and other military resources. This aid can be very useful, especially since the geographic situation in Mexico is different from that in Columbia. In Mexico there is no dense rain forest canopy over hundreds of square miles for insurgents and counter-state forces to operate. The helicopters, therefore, are useful tools in gaining and maintaining control of territory. Given the degree of corruption in Mexico and the possibility that the cartels may have infiltrated Mexican institutions, one must wonder if that aid will be used properly. One also even wonders if it might one day be used against the United States. The aid given to Mexico in the future will therefore probably not be of the same quality, quantity and effectiveness as that given to Colombia in its long struggle with powerful, determined and brutal internal forces.

Another factor is the degree of co-operation on the part of U.S. and Mexican law enforcement on a lower, operational and thus more effective level. This is not the kind of thing that can be easily monitored and assessed. One hope is that the effectiveness of such cooperation exceeds what we see on the surface, but we can never tell.

Conclusions

The United States-Mexico border is the only place where a powerful and prosperous First World country shares a land border with a country chronically struggling with endemic Third World problems. Cooperation between the two in dealing with the threats they now face, are already complicated by that proximity and by the nature of their disparity and history, perhaps to the point at which the United States can do little to help Mexico from weakening further, perhaps becoming a failed state or descending to the level of a narco-state, both of

which would pose a variety of security threats to the United States that no American government could ignore. If that should happen, the lawful military actions discussed above may eventually be the only options available for reasonable self-defense.

APPENDIX

Incidents of violence throughout Mexico 2005-2009

In the border city of Ciudad Juarez, across the Rio Grande from El Paso, Texas, 50 policemen were murdered in 2008 and between January 2008 and the first months of 2009 some two thousand drug related murders had been committed in the city. Twenty-eight of those murders were committed in a single week in April 2009 making Juarez the most dangerous city in the country. In 2008 the cartels threatened to kill one policeman every 48 hours until the police chief resigned. The police force fell apart and President Calderón sent in 8,000 soldiers to secure the city.

In May 2007 in the town of Cananea, 20 miles south of the Arizona border, 23 died in a battle between heavily armed narco-traffickers and Mexican soldiers and police. And in April 2009 in Piedras Negras, across the border from Eagle Pass, Texas, retired army Col. Arturo Navarro was murdered on his way home from work only three weeks after having taken the office of municipal police chief. And on June 19, 2009, 12 gunmen were reported killed in a gun battle with soldiers and federal police in a shootout in Guanajuato state in the middle of the country, an area not known as a drug center, hours after an attempt had been made on the life of a congressional candidate. This incident indicates that gangs are trying to infiltrate politics in that region as they have elsewhere in the country.

Violence goes on elsewhere in the interior of Mexico. In 2008 in Guerrero state, where the resort city of Acapulco is located some 900 miles from the border, drug cartels have battled for turf, and Mexican soldiers have been killed while attempting to gain control of the situation. On June 6, 2009, masked soldiers assaulted a hillside mansion in Acapulco in a firefight in which roughly 3,000 shots were fired and fifty grenades exploded while tourist hid in their hotel rooms. Tourism is the third largest source of legal income for Mexico, after remittances from Mexicans living in the United States and from petroleum. At first tourist areas escaped the violence, but recently the violence has begun to creep into Acapulco and Cancun as well.

In Acapulco in 2008 the bodies of 12 soldiers were found decapitated and displayed with the sign, "For every one of mine you kill, I will kill ten", a pattern of brutality that has also been found elsewhere in the country. Beheading in Mexico, as in Pakistan, is a favorite device for terrorizing police, soldiers and the public in general. Along with the savagery, criminal organizations show sophistication in psychological warfare using the YouTube and other means to intimidate law enforcement agents. For example, criminals broke into the police band and announced on the radio the names of officers picked for assassination then kill them the next day. Also, Mexican police officials have shown up in the United States seeking asylum, fearing for their lives and the lives of their families. Such requests place the United States government in the embarrassing position of having to deal with asylum cases from officials of a country it considers an ally.

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