Is an International Treaty Needed to Fight Corruption and the Narco-Insurgency in Mexico?

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Abstract
Mexican government corruption prevents effective law enforcement against drug traffickers and the violence associated with drug trafficking. This article reviews the nature and scope of government corruption, including a first-hand account by a Mexican state police commander, then suggests how and why an international treaty establishing United Nation (UN) inspectors who are empowered to investigate corruption at all levels of government could be effective in deterring corruption and restoring the rule of law in the U.S.–Mexico border region. The article suggests that the Rome Statute provides a model for establishing this type of treaty and a precedent for all of the powers envisioned for UN inspectors, and suggests that government leaders may be compelled by their own citizens to sign and ratify such a treaty if it is posed as a public litmus test of their leaders’ willingness to fight corruption.

Keywords
crime policy, crime prevention, criminal organizations, crime in complex organizations, legal issues, Mexico

In November 2008, the United States (U.S.) military’s Joint Forces Command issued a warning that Mexico might collapse: “the government, its politicians, police, and judicial infrastructure are all under sustained assault and pressure by criminal gangs and drug cartels” (U.S. Joint Forces Command, 2008, p. 36). Subsequently, the 2009 National Drug Threat Assessment report declared that “the Mexican drug-trafficking organizations represent the greatest organized crime threat to the United States” (U.S. Department of Justice, 2008, p. iii). Mexico is now the immediate source of 90% of the illicit drugs that are imported from Latin America into the U.S.; approximately 95% of the cocaine flowing into the U.S. arrives through the Mexico–Central America corridor from its

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origins in South America (U.S. Department of State, 2009, 2012, p. 317), and the drug war has now claimed 47,515 lives since December, 2006 (BBC, 2012).

While the severity of the threat is now recognized, there is no consensus regarding the solution. In August 2010, former Mexican president Vicente Fox called for the legalization of all drugs (BBC, 2010), and in 2009 three former presidents—César Gaviria of Colombia, Ernesto Zedillo of Mexico, and Fernando Cardoso of Brazil—urged governments to consider legalizing marijuana, which accounts for 50–65% of drug cartel profits, to undermine a major source of income for drug cartels; Mexico’s legislature has also debated the issue (Luhnow, 2009; The Guardian, 2010). Legalization in the U.S. would permit marijuana to be grown domestically in commercial quantities; presumably, the increased supply would drive prices down, eliminate high profits and the attraction of high profits to drug traffickers, and eliminate trafficking and the violence associated with trafficking, because marijuana would be grown and distributed by farmers in the same way as any other agricultural commodity. However, resistance to the legalization of marijuana and other drugs such as cocaine is high (U.S. Department of Justice, n. d.).

Mexican officials insist that the U.S. must do more to reduce the demand for drugs; however, the U.S. has already outlawed the possession, sale and distribution of cocaine, methamphetamines, heroin, marijuana, and other controlled substances and it is difficult to see how demand could be substantially reduced in the absence of a doubling or tripling of resources devoted to law enforcement. In an era when the federal government and almost all state governments are running enormous deficits, increases in funding are unrealistic. Instead, police department budgets are being slashed and in some cases eliminated (ABC News, 2010; Reed, 2011; Southern California Public Radio, 2010).

The Global Commission on Drug Policy, which includes former presidents César Gaviria, Ernesto Zedillo, and Fernando Cardoso, has called for reducing the harm to individuals, communities, and national security by decriminalizing drug use, focusing on treatment services, and refocusing law enforcement efforts toward reduction of the power and reach of violent criminal organizations, but it is not clear how this approach would break the grip of the drug cartels (Global Commission on Drug Policy, 2011).

Instead of legalization, decriminalization, or demand reduction, the U.S. has focused on policies that assist the Mexican government with supply interdiction, enforcement, and security measures. Through the Merida initiative, the U.S. has allocated $1.6 billion to support Mexican law enforcement operations and fight drug trafficking (U.S. Department of State, 2011). However, the problem continues to worsen, with supplies from Mexico of marijuana, methamphetamines, and heroin setting new records (U.S. Department of Justice, 2010).

A 2009 Strategic Studies Institute analysis titled, “Mexico’s Narco-Insurgency and U.S. Counterdru Policy,” suggests that U.S. narcotics policy is failing because it ignores underlying structural factors, foremost of which is government corruption (Brands, 2009). The analysis suggests that the drug cartels have informants and protectors at every level of government who ensure that the cartels are always one step ahead of law enforcement (Brands, 2009). While the Merida initiative provides funding for more thorough vetting of police officers in order to root out corruption, including polygraph tests, audits of officers’ personal finances to detect possible illicit enrichment, investigations of their socioeconomic backgrounds, psychological evaluations, and drug tests, this has proved to be ineffective in reducing corruption because the individuals who perform the tests can be corrupted (Bricker, 2009).

If corruption sabotages law enforcement, the implication is that an effective deterrent against corruption must be established. In the U.S., corruption is deterred through vigorous prosecution by investigators who are perceived to be incorruptible. The analysis presented in this article suggests that corruption in Mexico must be addressed by establishing a comparable deterrent: A body of inspectors that is incorruptible and empowered to investigate corruption at every level of government. However, since corruption apparently extends to the highest levels of the Mexican...
government, the implication is that this body of inspectors should be independent of the government. A precedent for the establishment of this type of independent body is the Rome Statute, an international treaty (of which Mexico is a party) that subjects parties to the treaty to the threat of international prosecutors who are empowered to investigate, arrest, and bring to trial any individual, including any government official up to and including the president, who is charged with war crimes, crimes against humanity, crimes of aggression, or genocide.

This call for international intervention in the domestic affairs of a state that is not at war raises serious issues that must be addressed before implementing a system of international inspections (Melandri, 2009). While the issues are challenging, there is now growing recognition by the international community that failures to attend to gross, persistent violations of the rule-of-law often lead to escalation of conflicts that require military intervention, result in enormous loss of life, and set the stage for widespread violations of human rights. As a consequence, there is growing recognition of the international community’s “responsibility to protect” (R2P) with regard to individuals who are at-risk or are victimized by violations of the rule-of-law (Richmond & Franks, 2009; United Nations, 2009). While the thrust of this initiative focuses on the protection of citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity, there is growing attention to the antecedent conditions that spawn these crimes and recognition of the need for international action that addresses the root conditions.

The contribution of this article is twofold. First, I offer an analysis suggesting why corruption may be understood as the key factor that prevents honest members of law enforcement from being effective. Second, I offer a detailed explanation suggesting how an international treaty could be implemented that would establish an effective deterrent to corruption. If corruption is the key factor, and if an effective deterrent to corruption can be implemented, there is a way forward that has not previously been recognized.

The approach adopted here is analytical and synthetic. Previous analysts acknowledged corruption as a prominent factor promoting drug trafficking and the violent crime that accompanies trafficking but, as indicated above, focused on legalization, decriminalization, demand reduction, harm reduction, and supply interdiction and enforcement as primary solutions. The analytical approach adopted here builds on previous analyses but focuses on dissection of the mechanics of trafficking: How traffickers operate under the protection of police and government officials, with a view toward understanding the potential role of independent investigators in disrupting this protection and restoring the type of deterrence that discourages criminal behavior. The synthetic aspect of the current study involves piecing together information and evidence from an array of sources to improve understanding of how it may be possible to establish a body of investigators that is resistant to the corrupting influence of the cartels. The evidence includes examples and analysis of treaty-level agreements establishing international inspectors in contexts where the rule-of-law is weak, impunity abounds, and conventional approaches have failed.

Section I of this article reviews the scope and nature of drug-related corruption in Mexico, suggesting that corruption is pervasive and extends to the highest levels of government. Section II focuses on a first-person account by a Mexican police commander who doubled as a contract killer for the Juarez drug cartel. This account suggests the depth of the corruption and why it appears to be impervious to ordinary domestic reforms of the police and law enforcement institutions. Section III describes the International Commission against Impunity in Guatemala (CICIG). This United Nations (UN)-supported organization of criminal investigators offers an innovative model for establishing UN-supported criminal investigators in Mexico. Section IV suggests how UN inspections could be established through an international treaty modeled after the Rome Statute, providing an independent capacity to root out corruption and restore the rule-of-law in Mexico. The discussion addresses issues raised by this proposal. Section V concludes.
Cartels and Corruption

The Mexican drug cartels essentially operate under license from Mexican municipal, state, and federal government officials and police forces through an organized network of corruption (Grayson, 2009; Grillo, 2011; Longmire, 2011; Pimentel, 1999; Ravelo, 2007). Until the fall of the Institutional Revolutionary Party (PRI) in 2000, geographical areas along the border were carved into drug-smuggling territories controlled by subdivisions of the Sinaloan mafia, which paid the police or military units commanding jurisdiction of those areas for their protection and cooperation (Grayson, 2009; Longmire, 2011; Pimentel, 1999; Ravelo, 2007; Vulliamy, 2010). In return, the mafia informed the police of freelance and rival operators so that the authorities could arrest them and give the impression of an authentic enforcement operation (Grayson, 2009; Longmire, 2011; Pimentel, 1999; Poppa, 2010; Ravelo, 2007). While control of these territories is now contested, this system continues to the present.

Types of Corruption

Information obtained from arrests of high-level Mexican antidrug officials offer details explaining how the drug cartels are able to operate with impunity. In many cases, key police and military officials leaked information about government investigations to the drug cartels in exchange for bribes. For example, Noe Ramirez Mandujano, the former antidrug chief and head of SIEDO (Mexico’s elite organized crime unit), leaked information to the Beltrán Leyva and Zambada drug cartels in exchange for $450,000 a month in bribes (CNN, 2008; Ellingwood, 2008; Latin American Herald Tribune, 2009). General Jesus Gutierrez Rebollo, Mexico’s top antinarcotics officer under President Zedillo, gave drug trafficker Amado Carrillo Fuentes access to all of Mexico’s classified drug enforcement information, police records and informants (PBS, 1997a). Ricardo Gutierrez Vargas, head of Mexico’s Interpol office from 2003 through 2008, leaked information to the Beltrán Leyva cartel (Booth, 2008; Herrara, 2011; The New York Times, 2008).

Another form of collaboration involved the appointment of government officials who were willing to ignore, or actively support cartel activities. For example, Rodolfo de la Guardia García, the No. 2 official in the elite Federal Investigation Agency (AFI) from 2003 to 2005, received a monthly payment of $10,000 to appoint regional leaders who were sympathetic to the Sinaloa cartel (Garcia, 2008; Herrara, 2011; Latin American Herald Tribune, 2009; The New York Times, 2008).

A third form of collaboration involved the active manipulation of police forces that would otherwise interfere with cartel activities. For example, Victor Gerardo Garay Cadena, chief of Mexico’s Federal Police, protected the Sinaloa cartel by ordering the withdrawal of police on two separate occasions after they had surrounded the leader of the cartel, Arturo Beltrán Leyva (La Prensa, 2008). Genaro García Luna, Secretary of Public Security under President Felipe Calderón, forced the release of Victor Gerardo Garay Cadena while allegedly receiving payments from Arturo Beltrán Leyva’s cartel (Ravelo & Bricker, 2008b). García Luna’s bodyguards have testified that he met with “El Mayo,” a high-ranking narcotrafficcker (Ravelo & Bricker, 2008a).

A fourth form of collaboration involved the participation of corrupt police in protecting cartel activities by actively kidnapping and killing rival cartel members and honest policemen. For example, almost 1,500 members of the AFI, created to fight corruption and organized crime, were themselves suspected of corruption, including kidnapping and killing while on the payroll of Joaquin “El Chapo” Guzman, leader of the Sinaloa cartel (Reuters, 2005). Interviews with Pablo Acosta Villarreal, the most powerful drug lord of the central border area, detailed the protection provided by the state and federal police, politicians and the army to the Acosta syndicate during the 1980s (Poppa, 2010).
Corruption extends to the highest level. A U.S. Department of Justice lawsuit implicated Mexican ex-president Carlos Salinas de Gortari in drug trafficking operations as a member of a group headed by his father and protected by the former Mexican Deputy Attorney General, Mario Ruiz Massieu, in cooperation with drug lords including Juan García Abrego, Miguel Ángel Félix Gallardo, the Arellano Félix brothers, and Amado Carrillo (Marin, 1997). The ex-president’s brother, Raul Salinas, collected $150 million monthly payments from the drug mafias, may have amassed $2 billion (Marin, 1997), and was convicted but later acquitted of ordering the 1994 assassination of a leading politician, José Francisco Ruiz Massieu (Capetillo, 2012; Preston, 1999). Raul Salinas’ wife controlled an $84 million Swiss bank account (PBS, 1997b). The U.S. Department of Justice charged that former Mexican Deputy Attorney General Mario Ruiz Massieu engaged in drug trafficking and money laundering (PBS, 1997b), tortured witnesses and suppressed evidence to conceal the role of Raul Salinas in the plot to kill Ruiz Massieu’s brother, José Francisco (Preston, 1999). Adrian Carrera Fuentes, the imprisoned former head of Mexico’s national police, testified that he collected nearly $2 million in drug bribes in 1993 and 1994 and turned the money over to Mario Ruiz Massieu (Golden, 1998). The U.S. Justice Department charged that Mexican government officials entered into a conspiracy and used their positions to assist members of drug trafficking gangs, and that Mario Ruiz Massieu was a member of this conspiracy (Marin, 1997).

The web of corruption involved the PGR Ministerio Público Federal (MPF) federal prosecutor, who was generally the intermediary between the drug traffickers, the PGR/PJF hierarchy, and the military (Pimentel, 1999, p. 16; Ravelo, 2007). Suitcases filled with money and gifts from the cartels were collected by the PGR/PJF “plaza” holders throughout Mexico, then disbursed to their superiors in the PGR/PJF and ultimately to President Salinas (Pimentel, 1999, p. 17; Ravelo, 2007).

Mexico’s Dirección Federal de Seguridad (DFS) intelligence service was also corrupted by the drug cartels. In the 1970s and 1980s, DFS personnel tortured and killed hundreds of Mexicans while participating in the drug trade (Pimentel, 1999; Ravelo, 2007). The head of the DFS, José Antonio Zorrilla Pérez, ordered the killing of Mexican newspaper reporter Manuel Buendía after he began publishing details of the drug traffickers’ connections to high-level police, politicians, and businessmen (Pimentel, 1999).

Mexico’s Secretary of Defense was also implicated in activities supporting the drug cartels. According to a U.S. Drug Enforcement Agency (DEA) informant, a consortium of traffickers including Rafael Caro Quintero, Juan Esparagosa Moreno, Jaime Figueroa Soto, Manuel Salcido, and Juan Quintero Paez paid $10 million dollars for protection to the Secretary, General Juan Arevalo Gardoqui, in a videotaped transaction (Lupsha, 1991, p. 53).

The evidence of high-level government protection is significant because it is impossible to move tons of cocaine, launder thousands of millions of dollars, and maintain a clandestine organization of several hundred armed persons without a system of political and police protection (Figueroa, 1997, p. 137; Grillo, 2011; Ravelo, 2007). Without this protection, large-scale, blatant violations of the law extending over decades cannot persist. Discipline is enforced by selectively removing the protection and ordering assassinations. This suggests that an effective strategy must address high-level corruption and corruption among the federal police, military, and anticorruption units.

Institutionalization of Corruption

Corruption in Mexico cannot be attributed to a few isolated bad apples. Instead, it has become institutionalized in a way that is difficult for honest members of law enforcement to resist. The political economy of corruption ensures that individuals who might otherwise seek to act independently are faced with a potent mix of carrots and sticks wielded by the drug cartels and embedded throughout the Mexican law enforcement system.
Offices within the PGR/PJF system are sold to criminals who use control of these offices to facilitate drug trafficking. The sale of offices within the PGR/PJF has generally been accomplished through a deputy attorney general who was purposely selected by the PRI hierarchy and named by Mexico’s president (Pimentel, 1999; Ravelo, 2007). A former PGR delegate (who functions like a U.S. district attorney) reported that he was bluntly informed by a deputy attorney general that the drug plaza he was taking over would cost $3 million, plus a payment of $1 million dollars per month rent to the PGR hierarchy, and that he should pay up front (Pimentel, 1999). The drug mafias would provide the funds; he would be responsible for funneling much of this to his superiors who, in turn would channel it to President Salinas’ private secretary, where the monies would be placed in secret accounts to be used as the president or the PRI hierarchy saw fit; the sale of offices continues to the present in the PGR/PJF (Pimentel, 1999, p. 20). Organized crime figures were only arrested to appease the U.S., for example, in the weeks prior to the annual “certification” by the U.S. of Mexico’s cooperation with drug control efforts (Pimentel, 1999; Ravelo, 2007).

Starting in 1992, the military, the PGR/PJF, and State Judicial Police officials began providing “limousine service” protection for drug shipments to the border area; roadblocks were implemented by the military, the PGR/PJF, or the local authorities to safeguard rather than detect the contraband shipments (Pimentel, 1999; Ravelo, 2007). Through intermediaries, the “plaza” holder was notified when a drug shipment was expected and instructed to set up the checkpoints, facilitate and supervise the operation, and ensure the safe shipment of the “merchandise” through his or her area (Pimentel, 1999; Ravelo, 2007).

To maintain high-level protection from law enforcement officials, protected drug traffickers assisted the police by informing on rival traffickers (Grillo, 2011; Pimentel, 1999; Ravelo, 2007). This permitted the police to record arrests, gain credit and promotions, and permitted Mexican government officials to demonstrate progress to their American counterparts in the fight against the drug cartels, thereby maintaining the flow of U.S. money and support to Mexico (e.g., through the Merida initiative).

Starting in 1997, however, the PRI lost its majority in the Cámara de Diputados (Chamber of Delegates). This erosion of power reduced the ability of the PRI to exert control over the drug cartels. Drug-related violence is now uncontrolled, as rival cartels battle for territory. They have seized the opportunity to go after their competitors and are assassinating the police officers and prosecutors who do go after them (Pimentel, 1999). Honest policemen will not investigate because it is better to delay an investigation than face assassination by one’s own police comrades (Blancornelas, 1997, p. 143, as translated and quoted in Grillo, 2011; Pimentel, 1999, p. 23; Ravelo, 2007). Corruption of the judicial system means that honest prosecutors and policemen are undercut in their efforts to fight crime. Through intimidation, coercion, and bribery of judges, serious charges against major criminals are dismissed, allowing them back on the street to continue their criminal activities (Grillo, 2011; Pimentel, 1999, p. 23; Ravelo, 2007).

If the drug war is being lost, the ultimate reason may be corruption. The evidence of Mexican corruption suggests how corrupt authorities protect the traffickers from honest members of law enforcement, why government authorities have been unable to control narcotics trafficking and the associated violence, and why it has become nearly impossible for honest members of law enforcement to prevail. The evidence that offices within the PGR/PJF are sold to criminals who use control of these offices to facilitate drug trafficking, that State Judicial Police, the military, the PGR/PJF, and local authorities are induced to ensure the safe shipment of contraband drugs, and political leaders are induced to provide protection for drug traffickers by manipulating the judicial system, suggests that honest members of law enforcement are confronted with a web of corrupt actors who thwart their efforts to fight trafficking and the associated violence.
**Enforcing Agreements**

The business of drug trafficking involves all of the problems of a conventional business. In particular, agreements must be enforced. Enforceable agreements permit the business to expand; lack of enforcement causes the business to fail. Drugs will not be supplied if payment is unreliable. Payment will not be made if deliveries are short of the agreed upon quantity or quality.

Unlike a conventional business, however, drug traffickers cannot rely on the legal system to enforce their agreements. Instead, traffickers employ sicarios—contract killers—to kill cheaters and to enforce discipline. In the words of one assassin: “What they needed to make things run smooth was enforcement” (Vulliamy, 2010, p. 253). In the absence of enforcement, cheating would be rife. Lacking the ability to enforce agreements through the legal system, the threat of violence is perhaps the main factor that prevents suppliers from cheating on quantity or quality, or prevents delivery personnel from skimming or stealing the product, or prevents street-level distributors from failing to pay for the drugs that are delivered to them, or prevents informants from reporting criminal activity to authorities who would prosecute criminals. Without the enforcement of agreements and intimidation of potential informants, large-scale organized drug-trafficking would not be possible because both supply and payment would be unreliable. This type of activity depends on the ability of the drug cartels to enforce business agreements and intimidate potential informants through violence.

To deter cheating, a special brand of violence is used: torture, mutilation, and graphic messages left with headless bodies prominently displayed on bridges, highway overpasses, and other public areas (Grillo, 2011; Ravelo, 2007; Vulliamy, 2010). The purpose is to terrorize everyone who might resist the traffickers—potential informants, honest members of law enforcement, and eyewitnesses to the crimes committed by traffickers—and to demonstrate the absolute control of the narcotraffickers and the futility of challenging them.

Enforcement is needed to deter honest law enforcement agents and discipline potential informants working for law enforcement. For example, when federal army troops arrested one of the founding commanders of Los Zetas in November 2008 and confiscated 428 guns (including 288 assault weapons), antiaircraft missiles, 287 grenades and bombs, and half a million rounds of ammunition, Los Zetas retaliated by torturing and executing a Mexican army general and two associates (Vulliamy, 2010). This type of crime is abetted by corrupt authorities: within a week, federal agents arrested Cancún’s chief of police, Francisco Velasco, and six other officers, for their alleged roles in the general’s murder (Vulliamy, 2010). Federal prosecutors estimated that as many as 1,700 of Velasco’s officers in Cancún’s police force were working for Los Zetas (Vulliamy, 2010).

To conduct its operations, including an audacious prison break that freed 40 prisoners affiliated with the Gulf cartel, Los Zetas obtained police and commando uniforms, as well as military weapons and ammunition that were likely purchased from corrupt police and soldiers with access to those items (Vulliamy, 2010). As a consequence of the corruption, there is a widespread belief that any crime committed by criminals goes unpunished and the authorities do little but cooperate with the criminals (Grillo, 2011; Ravelo, 2007; Vulliamy, 2010, p. 283).

**El Sicario**

To enforce agreements, the cartels recruit paid assassins from the ranks of the police and army. In a 80-min documentary by Gianfranco Rosi, “El Sicario: Room 164,” a contract killer who served as a commander in the Chihuahua state police while kidnapping, torturing, and murdering individuals targeted by the Mexican drug cartels provided a first-hand account of how the system worked. This account suggests the significance of corruption in facilitating the crime associated with drug trafficking and, therefore, the significance of developing an effective deterrent to corruption.
According to this commander, all of the law enforcement academies in Mexico for the various police forces, the investigative police, the military police, and the army have been co-opted and used by the narcotrafficking organizations to train their future employees. The drug cartels lavished young cadets who had few prospects in life and only received the equivalent of $12.75 per month in government salary with monthly cash payments of $1,000, drugs, and women (Molloy & Bowden, 2011). In this way, the cadets were recruited by the traffickers, who prized the skills taught in the academies, such as the use of weapons and surveillance techniques (Molloy & Bowden, 2011, pp. 74–75). The assertion that narcotraffickers use law enforcement and military academies to train their personnel is supported by Craig Deare, the former commander of the U.S. 7th Special Forces Group at Ft. Bragg, North Carolina, who also served as country director in the office of the U.S. Secretary of Defence and is now a professor at the U.S. National Defence University. According to Deare, some of the Gulf and Zeta cartels’ initial members were elite Mexican troops, trained in the early 1990s by U.S. special forces based at Ft. Bragg (Arsenault, 2011). They were given standard special forces training, including map reading, communications, and training with machine guns, automatic weapons and other firearms.

According to the commander, 50 of the 200 cadets in his Chihuahua state police academy graduating class were recruited and placed on the payroll of the narcotraffickers (Molloy & Bowden, 2011, p. 75). The 50 graduates were distributed throughout Juárez, Chihuahua City, Parral, and Ojinaga so that when an offer was received to traffic drugs from Durango, Sonora, or Coahuila into Chihuahua, state policemen were already committed to the traffickers at each port of entry into the state and could ensure easy circulation of the drugs. In many cases, official police vehicles were used to transport drugs. In other cases, drugs were hidden in trucks that were approved by the police. Marijuana was stacked in boxes on flatbed trailers and driven through checkpoints.

To foil law enforcement, individual policemen were assigned by the narcotraffickers to specific roles: guarding safe houses, surveillance, kidnapping of individuals who owed money or who switched to work for rival gangs, execution of those individuals, and burial of those who were executed (Molloy & Bowden, 2011, p. 79). The kidnapper delivered the victim to the executioner, who delivered the body to the person who buried it. The separation of roles ensured that no single person could give information to police investigators that would directly link the traffickers with the entire sequence of criminal actions required to kidnap and execute an individual and dispose of the body. Policemen using official patrol cars were recruited and assigned to shadow victims before they were kidnapped or killed (Molloy & Bowden, 2011). On the day that the kidnapping or assassination was scheduled, the director of the police was notified and told to call a 45-min meeting, so that all police were cleared off the streets and the kidnappers or assassins could operate freely. The police dispatcher was also bribed so that policemen would not be dispatched to the scene until after the kidnappers or assassins were finished.

According to the commander, officers who might otherwise decide to “retire” from their service with the narcotraffickers were compelled to carry out their orders or be killed (Molloy & Bowden, 2011). Discipline among the criminals was enforced through the same tactics.

In addition to the involvement of the police, the commander described the involvement of military officers in organized assassinations, including an individual known as “El Cora de Sinaloa” who commanded a group that executed people for the Sinaloa cartel (Molloy & Bowden, 2011). This specialized group of assassins operated throughout Sinaloa, Durango, Torreón in Coahuila, Chihuahua and Sonora, allegedly in collaboration with ranking military officers.

The commander and his team of 90 men, trained by the military, were recruited to kill high-level police commanders, including commanders of the state judicial police (Molloy & Bowden, 2011). This team employed all of the advantages of being actual police officers who had been tracking the daily schedules of each target in the course of their official roles as investigators. This included the use of devices to intercept and record cell-phone calls. In his official role, the commander
maintained direct communication with numerous other security agencies, including municipal police, state judicial police, federal judicial police, ministerial police, and the special police, who purposely or inadvertently supplied information that assisted in tracking the targets.

The commander described the ease of working in Juárez, Chihuahua, Sinaloa, and Durango, with every step facilitated by corruption:

All we had to do was arrive at an airport, get on a plane, and go. It was not a problem. Arms and cash were also transported by private planes. In the airport, everything was arranged such that the private flights—small Cessnas—were taken care of in all of the airports by elements of the army. The commercial flights were taken care of by the federal preventive police, and everything was arranged for us. . . . We would travel to these states to find people who owed money, and our job was to execute them. . . .

For some time, six to eight months or more, I was working inside the police, kidnapping people and then handing them over to other people. The advantage of being a policeman while also working for the narcotrafficking organizations is that you can play both sides. Supposedly, you are working to protect people and society, but at the same time, you are getting paid a lot of money to do jobs required by the narcotraffickers, to deliver people to them (Molloy & Bowden, 2011, pp. 91–95, 104).

This account is consistent with contemporaneous reports in 2004 that U.S. and Mexican officials believed that at least 20 officers in the Chihuahua state and Ciudad Juárez police departments doubled as enforcers and traffickers for the Juárez drug cartel (Corchado & Sandoval, 2004).

The evidence presented in Section II suggests that the control exerted by cartel leaders depends on the ability of the cartels to recruit contract killers from individuals who are trained at government-run police and military training academies and who masquerade as police and soldiers. The recruitment of these contract killers permits the cartels to enforce discipline among police who might otherwise quit the business of trafficking and become informants; this discipline permits large-scale drug-trafficking and high-drug profits.

The commander’s account suggests that narcotraffickers have infiltrated, corrupted, and hijacked the resources of the Mexican law enforcement system for their own purposes, permitting them to operate with impunity and to kill any member of law enforcement who opposes them. The institutions that are intended to fight crime have been coopted. According to the commander, the majority of the cartels’ work is managed from inside the Mexican prison system. Executions are ordered by individuals who are in prison, and prisons are used as manufacturing centers and packing houses for drugs that are shipped to the U.S. (Molloy & Bowden, 2011). In one case, a prison director released prison inmates at night to carry out executions using rifles originally issued to prison guards, including the massacre of 17 people at a party outside the city of Torreón on July 18, 2010 (Carroll, 2010).

As a consequence of corruption, members of the police and the government essentially participate with and assist the narcotrafficking organizations, rather than fighting them. At every level, corrupt police and army soldiers essentially work under the command of the narcotrafficking cartels as puppets, manipulated and controlled for the convenience of cartel bosses. Control is exerted through the power to assassinate any policeman or soldier who opposes the cartels (Molloy & Bowden, 2011).

The preceding analysis suggests that the crux of the problem is corruption. In the absence of corruption, police cadets could not be enticed to work for the traffickers as enforcers; without enforcement, it would be difficult for traffickers to control police who might otherwise quit the business of trafficking and become informants; without control over potential informants, it would be difficult for the traffickers to operate. The issue is, therefore, how to establish a powerful deterrent to corruption, a deterrent that is resistant to corruption by the traffickers and resistant to control by corrupt domestic officials.
Guatemala’s CICIG

Guatemala, which is one of the most violent countries in Latin America, offers an intriguing model involving international, UN-supported inspectors who lead criminal investigations in Guatemala. The rationale is that domestic agencies, weakened by corruption, are no match for powerful criminal organizations. For example, in 2007, Vice-President Eduardo Stein conceded that organized crime cartels had gained effective control of six of Guatemala’s 22 departments (Gavigan, 2009). According to Human Rights Watch: “Guatemala’s weak and corrupt law enforcement institutions have proved incapable of containing the powerful organized crime groups and criminal gangs that contribute to one of the highest violent crime rates in the Americas. . . . impunity remains the norm” (Human Rights Watch, 2011, p. 1). Illegal armed groups and criminal gangs operate death squads and employ violence and intimidation, supporting their activities through drug trafficking. Guatemalan law enforcement institutions are unable to address this rampant violence due to intimidation, corruption, and infiltration of the police and judiciary by the criminal organizations. In a notorious case, three members of the Central American Parliament were killed by senior members of Guatemala’s police, including the head of the organized crime unit (Hudson & Taylor, 2010). This incident galvanized Guatemala and the UN to create the CICIG through a treaty-level bilateral agreement (CICIG, 2012; Gavigan, 2009). CICIG seeks to address the current infiltration of government institutions by criminal organizations and the operation of violent death squads operating beyond the control of the Guatemalan state. CICIG is the first instance of a UN investigative body whose jurisdiction focuses on corruption and organized crime, rather than human rights violations.

CICIG employs international and local staff to conduct independent investigations and produce reports that are referred to Guatemalan prosecutors. The agreement with the UN specifies that:

“The Government of Guatemala shall provide CICIG with all the assistance necessary for the discharge of its functions and activities . . . and shall ensure, in particular, that its members enjoy: (a) freedom of movement without restriction throughout Guatemalan territory; (b) freedom of access without restriction to all State locations . . . without prior notice. . . . (c) freedom to meet and interview any individual . . . whose testimony is deemed necessary for the discharge of its mandate; (d) free access to information and documentary material that has a bearing on its investigations . . . whether civilian or military” (United Nations and State of Guatemala, 2006, p. 6).

Furthermore, “The Government of Guatemala shall take such effective and adequate measures as may be required to ensure the security and protection of [CICIG personnel] . . . . International personnel shall enjoy . . . immunity from personal arrest or detention” (United Nations and State of Guatemala, 2006, pp. 7–8). Thus, CICIG has extraordinarily broad freedom to conduct independent investigations into any person, official, or entity and to present criminal charges to Guatemala’s Public Prosecutor. However, CICIG is not empowered to enforce cooperation or impose penalties for noncompliance.

CICIG’s activities during the first 4 years of its mandate suggest that this type of international investigative body can achieve success relatively quickly, despite having limited enforcement tools and no independent ability to prosecute. CICIG’s investigations led to the indictment of powerful individuals including ex-President Alfonso Portillo for corruption; ex-Defence Minister Eduardo Arevalo Lacs for corruption; Senior Prosecutor Álvaro Matus for obstructing justice and destroying evidence; General Enrique Ríos Sosa, son of former Guatemalan General Efrain Rios Montt, and five other ex-military officials for embezzlement; the kidnappers of Gladys Monterroso, wife of the Human Rights Ombudsman; and four members of the National Civilian Police who engaged in extortion and assault (Hudson & Taylor, 2010). In all eight cases, the accused were directly and visibly connected to government institutions, politicians or drug-trafficking organizations.
When Judge Irma Leticia Valenzuela issued a ruling that protected ex-President Portillo, CICIG appealed to Guatemala’s Supreme Court, forcing Judge Valenzuela to resign from the case (Hudson & Taylor, 2010). CICIG forced multiple resignations of public prosecutors for corruption or obstruction of justice, including Attorney General Juan Luis Florido, Senior Prosecutor Álvaro Matus, and Administrative Crimes Prosecutor Patricia Lainfiesta (Hudson & Taylor, 2010). CICIG’s investigations also led to a purge of 1,700 allegedly corrupt police officers (Hudson & Taylor, 2010). These results suggest that CICIG is having an impact despite its inability to discipline or prosecute individuals, and despite the risk of violence to its investigators. CICIG’s success suggests that this type of investigative body can be successful even under conditions where criminal gangs, death squads and powerful individuals appear to operate with impunity—conditions that characterize Mexico, as well as Guatemala.

Lessons from CICIG’s experience include the need to dedicate significant resources to witness and staff security. Unless witnesses and victims feel sufficiently protected they are unlikely to provide crucial information and cooperation necessary for a successful investigation. CICIG created a witness protection program by negotiating an agreement with Spain for the relocation of protected witnesses, training 48 police officers to create an elite group of agents responsible for protecting witnesses, and successfully pressuring Guatemala to implement legislative reforms to enhance identity protection for witnesses in organized crime cases.

**UN Inspections**

If corruption among the police, military, customs and border agents, and government officials means that the same authorities who are society’s primary bulwark against crime serve, instead, to actively facilitate and promote the type of large-scale, organized drug-trafficking and wholesale violence that has developed along the U.S.–Mexico border, then the starting point of any effective strategy to reduce drug-trafficking and the associated violence is to establish a credible capacity to investigate, prosecute, and deter corruption among the police, military, and government officials.

If corruption among the police, military, and Mexican government officials can be controlled in the same way that it is controlled in Western developed nations, and if corrupt individuals are replaced with honest, competent officials, then honest, competent policemen could do their jobs effectively. If the police arrest those responsible for drug-trafficking, kidnapping, and murder, instead of participating in those activities, criminals and corrupt individuals would have a reason to fear arrest and would be deterred from committing crime. In Colombia, for example, kidnappers operated with impunity until reforms purged the police force of corrupt officers; as a result, Colombia has made significant gains in reducing the kidnapping rate (Grillo, 2011). César Gaviria Trujillo, former President of Colombia, stated that “kidnapping is a problem of bad policing. Because good police can always catch kidnappers.” (Grillo, 2011, p. 287).

The depth and scope of corruption in Mexico suggests the need for an institution to fight corruption that operates independently of the control of senior domestic officials—in other words, an international institution. This type of institution is needed not only in Mexico, but in many states around the world. While the notion that the international community could effectively deter corruption may seem utopian, the remainder of this article seeks to explain why it is not. Essentially, I suggest that it is feasible to establish a body of UN inspectors who would be empowered to investigate allegations of corruption, then refer cases to domestic courts for trial. This proposal would involve an international treaty, in the form of a protocol to the UN Convention Against Corruption (UNCAC), but raises a number of issues, including the rationale, reasons to think that the proposal could be implemented, and how it would work in practice. Significantly, both Mexico and the U.S. are parties to UNCAC and, thus, have already signed and ratified a legally binding international treaty requiring
them to implement and enforce laws against corruption. The proposed protocol would, upon ratification, require all parties to cooperate with UN inspectors to enforce those laws.

**Rationale**

The rationale for the proposed international treaty is threefold. First, all Western developed countries deter corruption through aggressive, independent investigators. Second, the two major cases where embedded government corruption was demonstrably arrested—Hong Kong and Singapore—involved the establishment of independent investigators (de Speville, 1999; Leak, 1999; Manion, 2004; Weder & Brunetti, 2000). Third, since corruption in Mexico and many other nations extends to the highest level, it is necessary for the international community to establish a body of inspectors—it is not possible to rely on domestic leaders to implement the necessary changes.

Hong Kong offers perhaps the clearest evidence of the impact of independent investigators on corruption. Prior to the anticorruption campaign initiated in 1974, syndicated corruption in Hong Kong “existed in a primal state” where “corruption infected not only the police, a classic source, but all government departments that provided any opportunity for its occurrence” (de Speville, 1997, p. 12). At that time, the task of eradicating corruption in Hong Kong seemed as hopeless as the eradication of corruption in Mexico. Yet, within a few short years of introducing independent inspectors, Hong Kong achieved “spectacular success” in arresting corruption to the point where it now scores higher than Germany, Belgium, and the U.S. on Transparency International’s corruption perceptions index, and consistently higher than the average for Organization for Economic Cooperation And Development countries on 11 measures of governance, including freedom from corruption (Manion, 2004, p. 2; Weder & Brunetti, 2000). Hong Kong is now one of the five richest economies in the world (Groenewold & Tang, 2007). This is directly attributable to a bureaucratically clean, predictable, investment-friendly environment (Weder & Brunetti, 2000).

While Western criminal investigators operate where the rule-of-law prevails, in contrast to the U.S.–Mexico border region, where the rule-of-law is weak, investigators from the International Criminal Court (ICC) have demonstrated that many of the most notorious, seemingly untouchable perpetrators of war crimes can be arrested and brought to trial even in the most lawless African states, where the rule-of-law is no stronger than in Mexico (International Criminal Court, 2011). Arrests were made despite the possibility that the investigators might themselves be harmed. This challenges the notion that Mexico is somehow a special case where corrupt officials cannot be brought to justice by international investigators.

**Precedent**

Significantly, leaders of 111 nations have signed, and parliaments have ratified, the *Rome Statute of the ICC*. Parties to the Statute include Mexico, but not the U.S.. The Rome Statute created an international body of criminal investigators and endowed the investigators with the same broad powers to conduct independent investigations on domestic soil that are envisioned for UN inspectors. The primary difference is that the Rome Statute focuses on crimes of war, aggression, genocide, and crimes against humanity, whereas UN inspectors would focus on corruption. The process by which the Rome Statute was established provides a model for establishing a UN inspectorate. The UN General Assembly established a committee that drafted the ICC Statute, leading to adoption by 120 nations in 1998 and ratification by 111 nations by March 2010. The same process could be pursued to establish a UN inspectorate. Table 1 compares the ICC and the proposal to create an Independent Commission Against Corruption (ICAC), employing UN inspectors. This comparison suggests that the ICC provides a model and precedent for all of the powers that are envisioned for UN inspectors.
<table>
<thead>
<tr>
<th>ICC</th>
<th>ICAC</th>
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<tr>
<td>UN General Assembly establishes committee that drafts ICC Statute,</td>
<td>Same process</td>
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<tr>
<td>leading to adoption by 120 nations in 1998 and ratification by 111</td>
<td>Same</td>
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<tr>
<td>nations by March 2010</td>
<td>Same</td>
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<tr>
<td>Signature and ratification creates legal duty to comply</td>
<td>Same</td>
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<tr>
<td>Compels full cooperation by state parties</td>
<td>Same</td>
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<tr>
<td>Authority to make determinations of noncooperation</td>
<td>Same</td>
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<tr>
<td>Prosecutor has complete independence; shall not seek or act on</td>
<td>Same</td>
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<tr>
<td>instructions from any external source</td>
<td>Same</td>
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<tr>
<td>Prosecutor shall be person of high moral character</td>
<td>Same</td>
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<tr>
<td>Prosecutor appoints staff investigators</td>
<td>Same</td>
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<td>Prosecutor and staff enjoy immunity from prosecution under local</td>
<td>Same</td>
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<tr>
<td>law</td>
<td>Same</td>
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<tr>
<td>Salaries and expenses paid by states parties, UN funds and</td>
<td>Same</td>
</tr>
<tr>
<td>contributions</td>
<td>Same</td>
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<tr>
<td>Prosecutor endowed with investigative and prosecutorial powers</td>
<td>Only investigative powers</td>
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<tr>
<td>Independent court with power to convict and imprison</td>
<td>No court; no power to convict</td>
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<tr>
<td>Power to arrest, convict, imprison, impose fines and property</td>
<td>Power to arrest</td>
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<tr>
<td>forfeiture</td>
<td>Same</td>
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<tr>
<td>Power to conduct on-site investigations, make arrests, gather</td>
<td>Same</td>
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<tr>
<td>evidence, take statements and testimony, prevent absconding, conduct</td>
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<tr>
<td>wiretaps and surveillance (where permitted), without cooperation</td>
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<td>of state parties</td>
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<td>Power to compel state party to execute arrests and surrenders</td>
<td>Same</td>
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<tr>
<td>Power to compel state party to prosecute the accused</td>
<td>Same</td>
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<tr>
<td>Power to enter into agreements to facilitate cooperation of states</td>
<td>Same</td>
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<tr>
<td>and persons</td>
<td></td>
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<td>Power to take steps to preserve evidence</td>
<td>Same</td>
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<tr>
<td>Crimes of war, aggression, genocide, crimes against humanity</td>
<td>Corruption only</td>
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<td>Crimes involving corruption of justice, including bribery,</td>
<td>Included</td>
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<td>retaliation, intimidation of witnesses or court officials</td>
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<tr>
<td>Criminal responsibility for those who order, solicit, induce, aid,</td>
<td>Same</td>
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<tr>
<td>or abet a crime</td>
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<tr>
<td>Jurisdiction where crime is committed in state, or accused is</td>
<td>Same</td>
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<tr>
<td>national</td>
<td></td>
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<tr>
<td>of state, that is party to the Statute</td>
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<tr>
<td>Admissability of a case or the jurisdiction of the Court may be</td>
<td>Same</td>
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<tr>
<td>challenged only once</td>
<td></td>
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<tr>
<td>Assumes jurisdiction if a state delays, shields the accused or</td>
<td>Same</td>
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<tr>
<td>lacks impartiality</td>
<td></td>
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<tr>
<td>Prosecutor may initiate investigations <em>proprio motu</em> (independently)</td>
<td>Same</td>
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<tr>
<td>Prosecutor does not proceed unless reasonable basis for</td>
<td>Same</td>
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<tr>
<td>allegation</td>
<td></td>
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<tr>
<td>Prosecutor does not proceed unless in the interest of justice</td>
<td>Same</td>
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<tr>
<td>Investigation must pursue both incriminating and exonerating</td>
<td>Same</td>
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<tr>
<td>evidence</td>
<td></td>
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<tr>
<td>Prosecutor must respect procedural rights of the accused against</td>
<td>Same</td>
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<td>coercion and arbitrary arrest, and rights to remain silent and of</td>
<td></td>
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<td>assistance to counsel</td>
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<tr>
<td>Preserves confidentiality of investigations</td>
<td>Same</td>
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<td>Limits information provided to states, to protect persons and</td>
<td>Same</td>
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<tr>
<td>evidence</td>
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<tr>
<td>Applies national laws of states that would normally exercise</td>
<td>Same</td>
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<tr>
<td>jurisdiction, provided that those laws are not inconsistent with the</td>
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<tr>
<td>Statute</td>
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<tr>
<td>Applies equally to all, including heads of state, members of</td>
<td>Same</td>
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<tr>
<td>government or parliament, and military commanders, regardless of</td>
<td></td>
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<tr>
<td>immunity under national law</td>
<td></td>
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<tr>
<td>No statute of limitations</td>
<td>Same</td>
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<tr>
<td>Orders by superiors do not relieve the accused of criminal</td>
<td>Same</td>
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<tr>
<td>responsibility</td>
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</table>

Note. ICC = International Criminal Court; ICAC = Independent Commission Against Corruption.
Significantly, autocracies with weak rule-of-law were as likely—or more likely—to ratify the ICC statute as high rule-of-law countries: “the least accountable governments—the least democratic, with the weakest reputations for respecting the rule of law, the least politically constrained—with a recent past of civil violence were at the highest “risk” of ratifying the Rome Statute” (Simmons & Danner, 2010). Thus, governments that were arguably at the highest risk of ICC action were most—rather than least—likely to ratify the Statute. Furthermore, ratification influenced behavior: the least democratic governments were almost 8 times more likely to terminate a violent conflict if they had ratified the ICC statute, apparently because of the real threat of prosecution for war crimes (Simmons & Danner, 2010). Thus, “the idea that ratification is purely symbolic does not square with the facts” (Simmons & Danner, 2010, p. 253). Ratification was not a symbolic action by leaders who could presume that they would be unaffected.

The ICC has been effective in conducting successful investigations, indicting alleged criminals for committing mass atrocities, and bringing them to trial—demonstrating that the ICC is not a paper tiger and adoption and ratification are not empty gestures by politicians to placate the international community. The ICC is bringing criminals to justice in cases covering Uganda, the Democratic Republic of Congo, Darfur/Sudan, and the Central African Republic. The Court convicted Thomas Lubanga, the founder of the United Congolese Patriots, of war crimes, including kidnapping and forcing children to participate in armed conflicts (International Criminal Court, 2012). The Court is currently trying Germain Katanga, former leader of the Patriotic Resistance Force in Ituri, and his senior commander, Mathieu Ngudjolo Chui, for war crimes and crimes against humanity (International Criminal Court, 2011). The Court is currently trying Jean-Pierre Bemba Gombo, former Vice-President and one of the richest men in the Democratic Republic of the Congo, for war crimes and crimes against humanity (International Criminal Court, 2011). The ICC has indicted Joseph Kony, the Ugandan head of the rebel Lord’s Resistance Army for crimes including murder, abduction, mutilation, sexual enslavement of women and children, and the conscription of child soldiers (International Criminal Court, 2011). Sudanese President Omar al-Bashir, the first sitting head of state to face ICC charges, has been indicted for war crimes and crimes against humanity in Darfur (International Criminal Court, 2011). The ICC has indicted Joseph Kony, the Ugandan head of the rebel Lord’s Resistance Army for crimes including murder, abduction, mutilation, sexual enslavement of women and children, and the conscription of child soldiers (International Criminal Court, 2011). Sudanese President Omar al-Bashir, the first sitting head of state to face ICC charges, has been indicted for war crimes and crimes against humanity in Darfur (International Criminal Court, 2011). Sudanese President Omar al-Bashir, the first sitting head of state to face ICC charges, has been indicted for war crimes and crimes against humanity in Darfur (International Criminal Court, 2011). Sudanese President Omar al-Bashir, the first sitting head of state to face ICC charges, has been indicted for war crimes and crimes against humanity in Darfur (International Criminal Court, 2011).

Thus, the Rome Statute provides a model of the process through which domestic leaders may be compelled, through international pressure, to sign and ratify a protocol that would expand the scope of the UNCAC, create the ICAC and, upon ratification, create the legal duty to comply with investigations led by UN inspectors that would accompany ratification. A recent book-length analysis found that international nongovernmental agencies (NGOs) created a powerful coalition and were influential in obtaining passage and ratification of the Rome Statute (Struett, 2008). Organizations such as Amnesty International were particularly effective because of the recognition by domestic leaders that these organizations could mobilize voters, thereby threatening the survival of any leader opposed to the Statute. NGOs such as Amnesty International set the terms of the debate, framed the passage of the Statute as a moral issue, and compelled domestic leaders to adopt the Statute or face public condemnation.

By obtaining early ratifications from a coalition of nations that favored the Statute, pressure was brought to bear on holdouts, which then became more willing to ratify the treaty because their neighbors were doing so. For example, one of the last holdouts, Uganda, ratified the treaty on June 14, 2002, as a direct result of pressure from other governments, human rights NGOs, and humanitarian relief organizations to improve Uganda’s record on human rights (Struett, 2008). Ugandan government officials believed that this action would improve Uganda’s reputation within the international community and would maintain international support for concessions regarding aid, trade, and debt relief (Struett, 2008).

After an international treaty has been signed and ratified, domestic leaders may attempt to obstruct investigations and warrants issued to arrest powerful figures. However, the examples cited...
above suggest that the ICC has been remarkably successful in bringing powerful individuals to justice, despite the dominance of domestic leaders over the legislative and judicial branches in autocratic nations. Even in the most corrupt nations in the world, the experience of the ICC suggests that independent investigators can complete their work, domestic officials can execute arrest warrants, and powerful figures can be brought to justice. The experience of the ICC gives reason to think that the proposed ICAC might be equally effective.

The draft protocol would effectively provide an independent means of investigating corruption, and would do so under the existing legal authority of the UN under the provisions of UNCAC. Under the protocol, any individual could submit a request for an investigation. The UN Commission on Crime Prevention and Criminal Justice would assess the validity of each charge and would provide a check against politically motivated investigations. Importantly, the UN would have the authority to investigate counterclaims that a given investigation is politically motivated. The UN would serve as an independent arbiter of conflicting charges of corruption. The UN would have the authority to conduct multiple investigations simultaneously to sort out conflicting claims, and would have the authority to recommend charges against multiple parties.

At the same time, trials would be conducted by domestic courts, unless crimes were to be referred to the ICC. Thus, the UN would have no power to convict, sentence, and imprison suspects (other than the temporary detention of suspects before they are handed over for trial). This separation of powers has been effective in Hong Kong in ensuring that the powers of investigation are not abused. At the same time, the lack of power to convict and sentence suspects is a potential weakness that could be exploited by corrupt domestic leaders. However, any interference with prosecutions and the courts would itself be a major crime subject to investigation as an act of corruption. Repeated instances would be brought to the attention of the international community through UN reports filed with Transparency International, and this could be expected to adversely affect Transparency International ratings, triggering financial sanctions by donors, the World Bank, and the IMF, flight of foreign investment, adverse publicity through the media, and erosion of electoral support that could unseat corrupt incumbents.

While it may seem unlikely that merely investigating corruption can stop it, this is precisely what happened in Hong Kong. The Hong Kong ICAC did not have the power to convict, sentence, or imprison suspects, yet was very successful in halting corruption (see de Speville, 1999; Leak, 1999; Manion, 2004; Weder & Brunetti, 2000). Until the advent of the ICAC, Hong Kong’s police force was notoriously corrupt. The introduction of the ICAC ensured, for the first time, that no corrupt policeman could feel safe from exposure. There would be no tipoff of a raid, inspection or investigation, and no chance to hide or destroy evidence. The calculus of the benefits and costs of corruption changed dramatically.

In the same way, independent UN investigators could ensure that corrupt police, prosecutors, judges, and staff of anticorruption units never feel safe from exposure. By exposing every member of the law enforcement community, every prosecutor, every judge, and every investigator in an anticorruption unit to the threat of investigation, independent investigators serve to deter corruption in the institutions that normally fight corruption. Police are compelled to collect evidence, prosecutors are compelled to present evidence, and judges are compelled to cite evidence, or risk investigation and prosecution themselves for favoritism and corruption. When faced with the prospect of incarceration, it becomes much easier for potentially corrupt police, prosecutors and judges to turn down bribes and to behave ethically. At the same time, it becomes easier for honest police, prosecutors and judges to advance themselves through competent work. By deterring corruption and crime among crime fighters, independent investigators multiply the effectiveness of their own efforts to fight crime.

Hong Kong’s experience suggests that the presence of independent investigators has a powerful effect on corrupt officials across all branches of government. When officials know that their telephones may be tapped, that any meeting might be recorded, and that any colleague may provide
evidence to prosecutors, the scope for corruption is drastically reduced. However, this is only the case when there is a truly independent body of inspectors that is perceived as incorruptible. While prior experience suggests that this is what is needed, the international community has failed to act.

Details and Procedures

A draft protocol to UNCAC, originally drafted to establish an African Commission Against Corruption (ACAC) and intended to deter corruption in African countries, could be broadly adapted for a protocol that would apply to signatories worldwide. Upon entry into force, the treaty would empower the UN to create an International Commission Against Corruption (ICAC) to investigate allegations of corruption. The preamble justifies the protocol by citing Articles 3, 10, 13, 43, 46, 48, and 62 of the UNCAC. Article 62 of the Convention provides the legal basis for employing the resources of the UN, and Articles 3, 10, 13, 43, 46, 48, and 62 of the Convention provide the legal basis to augment the capabilities of the police, law enforcement, and anticorruption agencies in developing countries to combat corruption. Furthermore, the Convention provides the legal authority for law enforcement personnel of member states to act on behalf of the law enforcement personnel of a requesting state. Specifically, Article 46 of the Convention specifies that Parties to the Convention “shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings” in relation to corruption-related offences. Finally, Article 62 of the Convention created a mechanism that could be used to fund the proposed ICAC through contributions by the World Bank, IMF, parties to the Convention, and the G8 countries, which have already agreed to commit substantial financial resources to fight corruption and ensure accountability and government effectiveness.

Thus, legal authority and a funding mechanism have already been established that would permit: (a) the establishment of a UN-funded ICAC, (b) the use of ICAC inspectors to augment the capabilities of the police, law enforcement, and anticorruption agencies in developing countries, and (c) the employment of inspectors and law enforcement personnel of member states, through the ICAC, to act on behalf of the law enforcement personnel of a requesting state to conduct investigations, involving all of the powers enumerated in Article 46, listed above. What is needed is not the legal authority, but a UN protocol that spells out the details of how this would work in practice. Thus, the draft proposal is framed as a protocol that supplements the UNCAC.

The draft protocol specifies procedures. Any individual may submit an allegation of corruption. After receiving a request for an investigation, the ICAC, under the auspices of the UN Commission on Crime Prevention and Criminal Justice, would review the merits of, and prioritize, each request. The Commission would designate a UN Inspector who would lead and supervise every aspect of the investigation, ensuring that the investigation is conducted in a manner that respects and abides by the laws and law enforcement procedures of the state where the investigation is conducted. Inspectors, their staff, and their surrogates would be immune from arrest or detention, and their papers, documents and personal baggage would enjoy the inviolability accorded to diplomatic envoys in conformity with article VI of the United Nations Convention on Privileges and Immunities, but their conduct and the propriety of all investigations would be monitored by an Operations Review Committee, with members nominated by parties to the protocol. The Operations Review Committee would refer cases of criminal misconduct by inspectors or their surrogates for prosecution under the laws and judicial system of the state where the inspectors or surrogates maintain citizenship.

UN inspectors would exercise their powers on production of a written authorization showing their identity and position, together with a document indicating the subject matter and purpose of the on-the-spot check, inspection, or investigation. Individuals served with these documents would be required to comply under the same terms as would be required by the police, law enforcement, and anticorruption units of the state where the investigation is conducted. Failure to comply would have
the same consequences as failure to comply with investigations by the police, law enforcement, and anticorruption units of the state where the investigation is conducted.

Where witnesses or suspects resist an on-the-spot check, inspection, interview, or investigation, the police, law enforcement, and anticorruption units of the state where the investigation is conducted, acting in accordance with national rules, would give UN inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check, inspection, interview or investigation. It would be for the police, law enforcement, and anticorruption units of the state where the investigation is conducted to take any necessary measures, in conformity with national law, to enforce cooperation. In cases where an Inspector believes that adequate and timely assistance has not been provided by the requisite police, law enforcement, judicial and anticorruption units, the Inspector may file a request for censure by the Commission on Crime Prevention and Criminal Justice. The Commission would review the request and may subpoena evidence and/or interview witnesses. The Commission would make a determination, by a majority vote, to approve or disapprove the motion for censure no later than 21 days after receiving a request for censure.

Under the draft protocol, The World Bank and IMF would develop and implement a system of reducing aid and credits in response to the magnitude and frequency of acts of noncooperation with UN Inspectors and their surrogates. Parties to the protocol agree to abide by the judgment of the Commission on Crime Prevention and Criminal Justice with regard to the magnitude and frequency of any acts of noncooperation, and with regard to the Commission’s recommendations for implementing reforms of the police, law enforcement, judicial, and anticorruption units of the state where the investigation is conducted.

Under the draft protocol, Inspectors would hand over disposition of each case to the appropriate prosecuting authority upon completion of the investigation. Each Inspector would submit reports to the Commission every 30 days following assignment to an investigation, until the investigation is completed and the case is handed over to the appropriate prosecuting authority. When the case is handed over to the prosecuting authority, copies of the final report would be submitted to Transparency International, in addition to the relevant prosecuting authorities, to ensure that the reports are not ignored through the machinations of corrupt officials. Transparency International would publish updates regarding the disposition of the case every 30 days, until the case is dismissed by the appropriate prosecuting authority or court, or a final verdict is reached by the appropriate court.

The reports and all supporting documents would constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They would be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and would be of identical value to such reports.

**Issues**

To ensure the safety of witnesses, victims, and UN inspectors under the violent conditions that exist in Mexico, the protocol specifies that UN inspectors would determine the measures necessary to protect their own safety and the safety of ICAC staff, witnesses, victims and all individuals who assist with ICAC investigations. The State where the investigation is conducted would implement measures requested by UN inspectors and their surrogates, including the use of armored vehicles, secure buildings, special plain-clothes guards, and measures to protect their identity. In addition, it may be necessary to implement witness protection measures including laws that permit closed trial sessions, the use of pseudonyms, voice distortion technology to shield the identity of witnesses while in court, and the use of confidential witness interviews. These measures have been employed to protect witnesses and victims testifying before the ICC and other international tribunals (Gonzalez &
Ferstman, 2009). It may be necessary to negotiate agreements with countries such as Spain for the relocation of protected witnesses. The necessary provisions may be written into the protocol or may be established through separate agreements. While these provisions could not eliminate the threat of violence, the threat could be managed, as indicated by the success of Guatemala’s CICIG, operating under similarly violent conditions (see Section III).

The protocol specifies that attempts to arrest, interfere with, or harm witnesses, victims or inspectors, contrary to the wishes of UN inspectors, would constitute obstruction of justice. This would trigger new ICAC investigations under the provisions of the proposed treaty since obstruction of justice is a form of corruption. The protocol specifies that a UN inspector may file a request for censure by the UN Commission on Crime Prevention and Criminal Justice if the inspector believes that obstruction of justice has occurred, or adequate and timely cooperation, assistance or protection have not been provided by the requisite police, law enforcement, judicial, anticorruption, or government units. The protocol also specifies that the World Bank and IMF would develop and implement a system of reducing aid and credits in response to the magnitude and frequency of acts of noncooperation with UN inspectors and their surrogates. While measures to protect witnesses, victims or inspectors could not eliminate the possibility of harm and the possibility of intimidation, there is ample precedent from Guatemala that witnesses and victims are willing to provide testimony and inspectors are willing to lead investigations, even under the violent conditions that prevail in Guatemala (see Section III).

The implementation of UN inspections and the possibility of investigation by investigators who are resistant to corruption may be expected to reduce the recruitment of police and military by the drug cartels. The possibility of investigation will not deter all corrupt individuals, but it is likely that there is a middle group of individuals who presently participate in crime only because they believe that existing law enforcement is weak. If UN inspectors are as successful as similar investigators in Guatemala and the expectation of impunity is broken, it is not unreasonable to expect that whistle-blowing will increase, the risk of arrest and incarceration will increase, and an increasing number of police and military will be deterred as private calculations of the relative benefits and costs of crime are revised.

The promise of serious investigations by corruption-resistant investigators could be expected to enlist the willingness of Mexican citizens—who are outraged at the violence and seeming impunity of cartel assassins—to cooperate with UN inspectors. Not all citizens will be willing to cooperate, but thousands of outraged citizens, many of whom have lost family members to drug-related violence, have taken to the streets in cities throughout Mexico to protest and could be expected to embrace UN-led investigations (see, e.g., Aljazeera, 2011; Escobedo Shephard, 2012; Public Radio International, 2011).

Mexican citizens are seeking a credible alternative to President Calderon’s strategy of using military troops to fight the drug cartels. Mexicans attribute the escalation of violence to this strategy (Aljazeera, 2011; Public Radio International, 2011). To the extent that the proposed treaty is viewed as a credible alternative to Calderon’s strategy, the treaty may receive public support. A campaign to gain public support could emphasize the success of Guatemala’s CICIG and suggest that a similar approach may be effective in Mexico. If public support for the protocol is forthcoming, it is less likely that concerns about foreign interference (concerns that have plagued the ICC in Africa) would derail the proposed treaty.

Public support for the protocol may sway a middle group of political leaders who are sensitive to their constituents. The fall of the PRI in 2000 and the rise of the National Action Party (PAN) means that Mexican elections are now hotly contested. Even corrupt politicians feel pressure to make public gestures to satisfy constituent concerns. It is no longer feasible for leaders to ignore public litmus tests regarding their willingness to fight corruption. If support for the protocol is posed as a public litmus test, it would be difficult to ignore, regardless of how corrupt a leader might be. Generally, corrupt leaders have followed a strategy of public gestures to fight corruption, followed by corrupt actions that eviscerate the public gestures. However, once an institution such as the CICIG or the
proposed ICAC is created it is not easily controlled by corrupt leaders, as demonstrated by the CICIG’s success in forcing the resignations of prosecutors and judges who obstruct justice (see Section III). This type of institution takes on a life of its own because its staff is paid generously out of UN funds and career advancement for its international investigators depends on the probity of their investigations, rather than rewards that are controlled by corrupt Mexican leaders. This insulation from domestic leaders in Guatemala and Mexico is what sets CICIG and the proposed ICAC apart from domestic law enforcement agencies, and is the reason why they are potentially much more effective than domestic agencies. Mexico’s 2006 presidential election was won by a razor-thin margin of 0.56 percentage points, implying that candidates who wish to win the presidency in the future must be responsive to voter concerns (Estrada & Poire, 2007). If future elections are as tightly contested and depend upon support for the protocol, there is reason to think that a treaty would be signed and ratified; once implemented, it would be difficult for corrupt leaders to control UN inspectors.

While corruption is a perennial campaign issue, a difficulty is that any reform that attacks corruption may undermine the underground economy that is an important source of revenue for lower-income communities. For example, the mayor of Mexico City, López Obrador, favored police reform because he viewed growing criminality and public insecurity as a major obstacle to his planned renewal of the downtown area (Davis, 2006). However, the mayor depended on support from lower-income citizens in downtown areas who sold goods, sometimes illegally, on the streets with the full complicity of the police, who provided protection in exchange for payment (Davis, 2006). López Obrador’s efforts to reform the police threatened those lower-income communities. As a result, the mayor steered away from substantive reforms. A similar dynamic may undermine support for the protocol, since an effective attack on corruption would presumably undermine the same communities and elicit opposition to reform. On the other hand, public outrage at the violence and apparent impunity of cartel assassins may counterbalance potential opposition.

While it may seem that corruption among Mexican police and government officials is so deeply embedded that it is impervious to reform, there is ample evidence from the American and British contexts that embedded corruption can indeed be overcome through concerted public pressure. Federal, state and local government in America were riddled with corruption during the late 19th and early 20th centuries (Hoogenboom, 1979; Keller, 1979; Miller, 1992; Steffens, 2004). Corruption “thoroughly permeated American politics and government in the nineteenth century” and involved all executive departments of the federal government (Hoogenboom, 1979; Keller, 1979, p. 10). According to one account, 25 American states were “utterly corrupt” (Keller, 2007, p. 181). The New York and Pennsylvania legislatures and the U.S. Congress were corrupt; votes of New York legislators “were bought and sold like meat in the market,” and the New York legislature practiced blackmail to extort financial payments (Hoogenboom, 1979, p. 127). Tammany boss William Tweed observed that money “was distributed around in every way, to everybody, and paid for everything, and was scattered throughout the community”—a description that could be applied equally to contemporary corruption in Mexico (Keller, 1979, p. 12). The litany of corruption in American government extended to the highest levels, including Vice-President Schuyler Colfax and Congressman James G. Blaine and James A. Garfield (Keller, 1979, p. 12). In Saint Louis, Missouri, corrupt legislators drew up a schedule of bribery fees that citizens and businessmen had to pay to obtain the right to build a grain elevator, a railroad switch, a rail side track, a street improvement, a wharf space—even every conceivable form of commerce and industry (Steffens, 2004). There was one scale of fees for approving legislative bills and a separate scale for defeating them. Campaign contributions, free railway passes, financial payoffs, and other perks were steered toward high-ranking police officials, judges, lawyers, and politicians who turned a blind eye to blatant violations of the law (Miller, 1992). Public outrage and intense pressure for reform ultimately forced political leaders to adopt effective laws and institutions to fight corruption (Hoogenboom, 1979). Similarly, government corruption was endemic in 16th and 17th century England (Peck, 1979). Bribery, graft, and
nepotism were normal practices, where government offices were briskly bought and sold (Peck, 1979). Corruption was practiced by the king and his ministers, who used governmental patronage to reward the Crown’s supporters in Parliament with offices and contracts until public outrage forced reforms (Peck, 1979). Thus, the fact that corruption is relatively rare in America and Britain is not an indicator that American and British leaders are more honest than Mexican leaders, only that pressure in America and Britain has been exerted more effectively and at an earlier period in time to restrict the freedom of their leaders to commit acts of corruption.

While it is true that corruption creates strong financial incentives for corrupt leaders to maintain a system of corruption, history suggests that it is indeed feasible to combat it. In America and England, reform occurred when public outrage was productively channeled into strong legislation. In Mexico, the same possibility exists. However, public outrage against the violence and seeming impunity of cartel assassins may transform into apathy unless citizens become aware of the option of implementing institutions such as the CICIG or the ICC that have been successful in challenging powerful individuals and breaking the expectation of impunity. This suggests that there is a window of opportunity for reform that could be converted into support for the protocol, but this window may close unless action is taken so that Mexicans become aware of their options.

A major question that arises is whether compliance with the protocol would be perfunctory. However, in addition to the provisions that permit UN inspectors to file requests for censure and require the World Bank and IMF to institute sanctions for noncooperation, the protocol contains provisions designed to foster transparency. Reports would be made available online. If domestic prosecutors refuse to prosecute, this information would become available to the public. A lengthy record of refusing to prosecute egregious cases could be expected to arouse public condemnation. The CICIG’s success in forcing the resignations of prosecutors who obstruct justice suggests that UN inspectors might also be successful in fighting obstruction of justice by prosecutors. This success has occurred under conditions that are not dissimilar to the conditions that currently exist in Mexico. There may be cases where corrupt individuals manage to obstruct justice, but this could be expected to trigger new investigations (since obstruction of justice is a form of corruption). Over a period of time, steady prosecution of corruption may be expected to reduce (but not eliminate) the probability of obstruction.

However, while the examples of the CICIG in Guatemala and the ICC in Africa suggest that independent inspectors can be very effective, there is no guarantee of success in Mexico and no way to determine if the proposed approach would work—except to implement it. The arguments presented in this article suggest why the effort may be worthwhile. The criterion for judging the proposal should be whether there is a better alternative—not whether there is definitive evidence that UN inspections would be a panacea for the embedded corruption and symbiotic relationships between the Mexican drug cartels and their protectors in the police, military, and government.

**Conclusion**

This article has outlined a model of anticorruption reform involving an international treaty that would apply to all parties to the treaty. This model suggests that the UN has the authority, under UNCAC, to establish the capacity for UN inspectors to respond to requests for investigations into allegations of corruption. A proposed protocol to the Convention would, upon ratification by individual nations, permit investigations led by UN inspectors into allegations of corruption. Evidence presented above suggests why domestic leaders might be compelled by broad public support to sign this protocol and to permit UN inspections. While domestic leaders might balk at signing a protocol authorizing UN inspections, it might be difficult for them to refuse if the protocol is framed as a public litmus test of their commitment to fight corruption, and in the face of strong public pressure. A president may not be able to refuse in the face of an aroused nation,
pressure from the U.S. government, the media, the World Bank, the IMF, and NGOs such as Amnesty International.

Any leader opposed to UN inspections may very well attempt to frame the proposal as a form of unwelcome foreign meddling in domestic affairs. However, the benefits of UN inspections would primarily accrue to Mexican citizens who have borne the brunt of the killing, kidnapping, and corruption that has plagued their country. As such, the question may be framed as a human rights issue: Are Mexicans entitled to freedom from the assassination, mutilation, kidnapping, and extortion that accompanies drug trafficking? Are they entitled to assistance from international inspectors in conducting vigorous investigations of corrupt police, military, and government officials?

Once inspectors are permitted to enter a country, it may be difficult to deny them access to individuals who observe and have knowledge of corruption and wish to provide testimony and evidence that would convict and remove corrupt individuals from positions of authority. A protocol that authorizes wiretaps, recorded conversations, interrogations, and seizures of evidence, in the hands of inspectors who are largely immune to pressure from corrupt officials, may dramatically alter calculations by corrupt individuals of the risks of participating in acts of corruption. The model presented here suggests that independent investigators could dramatically reduce corruption, promote good governance, the rule of law and human rights, and thereby foster freedom from the type of violence that regularly occurs in the U.S.–Mexico border region.

With regard to Mexico, President-elect Enrique Peña Nieto has promised aggressive action to combat corruption and drug-related crime (Peña Nieto, 2012). Thus, it is possible that he might sign the proposed treaty, especially if it is posed as a public litmus test of his commitment to fight corruption. Events in Tunisia, Egypt, and Libya suggest that leaders who seek to resist change are not immune to public pressure for political reform. Any president who refuses to sign or support ratification of a treaty that has popular support would be vulnerable to charges by opposition leaders that he is not serious about fighting corruption.

The analysis presented here is not meant to suggest that the process of drafting, negotiating, and ratifying an international treaty is quick or easy. The process may very well be long and difficult. However, the analysis does suggest a way forward that has not previously been suggested—a way that arguably addresses a root problem not only in Mexico, but anywhere in the world where corrupt police and government officials facilitate criminal activity.

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**Notes**

1. The Procuraduría General de la República (PGR) is the office of Mexico’s Federal Attorney General. The Policía Judicial Federal (PJF) was the federal judicial police force of Mexico. In an effort to address corruption, the PJF was replaced in 2002 by the AFI.
2. Beginning in 1986, the U.S. Congress required the U.S. President to annually certify, subject to congressional review, that drug producing or drug transit countries had cooperated fully with the U.S. in drug control efforts; certification avoids a series of aid and trade sanctions. While Mexico has been fully certified each year, Congress closely monitored these certification decisions and, in some years, submitted resolutions of disapproval.
3. The draft protocol is available online. See: http://www.box.net/shared/7qhp39cap8.
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