

The Toll of US Arms Trafficking to Mexico

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12/13/2021

Illicit Trade

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Fall 2021

Introduction

The US-Mexican border has always faced numerous challenges during the past decades, mainly stemming from drug trafficking and the movement of illegal migrants. However, in the past few decades, arms trafficking from the US to Mexico has become an issue that both Mexican and American authorities must adequately address because transnational criminal organizations (TCOs), most notably Mexican cartels, exploit lax US state and federal gun laws to traffic millions of small and high-caliber US firearms and other weapons to Mexico and other Latin American countries. As the cartels increase the flow of drug trafficking to the US to satisfy the voracious American demand, an increase in the supply of US firearms complements the cartels' arsenal to overpower their rivals and the Mexican government with better weapons. The devastating result for Mexico is that arms trafficking has contributed to a spike in cartel violence, deaths, civilian disappearances, and compromising the fragile Mexican rule of law.

The paper will address the issue through a fourfold approach by first describing the problem in general, determining the scope of arms trafficking, analyzing the economic value of trafficked weapons, and identifying the supply chain. Second, analyzing the legal framework within the US and Mexico relations that compares and contrasts state and federal gun laws by considering the three of the four US border states, scrutinizing Mexican federal anti-trafficking laws and their flaws, and focusing on the flaws of the now-defunct Mérida Initiative. Third, it will mention some recent developments in cases where the cartels have presumably used US firearms to perpetuate their crimes, the Mexican government's lawsuit against US firearms manufacturers, and the development of the new Bicentennial Framework. Finally, it will discuss the necessary policy solutions to address the issue within the scope of both governments and the Bicentennial Framework.

General Overview of US Arms Trafficking to Mexico

The origins of arms trafficking from the US to Mexico border could be traced back to the Mexican War of Independence, where war hero José María Morelos was supplied with guns from US boats bulging with weapons anchored in Zihuatanejo, Guerrero.¹ During the Texas Revolution, Mexico was already a dysfunctional state a decade following its independence, with records of indigenous populations obtaining US guns from American agents and merchants to launch raid campaigns in Northern Mexico. Another case was during the mid-1860s when President Benito Juárez returned from exile following the Second French Intervention to dispose of Emperor Maximilian I after selling prominent American investors millions in Mexican government bonds at discount prices to reequip his reconquest of the country. A decade later, Porfirio Díaz would become president after deposing his rival Sebastián Lerdo in a coup following the former's defeat in the presidential election by conspiring with American bondholders when weapons arrived in bulk to the Texas border.² Following Díaz's fall right before the Mexican Revolution, US policy in arms exportation to Mexico was considered politically biased as it favored then Presidents Francisco I. Madero, Victoriano Huerta,³ and Venustiano Carranza by placing an arms embargo on rebel forces to protect US interests.⁴ Following the closure of Ciudad Juárez as the main port of supply, gun smuggling activity within the Arizona-Sonora border increased as well as war material prices, widespread corruption, and

¹Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels* (New York: Bloomsbury Publishing, 2021). 153

² Brian DeLay, "Arms Trafficking: Its Past, Present, and Future," American Academy of Arts / Sciences, November 20, 2019, <https://www.amacad.org/news/arms-trafficking-its-past-present-and-future>.

³Luz María Hernández Sáenz, "Smuggling for the Revolution: Illegal Traffic of Arms on the Arizona-Sonora Border, 1912-1914," *Arizona and the West* 28, no. 4 (Winter 1986): 358 & 368. <http://www.jstor.org/stable/40169523>.

⁴Eduardo Daniel Rodríguez Lozano, "2001-2011 Estrategias de Una Relación Compleja: Tráfico Ilícito de Armas y Frontera Entre México y Estados Unidos" (Master's Thesis, Quito, Ecuador, 2014), 35 <https://repositorio.flacsoandes.edu.ec/bitstream/10469/5850/2/TFLACSO-2014EDRL.pdf>.

illegal transactions.⁵ A century later, after former Mexican president Felipe Calderón declared war against the cartels in 2006, arms trafficking became a massive criminal business.

The catastrophic impacts of US arms trafficking are overwhelming because it not only strengthens the cartels by overpowering Mexican security forces but also exacerbates violence and corruption, facilitates drug trafficking, and endangers the well-being of millions of Mexican civilians. Since 2006, it is estimated that US firearms at the hands of criminals have killed more than 150,000 civilians in Mexico. The Mexican government estimates that around 200,000 firearms cross the border annually. Additionally, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) estimated that 70% of firearms recovered in Mexico between 2014 and 2018 and submitted for tracing were originally from the US.⁶ Consequently, gun trafficking has contributed to the fact that 18 out of the 50 cities with the highest homicide rates (2020) in the world are Mexican⁷ and the cost of the violence to the country is estimated to be a reduction of its GDP of 1.92% between 2010 and 2014.⁸ Out of more than 277,000 murders in Mexico between 2007 and 2019, two-thirds of those killings were linked with firearms.⁹

Guns are everything criminal organizations need to assert fear and absolute control in their territories and overpower the state. Since the drug war started in 2006, the Sinaloa Cartel, Los Zetas, Cartel Jalisco Nueva Generación (CJNG), Gulf Cartel, and other cartels have obtained

⁵Luz María Hernández Sáenz, “Smuggling for the Revolution: Illegal Traffic of Arms on the Arizona-Sonora Border, 1912-1914,” 358, 368, & 376

⁶Chelsey Kenny, “Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis,” Report to Congressional Requesters, Government Accountability Office (Washington, DC: US Government Accountability Office, February 2021), 1 & 62
<https://www.gao.gov/assets/720/712530.pdf>.

⁷Seguridad Paz Justicia y, “Boletín Ranking de las 50 ciudades más violentas del mundo 2020,” Seguridad, Justicia y Paz, April 20, 2021, <https://www.seguridadjusticiaypaz.org.mx/sala-de-prensa/1596-boletin-ranking-de-las-50-ciudades-ma-s-violentas-del-mundo-2020>.

⁸Robert Muggah and Katherine Aguirre Tobón, “Citizen Security in Latin America: Facts and Figures” (Rio de Janeiro, Brazil: Igarapé Institute, April 2018), 12
<https://igarape.org.br/wp-content/uploads/2018/04/Citizen-Security-in-Latin-America-Facts-and-Figures.pdf>.

⁹Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 11

sophisticated high-caliber firearms exclusively for military use. Firearms such as pistols, automatic rifles, submachine guns, and shotguns make up a massive percentage of weapons recovered by the Mexican military, although grenades, grenade and rocket launchers, and mortar systems are also seized. The cartels' most preferred firearms are .9mms, .45s, .38s, and .22s for pistols; 7.62mms for machine guns; .22s, AK-47s, .50s, and AR-15s for rifles; 12, 16, and 20-gauges for shotguns; 9mms and Uzis for submachine guns. The majority part of explosives, on the other hand, especially grenades, are reportedly purchased in the US¹⁰ but mostly come from Central America, where M-67s are the most commonly seized.¹¹

The law of supply and demand within the context of the Mexican Drug War has always worked in two ways: the cartels selling their drugs northbound to satisfy US demand while arms trafficking and illicit financial flows (IFFs) in drugs go southbound to supply them with high caliber firearms and finance their criminal organizations. The main reason the cartels seek firearms from the US is that Mexico has strict gun laws, whereby the Mexican constitution prohibits civilians from bearing firearms exclusively for military use. This, in turn, has made the cartels' acquisition of different calibers of firearms feasible at a fair price in the US on the supply side. The US firearms demand from Mexican criminals grows and thus, representing new threats for Mexican national security. Other catalysts include a porous border lacking adequate checkpoints and an effective method to counter arms trafficking.¹²

In the microeconomics of arms trafficking, gun prices constantly fluctuate depending on the events and circumstances. Guns in the black market can be sold for two to six times more

¹⁰Matt Schroeder, ed., "Captured and Counted - Illicit Weapons in Mexico and the Phillipines," in *Small Arms Survey 2013: Everyday Dangers* (Cambridge: Cambridge Univ. Press, 2013), 286, 291, & 298
<https://www.smallarmssurvey.org/sites/default/files/resources/Small-Arms-Survey-2013-Chapter-12-EN.pdf>.

¹¹Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 203

¹²Eduardo Daniel Rodríguez Lozano, "2001-2011 Estrategias de Una Relación Compleja: Tráfico Ilícito de Armas y Frontera Entre México y Estados Unidos" 30 & 63-64

than their original price than in gun shops. The price escalates depending on locations and circumstances, such as missing serial numbers or selling one to a distressed buyer. On the other hand, "burned" guns are devalued when sold if they have been used for murder. Guns and bullets can be used as a currency to trade and bartered for other illicit commodities like drugs. Huge criminal organizations such as the Sinaloa Cartel's or CJNG's manpower helps them acquire weapons cheaply than buying from gunrunners. Other cheaper ways to obtain guns include stealing firearms. When cartels possess more weapons than they can seize more guns.¹³

The supply chain of arms trafficking at the US-Mexico border is different from other countries because the US has a very large number of citizens who own firearms¹⁴ It makes it easier to legally purchase firearms depending on state laws and then subsequently traffic them to the other side of the border. The process is simple and less complex, unlike other criminal activities as cartels only require the services of straw purchasers, people with no criminal background who legally buy firearms for convicts from a federal firearm licensee (FFL). Most of these purchases, carried out by the criminals' family members or friends, happen at gun shows where legally purchased US firearms are diverted to the black market. Albeit gun dealers and FFLs are not supposed to sell firearms to straw purchasers, they might never know if the sale is legitimate or criminal, and it is rare for them to refuse services to customers since they never know if the purchase is for themselves or on behalf of someone else.¹⁵ Technology is a catalyst for private sale as multiple platforms such as Armslist.com have emerged where anonymous dealers allow multiple sales with disregard for local state laws and are always operating 24/7.

¹³Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 347

¹⁴Fiona Mangan, "Annual Report 2018" (Geneva, Switzerland: Small Arms Survey, May 2019), 10 <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Annual-Report-2018.pdf>.

¹⁵Omar Camarillo, "A Content Analysis of the Coverage of Gun Trafficking along the U.S.-Mexico Border" (ProQuest Dissertations Publishing, 2015). 24-27. <https://search.proquest.com/docview/1733952335?pq-origsite=primo>

Others challenges for ATF agents are guns with no serial numbers. This is done to prevent tracing and tracking firearms trafficked through mailing services. The sheer volume of mail size of packages delivered at the national level makes detection difficult.¹⁶

A creative method for criminals is “ant trafficking”, where multiple traffickers smuggle small quantities of firearms from the US to Mexico by a large group of people with a low risk of getting caught by law enforcement. It is an organized scheme involving a single straw purchase with larger quantities of firearms and the same individuals making multiple straw purchases and border crossings. It can result in many illicit flows and accumulation of illegal firearms, an organized strategy or outcome at a large scale of a supply and demand mechanism. Interestingly, most of the cases that involve seized firearms by customs in both the US and Mexico tend to have smaller batches of five or fewer firearms which corresponds to ant trafficking schemes. Customs seizures in the US that involve cases of five or less firearms make up nearly three-quarters of all cases while in Mexico that same number of seizures represents two-thirds of all cases. When comparing to customs seizures of all other countries, the number of seizure cases involving six or more firearms account for three-quarters of all cases.¹⁷

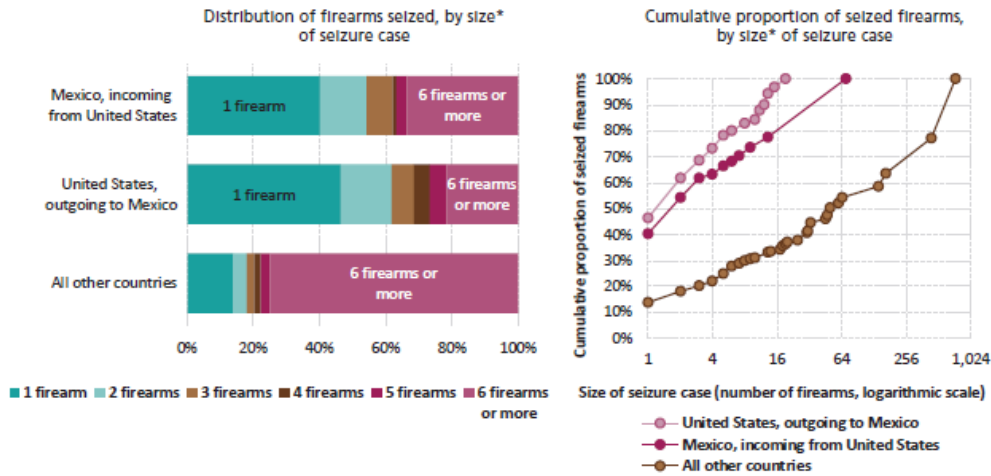
¹⁶Devika Agrawal, “Combating US Gun Trafficking to Mexico” (Berkeley, California: University of California, Berkeley, Spring 2019), 14 & 22

<https://stopusarmstomexico.org/wp-content/uploads/2019/10/U.S.-Guns-to-Mexico-Final.pdf>.

¹⁷UNODC, “Global Study on Firearms Trafficking,” United Nations publication (UNODC, 2020), 63-66

https://www.unodc.org/documents/data-and-analysis/Firearms/2020_REPORT_Global_Study_on_Firearms_Trafficking_2020_web.pdf.

FIG. 10... Size* of customs seizures from the United States to Mexico in comparison with customs seizures made by all other countries



Source: UNODC

Corruption is a key enabler in gun trafficking schemes as the actors implicated turn a blind eye to the criminals' wrongdoings and allow them to operate with impunity and facilitate their work in complex tasks. In this case, the cartels would need the help of corrupt public servants in Mexico to help bypass the legal and customs controls to have the weapons in their hands¹⁸ or by stealing or obtaining firearms from corrupt police officers¹⁹ or soldiers. There have also been cases of corrupt US police officers and Border Patrol agents working for the cartels, such as the mayor and police chief of Columbus, New Mexico, who were caught trafficking firearms for the Juárez Cartel in 2011. Corrupt private-sector actors include flight attendants, ship crew, and train workers who help traffickers move the merchandise.²⁰ Other facilitators include corrupt firearms licensees who can sell their products without conducting background checks.²¹ They rarely lose their licenses if breaking the law.²²

¹⁸Eduardo Daniel Rodríguez Lozano, “2001-2011 Estrategias de Una Relación Compleja: Tráfico Ilícito de Armas y Frontera Entre México y Estados Unidos” 30-31

¹⁹Omar Camarillo, “A Content Analysis of the Coverage of Gun Trafficking along the U.S.-Mexico Border, 118-119

²⁰Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 160-161, 198

²¹Omar Camarillo, “A Content Analysis of the Coverage of Gun Trafficking along the U.S.-Mexico Border. 28-29

²²Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*.183

It is estimated that the US has more than 51,000 gun stores throughout the country and around 6,700 within the border zones of the border states²³ and that 90% of trafficked US firearms in Mexico come from gun stores and gun shows.²⁴ It is easy for traffickers to acquire firearms at secondary markets because straw purchasers can buy multiple firearms in one transaction made by unlicensed individuals. Private gun sale loopholes surge when firearm purchases are made without conducting background checks in secondary, informal markets, hindering ATF tracing efforts. It is estimated that 25% of the individuals who sell firearms at gun shows might be unlicensed sellers.²⁵ The sale of firearms to Mexican criminal organizations has generated an estimated \$127 million for the US firearms industry during 2010 and 2012, representing about 2.18% of its total revenue. However, it is estimated that the true total value of arms sales to the cartels might have generated billions in revenue for the industry during the past two decades.²⁶

The cartels use the same drug trafficking and migrant smuggling routes for arms trafficking and safeguard them from any disruptions caused by their rivals and the state. Both Mexico's northern and southern borders are essential for illegal firearms to enter the country by land, air, and sea routes. The four main routes where US firearms are introduced to Mexico are the Pacific route from Tijuana to the Pacific states, the central route from Ciudad Juárez to Jalisco or Michoacán, the Gulf route from Coahuila or Tamaulipas to Oaxaca, Veracruz, or

²³José de Jesús González Rodríguez, “Tráfico de Armas - Entorno, Propuestas Legislativas y Opinión Pública” (Mexico City, Mexico: Centro de Estudios Sociales y de Opinión Pública (CESOP), December 2014), Cámara Mexicana de Diputados, 26 <https://www.casede.org/BibliotecaCasede/Trafico-de-armas-docto183.pdf>.

²⁴Matt Schroeder, ed., “Captured and Counted - Illicit Weapons in Mexico and the Phillipines,” in *Small Arms Survey 2013: Everyday Dangers*. 295

²⁵Omar Camarillo, “A Content Analysis of the Coverage of Gun Trafficking along the U.S.-Mexico Border.” 28, 31-32

²⁶ Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 179-180

Tabasco, and the Southern route from Tabasco or Chiapas to either Veracruz or Oaxaca.²⁷ The main entry points throughout the border where the cartels traffic firearms south include Sand Diego-Tijuana, Mexicali-Calexico, El Paso-Ciudad Juárez, Laredo-Nuevo Laredo, McAllen-Reynosa, and Brownsville-Matamoros. Although the cartels have the option of using hidden routes within the mountains and desert, they can also choose to navigate through the relaxed legal entry and exit points as many of these border crossing stations are connected to main cartel cities and through the country's largest highways.²⁸

Legal Framework

Albeit the US Constitution's second amendment states that citizens have the right to bear arms, it conflicts with the criteria of gun safety laws and general anti-gun trafficking laws, thus making them weak at the federal level. Other than the easy acquisition of any types of guns and ammunition for the cartels, problems include anyone becoming gun dealers, lack of federal limits on multiple sales, inefficient background checks and tracing practices, budgetary constraints, the concealability of guns, and legal transportation of guns. Other key issues are the lack of accountability, stiff penalties for gun trafficking, lack of disincentives on gun trafficking, and incentives for law enforcement agencies to detain offenders.²⁹ Most of the seized firearms in Mexico were traced back to California (19%), Arizona (15%), and especially Texas (41%), according to the ATF between 2009 to 2014. These three states combined also have 13,108 of the total 80,188 registered FFLs throughout the entire country, a 16.3% of all FFLs.³⁰

²⁷María Alejandra Cervera Pasos and Verónica Estefanía Cornelio Cortés, “Tráfico, Portación y Posesión de Armas Ilícitas.” (Chetumal, Quintana Roo, México, Universidad de Quintana Roo, 2017). 25-26

<http://risisbi.uqroo.mx/bitstream/handle/20.500.12249/1726/HD9743.2017-1726.pdf?sequence=3>.

²⁸Hayden Hosfelt, “Plomo: How American Guns Arm Mexican Cartels,” ArcGIS StoryMaps, October 24, 2020, <https://storymaps.arcgis.com/stories/11bb4c1bf154437d8f67c6a065d52e6c>.

²⁹Devika Agrawal, “Combating US Gun Trafficking to Mexico” (Berkeley, California: University of California, Berkeley, Spring 2019), 12-24

³⁰Hayden Hosfelt, “Plomo: How American Guns Arm Mexican Cartels,” ArcGIS StoryMaps, October 24, 2020, <https://storymaps.arcgis.com/stories/11bb4c1bf154437d8f67c6a065d52e6c>.

Out of all the border states, California is the only one that has the tightest and most restrictive gun laws. Since 1989, it became the first state to approve a ban on the sale, production, and possession of assault weapons and gun parts for military use and restricting the sale of rapid-fire magazines of more than ten rounds.³¹ Some of the state's actions are removing firearms from prohibited individuals, universal background checks, banning ghost guns (guns without serial numbers), research funding in gun violence, and regulations on open carrying and gun dealers. It can improve funding in community violence prevention programs and address the loopholes in existing gun regulations.³² Under state legislation, California prohibits straw purchasing, out-of-state purchases, self-assembled pieces, and firearms without serial numbers and has recently enacted legislation (AB 1191) that requires the analysis of firearm tracing and data relating to crimes from part of the California Department of Justice.³³ However, even though it has the most restrictive gun laws, that does not stop arms from crossing the border between California and Baja California due to a lack of regulatory mechanisms to surveil the movement of goods heading south.³⁴

Arizona is one of the states with the weakest gun laws, making it ideal for gun trafficking. It does not have any restrictions on buying or carrying weapons other than those embodied in federal law.³⁵ In 2010, the state repealed its concealed weapons permit requirement,

³¹Eduardo Daniel Rodríguez Lozano, "2001-2011 Estrategias de Una Relación Compleja: Tráfico Ilícito de Armas y Frontera Entre México y Estados Unidos" 52

³²"California Gun Laws," Giffords Law Center to Prevent Gun Violence, accessed November 18, 2021, <https://giffords.org/lawcenter/gun-laws/states/california/>.

³³"Trafficking & Straw Purchasing in California," Giffords Law Center to Prevent Gun Violence, accessed November 19, 2021, <https://giffords.org/lawcenter/state-laws/trafficking-straw-purchasing-in-california/>.

³⁴Devika Agrawal, "Combating US Gun Trafficking to Mexico" 22

³⁵Sarah Winifred Hirsch, "El Juego De La cooperación Internacional: Una Propuesta metodológica Para Observar El Efecto De La asimetría En Las Relaciones Internacionales Sobre Las políticas públicas domésticas a través Del Control De Armas Ilegales En México y Los Estados Unidos" (M.P.P., Mexico City, Mexico, Centro de investigación y Docencia Económicas (Mexico), 2021), 29 <https://www.proquest.com/docview/2564499189/abstract/E752C82DA5C4FADPQ/1>.

allowing anyone age 21 or older to carry hidden and loaded firearms without permission. It does well prohibiting firearms at polling places and reports on mental health records. It lacks universal background checks, assault weapons restrictions, gun owner licensing, and bans on large-capacity magazines.³⁶ The state adopted only one law in 2012 against arms trafficking penalizes it for "financial gain" in benefit of criminal interests, and defines trafficking to sell or buy any weapon to transfer, distribute, or dispose of them to another person.³⁷ However, it does not address the loopholes that facilitate arms trafficking to criminals, especially the cartels.

US State and Agency Responses to Arms Trafficking

Texas has done the least among the border states and entire country to curb the illicit flow of US firearms to Mexico and is the state where most seized US firearms are traced back. The state only requires a trainee's certificate for small firearm use when someone who already owns a gun wants to obtain a license to carry it.³⁸ As it does well in reports on mental health records and child access prevention laws, it lacks the same regulations as Arizona, such as universal background checks, restrictions on assault weapons, gun owner licensing, and bans on large-capacity magazines.³⁹ It has weak laws to deter and penalize arms trafficking but mentions racketeering offenses and has recently enacted legislation making it unlawful for prohibited persons to lie on a form required to be submitted to an FFL.⁴⁰ Because of Texas' huge geographic size, a massive movement in border cities, and weak state laws, these factors are essential to why cartels would mainly prefer to smuggle firearms out of the state.

³⁶"Arizona Gun Laws," Giffords Law Center to Prevent Gun Violence, accessed November 18, 2021, <https://giffords.org/lawcenter/gun-laws/states/arizona/>.

³⁷"Trafficking & Straw Purchasing in Arizona," Giffords Law Center to Prevent Gun Violence, accessed November 18, 2021, <https://giffords.org/lawcenter/state-laws/trafficking-straw-purchasing-in-arizona/>.

³⁸Sarah Winifred Hirsch, "El Juego De La cooperación Internacional" 29

³⁹"Texas Gun Laws," Giffords Law Center to Prevent Gun Violence, accessed November 18, 2021, <https://giffords.org/lawcenter/gun-laws/states/texas/>.

⁴⁰"Trafficking & Straw Purchasing in Texas," Giffords Law Center to Prevent Gun Violence, accessed November 18, 2021, <https://giffords.org/lawcenter/state-laws/trafficking-straw-purchasing-in-texas/>.

The US had promoted a series of bills and laws to address the surge of gun violence, such as the National Firearms Act of 1934 that made it difficult to obtain firearms deemed too lethal and the Gun Control Act of 1968 that established federal licensing programs and was a pioneer for current legislations on gun transfers. The Federal Assault Weapon Ban (FAWB) of 1994 was enacted by former president Bill Clinton that prohibited semi-automatic rifles and military features until its expiration in 2004 during the Bush administration.⁴¹ There is a strong correlation between the effects of the FAWB's expiration on the volume of arms trafficking towards Mexico. For example, around 253,000 trafficked firearms were purchased annually between 2010-2012, unlike 88,000 firearms between 1997-1999 when the FAWB was in effect. During the FAWB's period, there was a decline in firearms imports, manufacture, and FFLs, by the time it expired, imports and domestic sales rebounded and were attributed to the 16.4% of homicide rates in Mexico during 2004-2008.⁴²

However, the US lacks specific laws and statutes against arms trafficking and straw purchasing. Instead, the law only specifies smaller firearms offenses for unlicensed selling, knowing sales to prohibited individuals, and knowing shipment or transport of stolen firearms. Legislations such as the Arms Control Export Act and the International Traffic in Arms Regulations only serve as compliance measures, and consequences are mild for violators such as fines or reprimands. There is no searchable database for guns in the US because the law prohibits the ATF from using tracing technology, even if guns are found in crime scenes.⁴³

⁴¹Omar Camarillo, "A Content Analysis of the Coverage of Gun Trafficking along the U.S.-Mexico Border." 44-47

⁴²Topher McDougal et al., "Estimating Firearms Traffic Across the U.S.-Mexico Border" (Rio de Janeiro, Brazil & San Diego, California: Igarapé Institute & University of San Diego- Trans-Border Institute, March 2013), 6 https://catcher.sandiego.edu/items/peacestudies/way_of_the_gun.pdf.

⁴³ Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 12, 97

The ATF is the main US agency enforcing US firearm laws, regulations, and investigations in violations of these laws, such as theft and straw purchasing. Its responsibilities include investigating individuals and organizations that allegedly supply firearms to prohibited individuals and TCOs, tracing firearms, and analyzing results for investigation clues. In Mexico, it is responsible for working with local law enforcement and other US agencies in criminal investigations and violations of US federal firearms laws and helps agencies in tracing efforts of firearms recovered in Mexico. Its National Tracing Center participates in tracing tasks of recovered US guns in Mexico and around the world with the help of an electronic tracing system known as eTrace to identify and contact the FFLs, manufacturers, or importers to request transactions records for firearms. Between 2013 and 2018, the ATF traced an approximately 16,000 firearms recovered annually in Mexico.⁴⁴

However, it is considered one of the country's weakest federal law enforcement agencies as it had a budget of \$1.4 billion and was understaffed with only 5,082 employees during FY2020.⁴⁵ Two other caveats concerning the ATF include the lack of permanent leadership even during the Biden administration and lack of constant revisions on FFLs. One scandal that compromised its reputation and in US-Mexico relations was Operation Fast and Furious, when ATF agents allowed the "gun-walking" of two thousand firearms to cartel hands during 2009-2011 with hopes of identifying gun traffickers and dismantling drug trafficking organizations (DTOs). It all went wrong when the agents lost track of the trafficked guns and the guns were

⁴⁴Chelsey Kenny, "Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis". 5-8

⁴⁵"Budget & Performance," Government Website, Bureau of Alcohol, Tobacco, Firearms and Explosives, April 13, 2021, <https://www.atf.gov/about-atf/budget-performance>.

traced to massacres in Mexico, such as the killings of Border Patrol agent Brian Terry and ICE agent Jaime Zapata, and other massacres throughout Latin America.⁴⁶

The Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) of the US Department of Homeland Security (DHS) is responsible for export control investigations and arms trafficking by leading Border Enforcement Security Taskforces (BEST) units to combat suspicious TCO-related activities within the border area. It has 22 BEST units deployed throughout the border with Mexico: three units in California, seven in Arizona, three in New Mexico, and nine in Texas. The HSI's additional tasks include conducting financial investigations to identify and dismantle TCO networks and collaborating with the other US and foreign law enforcement agencies to identify, prosecute Mexican TCOs, and seizing illegal weapons. It cooperates with Mexican law enforcement through transnational criminal investigation units composed of vetted foreign law enforcement officials.⁴⁷

The Customs and Border Protection (CBP) enforces customs and trade laws by inspecting articles transported in and out of the US to ensure compliance with federal law by the Office of Field Operations. Through its 28 points of entry along the border, it conducts temporary outbound inspections and interdiction efforts that require investigating specific individuals and vehicles at designated ports of entry and gathering information during inspections. Along the US-Mexico Border: it has seven entry points in California, six in Arizona, two in New Mexico, and 13 in Texas. The CBP's Office of Intelligence and National Targeting Center shares intelligence with other CBP officials and the Mexican government regarding arms trafficking southbound.⁴⁸ However, the most challenging part is considering the porosity of the border and

⁴⁶Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 13, 245

⁴⁷ Chelsey Kenny, "Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis," 8-9

⁴⁸*Ibid.* 9-10

the sheer daily movement of people and vehicles crossing the border in which seized drugs, money, and guns, only make a microscopic fraction of the cartels' illicit flows.

The National Rifle Association (NRA) has always been an obstacle to any attempts at gun reforms because it lobbies with fervent pro-arms politicians to defend citizens' gun rights and the interests of national arms manufacturers and distributors. Many gun businesses depend on the NRA to protect them from legal action and financial difficulties as its value is ironically not as immense as other industries as it was worth between \$28 billion and \$52 billion in 2018.⁴⁹ It does not matter if the gun laws are meant to target gun violence, gun trafficking towards Mexico, or legal loopholes, the NRA works to block such legislations.⁵⁰ When gun regulations such as increasing the age limit or universal background checks are set, the industry faces a diminishing demand for guns, and through NRA lobbying, serves to leverage and maximize profits.⁵¹ The NRA's public image as a savior for gun rights represents the US government's lack of will on addressing gun trafficking to Mexico, and as previously mentioned, the gun industry might have earned millions, if not billions in sales from the cartels.

Mexican Legislation to Arms Trafficking

Article 10 of the Mexican Constitution of 1917 gives citizens the right to bear arms for self-defense. However, it prohibits them from bearing any weapons under federal law and those exclusively for military use in which the former determines the cases, conditions, requisites, and places that authorize citizens to carry firearms. After the article underwent reforms, the state enacted a series of restrictions that would limit civilians from bearing arms such as an enacted

⁴⁹Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 214

⁵⁰Georgina Olson Jiménez, "El tráfico de armas de Estados Unidos hacia México," in *Atlas de la seguridad y la defensa de México 2012* (Mexico City, Mexico: CASEDE, Colectivo de Análisis de la Seguridad con Democracia, 2012), 59–60, https://www.casede.org/PublicacionesCasede/Atlas2012/GEORGINA_OLSON.pdf.

⁵¹Devika Agrawal, "Combating US Gun Trafficking to Mexico" 27-28

law in 1933 that declared which firearms were exclusively for military use and established regulations of carrying firearms. In 1971 under the presidency of Luis Echeverría, article 10 was reformed to a stricter version and the Mexican legislature enacted the Federal Firearms and Explosives Law (*Ley Federal de Armas de Fuego y Explosivos*) the following year with 99 articles in 12 chapters with different rulings.⁵² Articles 71 and 81-85 of the law covers penalties for gun-related offenses such as fines and prison time. However, article 84 highlights the harshest penalties for those resorting to gun trafficking and public officials who fail to curtail trafficking, which can range from five to 30 years of imprisonment and a fine from 20 to 500 days.⁵³

Mexican gun laws are stringent, and unlike its US counterpart, it only has one gun shop in the entire country that is legally allowed to sell new firearms. The shop is known as the Directorate of Arms and Munitions Sales, which sits in a defense department building located on the west side of Mexico City and is run by the Mexican army. The process of legally acquiring firearms in Mexico can be a long, grueling, bureaucratic process where applicants have to fill out seven pieces of paperwork which can include a letter from their workplace, a clean record, and a waiting period of several months to receive government approval once the forms are filled out. Once the customers have finally obtained their guns, their details are registered into the gun owner's registry. The shop sells around 9,000 guns a year to civilians and 7,000 to private security companies.⁵⁴ Despite the country's strict gun laws, they have not sufficed to curb gun

⁵²Eduardo Daniel Rodríguez Lozano, "2001-2011 Estrategias de Una Relación Compleja: Tráfico Ilícito de Armas y Frontera Entre México y Estados Unidos" 36-37

⁵³María Alejandra Cervera Pasos and Verónica Estefanía Cornelio Cortés, "Tráfico, Portación y Posesión de Armas Ilícitas." 49-53

⁵⁴Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 159

trafficking and violence within the country due to the demand of the cartels for high-caliber US firearms and the corrosive corruption along the US-Mexico border.

Mérida Initiative and the UN Arms Trade Treaty

In 2007, the Merida Initiative was announced as a bilateral security framework in US-Mexico relations. During the first few years, the US funded \$1.5 billion in military aid, border security, counternarcotics, public security, and institution building. From FY2011-FY2017, its strategies were broadened to more sophisticated efforts such as intelligence sharing against organized crime, prioritizing the rule of law and human rights, modernized border security, and community building. Despite some success in implementing these key pillars and allocating roughly \$3.3 billion, it has faced criticism of its efficacy as Mexico has struggled with increasing violence and rampant corruption. In contrast, the US has failed to curb overdose deaths from drug demand, arms trafficking, and bulk cash smuggling.⁵⁵ There is a debate within the bilateral framework where the Mexican government claims that the US government should take care of gun trafficking traversing its border, but the latter argues that it is a demand issue rather than supply and that the former should deal with it.⁵⁶ After high ranking US officials dialogued with Mexican President Andrés Manuel López Obrador (AMLO) and other Mexican heads of state in Mexico City in October 2021, both agreed to take more holistic approaches in security affairs within the Bicentennial Framework.⁵⁷

The international community adopted the UN Arms Trade Treaty (ATT) to regulate firearms sales, reduce armed conflict, and promote peace and security. Mexico had signed about 20 arms treaties throughout its history that mainly address high-caliber, blinding laser, and

⁵⁵Clare Ribando Seelke, “Mexico: Evolution of the Mérida Initiative, FY2008-FY2022” (Washington DC: Congressional Research Service, November 1, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF10578>.

⁵⁶Omar Camarillo, “A Content Analysis of the Coverage of Gun Trafficking along the U.S.-Mexico Border” 43

⁵⁷Clare Ribando Seelke, “Mexico: Evolution of the Mérida Initiative, FY2008-FY2022”

weapons of mass destruction. The ATT was the first treaty Mexico signed to regulate the arms trade and combat arms trafficking.⁵⁸ In the US, the treaty is widely rejected by republican senators as it represents a threat to second amendment rights whereby the Trump administration pulled the US out of the ATT, and any attempt to rejoin requires a ¾ vote of approval. Republican senators have urged the current Biden Administration to reject any ideas rejoining the ATT as they cited concerns regarding second amendment rights and would make the US legally comply with international commitments without the Senate's consent.⁵⁹ Mexico became a signatory and ratifier of the ATT on September 25, 2013, while the US is also a signatory but has not ratified it to date.⁶⁰

Recent Developments

The incidents, massacres, and killings caused by cartels wielding trafficked firearms are endless since former Mexican president Felipe Calderón started the drug war in 2006. Most of these cases demonstrate the sheer brutality they unleash against their adversaries and civilians with little regard for human life, as some case examples are provided. In October 2019, during the so-called *Culiacanazo*, armed men from the Sinaloa Cartel caused chaos throughout the streets of Culiacan with weapon-mounted vehicles and automatic rifles following the arrest of Ovidio Guzmán, one of the sons of former Sinaloa drug lord Joaquín “El Chapo” Guzmán. Mexican president Andrés Manuel López Obrador (AMLO) had to order his immediate release and retreat from the city to avoid further bloodshed. In June 2020, Mexico City police chief Omar García Harfuch survived an ambush carried out by more than a dozen CJNG gunmen that

⁵⁸ María Alejandra Cervera Pasos and Verónica Estefanía Cornelio Cortés, “Tráfico, Portación y Posesión de Armas Ilicitas.” 60

⁵⁹ John Kennedy et al. “Kennedy, Marshall, Colleagues Urge Biden to Reject U.N. Gun Control Treaty,” Press Release, September 28, 2021, <https://www.kennedy.senate.gov/public/cache/files/0/9/09195279-5b42-4765-a6a0-46cca3a6f2e2/FEBDC563080D564BBCBED0C9FC24F0A9.admin-un-arms-trade-treaty-letter.pdf>.

⁶⁰ “ATT - Status of Ratifications and Accessions” (United Nations Office for Disarmament Affairs, n.d.), <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/ATT/docs/ATT-status-table.pdf>.

killed two of his bodyguards and an innocent bystander in the exclusive neighborhood of Lomas de Chapultepec with .50 caliber rifles.⁶¹ On November 4, 2019, nine Mexican-American Mormon LeBaron family members, mainly women, and children, were murdered in Northern Sonora, where gunmen ambushed them with AR-15s and a Minimi machine gun as the victims' cars were scorched and riddled with bullet holes.⁶²

In August 2021, the Mexican government filed an unprecedented lawsuit against 11 US firearms companies, such as Barret Firearms Manufacturing and Century Arms federal court in Massachusetts. By citing the violent consequences that have plagued the country, the lawsuit demands that the companies take more action in their supply chains, their "negligence" in facilitating the criminal acquisition of firearms. They seek economic compensation for Mexico rather than challenging second amendment rights. The US National Shooting Sport Foundation responded by calling the lawsuit "baseless" and blamed Mexico for the violence in its borders facilitated by crime and corruption. The gun companies legally depend on the 2005 US Protection of Lawful Commerce in Arms Act that protects them from any liability from their products used to commit crimes. The Biden Administration promised action against gun violence perpetrated within the US by passing a law that requires universal background checks and closing loopholes, thus cracking down on straw purchasers and reducing arms trafficking among US cities and the border.⁶³ In case of the lawsuit advances, arms trafficking will become a

⁶¹ Hayden Hosfelt, "Plomo: How American Guns Arm Mexican Cartels," ArcGIS StoryMaps, October 24, 2020, <https://storymaps.arcgis.com/stories/11bb4c1bf154437d8f67c6a065d52e6c>.

⁶² Ioan Grillo, *Blood Gun Money: How America Arms Gangs and Cartels*. 330

⁶³ Ioan Grillo, "Why Mexico Is Right to Sue U.S. Gun Companies," Foreign Policy (blog), August 12, 2021, <https://foreignpolicy.com/2021/08/12/mexico-guns-lawsuit-firearms-drug-cartels-exports-border-violence/>.

priority bilateral topic in security matters, and the gun companies would have to compensate the Mexican government and would have to develop mechanisms for gun trafficking prevention.⁶⁴

The Bicentennial Framework will be the new bilateral security framework between Mexico and the US that will provide a more holistic approaches to security issues, unlike the Mérida Initiative. The three key goals are based on the building of sustainable, healthy, and safe communities in both nations. The second goal of preventing transborder crime by diminishing the TCOs' capacity and tackling the trafficking of drugs, humans, wildlife, people, and human smuggling, and the third goal in disrupting key TCO financial networks in their illicit activities transnationally and in cyberspace. The arms trafficking component of the second goal seeks to increase bilateral efforts through cooperation in tracing, investigations, investments in ballistics technology, and information sharing.⁶⁵ This new chapter of bilateral security frameworks could help ease tensions following the arrest and release in US soil of former Mexican general Salvador Cienfuegos accused by the Drug Enforcement Administration (DEA) of having ties with a cartel last year. However, as negotiations are only beginning, experts point out the lack of concrete agreements within the framework development and resources both governments are willing to spend on the respective components of the framework.⁶⁶

Policy Solutions

Seeking the right policy solutions to curb the illegal business of arms trafficking is complex as they require focusing on different components of the issue via holistic approaches. It

⁶⁴ Diego Flores Jiménez and Jorge Martínez Falcón, “Detener el tráfico ilícito de armas, un reto binacional,” Nexos (blog), August 13, 2021, <https://seguridad.nexos.com.mx/detener-el-trafico-ilicito-de-armas-un-reto-binacional/>.

⁶⁵ “FACT SHEET: U.S.-Mexico High-Level Security Dialogue,” Government Website, The White House, October 8, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/fact-sheet-u-s-mexico-high-level-security-dialogue/>.

⁶⁶ UNAM, “Significa El Entendimiento Bicentenario Una Alianza Entre Los Jefes Políticos de Estados Unidos y México,” Dirección General de Comunicación Social, October 13, 2021, https://www.dgcs.unam.mx/boletin/bdboletin/2021_870.html.

is important to focus on how both the US and Mexican governments can find common ground in feasible political policies.

Reliable data is key in developing effective security public policies. The US federal agencies such as the ATF, ICE, CBP, and the Department of State (DOS) should increase cooperation and intelligence sharing regarding the tracing of firearms recovered in Mexico while working *in tandem* with their Mexican counterparts. The ATF director should analyze additional information in boosting its existing analysis identifying trends in arms trafficking to Mexico. Additionally, it should establish time frames for outreach and training with Mexican agencies to trace information and identify a mechanism for information sharing with HSI while working with the DOS and ICE. The ICE director should adopt similar measures as the ATF in boosting identifying trends and measuring its performance in investigation efforts. All four agencies must develop measuring tools to assess their investigation efforts on arms trafficking in Mexico.⁶⁷ Finally, keeping all information updated and accurate could help these agencies track down the origins of the trafficked firearms.

Ideally, the US could improve its anti-gun legislation at state and federal levels, including the border states. The country should ban multiple weapon sales, relaunch the FAWB, regulate ammunition sales, and the crackdown on straw purchasers and ghost guns.⁶⁸ However, it is hard to currently carry out these solutions due to a lack of political will and the NRA's lobbying influence. Ideally, the Mexican government could increase penalties for illegal gun possession and severely sanction corrupt officials for facilitating gun trafficking. However, the two factors that hinder the efforts of the Mexican government are rampant corruption and high levels of

⁶⁷ Chelsey Kenny, "Firearms Trafficking: U.S. Efforts to Disrupt Gun Smuggling into Mexico Would Benefit from Additional Data and Analysis," 41-42

⁶⁸ Devika Agrawal, "Combating US Gun Trafficking to Mexico" 33-35, 40-41, 43

impunity. Understanding the political and social circumstances in both countries makes it better to concentrate on policy alternatives that may not be ideal but are feasible for both governments. Both countries could focus on disrupting the IFFs that cartels earn from their criminal activities. Through intelligence sharing, both countries' financial intelligence units and cooperation from key private sectors to identify and report suspicious clients. This is of special interest to the US because it will weaken the drug supply to the US market and for the Mexican government because it weakens the cartels' ability to traffic arms into Mexico.

The Bicentennial Framework would make both countries focus more on disrupting criminal financial networks to prevent TCOs from profiting illicit activities and proliferating. As the cartels' criminal activities such as drug, human, and wildlife trafficking can generate huge illicit proceeds that can be laundered, they need that money to corrupt local authorities, buy key armament, and spend on legal defense. By disrupting the cartels' IFFs, they cannot launder their proceeds nor carry out their illegal activities. As information sharing and cooperation are already mentioned in the framework's plans, it is also important to prioritize the arrest of straw purchasers and other corrupt facilitators that enable arms trafficking. Lastly, both the Biden and AMLO administration should keep boosting bilateral talks on the subject so each other can fulfill their part of shared responsibility, especially when the results of the lawsuit against US firearms and the Bicentennial Framework are currently pending.

Conclusions

TCOs, terrorists, insurgents, rebels, paramilitaries, and other types of non-state actors worldwide have always depended on the trafficking of firearms, blades, and explosives to assert control through fear and terror in specific locations and overpowering the state. Arms trafficking worsens armed conflicts, violence, displaces, kills civilians, and corrodes the rule of law. Unlike

other forms of illicit trade, trafficked weapons can be legally manufactured, sold, and then diverted to the black market. Mexican cartels traffic firearms from the US due to the lack of gun regulations in gun shops and shows, unlike in Mexico, where gun laws are strict. The process mainly consists of making multiple purchases in the US, having short supply chains, and giving the Mexican cartels the legally acquired firearms.

Since the Mérida Initiative, both countries have struggled to curb the most significant problems they promised to address, and things are now worse than ever, especially with the COVID-19 pandemic. The US drug demand and deaths in overdoses have increased dramatically during the past few years. Mexican criminal and corrupt actors keep using US financial institutions for money laundering, and guns keep flowing south. On the other hand, Mexico has failed to tackle the increasing violence and forced disappearances during the past years, with the fragmentation of the cartels leading to more violence and high levels of corruption that have allowed the proliferation of the cartels and state capture. As the Bicentennial Framework is expected to have more holistic approaches by January 2022, both countries must analyze any components relevant to improving public safety and neutralizing criminal networks, especially arms trafficking, which tends to be an overlooked subject. The lawsuit presented by the Mexican government at a federal court in Massachusetts has demonstrated that by holding the US gun manufacturers' lax attitude accountable, it seeks more concrete cooperation and action against the problem, albeit the exact duration, eventual verdict, and impact of the litigation is unknown. Finally, any effort to address gun trafficking to Mexico and other affected countries could test Washington's political will and require the approval of both chambers. Passage of any bill could pose a challenge given the current circumstances.

Under the Bicentennial Framework, both countries have the opportunity to identify common objectives and reach agreements to enact effective strategies against transborder crimes. Initiatives must simultaneously attack drug and arms trafficking convergences with a higher probability of success. By considering holistic approaches, policies, and security frameworks that have higher success rates are those that simultaneously combat these two problems, the control of IFFs is a good example of an objective that would likely get the support of both governments.

Unfortunately, while both countries struggle to address their own woes and lack concrete action, the Sinaloa Cartel, CJNG, Los Zetas' remnants, the Gulf Cartel, and other Mexican TCOs will get stronger, and violence will worsen in the country. In the end, the Mexican civilians pay the heaviest price as they are victims of direct or collateral damage by the cartels in confrontations against their rivals and security forces. Taking holistic measures against arms trafficking will logistically weaken the cartels' firepower and serve as a steppingstone to healthy community and peacebuilding efforts in Mexico and other Latin American countries.

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