

THE RIGHT TO SELF-DEFENSE:
HOW THE UNITED NATIONS CAN AND SHOULD
PROMOTE AND PRESERVE THE RIGHT TO SELF-
DEFENSE IN MEXICO IN THE MIDST OF THE WAR ON
DRUGS

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ABSTRACT

Selling narcotics to quite large, profitable United States drug markets, drug cartels have grown in wealth and power in Mexico since the 1960's. Sadly, this significant concentration of wealth and power was in the hands of non-state actors; completely separate from the legitimate governing authority of Mexico. Since Mexico declared war on drug cartels, the Mexican people have suffered from increased and sustained violence. The first part of this note is the introduction which will describe the Drug War that Mexico has been suffering from for so long. The second part of this note establishes the universal right to self-defense, and why the United Nations and countries around the world should adjust their official conduct in order maintain and promote that right. The third part of this note surveys also the escalation of violence and also the statistics on gun proliferation and drug-related murders. Then, the fourth part of this note will describe the sheer violence that has been caused by the War on Drugs. The fifth part will be the basis for highlighting the flaws of United Nations treaties addressing gun proliferation in Mexico when considered in light of the nature of the Mexican Drug War. After detailing the flaws in the United Nations strategy to ending violence in Mexico, the final fifth part of this note will then describe a more appropriate, effective method for ending the Mexican Drug War.

I. INTRODUCTION

Drug cartels in Mexico have acquired immense wealth and power over the past half-century and have challenged the governing authority of the state of Mexico. The Mexican people have suffered a significant amount of death, destruction, and violence at the hands of drug violence. United Nations arms reduction treaties geared toward disarming violent drug cartels is largely

ineffective and in fact inhibit Mexicans' self-defense rights because they only disarm well-intentioned Mexicans, often prevent violent resistance that is for the common good, and fail to address the root cause of violence which is ultimately heavy drug consumerism. In this paper, I will argue that only a serious loosening of domestic gun restrictions in Mexico will enable Mexicans to defend themselves from drug cartels and will ultimately end the Drug War in Mexico.

II. THE HUMAN RIGHT TO SELF-DEFENSE

The United Nation's founding principle is the prevention of war and conflict.¹ Founded after the World War Two, a philosophy of pacifism and international cooperation was the underpinning of the United Nations. Although the United Nations did not purport to make a policy to end all conflicts within nations and between nations by intervention, the United Nations attempted to reduce conflicts through intergovernmental cooperation, one form of which is small arms reduction treaties.² The policy reasoning behind these international treaties was that the reduction of arms will reduce conflict which will prevent instruments of death from feeding the destructive intentions of either belligerent state, or in some cases, insurgent groups.³ In order to fulfill this mission, the United Nations generally employed international arms regulation measures that were aimed simply at the prevention of violence by reducing the amount of illegal and legal weapons.⁴ Focused on these two features for largely practical reasons, the United Nations necessarily ignores, or at least drastically underappreciates 1) a country's unique national characteristics and 2) even inhibited violence in the form of justifiable self-defense.

The right to self-defense with the purpose of protecting one's own life or another's life is the only foundation on which justifiable violence is premised.⁵ The preservation of life is the underpinning of this right and violence is therefore more than acceptable for self-defense in the form of justifiable resistance.⁶ Across the world, the United Nations deals with this consistently. Citizens must defend themselves from insurgent groups and criminal organizations with weapons and often the line is blurred between self-defense and murder. Nonetheless, the right to self-defense is critical for not only the preservation of life, but also ultimately

¹ U.N. Charter art. 1, para 4.

² U.N. Charter art. 57, para 1.

³ *UN General Assembly approves global arms trade treaty*, UN NEWS CENTER (Apr. 16, 2003), <http://www.un.org/apps/news/story.asp?NewsID=44539&Cr=arms+trade&Cr1#.UW3QN7WmiVW> (last visited Apr. 16, 2014).

⁴ *Id.*

⁵ *Catechism of the Catholic Church*, THE VATICAN, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm (last visited Feb. 8, 2013).

⁶ *Id.*

maintains the dignity of the free, sovereign human person. Consequently, self-defense is both a right and moral obligation in the Roman Catholic Church.⁷ The Catechism section on “Legitimate Defense” in the Roman Catholic Church demands the application of force in two contexts: humans protecting themselves and other human beings, and also the state applying force when necessary to protect its citizens.⁸

Resistance is not only to be exercised by individuals, but by the state when groups or criminals threaten the country’s stability.⁹ The state or governing authority of every nation must employ force in any form to ensure that peace and stability is preserved.¹⁰ Furthermore, the state may “curb the spread of behavior harmful to people’s rights and to the basic rules of civil society” and “inflict punishment proportionate to the gravity of the offense.”¹¹ The success of government law enforcement often determines the extent to which insurgent groups can continue to wreak havoc on the country. Finally, the level of success thereby determines whether local citizens will have to resort to self-defense because the government has not or cannot preserve peace and order. In developing parts of the world where states do not have the resources to enforce peace and stability, an even greater need to enable and promote self-defense arises, because citizens will not have the state for their defense.

The country of Mexico has a larger amount of gun violence. Since 2000, violence has been especially high in Latin America and the Caribbean because of the large amount small arms that are transported to Latin American countries of the world.¹² Developing countries of the world are not only the unlucky destination of internationally transported small arms, but developing countries are also. Everyone has a moral duty to render an unjust aggressor unable to cause harm, because a life that is unjustly threatened must be protected in order to preserve life’s inherent dignity.¹³

The United Nations does not fully appreciate that violence is necessary for the common good in some circumstances, but the Catholic Church upholds that violence can be for the common good because it can serve to preserve life that is

⁷ *Id.*

⁸ *Catechism of the Catholic Church*, THE VATICAN, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm (last visited Feb. 8, 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² DANIEL LUIS ALVAREZ, *New Wars and Small Arms Violence in Latin America and the Caribbean*, NGO COMMITTEE ON DISARMAMENT, PEACE, AND SECURITY, (Aug. 14, 2009, 2:15PM), http://disarm.igc.org/index.php?option=com_content&view=article&id=297%3Anew-wars-and-small-arms-violence-in-latin-america-and-the-caribbean&catid=139%3Adisarmament-times-summer-2009&Itemid=2.

¹³ *Id.*

unjustly threatened.¹⁴ Although the United Nations has always upheld and supported the dignity of the individual person, albeit with the exception of unborn, the Catholic Church's basis for the right to self-defense is deeper than that of the United Nation's justification for self-defense. The United Nations' only real rationale for proclaiming self-defense is to avoid creating inconsistencies stemming from the United Nation's staunch pacifist stance. Self-defense has often been ignored in international contexts when the United Nations created arms reductions treaties with intent to prevent violence or disarm violent groups.

The United Nation's position on peace and war is premised on the prevention of violence.¹⁵ To accomplish this goal, the United Nations has idealistically limited their efforts to non-violent means. This mantra is exemplified well by the statue of the twisted gun in New York City. However, the United Nations restricts its conception of self-defense to negative measures like reducing guns instead of positive measures to affording and enabling citizens of the world to maintain their own peace and security through self-defense. This inherent affirmative feature of the right to self-defense is simply not encapsulated in the United Nation's plan to creating peace in the world.

III. THE MEXICAN DRUG WAR HAS BEEN INCREASINGLY DEADLY AND VIOLENT

The escalation of violence in Mexico demonstrates that the Mexican Drug War has not as of yet been successfully controlled by the Mexican government. President Felipe Calderon's commencement of the war on drugs in 2006 has been valiant but in the end has not eradicated the drug cartels nor has it prevented drug violence from reaching innocent Mexicans.¹⁶ The violence in Mexico has been primarily in the form of a civil war, a war between the people of Mexico and drug cartels, and finally the Mexican government.¹⁷ Because the drug cartels have the motivation and resources to wage conflict primarily with small, readily available arms, and because the government does not have the resources to quell this criminal enterprise, the increase of intentional homicide has been uninterrupted since 2007.¹⁸

Evidence is abundant that just the sheer amount of gun violence and crime has increased dramatically in Mexico over the past twenty years because of the War

¹⁴ *Id.*

¹⁵ U.N. Charter, *supra* note 1, at art. 1.

¹⁶ CHRISTOPHER REYNOLDS, *Mexico, before and after Calderon's drug war*, LOS ANGELES TIMES, (Aug. 25, 2012), <http://articles.latimes.com/2012/aug/25/news/la-trb-mexico-before-and-after-calderns-war-20120823> (last updated Apr. 16, 2004).

¹⁷ NAZIH RICHANI, *A Civil War in Mexico?*, North American Congress on Latin America (May 29, 2012), <https://nacla.org/blog/2012/5/29/civil-war-mexico> (last visited Apr. 16, 2013).

¹⁸ Cory Molzahn, Viridiana Rios, and David Shirk, *Drug Violence in Mexico* (Trans-Border Institute, 2012).

on Drugs. Mexico has had over 50,000 “organized crime murders from 2006 to 2011.”¹⁹ Violence statistics have been published online which demonstrate the sheer pervasiveness of drug violence all over Mexico.²⁰ The U.S. State Department has warned of small-unit combat between rival drug cartels to traveling United States citizens.²¹ Drug murders have not only been restricted to feuds between individual cartels, but they have reached segments of civil society like media members and government officials.²² Attacking civil society in all of its forms is an even more contemptible piercing form of violence than common criminals attack. This type of violence demonstrates that Mexican drug cartels are not just engaging in crime, but consciously trying to subvert Mexican society.

Drug cartels have shown themselves to be ruthless and persistent enough to murder journalists who report about drug cartels. Many journalists have been assassinated from 2008 to 2011.²³ Drug cartels have not only murdered members of civil society, but public officials elected to serve and represent the Mexican people.²⁴ Multiple city mayors have been assassinated from 2008 to 2011.²⁵ These public officials are likely targeted in an attempt to again frighten them from counteracting the effect of drug cartels in their cities. Drug Cartels have also severed heads of police officers and placed them in front of church.²⁶ Needless to say, the outrageous, grotesque crimes represent a form of vicious terrorism by which drug cartels hope to intimidate Mexican law enforcement.

The necessity of self-defense is extremely high in Mexico because of the Mexican Drug War. Mexican citizens do not have the vibrant, powerful civil government to promote their safety and security in the cities and have often required help from the United States Department of Justice.²⁷ In addition, good-willed Mexican citizens in the press are also threatened. The Mexican drug cartels are a potent criminal and even political force in Mexico. The strength of drug cartels enables them to attack the government of Mexico and also Mexican civil society. The cartels have the resources and manpower to combat the Mexican government. However, the main danger of the cartels has not been their resources or armaments, but their persistent and vicious attack on Mexican society.

¹⁹*Id.*

²⁰*Id.*

²¹ Carina Bergal, *The Mexican Drug War: The Case for a Non-International Armed Conflict Classification*, 34 *FORDHAM INT’L L.J.* 1042 (2011).

²²*Id.*

²³ MOLZAHN ET AL., *supra* note 18.

²⁴*Id.*

²⁵*Id.*

²⁶ Pedro Galindo, *Mexico Drug Killers Dumb 6 Severed Heads by Church*, REUTERS (Dec. 16, 2009).

²⁷ *Department of Justice Announces Resources for Fight Against Mexican Drug Cartels*, DEPARTMENT OF JUSTICE (Jan. 24, 2009), <http://www.justice.gov/opa/pr/2009/March/09-opa-265.html>.

Mexican drug cartels are not only strong criminal groups with a profitable undying clientele in the United States, but they also are paramilitary forces with a strong presence in the country. This presence has grown strong enough not only to allow drug lords to subsist in virtual sovereignty within Mexico, but their military prowess has grown strong enough to challenge the Mexican government. This powerful presence also makes it difficult for the Mexican government to defend itself and the Mexican people from the drug cartels. Therefore, the violence in Mexico is uniquely incompatible with any arms reduction models in the United Nations. One of the United Nation's assumptions for reducing arms is often that the government is in a position to quell insurrection. In Mexico, the Mexican people have little hope that the government can quell receive aid or defense from their own government. Thus, arms reduction treaties have a disproportionately harmful effect on Mexicans who are especially vulnerable to criminal violence.

The Mexican government has officially measured the size and number of organized crime in their country. Drug cartels in themselves have grown to a size that mirrors the sizes of insurgencies or rebellions within a country strife in civil war. This large amount of non-state actors poses a grave threat to Mexico and rivals the amount of force, gun-power, and manpower of the Mexican government. The large number of organized drug-trafficking crime in Mexico simply means a larger criminal presence in the whole country. Death tolls are thus quite high in multiple Mexican provinces. Mexico's drug-related deaths exceed one-hundred and ninety two in eight Mexican provinces.²⁸ The violence is a consistent pestilence that plagues the entire country. Again, this is a result of the size of drug cartels fueled and funded by drug sales and thus these criminal forces come into constant contact with the Mexican army and Mexican law enforcement. Even if law enforcement is resolute and courageous in fighting the drug cartels, the violence itself will persist simply because drug cartels are so large in size that they will always come into contact with police officers.

In fact, the number of followers drug cartels are able to recruit into their criminal enterprises is staggeringly high. For example, in 2009, it was reported that there were 100,000 foot soldiers in cartels.²⁹ President Felipe Calderon's initiative to thwart the cartels is restricted to Federal initiatives that do not in any way address the local dominion that the drug cartels have acquired over time in Mexico's rural areas.³⁰

²⁸ MOLZAHN ET AL., *supra* note 18.

²⁹ Sara A. Cater, *100,000 Foot Soldiers in Cartels: Numbers Rival Mexican Army*, WASH. TIMES, Mar. 3, 2009, at A01

³⁰ BERGAL, *supra* note 21, at 13.

The drug cartels have privileged illegal access to guns that simply is beyond the scope of control of Mexico and the United Nations.³¹ This uncontrollable gun trade exists largely because of Mexico's close proximity to a developed country that produces a very large amount of weapons: the United States. A huge amount of arms sales are imported into Mexico from the United States.³² Approximately ninety percent of the weapons in Mexico are imported from the United States.³³ Notwithstanding the questions of whether guns reach into Mexico legally or illegally, Mexico is regardless overwhelmed by the large gun trade across the large, permeable U.S.-Mexico border. Nonetheless, there is obviously a high amount of illegal trafficking. About twelve percent of Mexico's illegal guns come from the United States.³⁴ The United States federal government records themselves report that sixty-eight thousand weapons confiscated by the Mexican authorities originated from the United States.³⁵

The large amount of weapons is finally evidenced by the high amount of weapons confiscations in Mexico. The Mexican police find not only weapons, but weapons of an advanced nature that would indicate a military conflict was going on within the country.³⁶ The Mexican government confiscated thousands of hand grenades in 2007-08.³⁷ Many rocket-propelled grenades, rocket launchers, and anti-tank weapons have been confiscated as well.³⁸ These weapons again not only represent the advanced military status of the drug cartels, but that there is indeed a military-style conflict going on within Mexico.

IV. UNITED NATIONS RESPONSE TO MEXICAN DRUG WAR

I. United Nations International Small Arms Treaties

Mexico has been subjected, sometimes willingly and sometimes unwillingly, to the effects of United Nations small arms treaties passed through the Geneva

³¹ Tim Johnson, *Study: A quarter million US guns are smuggled into Mexico every year*, THE CHRISTIAN SCIENCE MONITOR (MAR. 19, 2013), <http://www.csmonitor.com/World/Americas/2013/0319/Study-A-quarter-million-US-guns-are-smuggled-into-Mexico-every-year> (last visited Apr. 17, 2013).

³² Colleen Cook, *Mexico's Drug Cartels* (CRS Report to Congress, 2007).

³³ *Id.*

³⁴ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE: FIREARMS AND TRAFFICKING: U.S. EFFORTS TO COMBAT ARMS TRAFFICKING TO MEXICO FACE PLANNING AND COORDINATION CHALLENGES (2009).

³⁵ *ATF Releases Government of Mexico Firearms Trace Data, Bureau of Alcohol, Tobacco, Firearms, and Explosives* (Apr. 26, 2012), <http://www.atf.gov/press/releases/2012/04/042612-atf-atf-releases-government-of-mexico-firearms-trace-data.html>.

³⁶ David Kopel, *Mexico's Federal Law of Firearms and Explosives* (Independent Institute, Working Paper No. 10-12, 2010).

³⁷ *Id.*

³⁸ *Id.*

Convention and implemented through arms reduction programs. Again, because the United Nations centers its approach to reducing violence on the reduction of small arms, most any country will be affected even if that nation does not subscribe to a certain United Nations Treaty or policy. Nonetheless, Mexico is subject to these policies despite that fact that Mexico is a sovereign country with a national legislature. Inevitably, United Nations international efforts will affect the trade of weapons and that will affect Mexico, which receives the majority of its high-powered weapons from other countries, according to Mexican President Felipe Calderon, most especially the United States.³⁹

The United Nations' efforts to reduce international arms through international cooperation are a response to drug violence and the destructive Mexican Drug War.⁴⁰ First, the United Nations has implemented a Geneva Convention to reduce armed violence.⁴¹ The United Nations overall goal to reducing violence is sensibly addressing or rectifying the causes of violence and reducing or eliminating the international trade of violence.

The Geneva Convention first proposed programming for "targeting risks and symptoms of armed violence."⁴² This goal broadly sets out an international effort to eliminate causes of violence. Forming international restrictions on arms sales based on international cooperation and participation is the Geneva Convention's second method of reducing violence. This proposal is particularly geared at illegal weapons that ultimately empower criminal organizations.⁴³ The United Nations program for action is essentially: "to encourage the relevant international and regional organizations and States to facilitate the appropriate cooperation of civil society ... in activities related to the prevention, combat and eradication of illicit trade in small arms and light weapons."⁴⁴

The United Nations proactive efforts to reduce violence has been largely ineffective and inhibiting of all justifiable violence. The United Nations' only affirmative method of enforcing these laws has been ironically overseeing the Mexican military-the one entity that can possibly defend Mexicans. The United Nations receives complaints about abuse and then subsequently conducts

³⁹ CATHERINE E. SHIOCHET, *Mexico's president to U.S.: 'No more weapons,'* CNN (Feb. 17, 2012, 1:06PM) <http://www.cnn.com/2012/02/17/world/americas/mexico-us-weapons>.

⁴⁰ *United Nations Programme of Action Implementation Support System*, PROGRAMME OF ACTION TO PREVENT, COMBAT AND ERADICATE THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS IN ALL ITS ASPECTS, <http://www.poa-iss.org/poa/poahtml.aspx>.

⁴¹ *The Geneva Declaration on Armed Violence and Development*, THE GENEVA DECLARATION, <http://www.genevadeclaration.org/the-geneva-declaration/how-does-it-work.html>.

⁴² *The Geneva Declaration on Armed Violence and Development*, THE GENEVA DECLARATION, <http://www.genevadeclaration.org/the-geneva-declaration/how-does-it-work.html>.

⁴³ *Id.*

⁴⁴ *United Nations Programme of Action Implementation Support System*, PROGRAMME OF ACTION TO PREVENT, COMBAT AND ERADICATE THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS IN ALL ITS ASPECTS, <http://www.poa-iss.org/poa/poahtml.aspx>.

examinations of abuse against Mexican army.⁴⁵ Based on these complaints, the United Nations has disciplined the Mexican army.⁴⁶

II. *The Mexican Constitution and Gun Ownership Rights*

The Mexican Constitution provides for the right to bear arms but that is heavily restricted.⁴⁷ Choice of weapons can be denied and they are restricted to military distribution.⁴⁸ In spite of the fact that drug cartels have access to military weapons, citizens are nonetheless denied those same weapons for security reasons.⁴⁹ This restriction is in place despite the fact that military-style weapons are confiscated in the country.⁵⁰ Currently, weapons can only be held inside of the home.⁵¹ However, a large amount of drug violence is outside of the home which means individually-owned weapons cannot be legally used outside the home which is precisely where self-defense may be necessary.

Mexican gun regulations are highly restrictive. The Mexican people are constitutionally afforded a right to bear arms by the Mexican Constitution. The English translation of the Mexican Constitution states that all Mexican citizens may have arms “for security and legitimate defense.”⁵² This constitutional right reflects the basic premise that all of mankind has the right to defend the dignity of life from those who unjustly threaten the life that God bestowed on them. Mexicans living in both rural and urban communities exercised this right willfully for their own self-protection in a country ridden with violence and starved of effective law enforcement. Although the constitutional right is absolute and without equivocation, similar to the United States right to bear arms, the Mexican government through legislative and administrative measures have limited private ownership of and access to weapons.⁵³ The Mexican Constitution also has a key restriction on the right to arms in the form of an executive privilege.⁵⁴ By federal law, rather than the Mexican constitution, the Mexican government will “determine the cases, conditions, requirements, and places in which the carrying of arms will be authorized by inhabitants.”⁵⁵

⁴⁵ Nacha Cattan, *UN questions Mexican Army's role in drug war*, The Christian Science Monitor (Apr. 1, 2011), <http://www.csmonitor.com/World/Americas/2011/0401/UN-questions-Mexican-Army-s-role-in-drug-war>.

⁴⁶ *Id.*

⁴⁷ KOPEL, *supra* note 36.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

Mexicans do not have access to all the typical types of weapons. Federal Mexican law only permits handguns, shotguns, and small rifles.⁵⁶ These weapons, needless to say, are not designed for military combat or insurgency combat like that seen in Mexico between drug cartels and between the Mexican government and drug cartels. Rather, they are weapons that are for basic levels of protection that may be required when necessary for petty crimes and, in some more serious cases, defense of the person. The type of guns is not the only type of restriction, but also the method of acquiring guns is highly restrictive.

Gun sales are exclusively managed by Mexican military.⁵⁷ This government monopoly on what could be a private enterprise gives the Mexican government an opportunity to have complete control over the sale of guns and also even to what extent the public will have private ownership of guns. The rationale of this government monopoly is that guns can only be acquired through one medium. However, this policy, although it has been somewhat successful in preventing to some degree private ownership of weapons, has not prevented illicit gun ownership. The reason for this shortcoming is the prolific illicit international trade of arms. The Mexican military sells all weapons authorized for public ownership at one restrictive military base in Mexico City.⁵⁸ Mexican citizens, in order to acquire weapons legally, must drive to this one military base in Mexico City.⁵⁹ Mexico City is roughly in the center of the country of Mexico and is a long distance from many rural areas.⁶⁰ This makes it necessary for the army to grant special transportation permits for Mexicans seeking guns which grant temporary authorization for a Mexican to have small weapons outside of their residence.⁶¹

V. PROBLEMS WITH THE U.N. APPROACH TO DRUG WAR

The United Nation's general pacifist stance precludes any international measures promoting justifiable resistance. In fact, the United Nations approach to conflicts of any kind, including the drug war, normally focuses simply on the prevention of violence which is inevitable when a country is attempting to quell an internal insurgency or internal criminal organization.

The United Nation's purely pacifist stance has manifested in the form of human rights monitoring. When the United Nations detects human rights violations from a member-nation's government, the United Nations will issue

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

reprimands or make requests of the member-nation.⁶² This legal mechanism employed by the United Nations in itself indicates two flaws to the United Nations approach. First, simply by choosing to exert this petty form of supervision is without basis since the war on drugs is inherently violent, particularly when the viciousness of drug wars is taken into consideration.⁶³ Secondly, by failing to take into consideration the great violence that is occurring in Mexico on a routine basis, the United Nations further reveals that they are incorrectly limiting their anti-violence campaign to non-violent means. For example, in the case of Mexico, the United Nations has asked for the withdrawal of Mexican army from streets.⁶⁴

In addition, the United Nations fails to take into account the inability of Mexico to defend a large country. Mexico has both a large urban and rural population spread across the entire county. Mexican citizens must resort to self-defense often in rural areas of Mexico because drug cartels have more presence in their towns than the Mexican police and army.⁶⁵ The Mexican army is unable to defend most Mexicans because of severe government resources limitations, but the rural areas are in even greater need of self-defense because of their far distance from civilization and any military protection.⁶⁶

I. The Effect on the Right to Self-Defense

Self-defense is an indispensable right for all citizens if the dignity of life is to be protected. The United Nations needs to, in addition to acknowledging the right to self-defense, actively promote that necessary feature of the defense of the dignity of the human life. This involves often elevating the methods of self-defense that is proportionated with the situation. Providing small arms weapons as an empowerment tool is necessary in Mexico and any other area strife with violence. This fundamental right is subverted by international arms reduction treaties.

Resistance became a human right under the worst of circumstances in areas of the world besides Mexico. The United Nations has in one particular case been unable to implement an effective solution to a national crisis because the right of self-defense right was not sufficiently protected. The genocide in Sudan is a good example of this because murder and rape were perpetrated in a state-sponsored genocide and citizens were often defenseless. The killing particularly of young

⁶² Nacha Cattan, *UN questions Mexican Army's role in drug war*, The Christian Science Monitor (Apr. 1, 2011), <http://www.csmonitor.com/World/Americas/2011/0401/UN-questions-Mexican-Army-s-role-in-drug-war>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Phillippe Diedrich, *Mexico: Towns Arm Themselves For Self-Protection against Organized Crime*, Huffington Post (Jan. 17, 2013, 9:16AM), http://www.huffingtonpost.com/2013/01/17/mexicos-towns-arm-themsel_n_2495171.html.

⁶⁶ *Id.*

Sudanese women demonstrates the need of weapons for an “element of retaliation”⁶⁷

Furthermore, United Nations anti-genocide programs are a “worthless platitude” because U.N. refuses to empower the defenseless with weapons.⁶⁸ The United Nations small arms treaty exhibits this same flaw because it only prevents arms distribution rather than encouraging arming of citizens against armed insurrection.⁶⁹ Mexicans have a very high need for self-defense from drug cartels. Mexican citizens must resort to self-defense.⁷⁰ The government is unable on many occasions to provide defense to Mexican citizens from drug cartels because of size of country.⁷¹

The lack of the capacity and integrity in Mexican government to govern and lead the country through this crisis prevents a full, final destruction of the drug cartels. The Mexican government and police are corrupt which makes law enforcement difficult in many regions of Mexico.⁷² Mexican government has insufficient resources to deal with the crisis. Drug cartels are separate institution within Mexico and separate from Mexican State. Finally, the inability and the impossibility of alleviating the true, ultimate source of drug cartels is the ultimate problem. That problem is obviously a social and spiritual issue: drug addiction.

The example of Guatemala which suffered under a very abusive dictatorship exemplifies how a United Nations response that is not geared toward the source of the problem will be devastating to the people. In the country of Guatemala, government leaders were more concerned with their own power structure rather than the protection of its own citizens.⁷³ This is analogous to Mexico where the country does not address drug consumerism but instead its own national credibility and control.⁷⁴ In Guatemala, violence inevitably arose from maras [delinquent drug gangs] that assaulted innocent citizens.⁷⁵ Similar to Mexico, this kind of attack on innocent civilians continued because the United Nations never addressed the source of the problem which was Guatemalan government⁷⁶.

⁶⁷ Dimitri Vassilaros, Gun Control's Best Friend, PittsburghLive.com, (Apr. 1, 2005), http://pittsburghlive.com/x/tribune-review/opinion/columnists/vassilaros/s_319251.html (last visited Mar. 3, 2013).

⁶⁸ David Kopel, Paul Gallant, & Joanne D. Eisen, Is Resisting Genocide a Human Right, 81 Notre Dame L. Rev. 1275 (2006).

⁶⁹ *Id.*

⁷⁰ DIEDRIC, *supra* note 66.

⁷¹ *Id.*

⁷² KOPEL, *supra* note 36.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 13.

⁷⁶ *Id.*

Although reducing the amount of weapons worldwide could prevent criminals from acquiring weapons, an international arms reduction model is inapplicable to Mexico. The presumption of ethical standing of a state means that small arms treaties will be implemented without taking into account a country's government deficiencies like, for example, government corruption or low territorial control, both of which happens to be the case in the country of Mexico. When this is not taken into account, Mexican citizens in need of defense will be denied arms at a time that they desperately need them. Therefore, small arms treaties as applied to Mexico will have a disproportionately negative effect on Mexicans who have an ineffective government and law enforcement. These treaties in fact have an obsession with violent prevention that ultimately could be for the common good. What is for the common good entails Mexican citizens ridding Mexico of the yoke of the drug cartels through resistance. Mexico simply put is an inherently violent country because of the presence of drug cartels and influx of guns and thus small arms reduction treaties would be simply foolhardy because they will in no way be able to reduce the presence of weapons and violence in the country. The overwhelming amount of weapons in Mexico is the result of a massive illicit arms trade between the United States and Mexico. "Government-centric United Nations" obsesses with disarming insurgency groups rather than addressing oppressive conditions that may cause insurgencies.⁷⁷

II. Mexico's Non-Disposition to Private Gun Ownership

By empowering those who are more vulnerable by their disposition, a policy acquires the fullness of promoting the dignity of the human person. Without counteracting the inherent defensiveness of a person, the dignity of the human person is vulnerable. In Mexico, the general population, for both cultural and political reasons, is less disposed to acting affirmatively to promote their self-defense. Undisposed to ensuring their own self-defense from violence and crime, the Mexican people are not in a good position to acquire weapons under the current United Nations international arms reductions treaties. When a country's people are less culturally disposed to arming themselves against criminal organizations, then the United Nations is obligated to counteract that predisposition by increasing gun ownership in Mexico rather than reducing it. Failing to take these cultural aspects into consideration, the United Nations will almost certainly institute policies and plans that are harmful to the right of self-defense.

⁷⁷ *Id.*

The Mexican population by and large has a lower standard of living.⁷⁸ Being a poorer social group, Mexican do not have the sheer means to maintain weapons to defend their country against the drug cartels. Moreover, this Mexican population is simply not predisposed to fighting because Mexicans have grown accustomed to power and weapons being concentrated in the hands of drug cartels for so long in the country of Mexico. Drug cartels have amassed a great deal of military power in Mexico, thereby absorbing most of the power in Mexico from the Mexican people. This situation is far different from that of the United States where the American people are accustomed to and demanding of gun ownership and have a government that defends these gun rights.

United Nations arms reduction treaties make arms less available for Mexican when the Mexican population is in fact in need of policies that encourage more private gun ownership. When the level of gun ownership in a country is especially low, United Nations policies must reflect that in order to fully protect and promote a person's right to self-defense. The low level of gun ownership in Mexico despite the level of violence in the country suggests that arms reduction treaties are particularly harmful to Mexican self-defense rights.⁷⁹ The number of weapons per one-hundred person in Mexico is extremely low; 2.65 firearms per 100 people.⁸⁰ The Mexican state makes it extremely difficult for Mexicans to acquire guns despite the violent nature of the country and thus the United Nations should not make it any more difficult either. By ignoring these specific cultural features of Mexico and yet still pass the same arms reduction treaties, United Nations arms reduction treaties become even more harmful.

The United Nations has an inherent moral obligation to ensure that any policy related to weapons and arms promotes and defends the human right to self-defense. In order for the United Nations to promote the dignity of every man and woman, all United Nations policies need to be designed to ensure that self-defense is protected to the fullest. In order to accomplish this end, a necessary component of any law and particularly a United Nations international treaty must be to take into account all individual country's unique features and characteristics. Certain countries have a culture that is especially protective of the right to self-defense and their country's policies and level of gun possession reflect that. Some countries, like Mexico, instead are culturally disposed to less private gun ownership and a weaker sense of a right to self-defense. The United Nations should create policies that counteract Mexico's culture of low gun-ownership. Failing to counteract Mexico's unique disposition against gun ownership, the United Nations not only

⁷⁸ United States State Department, *Mexico: Poverty at a Glance*, US Embassy (Jan. 2010) http://photos.state.gov/libraries/mexico/895/pdf/2010_Poverty_Fact_Sheet.pdf.

⁷⁹ PHILIP ALPERS and MARCUS WILSON, *Mexico-Gun Facts, Figures and the Law*, GUNPOLICY.ORG (last updated Apr. 1, 2013), http://www.gunpolicy.org/firearms/region/mexico#top_of_page.

⁸⁰ *Id.*

harms Mexico but also, through an omission to act appropriately, harms Mexicans' self-defense rights.

The United Nation's initiatives for gun control have failed because they do not function correctly in specific cultural circumstances. Again, in Mexico, the people are not culturally disposed to violence which makes private ownership all the more necessary. Similarly, the United Nations has forced voluntary disarmaments in Uganda, with negative results commensurate to those of Mexico.⁸¹ The United Nations supported a government gun confiscation program in Uganda under the President with the goal of ensuring that non-state actors did not have weapons.⁸² The goal of this approach was to ensure not only that the government was the only one that possessed weapons, but also to attempt to reduce the amount of violence in a country ridden with destructive civil war.⁸³ Later, news networks reported that citizens who obediently forfeited their possession of weapons later were vulnerable to attack.⁸⁴ The Ugandan government consented to this form of United Nations intervention, but despite the fact that this disarmament occurred with national consent, a faulty United Nations plan was implemented and it nonetheless produced horrible results.⁸⁵ This United Nations policy has benign intentions to end violence with the purpose of reducing violence by reducing the presence of privately owned guns that could cause violence. This policy is precisely what the United Nations is pushing in Mexico. However, in the United Nation's attempt to end violence, the United Nations prevented violence that could have protected the dignity of Ugandans who needed to defend themselves. This is one example of the travesties that exist when self-defense is not protected to the extent necessary to defend the dignity of human life in violent war-torn countries like Uganda.

VI. SOLUTIONS TO MEXICAN DRUG WAR THAT PRESERVE RIGHT TO SELF-DEFENSE

I. *Reclassification of War Status*

Mexico and the United Nations must initiate a reclassification of war status of the Mexican Drug War between the government and drug cartels.⁸⁶ This solution is far more effective than the current United Nations response to armed conflict. Again, this solution would admittedly not solve the source of drug violence, but it

⁸¹ KOPEL, *supra* note 36.

⁸² *Id.* at 418.

⁸³ *Id.*

⁸⁴ *Id.* at 419.

⁸⁵ *Id.*

⁸⁶ BERGAL, *supra* note 21, at 16.

would certainly aid in the quelling of armed violence that has plagued Mexico for decades.

The nature of the conflict in Mexico indicates that there are significant justifications for classifying the drug war in Mexico with a newer and much more accurate war status. The number of battle-related deaths in Mexico exceeds ICDC minimum.⁸⁷ The number of deaths indicates that Mexico is engaged at the very least a serious insurgency and perhaps even a conflict between two rival powers: the Mexican state and the drug cartels. Categorization of drug war as “Non-International Armed Conflict” is necessary for quelling of internal drug cartel insurrection.⁸⁸ This will enable the Mexican army to apply the appropriate military resources and sustained attack against the drug cartels.

A new war status classification would make the country far safer and further the defense of the Mexican people.⁸⁹ United Nations will apply empowerment technique where Mexican government can stomp out drug cartels rather than simply disarming the drug cartels. These techniques can be applied with this new classification because drug cartels will be classified as belligerent powers to be quelled by military power. Military forces in addition to police forces will be able to resist drug cartel violence and ultimately restore peace in Mexico. It is not only an obligation, but in the end a necessity for all states to empower its citizenry to a level commensurate with internal threats. It is essential to allow armed force to treat cartels as armed insurrection and deploy military force against drug cartels located throughout country.⁹⁰ Increase trade and possession of small arms would also result and thus self-defense would also be an incidental benefit of this a new war classification because, since the conflict is classified as an armed conflict, there would be a more widespread trade of weapons to support an armed conflict.

II. *Loosening of Gun Restrictions*

In addition to a declaration of war on drug cartels, the Mexican government must, for individual Mexican citizens, significantly loosen gun restrictions by allowing automatic weapons in addition to pistols, shotguns, and rifles. Drug cartels may easily acquire these weapons from the United States which manufactures these weapons and thus Mexican citizens should have equally easy access. The first positive result of this change is that there will be more weapons for common Mexican citizens so they can resist drug cartels. Drug cartels again have access to a large amount of weapons from the United States that are transported illegally across the border. Mexican citizens having access to these

⁸⁷ *Id.* at 16.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

same types of weapons and employing them against drug cartels would seriously diminish the power of the drug cartels. Sometimes the best defense is a good offense as the adage goes. The second positive result of this change would be that illicit weapons that are only available to drug cartels through will become available through legal means. This again will allow the weapons access of Mexicans to both increase and ultimately rival the weapon's dominance that the drug cartels have had, which has again been much more expansive because of the large U.S.-Mexican illegal gun trade. There is no question that Mexico's violence stems ultimately from the enormous availability of weapons.

III. *End Military Monopoly on Gun Sales*

The Mexican government must eliminate the military monopoly on gun sales as it only prevents law-abiding citizens from acquiring arms. The country of Mexico is admittedly extremely dangerous because of the prevalence of drug violence. Secondly, it is also very convenient for the military to force all Mexicans, whether well-intentioned or not, to come to one place for guns sales. However, this policy is nonetheless still inconsistent with the needs of the Mexican people. The promotion of safety and security is not the only concern, but also the promotion of self-defense. The widespread prevalence of weapons in the form of small arms will only benefit those in need of self-defense from drug violence and drug cartels. Allowing gun stores to sell guns throughout Mexico will allow Mexican to have better access to weapons and arms that Mexicans could not otherwise have in the highly restrictive Mexican gun market.

The current restriction of gun sales to Mexico City imposes large practical burdens on acquiring weapons. This burden is particularly high in Mexico where a large portion of the country is rural and does not have easy access to Mexico City. In a country where violence is high and self-defense is all the more necessary, it is woefully difficult for Mexicans to acquire weapons because they can only do so by driving to army barracks in Mexico City where gun sales are exclusively held. Eliminating this restriction would make small arms more readily available for all Mexican, thereby promoting the right to self-defense and also making justifiable resistance a viable option for well-intentioned Mexicans.

VII. CONCLUSION

Mexico's unique propensity to drug violence alone makes the entire Mexican people's self-defense rights especially important. The United Nations, however, has a government-centric, arms-focused approach to quelling violence.⁹¹ For

⁹¹ KOPEL, *supra* note 36.

Mexico, the United Nations' efforts to reduce the trade of international arms have meant a restrained individual capacity for self-defense. Mexicans need instruments of deaths to combat the culture of destruction brought about by the drug cartels and implicitly allowed by the state of Mexico. This consequence is particularly damaging to Mexico which is ridden with violence and also weak law-enforcement. Correcting the United Nations approach to violence-prevention requires broadening their solution beyond mere arms reduction, but also individual empowerment. The United Nations must foster the distribution weapons to the Mexican people for their defense, but the government of Mexico as a sovereign country must also loosen restriction on small arms to counter and eventually eradicate the insurgency of drug cartels in Mexico. This approach and only this approach can ultimately win the War on Drugs in Mexico. However, to do so, the right to self-defense must be protected and promoted-even if that involves violence.