

NÚMERO 241

ALEJANDRO ANAYA MUÑOZ

**The Mexican government and its critics from abroad
Limits and possibilities of communicative interaction
in the area of human rights**

Importante

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• Carretera México Toluca 3655, Col. Lomas de Santa Fe, 01210,
• Álvaro Obregón, México DF, México.
• www.cide.edu

• Dirección de Publicaciones
• publicaciones@cide.edu
• Tel. 5081 4003

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Abstract

During the government of Felipe Calderón (December 2006 to November 2011), different international actors criticized the Mexican government for the prevalence of military jurisdiction to prosecute and punish violations of human rights allegedly perpetrated by members of the armed forces. The Calderón government engaged in a process of communicative interaction with its international critics and a “public discourse” ensued. In time, the government started to change its discourse and even took some measures to reform the system of military jurisdiction. This new discourse and these attempts, however, did not ultimately result in an actual reform. How can we explain this process of limited change in government policy? This document recurs to a theory of communicative interaction and human rights change developed by Thomas Risse and his colleagues, and argues in this sense that the pressure exerted by international criticisms resulted in an initial evolution of the process of communicative interaction towards “truth seeking arguing”. This evolution, however, was thwarted by the opposition of the armed forces. The document concludes stressing that Risse’s theory is more useful to understand these kind of processes and to explain their outcomes than realist or more purely rationalist theories.

Resumen

Durante el gobierno de Felipe Calderón (diciembre de 2006 a noviembre de 2011), diversos actores internacionales criticaron al gobierno de México por la prevalencia de la jurisdicción militar para procesar a miembros de las fuerzas armadas presuntamente involucrados en la violación de derechos humanos. El gobierno de Calderón se involucró entonces en un proceso de interacción comunicativa con sus críticos internacionales. Con el tiempo, el gobierno cambió su discurso con respecto al sistema de jurisdicción militar e incluso tomó algunas medidas para intentar reformarlo. Sin embargo, este nuevo discurso y dichos intentos de reforma no se materializaron en una reforma en la práctica. ¿Cómo podemos explicar este proceso de cambio limitado en la política gubernamental? Este documento recurre a una teoría de la interacción comunicativa, desarrollada por Thomas Risse y algunos de sus colegas, con base en la cual argumenta que la presión ejercida por los críticos internacionales del gobierno mexicano resultó en una evolución inicial del proceso de interacción comunicativa hacia lo que Risse llama “truth seeking arguing”. Esta evolución, no obstante, fue detenida por la

oposición de las fuerzas armadas. El documento concluye subrayando que la teoría de Risse parece más útil para entender este tipo de procesos y para explicar sus resultados que teorías más cercanas al realismo o a un acercamiento más claramente racionalista.

Introduction

The human rights situation in Mexico has figured prominently within the international agenda since the second half of the 1990s, when human rights organs and bodies of the United Nations (UN) and the Organization of American States (OAS), Non-Governmental-Organizations (NGOs) and some democratic governments started to closely monitor the situation, make public statements, issue reports and adopt resolutions which criticized the violation human rights in the country. The Mexican government has reacted to such international criticisms expanding its commitments with the international human rights regime, implementing different reforms and public policy initiatives at the domestic level and, overall, adopting a clear and sound human rights discourse.¹ More recently, during the administration of president Felipe Calderón (December 2006 - November 2012), international human rights actors showed a strong concern about the violations of human rights perpetrated by the armed forces in the struggle against drug cartels. Once again, Mexico was the target of international monitoring and critical statements and reports.² The government responded to international criticisms with a human rights rhetoric and a “public discourse” - the contentious process between different actors to define the meaning of a given situation through the use of arguments³ - took place. The debate focused heavily on the issue of military jurisdiction in Mexico—the prosecution of alleged violations of human rights by members of the armed forces through the military system of justice. This document focuses on this “public discourse” around the controversial issue of military jurisdiction in Mexico.

As described with detail in this document, the Calderón government initially reacted developing a staunch defense of military jurisdiction. But in time it changed its discourse and took some steps towards its reform. But this did not materialize in an actual reform. How can we explain this process of limited change in government policy?

In Section 1, the document describes the main arguments and demands formulated by international critics and the way the discourse and actions of the Mexican government changed over time. In section 2, the document presents Thomas Risse’s framework of communicative interaction between rights-violating governments and their international critics, focusing on the

¹ Alejandro Anaya Muñoz, *El país bajo presión. Debatiendo el papel del escrutinio internacional de derechos humanos sobre México*, México City, CIDE, 2012.

² Anaya Muñoz, *El país bajo presión*, pp. 117-139.

³ Thomas Risse, “Let’s Argue!”: Communicative Action in World Politics’, *International Organization*, 54:1 (2000), p. 29; Anja Jetschke, *Human Rights and State Security: Indonesia and the Philippines*, Philadelphia, PA and Oxford, UK: University of Pennsylvania Press, 2011, p. 20.

notion of “truth seeking arguing”.⁴ Following this framework, in Section 3 the document develops an argument about the observed changes in the Mexican government’s discourse and actions around the issue of military jurisdiction. The document argues that as the Calderón period evolved, the communication process between the Mexican government and its international critics experienced a limited evolution towards “truth seeking arguing”, which was (at least in part) the result of international criticisms, particularly by the Inter-American Court of Human Rights (IACoHR) and government actors from the US. This development, however, was thwarted by “hard-line” sectors within the Calderón government (particularly the military) which, in the context of the “war on drugs” and growing violations of human rights opposed any reform to the system of military jurisdiction. The document concludes arguing that Risse’s theory of communicative interaction and “the spiral model of human rights change” should stress with more emphasis the relevance of intra-government divisions and the importance of the type of international actors that participate in practice on processes of communicative interaction with rights-violating governments. Nevertheless, the document argues, this body of theory is more useful to understand these kind of processes and explain their outcomes than realist or more purely rationalist theories of international relations.

1. Mexico’s struggle against drug cartels: arguments and demands by international actors

The government of Felipe Calderón took the struggle against drug cartels to the top of the national agenda, heavily relying on the massive and intensive involvement of the armed forces, which in turn resulted in a significant increase in the presumed levels of human rights violations by the military.⁵ The violation of human rights and the impunity allegedly produced by the system of military jurisdiction was soon noticed and criticized by human rights organs and bodies of the UN and the OAS, international NGOs (particularly Amnesty International [AI] and Human Rights Watch [HRW]) and the US government.

Military participation in law enforcement activities in Mexico and the related problem of military jurisdiction had been a source of concern for human rights organs and mechanisms of the UN and the OAS since the mid-to-late 1990s. However, their preoccupation increased during the Calderón

⁴ Thomas Risse, ‘International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Area’, *Politics and Society*, 27:4 (1999), pp. 529-559; Risse, “‘Let’s Argue!’”.

⁵ Alejandro Anaya Muñoz, ‘Security versus human rights: The case of contemporary Mexico’ in Paul Kenny and Mónica Serrano (with Arturo Soto Mayor) (eds.), *Mexico Security Failure: Collapse into Criminal Violence*, New York, NY: Routledge, 2012, pp. 122-140.

government—the number of recommendations to Mexico issued by international organs and bodies regarding both issues rose from 19 in the period 1998 to 2006, to 35 between 2007 to 2011.⁶

In 2009, Mexico's human rights performance was thoroughly evaluated by the UN Human Rights Council, through its Universal Periodic Review (UPR) mechanism. Several members of this organ explicitly expressed their concern about the violation of human rights perpetrated by the military in the struggle against drug cartels and recommended the reform of the system of military jurisdiction.⁷ Similar concerns and recommendations were by the UN Human Rights Committee in 2010⁸ and by the UN Special Rapporteur on the independence of judges and lawyers and the UN Committee on the Rights of the Child in 2011.⁹

Similarly, in a ruling issued in 2009, the IACoHR underlined that “in the face of situations that violate the human rights of civilians, under no circumstances can military jurisdiction operate” and mandated Mexico to undertake legislative reforms in this respect.¹⁰ The IACoHR came to the same conclusion in three subsequent rulings adopted in 2010.¹¹

In every annual report issued between 2008 and 2011, both AI and HRW systematically condemned military abuses perpetrated by members of the armed forces while undertaking law enforcement activities against drug cartels, and denounced the prevailing impunity, arguing that it resulted from the prevailing system of military jurisdiction.¹² Criticism by AI and HRW intensified in 2009 when both NGOs published harsh special reports that

⁶ Database on international human rights recommendations to Mexico <www.recomendacionesdh.mx>, last consulted: February 27, 2013.

⁷ Human Rights Council, *Universal Periodic Review. Report of the Working Group on the Universal Periodic Review*. Mexico (A/HRC/11/27)*, May 29, 2009.

⁸ Human Rights Committee, *Observaciones finales del Comité de Derechos Humanos. Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto. México (CCPR/C/MEX/CO/5)*, April 7, 2010.

⁹ Special Rapporteur on the Independence of judges and lawyers, *Informe de la Relatora Especial sobre la independencia de los magistrados y abogados (A/HRC/17/30/Add.3)*, April 18, 2011, par. 94; Committee on the Rights of the Child, *Examen de los informes presentados por los Estados partes en virtud del párrafo 1 del artículo 12 del Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a la venta de niños, la prostitución infantil y la utilización de niños en la pornografía (CRC/C/OPSC/MEX/CO/1)*, April 7, 2011, par. 30.

¹⁰ Inter-American Court of Human Rights, *Case of Radilla-Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009, Series C No. 209.

¹¹ Inter-American Court of Human Rights, *Case of Cabrera-García and Montiel-Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 26, 2010, Series C No. 220; Inter-American Court of Human Rights, *Case of Fernández Ortega et al. v. Mexico. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215; Inter-American Court of Human Rights, *Case of Rosendo Cantú et al. v. Mexico. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 3, 2010, Series C No. 216.

¹² Human Rights Watch, *World Report 2008*, New York, NY: Human Rights Watch, 2008; Human Rights Watch, *World Report 2009*, New York, NY: Human Rights Watch, 2009; Human Rights Watch, *World Report 2010*, New York, NY: Human Rights Watch, 2010; Human Rights Watch, *World Report 2011*, New York, NY: Human Rights Watch, 2011; Amnesty International, *Amnesty International Report 2008. State of the World's Human Rights*, London, UK: Amnesty International, 2008; Amnesty International, *Amnesty International Report 2009. State of the World's Human Rights*, London, UK: Amnesty International, 2009; Amnesty International, *Amnesty International Report 2010. State of the World's Human Rights*, London, UK: Amnesty International, 2010.

explicitly focused on the violations of human rights perpetrated in the struggle against drug cartels and the blatant impunity caused by the system of military jurisdiction. Later on, HRW closed the grip by publishing yet another highly critical special report about the same issues in 2011.¹³

The US approached the violations of human rights perpetrated in the struggle against drug cartels through two specific mechanisms—the *Country Reports on Human Rights Practices* and the “Merida Initiative”. Throughout the Calderón period, the human rights reports of the State Department included information about the human rights violations perpetrated by the military in counternarcotics actions. The reports underlined that, in spite of the military’s formal human rights discourse, the investigations of cases of alleged violations of human rights conducted under the armed forces’ criminal justice system did not tend to result in convictions.¹⁴

In mid 2008, the US Congress approved the “Merida Initiative”, a multi-year assistance package proposed in 2007 by President George W. Bush to support Calderón’s “war on drugs”. Until 2010, the package allocated around \$1.5 billion in aid to strengthen the equipment and technological capacities of Mexican security forces (notably the military), but also for the implementation of a judicial reform, institution building, anti-corruption and rule of law objectives. The US Congress, however, conditioned the release of 15% of specific funding categories to a number of human rights measures to be taken by Mexico. In this latter respect, the US Congress established that the Secretary of State had to report whether Mexico was, *inter alia*, ensuring that civilian authorities were investigating human rights violations allegedly perpetrated by federal police and military forces.¹⁵ In 2010, the State Department reported that though the Mexican government had “to do more” regarding these conditions, it was taking “important steps that demonstrate that it is continuing to address” the human rights concerns included in the Merida Initiative. In any case, the State Department temporarily withheld \$26

¹³ Human Rights Watch, *Uniform Impunity. Mexico’s Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, New York, NY: Human Rights Watch, 2009; Human Rights Watch, *Neither Rights Nor Security. Killings, Torture and Disappearances in Mexico’s “War on Drugs”*, New York, NY: Human Rights Watch, 2011; Amnesty International, *Mexico. New Reports of Human Rights Violations by the Military*, London, UK: Amnesty International, 2009.

¹⁴ Department of State, *2007 Country Reports on Human Rights Practices. Mexico*, March 11, 2008 <www.state.gov/g/drl/rls/hrrpt/2007/100646.htm>, last consulted July 8, 2011; Department of State, *2008 Country Reports on Human Rights Practices. Mexico*, February 25, 2009 <<http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119166.htm#>>, last consulted December 13, 2010; Department of State, *2009 Country Reports on Human Rights Practices. Mexico*, March 11, 2010 <<http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136119.htm#>>, last consulted December 13, 2010; Department of State, *2010 Country Reports on Human Rights Practices. Mexico*, April 8, 2011 <<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154512.htm>>, last consulted April 27, 2011.

¹⁵ Supplemental Appropriations Act, H.R. 2642, 110th Cong. § 2(a), 2008; Washington Office on Latin America et al, ‘Congress: Withhold Funds for Mexico Tied to Human Rights Performance. Mexico has failed to prosecute violations, reduce torture’, September 14, 2010 <http://www.wola.org/index.php?option=com_content&task=view&id=1161&Itemid=8>, last consulted December 15, 2010.

million dollars of Merida funds, until the Mexican government, *inter alia*, presented a bill to Congress to reform the system of military jurisdiction.¹⁶

In sum, human rights organs and bodies from the UN and the OAS, international NGOs and even the US government exerted pressure over the Calderón government because of the prevalence of the system of military jurisdiction. It is important to underline that strong international criticisms were made in a persistent fashion in 2009, 2010 and 2011. How did the Calderón government react?

In early 2009, the Mexican government accepted all the recommendations issued by the Human Rights Council of the UN; except for a small number of them, notably those related to military jurisdiction.¹⁷ The government argued that through the military system of penal justice “Mexico continue[d] its prompt investigation of all allegations of human rights violations committed by members of the armed forces”, underlining that the system operated “under the universal principles” that define due process.¹⁸ Very similar arguments were made the same year in front of the Inter-American Commission on Human Rights (IACHR) and the IACoHR.¹⁹ More confrontationally, in late 2009 president Calderón reacted to the aforementioned HRW thematic special report on military jurisdiction²⁰ arguing that the military institutions efficiently prosecuted army abuses and challenging critics to give evidence of “any case, just one case, where [...] the competent authorities have not punished anyone who has abused their

¹⁶ Department of State, ‘Determination under Section 1010(a) of the Supplemental Appropriations Act, 2010 (P.L. 111-212)’, September 2, 2010; Maureen Meyer, (Director of the Mexico Program, Washington Office for Latin America), interview by author, Washington, DC, August 30, 2012; Washington Office on Latin America, ‘Conditioned funds for Mexico under the Merida Initiative should not be released unless concrete progress is made on human rights requirements’, May 26, 2010 <http://www.wola.org/index.php?option=com_content&task=viewp&id=1106&Itemid=8>, last consulted December 15, 2010; Washington Office on Latin America et al. ‘Congress: Withhold Funds for Mexico’; Washington Office on Latin America, ‘Memo to US Congress: Complaints against Security Forces in Chihuahua Grow’, January 27, 2010 <http://www.wola.org/index.php?option=com_content&task=viewp&id=1046&Itemid=8>, last consulted February 9, 2010.

¹⁷ Human Rights Council, *Universal Periodic Review*, parr. 94; Human Rights Council, *Universal Periodic Review. Report of the Working Group on the Universal Periodic Review*. Mexico. Addendum. Views on conclusions and/or recommendations, voluntary commitments (A/HRC/11/27/Add.1)*, no date.

¹⁸ Human Rights Council, *Universal Periodic Review. Report of the Working Group on the Universal Periodic Review*. Mexico. Addendum*, parr. 14.

¹⁹ Inter- American Commission on Human Rights, Public Hearing ‘Justicia militar y derechos humanos en México’, March 20, 2009 <<http://www.cidh.oas.org/Audiencias/seleccionar.aspx>>, last consulted June 22, 2012; Gabriel León and Alma Muñoz, ‘Mantiene el Estado su estructura de impunidad, reviran a Gómez Mont hijos de Rosendo Radilla’, *La Jornada*, Politics Section, July 9, 2009; Raquel Fernández and Eugenia Jiménez, ‘Defiende Gómez Mont al fuero militar ante la CIDH’, *Milenio*, Politics Section, July 8, 2009; José Antonio Guevara, (Deputy Ombudsman, Human Rights Commission of the Federal District; former head of the Human Rights Unit of Mexico’s Ministry of the Interior; former Minister responsible for human rights in the Permanent Mission of Mexico before the United Nations Office in Geneva; former Deputy Director General for Human Rights and Democracy of Mexico’s Ministry for Foreign Affairs). Skype interview by author, June 15, 2012.

²⁰ Human Rights Watch, ‘Mexico: Calderon Denies Military Impunity. Available Evidence Denies President’s Statements’, August 10, 2009 <<http://www.hrw.org/en/news/2009/08/10/mexico-calderon-denies-military-impunity>>, last consulted February 9, 2010.

authority.”²¹ In sum, by the end of 2009, the Calderón government firmly defended the existing system of military jurisdiction.

However, a year later, in October 2010, in the midst of persistent international criticisms - notably after the aforementioned rulings by the IACoHR and the temporal withholding of “Merida Initiative” funds - president Calderón sent to Congress a bill that proposed the elimination of military jurisdiction in cases of torture, rape and enforced disappearances.²² The government argued that the system of military jurisdiction needed to be reformed in order to “strengthen the effective protection of human rights” and to harmonize Mexico’s legislation with international law.²³

Later on, in December 2011, in a speech during the annual National Human Rights Award ceremony, and explicitly making reference to the fulfillment of the recent rulings by the IACoHR, president Calderón declared that he had instructed the Minister of the Interior and the Legal Counsel of the Presidency to give new elements to Congress in order to enrich the ongoing debate on the reform of military jurisdiction. In addition, he claimed to have instructed the Attorney General’s Office and the Ministries of Defense and the Navy to (in the absence of a reform) find administrative ways to transfer all cases of alleged violations of human rights perpetrated by members of the armed forces to civilian prosecutors and courts.²⁴ However, Calderón’s proposed bill to reform military jurisdiction was never approved and the President’s pledges about transferring cases to the ordinary system of criminal justice were not fulfilled in practice. How can we make sense of this limited process of change in the Mexican government’s position regarding the thorny issue of military jurisdiction?

²¹ Human Rights Watch, ‘Mexico: Calderon Denies’.

²² Ministry of the Interior, *Decreto por el que se reforman, derogan y adicionan diversas disposiciones del Código de Justicia Militar, de la Ley Orgánica del Poder Judicial de la Federación, del Código Penal Federal, del Código Federal de Procedimientos Penales y de la Ley que Establece las Normas Mínimas sobre Readaptación social de Sentenciados*, (Memo No. SEL/300/593/10), October 18, 2010; Human Rights Watch, ‘Mexico: Require Civilian Investigation of Abuses Against Civilians by Military. Calderon’s Proposed Reform Fails to Hold Armed Forces Accountable’, October 21, 2010 <<http://www.hrw.org/en/news/2010/10/21/mexico-require-civilian-investigation-abuses-against-civilians-military>>, last consulted December 15, 2010; Human Rights Watch, ‘Mexico: Letter to the Senate and the House of Deputies. Objections to President Calderon’s Proposal to Reform the Military Code of Justice’, November 10, 2010 <<http://www.hrw.org/en/news/2010/11/10/letter-president-senate-and-president-house-deputies>>, last consulted December 15, 2010.

²³ Ministry of the Interior, *Decreto por el que se reforman*, p. 5.

²⁴ Presidencia de la República, ‘El Presidente Calderón en la Entrega del Premio Nacional de Derechos Humanos 2011’, December 9, 2011 <<http://www.presidencia.gob.mx/2011/12/el-presidente-calderon-en-la-entrega-del-premio-nacional-de-derechos-humanos-2011/>>, last consulted December 30, 2011. According to Ambassador Juan Manuel Gómez Robledo, this speech was a direct response to the harsh report published by Human Rights Watch that same year (Gómez Robledo, interview).

2. Communicative interaction between rights-violating governments and their international critics

A central debate between rationalist theories of International Relations and constructivism has focused on whether state behaviour in the international realm is determined by the “logic of consequences” or by the “logic of appropriateness”.²⁵ Scholars disagree on whether actors (particularly states) in the international realm define their actions on the bases of cost-benefit calculations or following identity-based social scripts or roles. Within the constructivist tradition, Thomas Risse has proposed to add a third logic of social action and interaction, somehow between the latter two: the “logic of truth seeking or arguing”, through which actors try to find a reasoned consensus about causal and normative beliefs and thus about the contours of appropriate behaviour. The goal of achieving a reasoned consensus through communication (as opposed to maximizing one’s interest and preferences through bargaining or coercion) is central for this proposition.²⁶ In the human rights sphere, this means that actors (i.e. norm-violating governments and their domestic or international critics) can engage in “truth seeking arguing” about the veracity or the fairness of accusations of the violation of human rights norms and about what states should do in order to behave appropriately.

But, how can we identify an arguing situation when we see one? Thomas Risse has proposed a set of specific indicators:²⁷ a) actors consider each other as equal and valid interlocutors; b) actors show argumentative consistency; c) stronger actors (that is, governments) change their mind, even if it goes against their interests or previously established preferences; d) when accused of violating norms, governments do not dismiss the accusations as irrelevant or false or engage in self-serving rhetoric, but justify their behavior and even apologize; *and* e) governments match words with deeds (they modify their behavior as to comply with norms).²⁸

²⁵ Risse, “Let’s Argue!”, pp. 2-6.

²⁶ Risse, “Let’s Argue!”, pp. 6-9; Risse, ‘International Norms and Domestic Change’.

²⁷ Risse, “Let’s Argue!”, pp. 6-9; Risse, ‘International Norms and Domestic Change’.

²⁸ This requires the examination of discourse *and* behavior analysis—items *a* to *d* require to look at what governments *say*. (See Frank Schimmelfennig, ‘The Community Trap: Liberal Norm, Rhetorical Action, and the Eastern Enlargement of the European Union’, *International Organization*, 55: 1 (2001), pp. 65-66, and Harrold Müller, ‘Arguing, Bargaining and all that: Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations’, *European Journal of Human of International Relations*, 10:3 (2004), pp. 395-435.) But, quite importantly, item *e* requires us to focus on what governments actually *do*. (Thomas Risse and Kathryn Sikkink, ‘The socialization of international human rights norms into domestic practices: Introduction’ in Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds) *The Power of Human Rights*, Cambridge, UK, Cambridge University Press, 1999, pp. 1-38 p. 29).

Table 1. Arguing indicators

Mode of Communicative Interaction	Indicators
Truth seeking arguing	<ol style="list-style-type: none"> 1. Governments do not deny the validity of human rights norms;²⁹ 2. Governments do not deny the legitimacy of international critics; 3. Governments do not change their discourse in front of difference audiences; 4. Governments explicitly change their position about specific issues within the debate; 5. Governments recognize that violations have taken place and: a) argue that violations are not the result of government policy; and b) they explicitly apologize for the violations; 6. Governments modify their behavior: they stop violating human rights or comply with international demands.

In order to characterize a process of communicative interaction as one of “truth seeking arguing” it is necessary to find evidence of all six indicators. If a given situation presents some but not all these elements, it then might be one evolving towards “truth seeking arguing”, but still retain some features of a previous, interest-based form of communicative interaction. Indeed, actors can develop norms-based discourses in a self-interested fashion. This is called by the literature “rhetorical action”— the “strategic use of norm-based arguments in pursuit of one’s self interest.”³⁰ So if a government recurs to a human rights discourse in its interaction with transnational critics, but this discourse does not show the six characteristic of “truth seeking arguing”, then the process communicative interaction will be located in a gray area between the latter and “rhetorical action”.³¹

Risse, Ropp and Sikkink have argued in their “spiral model of human rights change” that in their interaction with international critics, governments tend to initially respond with a self-serving human rights discourse in order to simply let the pressure out—that is, they tend to recur to “rhetorical action”.

²⁹ This first indicator (the recognition or not of the validity of human rights norms) was added to Risse’s original proposal of five indicators, since it would not be possible to expect any kind of relevant discussion if the participants do not share a minimum common normative understanding in the first place.

³⁰ Schimmelfennig, ‘The Community Trap’, p. 63.

³¹ Risse and Sikkink, ‘The socialization of international human rights norms’.

However, they also argue that these processes can evolve towards “truth seeking arguing”. The key scope condition for this is that international critics exert pressure over the government in question in a consistent or persistent fashion throughout a period of time. That is, their theory proposes that if international criticisms persist over time, then “target governments” will eventually stop recurring to the strategic use of a human rights discourse and engage in a sincere process of communication through which they will try to find a reasoned consensus with its interlocutors from abroad.³² Was this the case for the Mexican government?

3. Responses by the Calderón government: towards truth seeking arguing?

The following analysis traces Risse’s discourse indicators, seeking to determine whether the process of communicative interaction between Mexico and its international critics has evolved towards “truth seeking arguing” or not. Then, the section attempts to explain why the process developed the way it did.

The analysis of the government’s communicative responses to its international critics is based on different sources: the text of hundreds of press releases and speeches (released between January 2008 to December 2011);³³ accounts included in the Mexican press;³⁴ official UN documents that include statements by the Calderón government and the audio or video recordings of thematic hearings called by the IACHR;³⁵ other official documents and a series of interviews with key informants from civil society and the government.

As seen in Table 2 below, the press releases and speeches by the Calderón government show the development of a discourse that repeatedly underlined an explicit commitment with the promotion and protection of human rights. This commitment was often made in front of, or aiming at, international audiences, including other governments and Mexico’s critics, such as AI, HRW and the different specialized bodies and mechanisms of the UN and the OAS. The Calderón government explicitly and publicly claimed (addressing national

³² Risse, Ropp and Sikkink, *The Power of Human Rights*.

³³ These press releases and speeches were obtained through guided searches in the Mexican government’s database of press documents (www.calderon.presidencia.gob.mx). These searches were made in January and February 2012. See end notes 40, 43 and 48 *infra*. Press releases and public speeches from 2007 were not included because of clear signs of missing data.

³⁴ This search was conducted using the *InfoLatina* news archive

<http://site.securities.com/corp/advanced_search.html?pc=MX>The search focused on the Mexican newspaper *La Jornada* (known for its extensive coverage of human rights issues), using as points of reference the dates of the release of the rulings by the IACoHR.

³⁵ The IACHR held four thematic audiences about the issue of security and human rights in Mexico between October 2008 and October 2011.

and international audiences) that its law enforcement actions (including those related to the struggle against drug cartels) were conducted with full respect for human rights. In this sense, the government repeatedly and explicitly recognized the validity of human rights, even in the context of its law enforcement actions against drug cartels (indicator number 1).

Table 2. Official discourse in press releases and speeches³⁶

CONTENT OF DISCOURSE	NUMBER OF PRESS RELEASES IDENTIFIED
Explicit commitment with the promotion and protection of human rights	217
Explicit commitment with the promotion and protection of human rights (addressing international audiences)	128
Claims that law enforcement actions are undertaken in a framework of respect for human rights	80
Claims that law enforcement actions are undertaken in a framework of respect for human rights (addressing international audiences)	15

Source: Elaboration by the author with information from www.calderon.presidencia.gob.mx

This discourse is also clearly shown in official UN documents that reproduce the arguments that the Calderón government developed while addressing international human rights organs and bodies.³⁷

³⁶ These press releases and speeches were identified in the Mexican government's database of press documents (www.calderon.presidencia.gob.mx). The table is based on the results of two complementary search exercises. The first of them was made requesting the search engine to find press releases that contained the terms "commitment" (*compromiso*) and "human rights" (*derechos humanos*). The search engine produced a list of 343 press releases. The text of all the documents was analyzed in order to verify that an actual link between the two key terms was explicitly made (the terms could have been used in different parts of the documents, without being explicitly connected or related with each other). The second exercise was made requesting the search engine to find documents already classified by the database within the "public security" (*seguridad pública*) issue and that, in addition, contained the key term "human rights" (*derechos humanos*). This search produced a total number of 277 documents. Again, the text of all the documents was analyzed in order to verify that, in fact, they contained claims about the respect to human rights in law enforcement activities.

³⁷ Human Rights Council, *Universal Periodic Review*, parr. 12; Human Rights Committee, *Examen de los Informes Presentados por los Estados Partes en Virtud del Artículo 40 del Pacto. Quinto informe periódico México (CCPR/C/MEX/5)*, September 24, 2008, parr. 275; Inter- American Commission on Human Rights, Public Hearing 'Impacto de las políticas de seguridad pública sobre los derechos humanos en México?', October 22, 2008 <<http://www.cidh.oas.org/Audiencias/seleccionar.aspx>>, last consulted June 20, 2012; Inter- American Commission on Human Rights, Public Hearing 'Justicia militar y derechos humanos en México'; Inter- American Commission on Human Rights, Public Hearing 'Seguridad ciudadana y derechos humanos en México', March 28, 2011 <<http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=122&page=2>>, last consulted June 26, 2012; Inter- American Commission on Human Rights, Public Hearing "Seguridad ciudadana y derechos humanos en México", October 27, 2011 <<http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=123&page=2>>, last consulted June 26, 2012; Ministry of the Interior, Press Release No. 015 'Sustenta México Examen ante el Consejo de Derechos Humanos de la ONU', February 10, 2009; Emir Olivares and Fabiola Martínez, 'Responsabiliza

The Calderón government never questioned or denied the legitimacy of international actors to critically scrutinize the country's human rights situation. In other words, it considered them as valid interlocutors (indicator number 2).³⁸ In 56 press releases, the government explicitly made reference to AI, HRW and the human rights organs and bodies of the UN and the OAS.³⁹ These documents were released by the Mexican government in the context of formal encounters or processes of interaction with those actors. In these press releases, the government never questioned the legitimacy of these actors to monitor the human rights situation in Mexico or to express critical views. Far from that, the press releases show that the government met with its international critics in numerous occasions (both in Mexico and abroad) and respectfully exchanged arguments and views with them about the human rights situation in the country.⁴⁰ In this way, the government did not try to bargain with or coerce these actors; far from that, it developed a discourse that considered them as valid and legitimate interlocutors in a dialogue. As stressed by Ambassador Juan Manuel Gómez Robledo (Deputy Secretary of Foreign Affairs for Multilateral Organizations and Human Rights throughout the Calderón administration), human rights criticism by foreign actors was considered "part of an absolutely normal interaction" between the government and all kinds of international actors, the legitimacy of which nobody questioned anymore.⁴¹

As advanced in Section 2, another important element in the analysis of processes of communicative interaction between rights-violating governments and their international critics is whether the former develop a consistent human rights discourse (indicator number 3). As argued above, the Calderón government developed a discourse that recognized the value of human rights and the legitimacy of international critics. As also stressed, the government argued that its security strategy followed human rights norms. The review of hundreds of government press releases reveals that these arguments were

la CIDH al Estado en 2 casos de violación', *La Jornada*, Politics Section, October 2, 2010; *La Jornada* 'Se dará cabal cumplimiento a la sentencia: SG', Politics Section, December 21, 2010.

³⁸ Juan Manuel Gómez Robledo, (Deputy Secretary for Multilateral Organizations and Human Rights of Mexico's Ministry of Foreign Affairs). Interview by the author, Mexico City, September 11, 2012.

³⁹ These press releases were identified requesting the search engine to find the releases containing the terms "Amnesty International" (*Amnistía Internacional*), "Human Rights Watch", "Human Rights Council" (*Consejo de Derechos Humanos*), "Human Rights Committee" (*Comité de Derechos Humanos*), "Special Rapporteur" (*Relator Especial*), "Commission on Human Rights" (*Comisión de Derechos Humanos*) and "Inter-American Court on Human Rights" (*Corte Interamericana de Derechos Humanos*).

⁴⁰ Ministry of the Interior, Press Release No. 036 'Aprueba el Consejo de Derechos Humanos de la ONU el Informe sobre México', February 13, 2009; Inter-American Commission on Human Rights, Public Hearing 'Impacto de las políticas'; Inter-American Commission on Human Rights, Public Hearing 'Justicia militar'; Inter-American Commission on Human Rights, Public Hearing 'Seguridad ciudadana', March 28, 2011; Inter-American Commission on Human Rights, Public Hearing 'Seguridad ciudadana', October 27, 2011; Olivares and Martínez, 'Responsabiliza la CIDH'; Emir Olivares, 'Pide México a CIDH precisar fallo en contra por violación de dos indígenas', *La Jornada*, Politics Section, January 8, 2011; Andrea Becerril, 'Cumplirá el gobierno los dos fallos que ordenó la CIDH: Gómez Robledo', *La Jornada*, Politics Section, 28 January, 2010; *La Jornada*, 'Se dará cabal cumplimiento'.

⁴¹ Gómez Robledo, interview.

made not only addressing international human rights actors, but also all sorts of domestic audiences and the national public in general. The press releases do not contain any evidence that suggests that the government changed its discourse in front of different audiences. In order to confirm this, a different route was also followed to trace possible signs of discourse inconsistency. A likely way to find such inconsistencies would be to look into the government's discourse directly addressed at the group that was most affected by international human rights criticism—the armed forces. In over 40 speeches by president Calderón or high-ranking military officials in front of members of the armed forces (mostly made in emblematic commemorative dates for the armed forces) the speakers never claimed that international human rights norms were not valid, that international critics could not legitimately scrutinize the situation in Mexico or argued that human rights could (let alone should) be sacrificed for the sake of security.⁴²

The fourth indicator of “truth seeking arguing” is whether the government changes its mind, as a result of the process of communicative interaction with its international critics. As stressed in Section 1, the government initially strongly defended the prevailing system of military jurisdiction. By the end of 2009, the Calderón government had given no signs that it would change its mind. However, as also mentioned in Section 1, as international criticisms not only persisted but intensified in 2009 and 2010 – notably after the aforementioned rulings by the IACoHR and the withholding of some “Merida” funds by the US –, in October 2010, president Calderón sent to Congress a bill that proposed the reform of the system of military jurisdiction.⁴³ The Calderón government explicitly argued in the bill that it was a response to the rulings regarding military jurisdiction adopted by the IACoHR.⁴⁴ In addition, as also mentioned in Section 1, the Calderón government justified the bill arguing explicitly that the system of military jurisdiction needed to be reformed in order to “strengthen the effective protection of human rights” and to harmonize Mexico's legislation with international law.⁴⁵

In 2011, as international criticisms continued, high-ranking representatives of the Calderón government stressed in front of the IACHR that the government was committed to reform the system of military jurisdiction and that the Ministry of National Defense was in practice transferring all cases of alleged violations to the ordinary or civilian system of criminal justice.⁴⁶

⁴² This search was made seeking for speeches that contained the term “military” (*ejército*). The search engine produced an initial list of 404 documents. The text of all of these speeches was analyzed in order to identify those that explicitly contained references to the struggle against drug cartels—43 speeches in total.

⁴³ Ministry of the Interior, *Decreto por el que se reforman*; Human Rights Watch, ‘Mexico: Require Civilian’; Human Rights Watch, ‘Mexico: Letter to the Senate’

⁴⁴ Ministry of the Interior, *Decreto por el que se reforman*, pp. 4 -7; Víctor Ballinas and Alonso Urrutia, ‘Envía Calderón al Senado iniciativa de reforma al Código de Justicia Militar’, *La Jornada*, Politics Section, October 19, 2010.

⁴⁵ Ministry of the Interior, *Decreto por el que se reforman*, p. 5. Critics like HRW dismissed the reform bill as clearly insufficient. Human Rights Watch, ‘Mexico: Require Civilian’; also see, Department of State, *2010 Country Reports*.

⁴⁶ Inter-American Commission on Human Rights, Public Hearing ‘Seguridad ciudadana’, October 27, 2011.

Again, it attempted to convey the message that it had changed its mind about military jurisdiction.⁴⁷

Just a few weeks after the pledges made by president Calderón in his December 2011 human rights speech (see Section 1 above), the Military's General Attorney challenged in federal courts a writ of *amparo* through which the relatives of Bonfilio Rubio Villegas (an indigenous peasant presumably executed by the military in 2009) had demanded that the case be prosecuted within the civilian or ordinary system of penal justice.⁴⁸ In this context, the Military's Attorney General publicly declared that the rulings of the IACoHR were not binding and that the system of military jurisdiction would continue to work without any modifications in practice until a reform bill was passed by Congress.⁴⁹ Clearly, the military had not changed their mind at all about the role of military jurisdiction. In this respect, Ambassador Gómez Robledo stressed that the Mexican state is not unitary. According to his account, some government officials saw the reform and the speech as unavoidable concessions, given the levels of international pressure faced by the government, while others were fully convinced that reforming the system of military jurisdiction was the appropriate thing to do for a democratic state that accepts and assumes its international obligations.⁵⁰ In a similar sense, José Antonio Guevara, former government official during the Fox and Calderón governments, recalls clear intra-government divisions regarding the way in which the Mexican state should respond to international criticisms regarding the violations of human rights perpetrated in the struggle against drugs.⁵¹

In sum, it seems nevertheless that while some sectors within the government had started to change their mind regarding the need to reform the system of military jurisdiction, others, particularly the military, continued to firmly oppose any reforms.

Moving to the fifth of Risse's indicators, the Calderón government sometimes denied that violations had actually taken place.⁵² However, in the aforementioned December 2011 human rights speech - again, in the midst of persistent international criticisms - president Calderón recognized explicitly that violations of human rights had sometimes taken place. He argued that such violations were "repudiated and punished by the Mexican state" and

⁴⁷ In interviews, activists and practitioners claim that the government has not really done anything in practice to transfer cases of human rights violations presumably perpetrated by members of the armed forces from the military to civil courts (Guevara and Gutierrez, interviews).

⁴⁸ Centro de Derechos Humanos Tlachinollan, Press Release 'Ejército se opone a una sentencia histórica en materia de derechos humanos', January 29, 2012; Meyer, interview.

⁴⁹ Jesús Aranda, 'Sentencia de la CIDH en el caso Radilla, sólo de carácter orientador: procurador castrense', *La Jornada*, Politics Section, January 7, 2012.

⁵⁰ Gómez Robledo, interview.

⁵¹ Guevara, interview.

⁵² AFP, 'Breve retardo del Ejército en entregar a Montiel y Cabrera, acepta México en la CIDH', *La Jornada*, Politics Section, August 28, 2010; Inter-American Court of Human Rights, *Case of Cabrera-García*.

offered a justification stressing that they were not “in any sense systematic, let alone the result of an institutional policy.”⁵³

Nevertheless, according to activists and practitioners, overall, the Calderón government tended to minimize the importance of the human rights consequences of its security approach—arguing that violations seldom took place and that, when they did, they were always investigated by the authorities.⁵⁴ This was also clearly observed in the hundreds of press releases and speeches reviewed for this research—the government seldom recognized explicitly that abuses took place; and when it did recognize the facts, the argument it tended to advance was that violations were rare events, that investigations were undertaken and that those responsible would be brought to justice. The press reports and speeches, however, do not contain explicit apologies by the government on account of the cases of violations that it recognized.

Finally, a fundamental indicator of “truth seeking arguing” is whether the government changed its behavior (indicator number 6). As it has been stressed, the key demand of international human rights critics was the reform of the system of military jurisdiction. Calderón’s reform bill was never approved; and according to some accounts the government did not show much commitment to make it pass.⁵⁵ But, obviously, the responsibility for discussing and passing new legislation resides in Congress, which did discuss the president’s and other proposed bills on military jurisdiction. An improved version of the Calderón bill was actually approved in Senatorial commissions. But, according to some accounts, the new bill did not succeed in the legislative process because of strong and effective lobbying against it by the military⁵⁶; which had been significantly strengthened as a political actor by its leading role in the government’s struggle against drug cartels.⁵⁷

Furthermore, as stressed above, the government did not fulfill the promises made by the President in his December 2011 speech. So there is a problem with the lack of consistency in practice, a clear gap between words and deeds.

In the summer of 2011, the Mexican Supreme Court discussed the implementation of the first military jurisdiction ruling adopted by the IACoHR, in which the Court stressed that military jurisdiction should not be applied in

⁵³ Presidencia de la República, ‘El Presidente Calderón en la entrega’. According to Ambassador Gómez Robledo, this speech was a direct response to the aforementioned 2011 special report by HRW, which documented 170 cases of torture, 39 disappearances, and 24 extrajudicial executions by the armed forces, which took place during the Calderón period in a sample of five Mexican states. Gómez Robledo, interview; Human Rights Watch, *Neither Rights Nor Security*.

⁵⁴ Knox, interview; Guevara, interview; Meyer, interview.

⁵⁵ Meyer, interview; Gutierrez, interview; Knox, interview.

⁵⁶ Knox, interview. Andrea Becerril, “Grave, que la reforma al Código de Justicia Militar quedara pendiente”, *La Jornada*, politics section, April 6, 2012.

⁵⁷ Jordi Díez, “Civil-Military Relations in Mexico: The Unfinished Transition”, in Roderic Ai Camp (ed.) *The Oxford Handbook of Mexican Politics* (Oxford, UK: Oxford University Press 2012), pp. 278-282.

cases of violation of human rights by members of the armed forces. As a result of this discussion, the Mexican Supreme Court concluded in a binding resolution that the Judiciary Power has obligations that result from the rulings of the IACoHR and that therefore all Mexican courts should interpret the limits of military jurisdiction according to the criteria established by the IACoHR in the 2009 ruling on the matter. In other words, the Mexican Supreme Court established that cases of violation of human rights by members of the armed forces should be processed through the civil or ordinary system of criminal justice.⁵⁸ Later on, in the summer of 2012, the Mexican Supreme Court adopted a series of landmark rulings regarding specific cases in which it confirmed that view. As stressed by Ambassador Gómez Robledo, however, this important transformation in legal practice did not come in any sense from the Executive branch of government, but from the Supreme Court itself.⁵⁹

Once again, different actors within Mexico showed different courses of action regarding the issue of the reform of Mexico's system of military jurisdiction. The President submitted a bill to reform it and a Senatorial Commission adopted an improved version thereof. However, the military firmly opposed to such legislative developments. Meanwhile, the Mexican Supreme Court passed a series of landmark rulings which actually coincide with what international actors had been demanding for a long time.

⁵⁸*Diario Oficial de la Federación*, October 4, 2011

<http://dof.gob.mx/nota_detalle.php?codigo=5212527&fecha=04/10/2011>, last consulted: December 30, 2012.

⁵⁹ Gómez Robledo, interview.

Conclusions

The Calderón government engaged in a “public discourse” with international actors regarding the violations of human rights that were perpetrated by the armed forces in the militarized struggle against drug cartels. It did not try to advance its interests through bargaining or coercion; it did not, for example, threaten or expel from the country foreign observers. To the contrary, it engaged in a norms-based discussion with them.

The Calderón government did not question the validity of human rights norms; far from that, it systematically developed a discourse of commitment with the respect of human rights. In addition, it did not question or deny the legitimacy of international monitoring and criticisms. In this way, it recognized its critics as valid interlocutors. This discourse was largely consistent during the Calderón administration—it did not change in front of different audiences. Some sectors within the government started to change their mind regarding a reform to the system of military jurisdiction, while others (notably the military) continued to firmly defend their standing preferences. The government sometimes offered justifications as to why violations took place, though it tended to minimize the severity of the situation, and it never apologized. Finally, and most importantly, some actors within the Calderón government (and the Mexican Congress and Supreme Court) took steps towards reforming the system of military jurisdiction; in other words, they somehow changed their behavior. Other actors, however (i.e. the military) took action to prevent the reforms. All this leads us to conclude that, as the Calderón period evolved, the process of communicative interaction between the Mexican government (and other bodies of the Mexican State, like Congress and the Supreme Court) and its international critics started to show some signs of “truth seeking arguing”. International criticisms were exerted persistently and even increased in 2009 and 2010. In this context of persistent international pressure, some sectors of the Calderón government (and other actors of the Mexican State) started to move towards “truth seeking arguing”. In other words, as the Calderón period evolved, and as a result of a persistent process of international criticism, an incipient process of “truth seeking arguing” started to emerge.

Processes of communicative interaction should not be seen necessarily as *either* “rhetorical action” *or* “truth seeking arguing”. They can present signs of both modes of communicative interaction at the same time. This document cannot conclude which mode of communicative interaction was dominant at that time. What it can argue with confidence, however, is that *some* arguing started to take place towards the end of the Calderón period, and that this resulted (at least in part) from the persistent pressure exerted by international critics.

The limits of this incipient evolution towards arguing is related to one of the key empirical findings of this document—different government sectors reacted differently, some pushing towards arguing and others obstructing progress in that direction. In this sense, the case of Mexico suggests that an explicative theory of communicative interaction between rights-violating governments and their international critics should be more explicit about intra-government divisions. A similar point has been stressed by authors like Sonia Cardenas, who has shown that in processes to transition to democracy, governments face not only the pressure of (domestic and international) advocates of human rights, but also those of pro-violation constituencies, which demand the application of “hard-line” policies. These tensions explain the limited impact of transnational human rights pressures.⁶⁰

A second central empirical finding of this document is that the changes in the position regarding military jurisdiction by some sectors of the Calderón government (and by the Mexican Supreme Court) can be considered, to a good extent, as an explicit response to the adoption of four rulings by the IACoHR and to the withholding of some “Merida” funds by the US. For years, international and domestic NGOs, together with different (non jurisdictional) human rights organs and procedures of the UN and the OAS had recommended the reform of the system of military jurisdiction. But only after the IACoHR and the US government directly intervened, did some sectors of the Mexican government start to change their mind and their behavior regarding the controversial issue of military jurisdiction. Again, this offers important insights to a more specified theory of communicative interaction between rights-violating governments and their international critics—such a theory should explicitly keep in mind that the “nature” of the critics matter a good deal.

From a theoretical perspective, this document suggests that Risse’s theory of communicative interaction and the “spiral model of human rights change” should be more explicit and emphatic about the relevance of intra-government divisions and about the importance of the type of international actors that actually participate in processes of communicative interaction with rights-violating governments. The document, however, shows that Risses’ theory and the “spiral model” are more useful than other alternatives in gauging the significance of “public debates or discourses” in the area of human rights, and in explaining their outcomes. As already suggested, the interaction between Mexico and its international critics cannot be understood in terms of realist theories that underline the material power of states *vis a vis* non-state actors and the use of bargaining or coercion by the latter in order to “defeat” their critics. As stressed above, the Mexican government did not try to bargain with international critics or to coerce them to stop what

⁶⁰ Sonia Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (Philadelphia, PA: University of Pennsylvania Press, 2007).

they were doing. Rather, it engaged in a communicative process; and even if norms-based arguments can be used in an strategic fashion, this kind of interaction and the changes that it elicits is something that realism or more purely rationalist theories cannot fully grasp.

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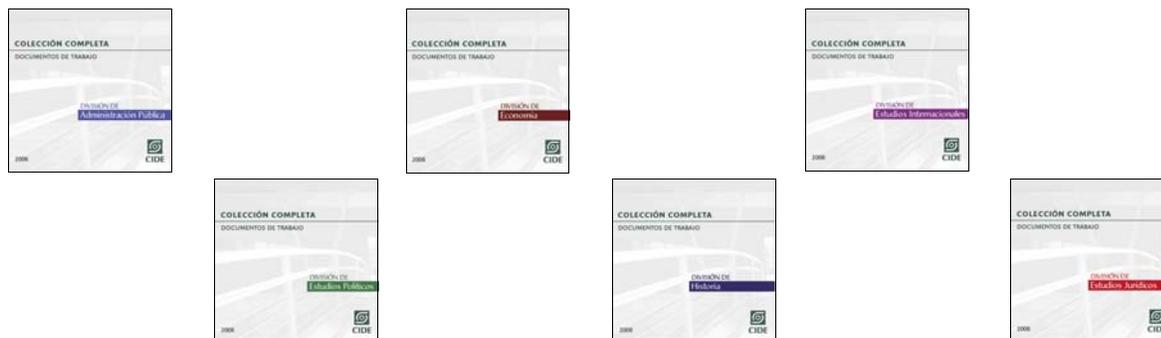
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