

# BRIDGING CRISIS MANAGEMENT AND POLICY TRANSFER: A COGNITIVE APPROACH

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## ABSTRACT

*The end of the Second World War saw an exponential increase in the number of supra- and international organizations. They often establish guidelines that governments adopt when managing crises. Different organizations may have different understandings of problems, thus different information, definitions, strategies and policies. As a result, governments face ambiguity when transferring policies from the international to the national sphere. Crisis management and policy transfer literature have both highlighted the centrality of informational issues, yet their academic study remains isolated from each other. This article seeks to bridge them through a cognitive perspective and argues that, during crises, heuristics – the ability to exploit information in its environment – can help explain how organizational decision-makers transfer policies. In order to achieve this, the article examines the case of a particular crisis decision-making process: How the Mexican Congress transferred the definition of disappearances of persons from the international to the national sphere. Results show that the structure of information – its gaps and overloads –, affects both the type of heuristics and the degree of transfer. The research is relevant for understanding decision-making processes during crisis in the context of an increasing internationalization of policies.*

**Keywords** - ambiguity, crisis, decision-making, heuristics, policy transfer, uncertainty

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## INTRODUCTION

Managing a crisis (e.g., natural disasters, pandemics, riots, terrorism) implies adopting accurate and fast decisions (’t Hart and Sundelius 2013; Boin, ’t Hart, and Kuipers 2018; Christensen, Læg Reid, and Rykkja 2019). Pressures from dealing with uncertain situations can lead decision-makers, be it individual politicians or administrators, or their organizations, to focus on some information while ignoring other (Gigerenzer and Brighton 2009; Gigerenzer and Gaissmaier 2011; Todd, Gigerenzer, and ABC Research Group 2012; Secchi 2011). This is why, in practice, these individual or collective decision-makers often adopt cognitive shortcuts or heuristics during crises.

Crisis open opportunities to discuss current policies, either by choosing to conserve or to change the status quo (Boin, ’t Hart, and McConnell 2009). An available option is importing “decisions made by actors in other jurisdictions on the same issue” (2009, 91), i.e. transferring policies. This has the potential advantage of increasing the acceptance of the decision, as it has been considered an appropriate choice by other decision-makers (Finnemore 1993; Weyland 2007). In this sense, transferring policies from the international to the national jurisdiction constitutes an alternative that can positively impact the perception of legitimacy of the decision, and thus the management of the crisis (Christensen, Læg Reid, and Rykkja 2016).

In an increasingly diverse and fragmented international community (Hafner 2004), different international organizations may have different definitions, strategies and policies. This creates ambiguity for decision-makers when they decide to transfer the definitions, strategies or policies into the national or local setting. However, we know little about how the increasing fragmentation of the international community affects decision-making during crises. The uncertainty derived from the crisis, together with the ambiguity resulting of diverse international policies, reinforces the use of heuristics in organizational decision-making. In this context, a relevant question is: How does uncertainty and ambiguity affect heuristics in crisis decision-making?

This article argues that processes and structures – informational structures amongst them – significantly affect decision-making behavior because they influence how actors look for and choose available solutions in a given bounded rationality context (Simon 1955). The ability to process information quickly and accurately becomes central for decision-makers. Recent studies in both crisis management and policy transfer literature point out the need for incorporating a cognitive approach by explaining behavior as a result of the processing of information and other environmental stimuli (Weyland 2005; Dussauge-Laguna 2012; Ansell and Boin 2017). This article seeks to bridge them, with the hope that it contributes to the better understanding of critical decision-making in the context of increasing internationalization of policies.

The following sections successively discuss the literature on crisis management and on policy transfer, in order to develop the argument that a cognitive approach can build a bridge between both strands of literature. Then, the article describes the main features of the empirical case chosen as a plausibility probe, the definition of disappearance of persons in Mexico, as well as presenting the research design and

findings. Finally, a discussion and conclusions link the empirical findings to the analytical framework developed.

## THEORETICAL FRAMEWORK

### Crisis Management and Organizational Decision-Making

Any account on how organizations decide inevitably needs to be premised on a theory of organizations: The way political-administrative systems are arranged and operate (Christensen et al. 2007). From an organizational perspective, different contexts have different social norms that help them cope with ambiguity and face uncertainty. This means that organizations affect decision-making processes in day-to-day activities as well as in crises.

The most widely accepted definition of a crisis considers three necessary and sufficient perceptions from the part of the decision-maker: a) a threat to core values; b) uncertainty; c) urgency (Boin, 't Hart, and Kuipers 2018; Stern 1999). The perception of the threat to core values refers to the values of the state rather than the values of a particular government (Stern 1999). The perception of uncertainty relates either to the lack of knowledge regarding the nature or the consequences of the threat. The third perception, regarding the urgency of the situation, relates to a temporal dimension. There is a broad spectrum of what constitutes a need for quick responses. Natural disasters call for immediate responses, as a speedy decision may save lives. However, with issues such as terrorism, migration or disappearances, the sense of urgency is less straightforward as it cannot be measured objectively by the clock (Waugh 2003; Payan and de la Garza 2014; Sturdy Colls 2018). In these cases, it is difficult or even impossible to give a prognosis on when the crisis will end, yet every decision remains urgent because there is a risk of having wider, deeper and more permanent consequences as time goes by. In some cases, crises can become chronic or permanent (Boin et al. 2005, 28).

Given they rely on perceptions, crises are social constructions “people use to characterize situations or epochs that they somehow regard as extraordinary, volatile, and potentially far-reaching in their negative implications” (Boin et al. 2009, 137–38), and not objective in their nature, either in the threat, the urgency or the uncertainty that they imply. Determining whose perception is at play becomes essential for understanding crisis management. In this sense, crisis management has been analyzed both at the individual (Ansell and Boin 2017; Stein 1994) and at the organizational level (Lægheid and Rykkja 2019; Boin, 't Hart, and Kuipers 2018).

At the individual level, literature emphasizes the role of leadership, as leaders can influence the sensemaking of the situation (Weick 1995). At the organizational level, authors such as Stern (1999) adopt an institutional perspective to explain how its structure and processes affect the flow of information, enabling or constraining agents. Thus, the characterization of a situation as a crisis is a result of an organizational cognitive process.

As the purpose of this article is to understand how uncertainty and ambiguity affect organizational decision-making during a crisis, the focus is on how a decision took

place, once established that there was a critical situation. The decision in question is policy transfer.

### **Policy Transfer and Organizations**

The academic debate on the definition of policy transfer is still ongoing, as it has become an umbrella notion (Evans 2009) where concepts such as policy circulation, mobility, convergence, diffusion, translation, lesson-drawing and learning, all fit under the label of “policy transfer studies” (Delpuech 2008; Stone 2004; James and Lodge 2003; Culebro Moreno and Figueras Zanabria 2012; Baker and Walker 2019). This article subscribes to the most widely accepted definition of policy transfer, which understands it as “the process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system” (Dolowitz and Marsh 2000, 5).

Literature on policy transfer has received several criticisms, mainly because of the difficulty in operationalizing the concept (James and Lodge 2003; Benson and Jordan 2011). Adopting a substantive perspective on policy transfer entails challenges such as determining if it happened, why it happened and how it happened (Baker and Walker 2019, 2). Nonetheless, in an effort to answer how transfer happens, literature has relied on instrumental and agency explanations (Dussauge-Laguna 2013; Wood 2015; Meseguer and Gilardi 2009; Peters 1997; Robertson 1991; Street 2004; Gilardi 2010; Dolowitz and Marsh 2000). In this discussion, several degrees or types of transfer have been recognized (Dolowitz and Marsh 2000; Evans 2009; Rose 1993; Geva-May 1997; Stone 2004):

“copying, which involves direct and complete transfer; emulation, which involves transfer of the ideas behind the policy or program; combinations, which involve mixtures of several different policies; and inspiration, where policy in another jurisdiction may inspire a policy change, but where the final outcome does not actually draw upon the original” (Dolowitz and Marsh 2000, 13)

Literature explains variations on types of transfer by emphasizing two aspects: Agency and occasion – who is involved in the process of transfer, as well as what stage of the policy-cycle is relevant (Dolowitz and Marsh 2000). While politicians would tend to copy or emulate policies, bureaucrats strive for combinations. Also, emulation may be applicable during agenda-setting, while copying or combination is common during policy formulation and implementation.

In this article, I try to understand how informational structure variables, such as uncertainty and ambiguity, affect the mechanism of heuristics whereby policies are transferred during crisis. Hence, once a crisis situation is identified where there is certainty that policy transfer occurred, it is possible to explore how these variables affected it. The following section develops a theoretical proposal on how heuristics can help bridge the gap between the crisis management and the policy transfer literature.

## **Heuristics: A Bridge between Crisis Management and Policy Transfer**

In crises, decision makers ignore and focus on information, intentionally or not. Cognitive approaches become relevant in order to understand the decision-making process (Holsti 1976). For over 40 years, international relations literature has studied the role of cognitive heuristics in critical foreign policy decisions (Larson 1994; Balzacq and Jervis 2004; Stein 1994; Yee 1996; Khong 1992; Rosati 1988; Rosati 2000). These studies have shown that how information is structured and how it is processed affects the decision outcome (Geva and Mintz 1997).

Nonetheless, most of these studies remain rooted at the individual level, relating to the negative biases paradigm (Kahneman and Tversky 1973), while few studies address organizational level cognitive processes used to deal with uncertain and ambiguous situations, relating to the fast-and-frugal paradigm, as proposed by Gigerenzer and colleagues (Loock and Hinnen 2015; Gigerenzer and Gaissmaier 2011; Gigerenzer 2018; Bingham and Eisenhardt 2011). In this article, I use this second approach by focusing on ecologically rational heuristics, understanding them as an “ability to exploit the structure of the information in natural environments” (Goldstein and Gigerenzer 2002, 76).

Policy transfer literature is based on the premise that transfer results from choice in business-as-usual situations. In unsettled situations or crises, however, decision makers have to make sense of highly transformative environments surrounded by uncertainty (Weick 1995; Olsen 2017; Christensen, Lægreid, and Rykkja 2019; Ansell and Boin 2017). In crises, information issues are at the center stage (Starbuck 2009; Stern 1997; Boin, 't Hart, and Kuipers 2018). Information shortages lead to uncertainty, whereas information overloads generate ambiguity (Vertzberger 1990).

Scholars have recently underlined the usefulness of cognitive approaches to policy transfer (Meseguer and Gilardi 2009; Weyland 2005; Dussauge-Laguna 2012; Meseguer 2005; Weyland 2007). Weyland (2005, 294) addresses how heuristics influence the decision to transfer policies: “Bold changes that happened next door are immediately available and thus grab the attention of the decision makers; there is no way not to consider such a reform”.

The end of the Second World War meant an exponential increase in the number of international organizations, passing from less than 130 in 1951 to almost 9500 in 2016 (UIA 2017). This means that issues are increasingly addressed by supra- and international organizations. In dealing with problems such as crime, climate change, terrorism, migration, etc., international organizations establish guidelines that governments can then refer to when addressing the issues nationally, as international organizations make some decisions and definitions socially acceptable and legitimate (Finnemore 1993), a perception that is particularly relevant in managing crisis (Lægreid and Rykkja 2019). This explains why policy transfer has been considered a trend that results from increased regionalization and globalization (Dolowitz and Marsh 2000; Bulmer et al. 2007).

In this increasingly diverse international environment, different organizations have different understandings of problems. This means that international guidelines may not necessarily be consistent and can even be contradictory between each other,

generating ambiguity. For the purposes of this article, the concept of international guidelines refers to the result of authoritative and expert knowledge (Brunsson, Rasche, and Seidl 2012; Boswell 2008; Stone 2004; Jacobsson 2000; Evans 2009). They are reflected in international organizations' both binding and non-binding instruments.

From an ecological perspective, crisis decision-makers can use different heuristics to transfer policies, as international guidelines become cues to be weighted in the decision-making process (Gigerenzer and Gaissmaier 2011; Todd, Gigerenzer, and ABC Research Group 2012; Gigerenzer and Brighton 2009; Gigerenzer and Selten 2001). The degree of ambiguity of international guidelines affects the type of heuristic used in transferring policies.

When different guidelines are consistent, one could expect them to be understood as cues that are weighted equally, relating to the trade-off heuristic of tallying (Gigerenzer and Gaissmaier 2011; Gigerenzer and Brighton 2009), which “entails simply counting the number of cues favoring one alternative in comparison to others” (Gigerenzer and Gaissmaier 2011, 469). Decision-makers do not waste time weighting cues if it is irrelevant.

When the guidelines are ambiguous, one could expect that binding instruments are given more weight than non-binding ones. This would point towards the adoption of one-reason decision heuristic (Gigerenzer and Gaissmaier 2011, 463) where one alternative is given a higher value on a criterion, in this case, enforceability. This is in line with recognizing that the nature and structure of each international organization involved, as well as its attribution to issue mandatory or voluntary norms, influences the transfer process (Dussauge-Laguna 2012; Weyland 2005).

This allows developing a contingency framework to understand how, during crises, policy-makers recur to different types of heuristics in order to transfer policies in varying degrees. Two dimensions are relevant. First, the degree of uncertainty on the problem, generated as a consequence of information gaps. Second, the degree of ambiguity of international guidelines, created as a result of information overload. These hypotheses are summarized in Table 1.

If there is knowledge on the problem, and consistent guidelines, copying will occur. When there is knowledge on the problem and ambiguous guidelines, combination will occur. If there is a high degree of uncertainty on the problem and consistent guidelines, it is likely ideas will be adapted as an attempt to cover unknown situations, thus emulation will occur. Finally, when facing a high degree of uncertainty on the problem, and ambiguous guidelines, inspiration is more likely to occur. Inspiration is generally associated with innovation, but any space for innovation is also a space for paralysis, in what has been referred to as the innovation dilemma (Kriegesmann, Kley, and Schwering 2005; Langley 1995).

***Table 1: A contingency framework on policy transfer during crisis***

<b>Ambiguity of international guidelines</b>
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		More	Less
<b>Uncertainty of the problem</b>	More	Inspiration	Emulation
	Less	Combination	Copying

Source: prepared by the author

### RESEARCH DESIGN: THE CASE OF DISAPPEARANCE OF PERSONS IN MEXICO

Assessing the relative role of cognitive heuristics in policy transfer requires a methodological design that enables us to answer the question: What information was available to decision-makers and when? To ascertain the plausibility of the analytical framework developed above, it will be put to the test in a case study of a particular crisis decision: How the problem of disappearance of persons was defined by the Mexican Congress.

Process tracing constitutes a method to approach the black box of this decision by reconstructing it and revealing cognitive processes (George and Bennet 2005), which is the tentative causal mechanism. As such, the relevant outcome is a decision, and the variables to be explored are uncertainty of the problem and ambiguity of international guidelines. This, considering that how information is processed affects the outcome of the decision (Mintz 1997).

The method is applied in several successive steps in order to make inferences using the correspondence between hypothetical and actual observable events (Beach 2017). First, the decision should be clearly identified as a response to a crisis, and the relevant decision-making units should be characterized. Second, all available data from archival records, such as the Diary of Debates, video recordings and typographic versions of the discussions held should be analyzed in order to map the type and timing of information available to decision-makers. Third, follows the information processing, by extracting the decision-maker’s strategies by coding the description of the case to a cognitive description (Woods 1993, 247). Finally, the degree to which cognitive heuristics allows to explain the decision is studied.

The case is also appropriate to analyze policy transfer because disappearance of persons is addressed foremost at the international level, as the topic was first regulated from the laws of war after the Nuremberg Tribunals, and it currently has settled into human rights law (Finucane 2010; Sturdy Colls 2018). In this case, the Mexican Congress had an unequivocal intention to take into account international guidelines. As such, the Senate explicitly referred to different international instruments: “What occupies these Commissions is the creation of a solid and complete legal document that is in accordance with the international treaties of which our country is party” (Senate 2017, 164, own translation). This means that the transfer occurred from the international to the national sphere.

In order to explain the decisions that resulted in the approval of the Law on Disappeared, alternative approaches can be taken. As a legislation approved by the majority of two chambers, political science studies the decisions in terms of political-

administrative bargaining (Tsebelis 1995; Carey 2006; Lijphart 2012), coalitions (Strøm and Nyblade 2007; Cheibub, Przeworski, and Saiegh 2004) or party politics (Caul and Gray 2000). In the case that concerns this study, such approaches can be very fruitful if applied regarding the issues that were contested and part of the public fora held in the Senate during 2016: Search process; criminal investigation; and the rights of the victims (Senate 2017, 156–65). Nonetheless, these perspectives leave unresolved the explanation of how disappearances were defined as there is no data available in the record of the debates in either chambers of Congress to support the hypothesis that such discussions took place.

### **Crisis of disappeared persons in Mexico**

Disappearance of persons in Mexico has been on the public agenda at least since the 1960's, when the so-called *dirty war* took place. In this case, disappearance of persons was ordered by government officials in order to suppress dissent (UN 2015). In 2006, President Calderon initiated the war against drug trafficking and their number started to increase. The National Registry of Disappeared and Missing Persons shows that in 2007, 0.5 per 100,000 inhabitants were disappeared, while in 2017, it rose to almost four (SESNSP 2018). This implies an 800% increase in disappearance of persons in a decade.

Disappearance of persons is much more diverse today than what it was half a century ago. Now, besides being deliberate acts of governments, where its organizations or parts thereof give the order to disappear someone, they are also a result of collusion of state agents with criminal organizations; an accepted result by the government as collateral damage in the war against drug cartels, either as an intimidation tactic or as an accepted accident; a result of the abuse of use of force by public officials; rotten apples that make this their *modus vivendi*; or as a rational response by government officials in the face of a threat by a criminal organization. Each of these types involves organizational, sociological and legal aspects completely different from each other. Additionally, economic and geographic variables create more complexity. This implies that disappearance is a causally complex and heterogeneous phenomenon, where a single strategy cannot solve the problem.

Disappearances, just like terrorism (Waugh 2003) or migration (Payan and de la Garza 2014), crosses over the three perceptions to be considered a crisis, developed above. First, it represents a threat to core values associated with the state itself, as it weakens the fulfillment of the state as a provider of public security and its monopoly on the use of force. Not only is the state incapable of providing security to its inhabitants, but it may be behind systematic violations of human rights. The basic characteristics of a democratic state are under threat: Rule of law and respect of human rights are being neglected. As it becomes chronic, it is subject to management rather than solution (Head 2018).

Second, disappearance of persons generates pressures for authorities at every level of government. In particular, Congress has been the focus of pressure, as national and international actors highlight the faults in the legislation as an impediment to manage the crisis. The Organization of American States, as well as the Interdisciplinary Group of Independent Experts emphasized that these faults constituted an important obstacle in



implementing a policy to manage this situation which could ultimately imply the international responsibility of the state (CIDH 2018; GIEI 2015). This can be illustrated by how, in November 2018, the InterAmerican Court of Human Rights condemned Mexico for the disappearances of three persons in 2009, signaling its responsibility for the absence of legislation in the matter, which constituted an obstacle for the immediate search and the investigation of the crime (IACoHR 2018, para. 206).

Third, disappearances are intrinsically uncertain, as they are executed with the purpose of obscuring the facts. Additionally, it is a complex and heterogeneous phenomenon where a specific causality cannot be pinpointed. Finally, there is little knowledge about who is systematically being disappeared as well as who are the perpetrators behind it. This, because the National Registry of Disappeared and Missing People has several deficiencies, both in its design and in its implementation (Galindo, Ramírez, and Rodríguez 2019). Several national and international organizations have highlighted the problem of lack of certainty on the scope of the problem (CNDH 2017; IACHR 2015).

It is against this background that the *General Law on Forced Disappearance of Persons, Disappearance committed by Private Persons and of the National System for the Searching of People* (Law on Disappeared) was passed (OJF, 2017)<sup>1</sup>. In this context, the relevant decision-maker is Mexican Congress. As Mexico is based on a civil law tradition, any policy needs to be reflected in a legal instrument as to allow for public action. Studying the legislative process allows understanding of what information was available, which was ignored, which was focused on and when.

Before analyzing the legislative process in the passing of the Law on Disappeared, a few words on the organization of the Mexican legislative branch are in order, as its processes affect its behavior. Mexico is a federal system, composed of 32 states and over 2400 municipalities. Distributions of legislative competencies between the different levels of government are established in the Constitution. In particular, Federal Congress has the ability to legislate nationally relating to the disappearance of persons.

The legislative process in Mexico is structured around two chambers: Representatives and Senators. Both chambers, as well as the President, among others, have the power to propose legislation. Every legislation draft is analyzed, reviewed and approved by the relevant Commission, who is also responsible for preparing the draft that will be discussed and voted in a plenary session. Once approved by the majority of one Chamber, the draft passes to the other Chamber, where it may be approved and passed to the Executive for publication, or revised and returned to the Chamber of origin for further discussion.

Regarding the Law on Disappeared, the Chamber of origin was the one of the Senators. The Commission took into consideration six initiatives presented between February 2014 and December 2015, proposed by the three most important political parties at that moment (PAN, PRI and PRD). From February to November 2016, a series of public hearings were held in order to interview victims and experts, notably the UN Office of the High Commissioner on Human Rights, the Inter-American Commission on Human Rights as well as the International Committee of the Red Cross (UNOHRC 2018; ICRC

2015). In April 2017, the Commission and the plenary approved the draft, and sent it to the Chamber of Representatives, which approved it without changes later in October. The Law on Disappeared was published on the Official Journal of the Federation on November 17, 2017.

It is important to consider that the constitutional reform that allowed Congress to legislate on disappearance of persons was approved on July 2015. Also, it was unusual that Congress held public hearings, but it allowed to include non-governmental organizations in the discussions of certain contested issues of the law such as the search process; the criminal investigation; and the rights of the victims (Senate 2017, 156–65). Without considering these periods, the Law on Disappeared was drafted, discussed and approved by Congress in little over a year, which endorses the critical importance of the problem and makes it a case of crisis management.

To understand what information was available and how it was treated, in a similar manner as Verbeek (1994) and Vaughan (1996), the study includes the analysis of several primary documents, ranging from four international instruments<sup>2</sup>; six initiatives<sup>3</sup>; the Senate's and the Chamber of Representative's drafts and registry of their discussions, stenographic versions, as well as video recordings of the public fora held; and the published version of the Law on Disappeared. The study of how the different initiatives came to be and the reasons for the differences between them, even if interesting per se, are left out of this study.

## FINDINGS

### Problem uncertainty and international guidelines' ambiguity

In order to systematically analyze what was transferred and how, it is necessary to consider the three elements of any legal definition of a crime. These can be better understood through answering “Who did what to whom?” (Ball 1996), as it needs: 1) an active subject or perpetrator; 2) a passive subject or victim; and 3) an action or omission that relates the two of them.

Regarding the action or omission that connects active and passive subject, disappearances occur when there are two consecutive actions: Deprivation of liberty followed by concealment of the whereabouts of the victim. As concerns the passive subject, there are no specific qualities needed to be considered one. Anyone can be a victim. These two elements are unequivocal, thus not pertinent to study the role of ambiguity and uncertainty in crisis decision-making.

Concerning the actor or perpetrator, there is diversity in how this element is treated at the international level, which makes it interesting to study as the multiplicity of different alternatives implies deciding between choices, thus allowing to analyze if and which heuristics were used to discriminate between available information. The alternatives are that a person in one of the following types of actors is responsible for the disappearance of persons:

- A government official, be it from the legislative, judicial or executive organs, at the central, provincial or local level of government (ILC 2001, art. 4);
- An agent of the State, which includes government officials, as well as persons or entities “empowered by the law of that State to exercise elements of the governmental authority” (ILC 2001, art. 5), e.g. parastatal entities, public corporations or agencies;
- A private individual with authorization, support or acquiescence of a person, entity or organ of the State;
- A private individual without authorization, support or acquiescence of a person, entity or organ of the State.

In order to identify the decision-maker’s cognitive strategies, I will study if and how these different categories of actors are included in international instruments, as well as if and how they were addressed in the national legislation. It is therefore previously necessary to determine the degree of ambiguity and of uncertainty surrounding these categories.

After more than ten years of generalized violence in Mexico, national, international and non-governmental organizations have documented events that reflect that some persons disappear both after an interaction with a government official – typically a policeman or a soldier, or by a member of an criminal organization as a result of retaliations between these groups (Observatorio sobre Desaparición e Impunidad 2018; Observatorio sobre Desaparición e Impunidad 2017). There is less evidence that agents of the State are behind the disappearance of persons. Thus, there is more uncertainty on this type of actor than in the rest. Table 2 summarizes the uncertainty about type of actors or perpetrators.

**Table 2. Problem uncertainty regarding disappearance of persons**

Type of actors	Problem uncertainty
Government officials	Less
Agents of the State	More
Private with support of the State	Less
Private without support of the State	Less

Source: prepared by the author

The ambiguity of international guidelines is understood as the degree of consistency in the treatment of specific type of actors, ranging from more to less ambiguous. Table 3 shows which of the relevant international instruments for Mexico address which type of actors. It is noteworthy that the Declaration is a non-binding instrument, whereas the two Conventions and the Rome Statute are binding and enforceable for states.

**Table 3. Typology addressed by international instruments**

Type of actors	Declaration	Inter-American Convention	Rome Statute	International Convention
Government officials				
Agent of the State				
Private with support of the State				
Private without support of the State				

Source: prepared by the author

The analysis shows that the two types of actors consistently addressed by the instruments are the responsibility of a presumed perpetrator defined as 1) government officials, and 2) as private individuals with the authorization, support, or acquiescence of the State. Regarding the agents of the State, they are not treated consistently at the international level, thus there is ambiguity. Nonetheless, the three binding instruments consider its inclusion. Finally, regarding private persons without the support of the State, international guidelines are also ambiguous, as only two of the three binding instruments suggest its inclusion. Table 4 summarizes these findings.

**Table 4. International guidelines' ambiguity regarding disappearance of persons**

Type of actors	Ambiguity
Government officials	Less
Agents of the State	More
Private with support of the State	Less
Private without support of the State	More

Source: prepared by the author

### **Transferring Problem Definitions: Which heuristics and when?**

Regarding the passing of the Law on Disappeared, six documents were discussed before the Senate's Commission drafted the Minute that would later be approved by the plenary, the House of Representatives and later enacted by the Executive and published in the Official Journal of the Federation. All Initiatives referred that their aim was to establish a definition in line with international guidelines. Table 5 summarizes the typology of actors addressed throughout the legislative process towards the definition of the crisis of the disappeared. Explicit references to particular instruments are as follows: Initiatives A, C, D referred explicitly to the four international instruments (Senate 2017, 10, 51, 81–82) while initiatives E and F refer to both the Inter-American and the International

Conventions (Senate 2017, 93, 117), yet none discussed the differences between the different categories of actors. This means that each draft either includes or excludes each category.

The two types of actors that were proposed to be included in all initiatives were government officials and private individuals with support of the State. Disappearances by agents of the State was never proposed nor discussed. Some documents suggested including the responsibility of private individuals without the support of the State, which was adopted in the approved version.

**Table 5. Typology of actors addressed by different initiatives**

	A	B	C	D	E	F	G	H	I
Type of actors	13-feb-14	18-mar-15	24-mar-15	16-apr-15	17-sept-15	14-dec-15	Senate	Ch. of Repr.	OJF
Government officials									
Agents of the State									
Private with support of the State									
Private without support of the State									

Source: prepared by the author

In line with the original expectations, findings show that government officials and private persons with the support of the State were included in the definition of disappearance of persons. Less ambiguity in guidelines means that all international instruments are weighted equally through a tallying heuristic. A second finding is that private persons without the support of the State were also included. This means that when guidelines are more ambiguous, one-reason heuristics help discriminating information by focusing on the binding instruments in order to decide on their inclusion.

An interesting finding that defies the original expectations is that the broader type of the agent of the State was not included in the definition. This means that one-reason heuristic, giving more weight to binding instruments than to non-binding ones, did not occur. Considering the two variables under study, Table 6 summarizes the findings on how the definition of disappearance of persons was transferred from the international to the national sphere.

**Table 6. Definition of the problem of disappearances**

		Ambiguity of international guidelines	
		More	Less
Uncertainty of the problem	More	Agents of the State	-
	Less	Private without support of the State	Government officials Private with support of the State

Source: prepared by the author

The analysis shows that in the types of actors 1 and 3, where international guidelines are consistent thus less ambiguous, all draft legislations provided for their inclusion in legislation through copying. The other two types, treated ambiguously by international guidelines, vary in how they were defined according to the degree of uncertainty of the problem.

Regarding agents of the State, even if the binding international guidelines refer to this broader category of active subject consistently, it was not adopted in legislation. In this case, the degree of uncertainty on the problem as well as the degree of ambiguity in the guidelines is high. Finally, concerning private persons without the support of the State, a combination of policies was adopted. While the Rome Statute refers to *political organization* as persons or entities separate from the State (UN 1998, para. 7.2.i), the International Convention refers to *persons or groups of persons acting without the authorization, support or acquiescence of the State* (UN 2006, art.3). The legislation adopted does not refer to any particular quality for the active subject, thus including both guidelines. This coincides with combination as a type of transfer (Dolowitz and Marsh 2000).

## DISCUSSION AND CONCLUSIONS

The adoption of the Law on Disappeared in Mexico illustrates how heuristics are used during crisis decision-making in order to transfer policies. The findings hopefully contribute to understand how, in times of crises, decision-makers use heuristics to reduce complexity in an increasingly international and diverse environment.

From the perspective of crisis decision-making, the case points towards the relevance of the institutional characteristics of the structure of information. Heuristics can help crisis decision-makers deal with either high levels of ambiguity, or high levels of uncertainty. However, when information is simultaneously highly ambiguous and uncertain, paralysis occurs. This would mean that transferring policies in crises requires a degree of knowledge. Research on crisis management has shown that crises sometimes help overcome governmental inertia, but can also lead to obstacles in learning, bureaucratic resistance and paralysis (Stern 1997; Stone 2004; Jensen, Lægread, and

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Rykkja 2019; Langley 1995). This finding is in line with the argument that crisis are not a sufficient condition for change (Boin, 't Hart, and McConnell 2009; Lodge and Wegrich 2012).

From the perspective of policy transfer studies, the analysis pointed towards a framework that shows that uncertainty and ambiguity affect the degrees of transfer. Different elements of the definition of disappearance of persons were transferred in varying degrees, through the use of heuristics. This builds an alternative insight on the topic, beyond the role of agency and rationality, because the findings challenge the view that actors have a preferred type of transfer considering the different stage of the policy cycle (Dolowitz and Marsh 2000). In the case analyzed, politicians use copying, just as well as combination or inspiration.

The case also contributes as empirical evidence of the role of international organizations in national policy decisions. It shows that in practice, the distinction between binding and non-binding instruments can be blurred. Literature from international relations and international law have discussed the usefulness of this distinction by putting forward rational-strategic explanations (Guzman and Meyer 2010; Soltvedt 2017; Abbott and Snidal 2000), yet this article extends the discussion by advancing an alternative explanation: It may not always be due to strategic or intentional behavior, but also cognitive shortcuts. Even more, the findings point towards disproving the theoretical distinction between coercive and voluntary transfer, both as a dichotomy or as a continuum, as suggested by Dolowitz and Marsh (2000), as well as James and Lodge (2003).

Like any empirical study, this article has a number of limitations related to the research design. First, even though the case is based on publicly available information, including video recordings of the different forum held in the Senate during the legislative process, it would have been optimal to obtain complementary narratives of the events. Nonetheless, the extensive documentary data has provided means to reconstruct satisfactory and credible descriptions of what was actually discussed or not. Second, as any study on heuristics is contextual and rooted in idiosyncrasies (Yee 1996), the degree in which the findings can be generalized is dependent on analytical rather than on a statistical basis (Flyvbjerg 2006). Future research might study contexts beyond criminal law or in common law countries. This could improve the generalizability of the findings. Finally, since this article builds on a single case study, the relative frequency of heuristics in crisis decision-making cannot be established. Future comparative research could be helpful in refining the findings, as well as extending them into other social, political and legal contexts.

## NOTES

- 1 The passing of the law in no sense ends the debate on the management of this crisis, as issues of resource assignment and implementation rise (Boin et al. 2005).
- 2 Declaration on the Protection of All Persons from Enforced Disappearance (UN, 1992); Inter-American Convention on the Forced Disappearance of Persons, ratified

by Mexico May 9, 2002 (OAS, 1994); Rome Statute of the International Criminal Court, ratified by Mexico October 28, 2005 (UN, 1998) and the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Mexico March 18, 2008 (UN, 2006).

- 3 Initiative presented on February 13, 2014 by a representative of the Democratic Revolution Party (PRD); Initiative presented on March 18, 2015 by a representative of the National Action Party (PAN); Initiative presented on March 24, 2015 by a representative of the Democratic Revolution Party (PRD); Initiative presented on April 16, 2015 by a by a representative of the Institutional Revolution Party (PRI); Initiative presented on September 17, 2015 by representatives of the Democratic Revolution Party (PRD); Initiative presented on December 14, 2015 by Mexico's President.

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