

Human Rights and Non-State Violence U.S. and Canadian Refusal of Asylum to Mexicans

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The skyrocketing death toll in the war against organized crime has led to a rapid increase in asylum requests.

The so-called war against drug trafficking began in 2006, and in 2007, it became one of the main reasons cited for applying for asylum in Canada. Applications reached a record high in 2009, and Canada imposed a visa requirement for Mexicans, arguing that they were taking advantage of Canada's refugee system by presenting faked applications. By 2010, the numbers of asylum requests began to drop, but the number of requests made to the United States doubled and some began to be made to European countries. This trend indicates that, while some people tried to use the Canadian system to emigrate for economic reasons, it is also true that a situation exists that generates real requests for asylum, particularly in those countries, in the context of the war against drug trafficking.

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Nevertheless, with a few exceptions, Mexicans' requests for asylum have not been granted by U.S. and Canadian courts. In this article, I venture a hypothesis about the reasons for this systematic refusal.

THE NUMBERS

In 2007, the UN High Commissioner for Refugees (UNHCR) shined a light on how Mexico was becoming an important point of origin for asylum requests, particularly for Canada and the United States. While in 2004, Mexico had been twenty-first on the world's list of countries whose citizens requested asylum, by 2007, it had moved up to seventh place, following only Iraq, Russia, China, Serbia, Pakistan, and Somalia. Mexico was even ahead of Afghanistan, Iran, and Sri

Lanka. In contrast with Mexico—or at least what people used to think Mexico was like—all these countries had openly authoritarian regimes or were in the midst of civil wars. In 2007, Mexico was the origin of 9 545 asylum requests, 74 percent of which were made to Canada and 24 percent to the United States, and this trend has continued to rise.

Between 2006 and 2010, 44 019 Mexicans requested asylum in other countries: 13 700 in the United States and 30 142 in Canada. In 2007, 1 830 requests were made to the United States; in 2008, this number increased to 2 487; but in 2009, it went down slightly to 2 422. In 2010, the number almost doubled, jumping from 2 422 to 4 225. According to the U.S. Department of Justice, Mexico went from being the country with the fifth largest number of requests in 2006 to the second in 2010, following only China and surpassing Haiti, Guatemala, and El Salvador. Canada, for its part, received 4 913 requests in 2006, and by 2008, the number more than doubled, soaring to 9 413 in only two years. In 2009, requests began to drop (7 561), and by 2010, they had dropped to 1 198, evidently due to the imposition of the visa requirement for Mexicans in July 2009.

On July 14, 2009, the Canadian government announced a visa requirement for Mexicans who wanted to visit Canada, contravening the reciprocity it had previously had with Mexico, which does not require a visa of Canadians. However, despite the elimination of this possibility for asylum, Mexicans continued to seek alternatives: as already mentioned, from 2009 to 2010, requests for asylum in the United States increased and a few began to be made to European countries. This showed that even though some Mexicans may have been able to defraud Canada's asylum system, many others, legitimately afraid for their lives because of persecution, were looking for alternatives.

WHAT IS BEHIND MEXICAN REQUESTS FOR ASYLUM

Since he took office in 2006, President Felipe Calderón declared “war on drug trafficking.” The language is not metaphorical: he put 45 000 troops out on the streets right away, and by 2011, that number had swelled to 70 000. By 2011, military operations had extended to the states of Chihuahua, Baja California, Nuevo León, and Tamaulipas. This military approach to the phenomenon of drug trafficking excluded almost by definition the financial or social policy aspects,

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and efforts concentrated on the capture or assassination of drug kingpins. Thus, from that year on, the criminal gangs opened fire on each other to gain control of strategic resources (territory and routes) and fill the power vacuums that emerge every time a kingpin is killed or captured and territory opens up because of the confiscation of drugs.

The military approach, therefore, has unleashed a wave of violence and insecurity in cities like Morelia, Michoacán; Acapulco, Guerrero; Veracruz, Veracruz; Ciudad Juárez, Chihuahua; Tijuana, Baja California; Nuevo Laredo, Tamaulipas, and Monterrey, Nuevo León. This is due not only to in-fighting among the criminal gangs but also to the fact that military harassment led the cartels to diversify their criminal activities to include kidnapping, smuggling and trafficking in persons, “protection” schemes, and charging legitimate businesses for the right to operate.

However, the violence has not only been the work of the criminals. According to information from the National Human Rights Commission (CNDH), the number of complaints against army personnel rose from 8 in December 2006 to 376 in 2007, 1 143 in 2008, and 1 644 in 2009. By 2010, the number began to drop, registering 1 320, although it is possible that this was due to fear of making a complaint and not to a drop in abuses. By the first half of 2011, the complaints had decreased to 709, although the total from December 2006 to June 2011 was 5 200. Of these, only 81 ended in CNDH recommendations.

Human rights organizations have said that the criminal organizations' activities and abuses by the military in the context of the war against drug trafficking have pushed Mexico into a grave human rights crisis. This has been sharpened by the high degree of impunity both in cases of human rights violations by the military and the offenses committed by the criminals: nationwide, impunity for both crimes and abuses is at 98.76 percent. This is not simply a result of the inability to investigate or lack of skill, but the result of widespread corruption and the criminals' penetration of the justice system and police forces. Unfortunately, in contrast with the militarization, concentrated in the country's Central West and

North, impunity is neither isolated nor regional, but rather affects the entire country on all levels of government.

Because of the justice system's structural deficiencies, the military, police-based approach to drug trafficking has not solved the problem. Far from it: despite kingpins being captured and killed, the criminal gangs have not disappeared, but have regrouped or allied with others. As a result, the atmosphere in the country is that of a war among criminal groups who are fighting for control over the illicit drug business, and even if they do not confront the state directly, they resist the government onslaught with actions that can be characterized as terrorist, like car bombs.¹ This war's death toll is already 50 000; at least 4 000 people have disappeared; and another 230 000 have had to leave their homes, according to the Internal Displacement Monitoring Centre and the Norwegian Refugee Council.²

Despite this human rights crisis and the ongoing war in the regions mentioned, as I have already pointed out, refugee applications continue to be systematically denied in the United States and Canada. The reasons cited in both cases are similar: neither the 1951 Convention on the Status of Refugees nor its 1967 Protocol recognizes refugee status for victims of organized crime. The judges say that, even if the cases did fit within the stipulations of the convention and its protocol, since a state of war has not become generalized throughout the country, those affected could always simply relocate to other cities. However, although it is thought that the war is contained in certain regions in Mexico, the other components of the human rights crisis (impunity caused by corruption and criminal penetration of the justice system) are nationwide.

According to migration lawyer Carlos Spector, in the United States, Mexican asylum seekers are trying to prove that they are the object of political or religious persecution, but this is no easy task because the U.S. justice system cannot manage to understand the complexities of Mexico's political reality. This is precisely the case of police officers José Alarcón and his colleague Felipe Galindo, who both received death threats from the Juárez Cartel after stopping two armed hit-men for a

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traffic violation. Since the cartels have totally infiltrated the police, they used the police band to order the two officers to let the detainees go immediately; they complied, but the hit-men were gunned down in a fire-fight a few hours later. On the way to the scene of that crime, the police officers received a new message on their patrol-car radio: even though they had let the two hit-men go, they were to consider themselves dead men. The next day they were attacked. Alarcón fled to Texas and is requesting asylum there.³

While the exact number of asylum cases is confidential, the U.S. media are getting information directly from asylum seekers' attorneys, who state that some truly dramatic cases are being refused, such as that of the woman who fled to El Paso with her four children after her husband was murdered in a massacre by organized crime. Two of her children have already been deported, and she is awaiting the judge's decision about her own situation and that of her other two children, one of whom is only nine years old.

Mechanic José Jiménez's case is similar; he was threatened because he refused to build secret compartments into tractor-trailer trucks to store drugs. Spector, who has lost several of these cases, says that the orientation is very clear: "The government's strategy is to oppose all Mexican asylum claims. Their marching orders are no, no, no, no, no."⁴ Of the 13 700 requests received in the United States from 2006 to 2010, only 382 have been granted.

Two cases stand out among all the others: two people who have been able to show persecution by a government body, specifically the Mexican army. The first case is that of journalist Jorge Luis Aguirre, the director of the internet news website LaPolaka.com.⁵ Aguirre managed to flee Ciudad Juárez a few hours after journalist Armando "Choco" Rodríguez was killed execution style and after receiving an anonymous call warning him, "You're next."⁶ Aguirre made a political—not a legal—defense of his own case before a hearing of the U.S. Senate Subcommittee on Crime and Drugs in his testimony in March 2009.

The other case is that of human rights activist Cipriana Jurado, who was able to prove that the army persecuted her for defending the human rights of a family who had denounced the disappearance of three of its members, two of them women, in the Juárez Valley in 2009.⁷

The systematic rejection of requests for asylum is similar in Canada. It is the case, for example, of a truck driver who was threatened with his own and his family's deaths if he did not agree to transport drugs. Similar to this is the case of

a journalist who received death threats after denouncing trafficking in children's cadavers for the illegal organ market, and who was later involved in a traffic accident. One woman had to flee after her ex-husband, a federal policeman, pressured her to act as a cocaine mule. A radio reporter was attacked and threatened for investigating links between police and organized crime. All these asylum requests were denied using the argument that Mexico has the capability of protecting its own citizens.

The Canadian government bases itself on a false premise protected by its legislation: that the Mexican state has the capability and the will to protect its citizens, and that asylum seekers can avoid persecution. Canada recognizes that collusion between organized crime and the institutions in charge of public safety is serious, but it also unequivocally states that this is not Canada's problem in the framework of its legislation about asylum and refugee status. For them, if a person is persecuted by a group of police or a drug cartel, he or she can go to the justice system and seek support, or move away, as mentioned before. It is not understood that the problem is institutional and structural, as has been shown by the cases of kidnapping in which a complaint made to the public prosecutor's office is useful only to alert the criminals that they have been "outed."

The argument is constantly repeated to shore up the refusal of asylum, as in the case of police detective Gustavo Gutiérrez, who had to flee from Ciudad Juárez after becoming known for his outstanding work in investigating the femicides there, and being promoted to an important position because of his clean record. The judge said that Gutiérrez was perfectly capable of relocating to Mexico City, undoubtedly because he could not see that organized crime has penetrated the entire country.⁸

CONCLUSION

In study by Marc Roseblum and Idean Salehyan, the authors lay out the reasons for the refusal to grant asylum, at least in the U.S. case, stating that U.S. asylum policy regarding particular countries can have three objectives:

- 1) preserving relations with friendly countries, by refusing asylum requests from their nationals;
- 2) weakening enemy states by accepting their nationals as refugees; and

- 3) limiting entry through the country's back door to "fake" asylum seekers.⁹

According to these authors, the determining factor for being accepted is not the prevailing human rights situation in the country of the asylum seeker, but U.S. economic and security interests. In the case of Mexicans, giving them asylum would mean recognizing that Mexico is incapable of protecting its citizens. It would also mean opening a new door to Mexican migration, which has been combated by policing and legal means. In the Canadian case, we can assume the situation is similar, which is why visas are now required of Mexicans and asylum cases have been dubbed fake. Also, while judges argued the legal reasons for not granting asylum, it is clear that the real reasons are completely political, since the United States and Canada are protecting their relations with Mexico at the same time that they are closing the little door that remained open in their migratory policy toward Mexico. ■■

NOTES

¹ Scott Stewart, "The Perceived Car Bomb Threat in Mexico," Stratfor, April 14, 2011, <http://www.stratfor.com/>.

² *Mexico* (Oslo: Displacement Monitoring Centre-Norwegian Refugee Council, 2011).

³ "Un policía mexicano pidió asilo en EE.UU.," ObservadorGlobal.com, November 24, 2011, <http://observadorglobal.com/mexico-fracaso-la-lucha-contra-el-narcotrafico-n12742.html>. [Editor's Note.]

⁴ Quote taken from Todd Bensman, "Attorneys Speak Out on Mexican Deportations." Globalpost, 2009, <http://www.globalpost.com/dispatch/mexico/us-asylum-cases-mexico>, accessed October 5, 2011. For further information see Sito Negrón, "Q and A with Carlos Spector. Fighting for the Mexican Media," *El Paso Inc.* September 26, 2010, http://groups.google.com/group/frontera-list/browse_thread/thread/f39195e66a8181e7.

⁵ See <http://lapolaka.com/>. [Editor's Note.]

⁶ Alejandro Páez Varela, "¿Quién mató al Choco?" <http://www.letraslibres.com/revista/letrillas/quien-mato-al-choco>. [Editor's Note.]

⁷ See the *cnn.com* report, <http://mexico.cnn.com/nacional/2011/03/15/activista-de-juarez-pide-asilo-a-eu-por-temor-a-ser-la-siguiente-victima>. [Editor's Note.]

⁸ "Canadá deniega el asilo a un policía de Ciudad Juárez amenazado de muerte," October 14, 2009, <http://procedimientospolicias.blogspot.com/2009/10/canada-deniega-el-asilo-un-policia-de.html>. [Editor's Note.]

⁹ Marc R. Roseblum and Idean Salehyan, "Norms and Interests in US Asylum Enforcement," *Journal of Peace Research* no. 41, vol. 6, 2004, pp. 677-697.