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## Violence Outside the Context of War Mexico: A Nation at War?\*\*\*

**M**exico has been one of the most violent fronts in the global drug prohibitionist policy promoted primarily by the United States of America. Since the late 1960s, the Mexican authorities have used the armed forces to destroy crops, first in three northern states (Durango, Chihuahua, and Sinaloa) and then across the rest of the country.<sup>1</sup> Over the years, the measures taken to combat drug trafficking have grown increasingly draconian, employing the full punitive power of the state,

through criminalization of activities related to cultivation, production, and commercialization; the creation of a state of emergency in criminal prosecutions; a criminal legal system of the enemy; and the use of the army and the navy to pursue people involved in such illegal activities.<sup>2</sup>

The most extreme manifestation of Mexico's antidrug policy was seen starting in December 2006 when then-President Felipe Calderón Hinojosa deployed thousands of troops to pursue and weaken drug trafficking organizations and regain state control of territories. To preserve and expand their criminal enterprises, these armed groups resorted to violence.

Official statistics report that, between January 1, 2007, and December 31, 2020, National Defense Ministry (Sedena) forces engaged in 4,995 confrontations with "civilian ag-

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gressors.”<sup>3</sup> From 2008 to 2020, naval forces commanded by the Ministry of the Navy (Semar) took part in 389,<sup>4</sup> while officers of the now-defunct Federal Police and its successor the National Guard (made up primarily of military personnel) have reported engaging in 1,751 such confrontations. The National Guard, from its formal creation in July 2019 through December 31, 2020, reported 156 clashes.<sup>5</sup>

Since the Mexican Revolution (1910-1917/1920), the country had not undergone a period of armed violence on a scale comparable to what is referred to colloquially as the “war on drugs.”

Human rights defense mechanism institutions have independently documented human rights violations targeting the civilian population in the context of the war on drugs. For example, they published intolerable statistics on extrajudicial killings,<sup>6</sup> enforced disappearances,<sup>7</sup> and torture committed by both public officials and criminal organizations.<sup>8</sup> They also found that the situation in Mexico, involving non-sporadic acts of victimization, exceeded the normal limits of a country with historically high crime rates and concluded that it was a crisis of violence, security, human rights violations, and impunity.<sup>9</sup> In 2019, the current UN High Commissioner for Human Rights, Michelle Bachelet,<sup>10</sup> and, in 2015,<sup>11</sup> her predecessor Zeid Ra'ad Al Hussein (2014-2018), without acknowledging the existence of an armed conflict, affirmed that Mexico's numbers of violent deaths were cause for concern and indicative of a country at war. They both called on the authorities to combat impunity to prevent the recurrence of such abuses.

Using the definitions established in international law, the situation of violence in Mexico can only be explained as a non-international armed conflict.

As of October 2021, official statistics report 93,212 missing persons and more than 350,000 homicides,<sup>12</sup> of which at least 58 percent were committed with firearms.<sup>13</sup> In this regard, the Sedena has reported that 5,042 “alleged offenders” and 42 “bystanders” have died in confrontations.<sup>14</sup> The Semar reported the deaths of 510 alleged offenders.<sup>15</sup> For its part, the National Guard has reported that clashes it has been involved in have resulted in the death of 68 persons (identified as aggressors).<sup>16</sup>

Authorities of the three levels of government (federal, state, and municipal) have committed atrocities as part of their security strategy, while criminal organizations have done so as a means of spreading fear and controlling regions to more freely conduct their illegal business. How-

ever, no competent national institution has made an effort to investigate and clarify the alleged confrontations or the deaths resulting from or related to them, and much less have they imputed political, social, administrative, or criminal liability to the perpetrators and abettors of heinous crimes.

Authorities have defended the idea that they have a duty to perform functions related to security and that armed violence is the product of criminal activities, effectively eliminating any possibility of accurately characterizing the situation and exploring alternatives to end it. Since they began using this argument, security policy has increasingly relied on the armed forces, which in turn has led to further confrontations.

The Current Administration's Limited Characterization of the Violence

President López Obrador won the 2018 election with broad social backing, in part based on a campaign promise that his security policy would be different from that of his predecessors. In office, he has criticized previous administrations for provoking violence by authorizing the armed forces to pursue criminal organizations and use lethal force against their leaders and members.

The [previous] guiding document of federal public policy acknowledged that Mexico was in a state of war, thus favoring the use of force and had as its prime objective to eliminate the heads of criminal organizations.<sup>17</sup> The current administration, on the other hand, decided to modify the approach to attack “the root causes of rampant criminality and loss of security with the immediate goal of lowering crime rates.”<sup>18</sup> On several occasions, President López Obrador has personally described the security strategy of previous administrations as one of war,<sup>19</sup> condemning it as an irresponsible approach<sup>20</sup> in which many lives were lost among civilians and members of the armed forces.<sup>21</sup>

Over the years, the measures taken to combat drug trafficking have grown increasingly draconian, employing the full punitive power of the state, through criminalization of activities related to cultivation, production, and commercialization.

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Although López Obrador has criticized the existence of an armed conflict in previous administrations, in practice his own policy remains the same, and, in frank contradiction with the official discourse, has doubled down on using the military to pursue and defeat criminal organizations.

The Growing Militarization of Security and Public Administration

Paradoxically, on the one hand the current federal government condemns the strategies of past administrations, while on the other hand it deploys thousands of soldiers to pursue criminal organizations and militarizes the federal police forces. In late 2018, President López Obrador promoted—and a few months later won approval for—a constitutional amendment to disband the Federal Police and create a purportedly civilian National Guard. On a transitory basis, the amendment allowed for the possibility of deploying the armed forces to perform law enforcement tasks for five years (2019-2024), on the condition that its participation should be extraordinary, regulated, subject to oversight, subordinate, and complementary.<sup>22</sup>

In frank opposition to the terms of the constitutional amendment, the president appointed an active member of the armed forces to command the National Guard and filled its ranks with military personnel. At the same time, he increased military involvement in law enforcement, to the degree where the Ministry of National Defense recently reported that more than 300,000 members of the military are participating in law enforcement across a large swathe of Mexico.<sup>23</sup>

Also, in a clear violation of the Constitution,<sup>24</sup> López Obrador has extended the functions of the armed forces to include tasks that would normally be the purview of civilian authorities, such as migration control, public works, healthcare, education, and social policy. A recently published study found that in recent years the armed forces have undertaken 246 tasks previously performed by civilian authorities.<sup>25</sup>

## Armed Conflict in Mexico

According to international law, the situation of violence in Mexico can only be explained as a non-international armed conflict; in other words, the level of armed violence and the organizational capacity of the criminal groups involved meet the criteria established in international humanitarian law (IHL), also known as the law of war. As we have seen, the federal government has acknowledged that, under the two previous administrations (2006-2018), Mexico fought a war, and today the government seeks to deceive the population into believing that the present situation is different, even as both the armed forces and the National Guard continue to engage in armed confrontations with criminal organizations.

The Mexican armed forces, like many criminal organizations, possess the level of organization necessary to be considered an armed group under IHL.

In this sense, rigorous studies have found that the Mexican armed forces, like many criminal groups, possess the level of organization necessary to be considered an armed group under IHL due to their command structure, internal discipline, control of territory, access to equipment and recruits, and capacity to sustain military operations, among other factors.<sup>26</sup>

Also, confrontations between the Mexican armed forces and armed criminal groups, or among the latter, are of sufficient intensity to qualify, considering their nationwide occurrence, their duration, the type of high-caliber weapons used, numbers of casualties, persons injured and displaced internally,<sup>27</sup> and civilian property destroyed, among other factors.

In conclusion, we can affirm that the armed conflict in Mexico that began in December 2006 continues to this day. However, the official narrative insists that Mexico is undergoing a complex security situation, its armed forces are acting to enforce the law, and they are no longer given orders to kill and disappear members of criminal organizations, even as the government continues to celebrate killings of organized crime leaders as markers of success in military operations.<sup>28</sup> In that context, official responses to challenges seeking to mitigate violence by government agents cite the efficiency of security policy and in that sense have reinforced the military presence in such tasks without addressing either the causes of the conflict or its effects on the rights of persons with no direct part

Secondly, recognizing the situation as an armed conflict would allow for more effective action on the part of international humanitarian organizations to provide appropriate care for victims of the conflict, including, for example, the hundreds of thousands of internally displaced persons, who at present are completely unprotected

in the hostilities, including the population, people who suffer injury or illness, combatants who have laid down their arms, detainees, journalists and human rights defenders, and healthcare personnel, among others.

Acknowledging that the armed confrontations between criminal organizations and the public security forces since the year 2006 constitutes an armed conflict offers at least three advantages. The first is that it would subject armed personnel to the rule of law, because they would be forced to adhere to the rules on use of force established in IHL. This, in turn, would oblige soldiers and naval personnel to apply the principle of distinction between the civilian population and private property and military targets, which at present they do not. Also, superior officers would be obliged to prevent the troops under their command from targeting civilians or persons with no direct part in the hostilities, with an added imperative to treat the civilian population, detainees, healthcare personnel, journalists, human rights defenders, combatants who have relinquished their arms, and persons who are injured or ill humanely at all times.

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Secondly, recognizing the situation as an armed conflict would allow for more effective action on the part of international humanitarian organizations to provide appropriate care for victims of the conflict, including, for example, the hundreds of thousands of internally displaced persons, who at present are completely unprotected. Specifically, more agile and efficient action could be taken to allow the International Committee of the Red Cross to exercise its mandate for situations of armed conflict, and

to expedite intervention by the UN Office for the Coordination of Humanitarian Affairs and High Commissioner for Refugees.

Thirdly, war crimes committed by the parties in conflict, in particular by agents of the state, in which the victims are civilians or persons protected by IHL, could be investigated, prosecuted, and sanctioned by national jurisdictions of third countries and by competent international authorities like the International Criminal Court. We cannot overlook the fact that, as the UN Security Council has affirmed repeatedly, impunity for heinous crimes represents a threat to regional peace and security.

The armed conflict in which Mexico is immersed today is unique compared with how events have unfolded in the past, where armed forces traditionally faced left-wing armed groups with explicit political aims, for example regime change or what they referred to as national liberation.<sup>29</sup> What we see today is that armed groups seek to control the territory to continue or expand their business without aspiring, at least overtly, to hold positions in government. This is relevant because, contrary to what some may believe, to define a situation of armed violence as an IHL conflict does not require organized groups opposing authorities to have a political motivation.

## Final Considerations

I am convinced that, to achieve peace, Mexico first needs to acknowledge the existence of an armed conflict, not only for the advantages outlined above, but because it would represent a change in the military paradigm of security, demilitarize police institutions, and help purge law enforcement of officials responsible for committing atrocities. The process would be strengthened if perpetrators and abettors of human rights abuses, crimes against humanity, and severe IHL violations were prosecuted, which would also help prevent their recurrence.

In recent years, numerous studies have found that international prohibition has failed and its stated objectives have not been achieved, nor are they attainable under the existing punitive and security-based approach. It has been shown that democracies that have regulated the cultivation, production, commercialization, and consumption of substances, with a focus on preventing risks and harm to consumer health, have reduced violence sur-



rounding the market for drugs and have generated tax revenues to manage problems arising from substance abuse in the healthcare sector.

In this context, Mexico would have to reform its drug policy to incorporate a regime for the regulation of cultivation, production, distribution, and marketing of all substances produced, processed, and consumed in Mexico and establish a system to prevent health hazards and harm to consumers and to provide proper care for those with problematic usage habits.

In parallel, Mexico needs to implement a national disarmament program, specifically targeting private citizens and criminal groups; and, to weaken organized crime, it should prioritize attacking the financial structures of illegal businesses and prosecute their members for crimes against human rights (for example, murder, kidnapping, human trafficking, disappearance, and forced displacement of persons).

The demilitarization of security is a legitimate demand of Mexican society, which has coalesced around an informal movement named *Seguridad Sin Guerra* (Security Without War),<sup>30</sup> which advocates for returning the army and navy to their constitutional duties in peacetime, strengthening civilian police, purging law enforcement of officials implicated in human rights abuses, and implementing a transitional justice policy that expedites the prosecution of those responsible for abuses, even at the highest levels.

We Mexicans have been incapable of ending the armed violence that began almost fifteen years ago. Due to the severity of the atrocities committed in the course of a non-international armed conflict, and above all in view of the government's reluctance to protect the civilian population, the international community has a responsibility to intervene. There is still time to construct a peace process with justice before Mexico's incipient democracy is irreparably harmed. ■■■

## Notes

**1** José Antonio Guevara, Olga Guzmán, and Amaya Ordorika. *El costo social contra las drogas en México: Militarización y vulneración sistemática de los derechos humanos* (Mexico City: Ed. Ubijus, Mexican Commission for the Defense and Promotion of Human Rights and Autonomous University of Tlaxcala, 2018) pps. 38 on.

**2** See Eugenio Raúl Zaffaroni. *El enemigo en el derecho penal* (Mexico City: Ed. Coyoacán, 2011).

**3** Secretaría de la Defensa Nacional, response to request for information, folio 0000700078821, February 17, 2021.

**4** Secretaría de la Armada, response to request for information, folio 0001300032021, February 17, 2021.

**5** Guardia Nacional, response to request for information, folio 2800100021321, February 17, 2021.

**6** United Nations, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, A/HRC/26/36/Add. 1.

**7** United Nations, Report of the Special Rapporteur on Enforced Disappearances, A/HRC/19/58/Add.2, par. 16, 17, and 76; CED/C/MEX/CO/1, par. 10 and 27.

**8** United Nations, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/28/68/Add.3, par. 23 and 32, 2014.

**9** OEA/Ser.L/V/II, December 31, 2015, par. 27, 11, 61, 63, 66, 105, 160, and 192 to 214; CCPR/C/MEX/CO/6, par. 22.

**10** Statement by the UN High Commissioner for Human Rights, Michelle Bachelet, regarding her visit to Mexico, April 9, 2019.

**11** Statement by the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, regarding his visit to Mexico.

**12** Figures from the Registro Nacional de Personas Desaparecidas y No Localizadas as of October 18, 2021.

**13** 2006 to 2019.

**14** Ministry of National Defense, response to request for information, folio 000070d0078821, February 17, 2021.

**15** Secretaría de la Armada, response to request for information, folio 0001300032021, February 17, 2021.

**16** Guardia Nacional, response to request for information, folio 2800100021321, February 17, 2021.

**17** Programa Nacional de Derechos Humanos, published in the *Gazeta Oficial de la Federación* on December 10, 2020.

**18** Plan Nacional de Desarrollo 2019-2024, published in the *Gazeta Oficial de la Federación* July 12, 2019.

**19** Stenographic transcript of President Andrés Manuel López Obrador's morning press conference, October 23, 2019.

**20** Stenographic transcript of President Andrés Manuel López Obrador's morning press conference, December 11, 2019.

**21** Stenographic transcript of President Andrés Manuel López Obrador's morning press conference, October 23, 2019.

**22** Decree amending, adding, and abrogating sundry provisions of the Mexican Federal Constitution regarding the National Guard. Published in the *Gazeta Oficial de la Federación*, March 26, 2019.

**23** Secretaría de Defensa Nacional.

**24** Article 129 of the Constitution states that in peacetime the armed forces may only conduct activities pertaining to military discipline.

**25** Centro de Investigación y Docencia Económicas, *Inventario Nacional de lo Militarizado*, Plataforma de Proyección de Datos Abiertos.

**26** Universitet Leiden-Grotius Centre for International Legal Studies. *La situación de la violencia relacionada con las drogas en México de 2006-2017: ¿Es un conflicto armado no internacional?* (Guadalajara / Mexico City: Instituto Tecnológico de Estudios de Occidente [ITESO] and Mexican Commission for the Defense and Promotion of Human Rights, 2019). Also see Chiara Radaelli. "Engaging with Drug Lords: Protecting Civilians in Colombia, Mexico, and Honduras," in *The War Report. Armed Conflicts in 2014*, (Oxford: Oxford University Press, 2014); Julie Lambin, "Mexico: Armed Gang Violence Sliding into Armed Conflict?" in

*The War Report. Armed Conflicts in 2017* (Geneva: Geneva University, 2017); and Andreas Schedler, *En la niebla de la guerra. Los ciudadanos ante la violencia criminal organizada* (Mexico City: Centro de Investigación y Docencia Económicas, 2015).

**27** On internal forced displacement in Mexico due to widespread violence, armed conflict, and/or human rights violations, see various CMDPDH studies: *Report 2017*, *Report 2018*, “Entre la invisibilidad y el abandono.” Also see María Cristina Díaz Pérez and Raúl Romo Viramontes, *La violencia como causa de desplazamiento interno forzado. Aproximaciones a su análisis en México* (Mexico City: Secretaría de Go-

bernación and Consejo Nacional de Población-Fondo de Población de las Naciones Unidas, 2019).

**28** Secretaría de la Defensa Nacional, “El Ejército Mexicano afecta la estructura de las organizaciones delictivas de los Carteles del ‘Golfo’ y ‘Pacífico,’” press release, October 24, 2021.

**29** As seen in the Mexican Army’s clashes with guerrillas in the 1970s or the Zapatista National Liberation Army in the state of Chiapas in 1994.

**30** Founded in 2017, *Seguridad sin Guerra* (Security Without War) is a non-profit formed by more than 300 civil society organizations, activists, academics, journalists, and human rights defenders.

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