

Security without Rights, or What Went Wrong with the National Security Accord?

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Isabel Miranda de Wallace and María Elena Morera, two of the main leaders of the civic movement against crime in Mexico.

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Mexico will remember 2008 as the most violent year of recent history. The second half of the year was particularly a showcase for situations that questioned the very capacity of the Mexican state to deal with crime and offer protection to its citizens. Emblematic cases were just the tip of the iceberg of the inefficiency, disorientation and even absence of public policies for dealing with insecurity.

In June of last year, a police operation designed for media impact at the News Divine disco ended the life of nine teenagers and three police officers, demonstrating that for the

Mexico City government, the fight against crime means repression, harassment and objectification of those it considers a security risk.¹ Only a month and a half later, the death of the son of an important businessman at the hands of his kidnapers made it clear just how blurry the dividing line is between security institutions and criminals and how easy it is for police at any level to be involved in criminal activities.² Last December, the death of the daughter of Nelson Vargas, a well-known athlete and former head of the National Sports Commission (Conade), was confirmed after an investigation, riddled with deficiencies, that had begun a year before when she was kidnapped by people working for her family. After agreeing to keep silent about this fact on the authorities' urging, in November, before the young woman's death was confirmed, her parents announced that they had already pointed the finger at the alleged kidnapers and that, despite this, the Attorney

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General's Office had done nothing to detain them.³ During the September 15 Independence Day celebrations, in Morelia, Michoacán's central Melchor Ocampo Plaza, a group of suspects allegedly involved with the Gulf of Mexico drug cartel threw two grenades into the crowd, killing eight and injuring dozens. This was the first violent act perpetrated by organized crime against the civilian population.⁴

As if all this were not enough, from July to December 2008, 10 public officials with posts in federal security institutions, among them, the head of and an assistant general director of the Attorney General's Office's Anti-Organized Crime Unit (SIEDO) and the former head of the Federal Preventive Police (PFP), were arrested and charged with collaborating with drug traffickers. By the end of the year, clashes among the cartels had taken a toll of 5,376 persons executed, almost 150 percent more than in 2007, and violence continued to spread to almost every state in the country.⁵

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In reaction to this situation, particularly given the visibility of the kidnappings victimizing nationally known figures, on August 30, 2008, a large number of people took to the streets to demonstrate their concern about the prevailing insecurity in the country. The result of that peaceful demonstration was an accord proposed to the nation committing federal, state and municipal governments, as well as the business community, the clergy, the media and civil society to 75 concrete actions.⁶ The authorities were given 100 days, until November 29, to report back on the results. In fact, frequently, that deadline was mixed up with the demand by a well-known businessman, the father of a kidnap victim murdered in early summer, in a speech before public security authorities, that they resign if they could not successfully carry out their work. "If you can't do it, resign," became the slogan of the citizens' movement for public safety.

The deadline came and went with very few reported results. In the midst of a highly publicized clash between the

Attorney General and the Ministry of Public Security, the Ministry of the Interior admitted that there was nothing to celebrate and that as long as there were dishonest police and public prosecutors, it would be impossible to talk about achievements in security issues. According to the figures announced at the meeting of the National Public Security Council, over those 100 days, kidnapping complaints dropped from 3.04 to 2.4 a day and 184 kidnap victims had been rescued and 795 kidnappers arrested; plus, in the previous two years, security spending had increased 85 percent.⁷ The conclusion from several different angles is that the results hoped for with such expectation were widely questioned.

What went wrong? The contents of the accord? The 100-day deadline? The government strategy and that of other sectors? Or, did organized crime simply win the war?

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In my opinion, the answer to all these questions is a resounding yes. The deadline failed. The contents of the accord failed. The strategy has failed and, in effect, organized crime has the advantage in the war the government has launched against it.

Despite its legitimate origins, the National Security Accord suffers from problems that should be underscored. On the one hand, it is a series of actions that, despite their individually being interesting, lack the content that would make them not only necessary, but also valid and feasible. The federal branches of government and local and municipal governments are asked to commit themselves to actions that today must be part of their obligations: accountability, transparency, evaluation and policy correction. But this happens in the absence of an overall vision that points to precise ways that these actions can be taken: what kind of security institutions are compatible with democracy; what profiles are required for public servants who would carry out the actions; how should security policies be made compatible with human rights, among other things.

For their part, the other sectors of society are required, in short, to promote respect for the law. But, here, a guiding discourse that would lead to a common understanding of what should be understood as *legality* is also absent. And the problem is that the possibilities range from simple respect for the law, usually proposed in *law-and-order* models, which turn anyone simply suspected of not respecting it

into an enemy of society, all the way to a position that assumes social co-responsibility for crime, its comprehension and dealing with its root causes.

There is also the absence of a program. In addition to the need for profound thinking about the matter of criminality, the accord lacks a program for each of the actions that make it up. And this is where the question of the 100 days becomes relevant. One hundred days is a matter of rhetoric. No successful reform can be achieved in the short term, or even the medium term. Although certain actions do need to be taken immediately, the results take longer to become visible. Successful experiences in fighting insecurity in the world take decades, with intermediate goals that must include viable indicators for their evaluation and eventual correction. Today's insecurity and criminal activities are phenomena that have come together gradually, over a period of years at the center of processes involving the market and the broadcast media. Thus, disarticulating them, or at least keeping them under control, also requires years. The accord, then, is the equivalent of products that promise dramatic weight-loss in a matter of days: if they work, the secondary effects can be fatal; if they do not work, they are a useless investment, fostering frustration and even, as seems to be the case, producing severe relapses.

All this is connected to the third issue: the strategy. Or perhaps we should say the lack of a strategy. While it is true that there have been achievements in the realm of capturing important members of the criminal organizations—in fact, in 2008, seven people allegedly involved at the highest levels of drug trafficking were arrested, among them Alfredo Beltrán Leyva, Jesús “El Mayo” Zambada and Eduardo Arellano Félix—the federal government's inability to stop the violence is explained by its reticence to accept the fact that the problem of organized crime has little to do with the law and a great deal more to do with the market. Just as has been happening over the last 30 years, the capture of drug kingpins has not lessened drug trafficking, but only spurred the reshuffling of the cartels and the functioning of the drug trade.⁸ The federal government's strategy has therefore had no impact on the illicit drug market; what it has done is to generate important human rights violations. It is not by chance that the Mexican army and the Attorney General's Office continue to be the bodies most complaints are brought against before the National Human Rights Commission for abuses committed in the name of the fight against drug trafficking.



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As long as civil society, the business community, the clergy and the media's myopia about criminal activity and organized crime is not overcome, they are condemned to foster the violence they so fear. The phenomenon of criminal activity is not alien to social stratification or discrimination, class prejudice and economic, political and class opportunism. Society (the business community, the clergy, the media and social relations in general) shares a measure of co-responsibility for crime. We tend to think that locking people up is the best answer to insecurity, without thinking about how much of that insecurity has a circumstantial component, just like what happens in the sphere of work, education, health and survival in general, something which tens of millions of people are submerged in.

Finally, it must be recognized that organized crime has a noteworthy advantage over the state. The same day that the results of the 100 days were announced, 33 people were executed at different points throughout the country. What this means is that crime always takes advantage; that is its reason for being. This is why the state cannot—and should not—stoop to the same level. The logic of the war on crime has generated responses that, despite being understandable, nevertheless are primitive, intuitive, and, in most cases, even counterproductive. By turning crime policy into a *fight against crime*, the strategy limits itself to a test of strength with the criminals: reducing penal and procedural guarantees, increasing sentences, giving more powers to the police and investigative prosecutors, creating states of emergency in jails and militarization. These policies' obvious failure has increased the fear of crime and society's indignation over impunity, which in turn increase severity and vindictive feelings in society; calls from society and political parties for life sentences and the death penalty; indifference and sometimes support for mistreatment and torture of alleged criminals; and, in extreme cases, the exercise of justice at the hands of individuals. If we add to this the human rights violations during some police operations in the form of lack of due process and violence as the order of the day in jails—which, by the way, have become a job pool for organized crime—what



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clearly emerges is that today's crime policy not only does not reduce violence, but that it is even the source of new legal, institutional, structural, *de facto* violence added to that which already exists.

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With this panorama, the priority for efficient public policy is undoubtedly the necessary reduction of levels of violence. Society and the state must join together in actions that are mutually demanding and committed to achieving this end. This is the point where security converges with democracy and the culture of rights. Reducing violence serves the objective of preserving fundamental rights, which is none other than the very objective of the constitutional rule of law.

In accordance with this view of things, the commitment implies both the state and individuals doing everything in their power to reduce the violence, or at least not doing anything to increase it. This demand presupposes transparency, accountability and the feasibility of monitoring and sanctioning both the state and individuals, in the framework and on the level on which the commitment to rights must be assumed. It is the state's duty to define the security model that guarantees fundamental rights. This means that when talking about security, it must not only refer to the risks created by criminals, but also to anything that represents a threat to fundamental rights, to property, physical safety and life, as well as to a healthy environment, a decent life, health, education and work, to basic satisfiers and to culture. In accordance with this view, it is fundamental to define the functions this model must cover, broadly speaking, to achieve the desired ends: first of all, the prevention and reduction of violence (both the violations of fundamental rights and crime, and the violations that produce and update institutional violence) as well as their investigation and punishment; in the second place, the processes implicated in the model must be legitimized; and, on a third level, efforts in planning, evaluation and accountability must be coordinated. At the same

time, it is indispensable to harmonize all the sub-systems, norms, bodies, policies and programs whose objective is to channel the model's functions toward the goals of access to, the guarantee of and the protection and defense of fundamental rights, as well as to establish the conditions needed for forging a responsible citizenry.

It is the individual's responsibility to commit him/herself to reducing inequality through responsible compliance with norms, and, if necessary, the sanctions for not following them.

A myriad of possible concrete, immediate solutions that the state and society can individually or jointly carry out fit into this framework of these general long-term but also ambitious considerations. This can begin to build societies based on solidarity that are, as a result, safer. In Mexico, conditions exist to develop approaches and proposals with a rights-based perspective that not only do not oppose security, but are in and of themselves a guarantee of security in the face of any risk threatening us. Paradoxically, the pre-condition for beginning these changes is taking the risk of focusing on crime with a broader lens, broad enough to show that the state and society are jointly responsible for the problem, which, therefore, we are jointly responsible for solving. ■■■

NOTES

¹ Comisión de Derechos Humanos del Distrito Federal, *Informe especial en torno a las violaciones a derechos humanos con motivo de los hechos ocurridos el 20 de junio de 2008 en la discoteca News Divine* (Mexico City: CDHDF, 2008).

² In August 2008, the body of Fernando Martí Haik, son of businessman Alejandro Martí, was discovered 53 days after he had been kidnapped by a group known as the Band of the Flower. Although some suspects have been arrested, among them former local policemen and one Federal Police agent, the case continues open and unsolved. Alejandro Martí recently announced the creation of a non-governmental organization dedicated to promoting public safety.

³ Silvia Vargas Escalera, the daughter of athlete and businessman Nelson Vargas, was kidnapped in late 2007. In December 2008, the Attorney General's Office confirmed that a body found at a criminal safe-house in Mexico City's Tlalpan ward was hers.

⁴ See, among other newspaper articles, "Atentado en grito de Morelia: 3 muertos," by Rafael Rivera, *El Universal* (Mexico City) September 16, 2008, p. 1; and *Anuario 2008*, Special supplement of Mexico City's *Reforma* newspaper, January 2009, from p. 8 on.

⁵ *Ibid.*

⁶ Acuerdo Nacional por la Seguridad, la Justicia y la Legalidad, available at http://www2.scjn.gob.mx/informe2008/PDF1/CJF_ANSJL.PDF.

⁷ *Excelsior*, November 29, 2008, p. 1.

⁸ Luis González Placencia, "Criminalidad y derechos: paradojas en el contexto de la interacción contemporánea entre Estado, individuo y mercado," E. Bodegón et al., *Contornos y pliegues del derecho. Homenaje a Roberto Bergalli* (Barcelona: Anthropos, 2006), pp. 371-385.