

The Temporary Militarization (In) Of Public Security In Mexico: Tension Between Security And Human Rights

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Abstract

In Mexico, The Constitution Has Been Reformed To Temporarily Authorize The Armed Forces' Action In Peacekeeping Police Duties. On The Basis Of This, On 11 May 2020, The Presidential Decree Ordering The Army To Participate In Public Security Work Throughout The Country Was Issued For Up To 5 Years.

The Research Demonstrates Through An Analytical Method That The Army's Public Security Work Is, Unfortunately, In The Light Of The Criteria Of The Inter-American Court Of Human Rights And The Supreme Court Of The Nation A Constitutional Normality Of A Transitional Nature In Mexico. In This Context, An Important Challenge For Democratic Institutions Is To Defend The Fundamental Freedoms Of The Citizen Against Possible Excesses By The Power Of Constitutional Reform. This Leads Us To Conclude That The Absence Of A Liberal Constitutional Identity That Builds A Debt Forbidden To That Power Of Reform, Further Guaranteed By An Institution Entitled To Control It, Is A Threat To Human Rights In Mexico.

Keywords:

Constitutional Reform. Human Rights. Armed Forces.

I. State Of The Art On The Militarization Of Citizen Security In Mexico

The Punitive Populism That Follows Today By The Mexican State Is Armed With The Alarming Rates Of Violence That Have Increased Exponentially For A Decade As A Result Of The Phenomenon Of Organized Crime And The Unstable Political Situation That Prevailed In The Country. The Intervention Of The Mexican Army In Internal Security Work Is An Exemplifying Element Of This Criminal Maelstrom Located In What Could Be Recognized In Terms Of The Enemy, As The Criminal Law Of The Enemy, Who Has Exposed The Need To Protect Certain Legal Assets Under Conditions Of Exceptionality. This Extraordinary Condition Plays A Leading Role In The Study Of This Phenomenon, Since The Enemies Of The State Would Be The Main Factors In Justifying An Over-Punitive Criminal Policy And Constitutional Adequacy That Are In A Clear Landscape Of Constitutional Exceptions.

For More Than Three Years, The Violence Generated By Organized Crime In Mexico Has Continued To Increase Year After Year. The Last Three Presidents Of The Republic, Each Of Political Parties Of Absolutely Different Ideologies, Designed And Implemented Different Strategies To Stop The Advancement Of Criminal Groups. However, It Has Been The Erosion Of Social Trust In The Police Of The Three Government Orders, Due To The Lack Of Sufficient Resources, Training And Even Cases Of Corruption Among Its Members, Which Has Justified The Need For The Mexican Army To Participate In Public Security Work, Also Having Extensive Social Support, As Polls Showed That 78% Of Mexicans Endorse The Army's Public Security Work During The Next Five Years.

Since The Mid-1990s, The Mexican Legislature Decided Not To Amend The Constitution, I.E., It Did Not Introduce Any Kind Of Exceptionality, Much Less Legislative Or Judicial Controls. In 1996, Then-President Ernesto Zedillo Issued The Federal Law Against Organized Crime (Lfdo), Which Set Out An Alternative And Novel Criminal Policy

To Ensure Effective Action Regarding The Investigation, Prosecution And Trial Of An Enemy Of Such Magnitude. For These Reasons, A Number Of Exceptions To Guarantees For Human Rights, Which Will Be Presented As A Response To The Practical Impossibility In Combating Dismembering The Intricate Criminal Organizations.

In Addition, The Federal Executive Branch At The Time Presented A Reform Initiative To The Federal Organized Crime Act, Prioritizing The Fight Against Organized Crime And The Struggle To Topple The Positions Of Power That Had Been Obtained In Recent Years, Through Mechanisms Such As Federation Armed Forces Agreements With Local Units Increasing Civilian And Military Forces, As Well As Substantial Reforms To Support The Country's Structural Changes. In This Way, The State Gradually Adopted An Aggressive State Criminal Policy, Seeking To Achieve Effectiveness In Prosecuting Crimes Of Reactive Organized Crime And Thus Would Be Progressively Justified

In This Context, The Enemy Is Organized Crime, As Stated By The Former Un Secretary-General As "The Uncivil Society." Organized Crime Is A Crime That Affects All Legal Spheres And All Social Spheres Without Discrimination, Putting At Risk The Social Welfare Related To The Proliferation Of Conflicts, Poverty And Even Environmental Deterioration, Thus Setting Up An Overriding Need For Its Combat Through The Constitutional Mechanisms Available To The State. In The Convention Against Organized Crime, Signed And Ratified By Mexico On 4 March 2003, The International Community Addressed This World-Class Problem By Observing The Serious Nature Of Crimes Equating To Organized Crime, As Citizens Are Killed, Injured, Sick, Kidnapped, Treated And In Perpetual In Order.

Faced With This Challenge Not Only In Mexico, But In Liberal Democracies In General, The Government Was Reluctant To Give In To The Pressures Of Perpetrators Of Inhuman Acts Against Its Citizens. Taking Terrorism (Another Arm Of Organized Crime) As An Example, The United Nations Security Council Warned In Its Resolution 1373 (2001) That All States: "2.B) Take The Necessary Measures To Prevent The Commission Of Acts Of Terrorism, In Particular By Warning Other States As Soon As Possible Through The Exchange Of Information." In This Context, The Alarming Situation In The Country, Forced The Federal Government To Use The Dn-Ii Plan, Whose Main Objects Are: Combating Drug Trafficking (Constitutionally In Support Of The Office Of The Attorney General Of The Republic), Counterinsurgency, I.E. Support For Public Security Forces, Provided That The Respective Convention Exists With The Federal, State And/Or Municipal Units And Is Indicated In The Respective Actions Of Any Of The Members Of The Mexican Army.

At Its National Level, The Fight Against Organized Crime In Mexico Began In Fact With The Implementation Of Several Agreements Between The Signatory Countries Of The North American Free Trade Agreement (Nafta) As A Result Of The 9/11 Attacks. Such Would Be The Case With The Integration Of Northern Command (2002) And The 2005 North American Alliance For Security And Prosperity (Aspan)." However, It Will Be The Continued Failure Of The Country's Police Corporations That Has Forced The Structures And Functions Of Public Security Institutions To Be Modified - Always Under The Aid Of The Armed Forces - Until We Reach What We Can Call The Temporary Constitutionalization Of The Army's Participation In Public Security Work.

As You Will See, The Armed Forces' Action In Combating Organized Crime Merited A Pronouncement By The Inter-American Court Of Human Rights, Setting Interpretative Limits On Such Action In Peacetime. The Same Was Done In The Supreme Court Of Justice Of The Nation When Invalidating The Internal Security Act Enacted By President Peña Nieto. And Currently The Supreme Court Is Considering Various Challenges Against President López Obrador's Decision To Have The Armed Forces To Assist The National Guard In His Duties.

The Institutional Engineering Forged Since The Adoption Of The Mexican Constitution Of 1917 Sought A Political System That Self-Contained More By The Effectiveness Of Political Controls Than By Those Of A Legal Nature. Only Until Recent Times Have The International And National Courts Had Been More Relevant In Terms Of Bringing State Decisions Back To The Constitution. However, As Will Be Demonstrated In This Article, The Constitutional Reform That Temporarily Militarizes Public Security In Mexico Has Highlighted The Formal And Material Limits That The Defense System Has To The Constitution To Avoid Changes To The Model Of Peaceful Coexistence That It Itself Enshrines, And In Any Of The Matters It Regulates.

II. Constitutional Framework On The Aims Of Citizen Security

The Preservation Of Social Peace And Respect For Human Rights Is The Essence Of Every Constitutional State. To Achieve This, The Constitution Establishes A Catalogue Of Fundamental Rights And A Competition System That

Provides Each Institution With Specific, Fiscalized And Control-Controlled Functions. In Addition, The Constitution Also Provides For Mechanisms For The Control Of Laws And Acts Of Government To Ensure, Precisely, Its Own Supremacy As A Structuring Principle Of The Exercise Of Political Power, In Order To Ensure The Freedom Of The Citizen. To Quote This Article:

However, For Two Decades, Both The Catalogue Of Rights And The Competition System Of The Mexican Constitution Have Been Modified On Multiple Occasions With The Purpose Of Providing Comprehensive Solutions To The Problem Of Insecurity That Lays Out The Country Since Then, In Which The Number Of Victims For Intentional Homicides Is Counted In More Than 200 Thousand Deaths From Violent Acts , Many Of Them Associated With The Presence Of Organized Crime Groups Engaged In Activities Such As Drug Trafficking, Undocumented Trafficking, Extortion And Kidnapping. Accordingly, The Last Four Presidents Of Mexico As Supreme Commanders Of The Armed Forces Have Ordered The Participation Of Those In Functions Proper To The Police Forces, That Is, In Public Security Duties; While The Last Three Presidents More Or Less Successfully Promoted Institutional Reengineering To Give Such Action Legitimacy.

Importantly, For Some Specialists, This Reengineering Is Originally Due To Bilateral Agreements Between Mexico And The United States Of America; Indeed, The Beginning Of The Fight Against Organized Crime From A National Dimension Begins With The Integration Of Northern Command (2002) And The 2005 "Alliance For Security And Prosperity Of North America (Aspan)" At The Request Of The United States Following The Terrorist Attacks Of September 11. But After These Non-Binding Declarations With No Legal Value, The Fight Against Organized Crime Continued With Legal Changes To Reconfigure The Powers And Organization Of Police Forces In The Country, As Well As Some Attempts At Reforms To Legalize The Armed Forces' Actions In Their Own Public Security Efforts.

Initially, The Secretariat Of Public Security Is Created As An Exclusively Crime Prevention Authority, Which A Security Specialist Called "The First And Most Important Public Safety Policy Undertaken By President Vicente Fox."

Subsequently, The Fight Against Organized Crime In The Country Would Intensify "To The Point Of Being Totally Confused With The Problem Of Insecurity And Organized Crime, And Becoming The Highest Priority For The Federal Government."

In January 2007, President Calderón Paid A Visit To The State Of Michoacán Dressed In Military Clothing And Ordered The Deployment Of The Mexican Army To Contain The Criminal Activities Of Organized Crime In The Country. Symbolically, That Act Represents The Moment When The President Declares War On Drug Trafficking. Subsequently, In The Face Of The Escalation Of Violence In The Country, In 2009, President Calderón Disappeared To The Federal Preventive Police And Replaced It With Another So-Called Federal Police, But Would Now Not Only Have Preventive Powers, But Also An Investigation Of Crime Under The Constitutional Reform Of June 2008. Subsequently, During The Administration Of President Peña Nieto (2012-2018), He Also Ordered Almost Throughout The Six-Year Period The Participation Of The Army In Public Security Work, That Is, To Perform Functions That Constitutionally Fall To The Country's Civilian Police. Finally, Today The Government Of President López Obrador (2018-2024) Continues To Face Organized Crime With The Support Of The Armed Forces, With The Newly Created National Guard, Which Occupies The Place Of The Defunct Federal Police, But Unlike Its Predecessors Makes It Entitled Directly From The Constitution.

The Mexican Constitution In Article 21 Provides That "Public Security Is A Function Of The State In Charge Of The Federation, The Federal Entities And The Municipalities... And That Public Security Institutions, Including The National Guard, Will Be Civil, Disciplined And Professional In Nature. The Public Prosecutor's Office And The Police Institutions Of The Three Government Orders Must Coordinate With Each Other To Fulfill The Purposes Of Public Security And Form The National Public Security System." Moreover, Article 129 States That "In Times Of Peace, No Military Authority Can Perform More Functions Than Those With Exact Connection To Military Discipline". It Is Therefore Clear That The Constitution Not Only Excludes The Armed Forces From Public Security Work In The Country, But Instead Obliges Them To Remain Quartered As Long As There Is No Belligerent Situation. In This Way We Can Advance That The Purpose Of The Constant Legal Reforms To Give Legal Certainty To The Actions Of The Army In Public Security Work Typical Of The Police, In The Face Of The Serious Crisis Of Violence And Insecurity In Mexico, Was Rightly To Protect Members Of The Armed Forces From Possible Demands For Civil Or Criminal Responsibility, Since The Constitution Does Not Give It Powers To Carry Out Such Tasks.

A First Attempt At The Constant Legal Reforms Previously Identified Occurred In 2010 In The Senate Of The Republic For Its Constitutional Powers. In That Year, Amendments Were Proposed To The National Security Act To

Establish That The Armed Forces Could Intervene In Social, Labor, Electoral Or Political Conflicts When They Became A Threat To National Security. In Addition To The Above, It Established The Concept Of "State Of Affection" As Justification For Granting The President Of The Republic The Power To Make Such A Declaration In Peacetime In Some Region Of The Country Threatened By Violence Or Some Kind Of Disaster. In Addition, Individual Guarantees (Fundamental Rights) Could Be Suspended And The Armed Forces Intervened Accordingly. The Proposal Was Not Approved Despite The Strong Support Of The Main Opposition Party In The Senate; Paradoxical, Moreover, Given That In 2011 The Most Important Constitutional Reform On Human Rights Was Carried Out In Recent History In Mexico.

Subsequently, In 2017, During The Management Of The Then President Peña Nieto, The Internal Security Act Was Passed, In Which A Procedure Was Designed Through Which The President Had The Power To Issue A Declaration Of Protection To Homeland Security. The Act Noted That In The Presence Of Threats That Posed A Serious Danger To The Integrity Of Individuals Or The Functioning Of Fundamental Government Institutions, The President Had The Power To Order Immediate Action By The Armed Forces. However, The Homeland Security Act Was Declared Unconstitutional By The Nation's Supreme Court Of Justice One Year After Its Adoption, Considering That It Was Intended To Normalize The Use Of The Armed Forces In Matters Of Public Security, Which Is Contrary To The Constitutional And Conventional Order.

The Last Attempt To Legalize The Participation Of The Armed Forces In Public Security Efforts Has Been Achieved With The Constitutional Reform Of 26 March 2019. The Objective Of This Change To The Constitution Was To Modify The Function And Shaping Of The Historical Institution Previously Attached To The Local Area Called "National Guard", To Become Now A Corporation Of Police Under The Command Of The Secretariat Of Public Security Of The Federal Government. According To Constitutional Article 21, The National Guard Aims To Safeguard People's Lives, Freedoms, Integrity And Heritage, As Well As Contribute To The Generation And Preservation Of Public Order And Social Peace, But Also Makes It Perfectly Clear That It Is A Civil Public Security Institution.

This Constitutional Reform Has Been Controversial In Two Moments. The First Was During The Legislative Process For Approval, Given That Specialists, Opposition Political Parties And Even International Bodies Considered That The Creation Of This New Police Institution Actually Covered Up The Creation Of A Corporation Of Castrense Court, Since The Government's Proposal Was To Be Constituted With The Elements Of The Former Federal Police, In Addition To The Members Of The Military Police And The Naval Police , Which Would At All Times Preserve Their Respective Ranks And Performances. The Second - And Most Momentous - Occasion Has Occurred Recently In Connection With The Issuance Of The Presidential Decree Of 11 May 2020 Authorizing The Participation Of The Army In Public Security Work Throughout The Country For Up To 5 Years, All Based On The Fifth Transitional Article Of The 2019 Constitutional Reform.

Unlike Previous Strategies To Legalize The Actions Of The Armed Forces In Public Security Work, Such As The Attempt To Reform The National Security Act, Or The Short-Lived Force That Had The Internal Security Act, Invalidated By The Supreme Court, That Of The Government Of President López Obrador Seems To Have Been The Most Effective, By Directly Reforming The Constitution. This Last Reform Created A New National Police Force That, By Constitutional Imperative, Allows The Institution To Be Assisted By The Armed Forces For As Long As The Institution Requires For Full Implementation. This, As Can Be Inferred, Involves A Number Of Issues Directly Related To Constitutional Reform In Particular, But Also To Others Other Than Might Possibly Modify, Both The Catalogue Of Fundamental Rights And The Constitutional Powers Of The Bodies Or Authorities Of The Mexican State.

Some Of The Issues Referred To By The Supreme Court Of Justice Has Already Answered On Previous Occasions, But Others Are Pending Pronouncement, Such As: Is The Provision Contained In Article Fifth Transitional Of Constitutional Reform Of 26 March 2019 Constitutionally Valid, Enabling The President To Have The Permanent Armed Force In Public Security Duties In An Extraordinary Manner , Regulated, Audited, Subordinated And Complementary, For The Next Five Years To The Entry Into Force Of This Decree, While The National Guard Develops Its Structure, Capabilities And Territorial Implementation, In Terms Of Constitutional Article 129? Can The Scjn Carry Out A Constitutional Review Of The Constitutional Reform Of 26 March 2019? Is The Participation Of The Armed Forces In Security Work In Accordance With The Parameter Established By The Inter-American Court Of Human Rights? Finally, Are There Formal Or Material Limits For A Constitutional Reform Procedure In Mexico?

Are There Intangible Clauses In The Mexican Constitutional Order That Prohibit Conflicts Between The Constitutional Norms Themselves Following Otto Bachof's Theory Of Unconstitutional Constitutional Norms?

III. Tension Between The Principles Of Citizen Security And Respect For The Conventional And Constitutional Legal Framework

The First Question Lies In The Relationship Between The Constitution And The Transitional Provisions Contained Therein; In Other Words, Whether Or Not The Transitional Articles Of Constitutional Reform Are Part Of The Constitution Itself. On This, The Supreme Court Of Justice Itself Has Established That The Transitional Rules Are Part Of The Constitution And Its Content Is Aimed At Clarifying Circumstances Of A Temporary Nature, Related To Aspects Such As The Effectiveness, Validity, Application, Clarification, Repeal And Abrogation Of The Rules Themselves. In This Order Of Consideration, The Supreme Court Has Determined That The Amparo Judgment Is Inappropriate Against The Transitional Articles Of The Decrees That Reform The Constitution Itself, Since They Are Considered Part Of The Order Itself, Regardless Of Whether Its Content Is Directed Only To Regulating The Transition Between The Previous And The New Rule, Or Incorporates Its Own Substantive Or Adjective Content.

In Connection With The Above, One Might Wonder Whether A Constitutional Reform Can Be Reviewed By The Country's Highest Constitutional Court. The Answer Is No. In 1996 The Supreme Court, In Resolving The Trial Known As The Camacho Case, Considered That At Least In Principle The Constitutional Reform Procedure Was Challengeable Through The Amparo Trial; However, It Was Clear That This Was Not A Position Broadly Supported By The Members Of The Court, As The Decision Was Approved Only By Six Of Its Eleven Ministers. However, On Later Occasions, The Supreme Court's Position Was Radicalized On The Non-Admission Of Any Means Of Judicial Review With Respect To Reforms Constitutional. He Began Building His Doctrine By Resolving Constitutional Dispute 82/2001, From Which Two Jurisprudence Theses Were Derived Which Make It Crystal Clear That The Reforming Power Is A Sovereign Body That Performs An Exclusively Constitutional Function, Not Subject To Any External Control, Since In The Very Complex Formation Of The Body - Composed According To Article 135 By Both Houses Of Congress Of The Union And The Simple Majority Of The Legislatures Of The States Of The Federation - And In The Attribution Of Its Own Function, Is Found Its Own Guarantee.

Consequently, From The Pronouncements Of The Supreme Court Mentioned Above, It Can Be Collected That The Transitional Provisions Of The Constitutional Reform That Empower The President To Have The Use Of The Armed Forces For Up To Five Years In Labor Constitutionally Entrusted To The Newly Created National Guard, Are An Integral Part Of The Constitutional Order Itself; Moreover, Those Transitional Rules, Like Those That Were The Subject Of The Reform Itself, Are Presumed Constitutionally Valid, While It Was The Work Of A Sovereign Body That Is Not Capable Of Being Reviewed By Any Constituted Power, Such As The Supreme Court.

The Participation Of The Armed Forces In Public Security Work Has Been The Subject Of Pronouncement By Both The Supreme Court And The Inter-American Court Of Human Rights. For More Than Two Decades, The Supreme Court Has Considered That The Armed Forces Have Constitutionally Empowered To Perform Public Security Work. It Was Resolved By Analysing Action Of Unconstitutionality 1/96, From Which A Series Of Jurisprudence Theses Were Detached That Guided Its Doctrine. The Main Premises In All Of Them Would Be: It Is Legitimate To Participate In Cases Where The Competent Authorities Require Their Assistance; Subordinate To Civilian Authorities Who Require Their Support; A Declaration Of Suspension Of Fundamental Guarantees Is Not Indispensable; That When There Is A Situation That Raises A Right-Handed Fear For Its Characteristics, And In The Face Of The Imminence That The Situation Is Aguided, It Is Justified To Have The Strength Of The State, And; Submit To Constitutional Provisions.

However, One Of The Ongoing Discussions Not Only Internally, But At The Latin American Level Was The Exceptional Nature Of The Measure Implicitly Underlying Article 27 Of The American Convention On Human Rights And Which Is At Over Tension With The Issue Of The Participation Of The Armed Forces In Public Safety Work. By Referring To The Issue Of The Exception, We Are Referring To Cases Of Disturbance Of Peace Or Internal Order, Catastrophe Or Serious Circumstances Affecting The Life Of The Nation. States Of Exception Are Provided For In Article 27 Of The American Convention On Human Rights Authorizing The Suspension Of Guarantees In Cases Of War, Public Danger Or Other Emergency That Threatens The Independence Or Security Of The State For The Time Strictly Limited To The Requirements Of The Situation And Provided That Such Provisions Are Not Inconsistent With The Other Obligations Imposed On Them By International Law And Do Not Involve Any Discrimination Founded Race, Color, Sex, Language, Religion Or Social Origin.

Taking Into Account The Jurisprudence Of The Inter-American Court Of Human Rights (Coidh), It Should Be Emphasized That "Within The Principles Of The Inter-American System, The Suspension Of Rights Cannot Be Disassociated From The Effective Exercise Of Representative Democracy Referred To In Article 3 Of The Oas Charter. This Observation Is Particularly Valid In The Context Of The Convention, The Preamble Reaffirming The Intention Of Consolidating On This Continent, Within The Framework Of Democratic Institutions, A Regime Of Personal Freedom And Social Justice, Based On Respect For The Essential Rights Of Man". This Is Of Great Relevance Since It Is In The Face Of Exceptionality That The Strength Of The Institutions And The Autonomy Of The Authorities Responsible For Administering Justice Can Be Tested, Recognizing That Even In Extreme Cases The Right Cannot Be Reversed In Order To Make The State (Or The Reason Of State) Prevail.

In This Regard, The Iachr Has Established That It Is "Absolutely Necessary To Emphasize In The Extreme Care That States Must Observe When Using The Armed Forces As An Element Of Control Of Social Protest, Internal Unrest, Internal Violence, Exceptional Situations And Common Criminality. (...) States Should Limit To The Maximum The Use Of The Armed Forces For The Control Of Internal Unrest, Since The Training They Receive Is Aimed At Defeating The Enemy, And Not The Protection And Control Of Civilians, Training That Is Typical Of Police Authorities. The De-Stalin Of Military And Police Functions Should Guide The Strict Fulfilment Of The Duty Of Prevention And Protection Of Rights At Risk, By The Internal Authorities."

Likewise, The Inter-American Court Of Human Rights, Upon Hearing The Alvarado Espinoza And Otros Vs. Mexico Case, Also Considered The Actions Of The Armed Forces In Citizen Security Tasks To Be Legitimate. In That 2018 Judgment, The Inter-American Court Found That The Increase In The Army's Participation In Citizen Security Work Has Been A Constant Pattern In Mexico Since 2006. The Use Of The Army Became A Common Practice Through The Implementation Of The So-Called "Joint Operations", In Which Police And Military Were Involved. However, This Practice Did Not Guarantee The Fulfilment Of Certain Safeguards For The Proper Intervention Of The Army In These Tasks.

Therefore, As A General Rule, The Court Reaffirmed That The Maintenance Of Internal Public Order And Citizen Security Should Be Primarily Reserved For Civilian Law Enforcement. However, Where Exceptionally Involved In Security Tasks, The Participation Of The Armed Forces Must Comply With The Following Standard: (A) Extraordinary, So That Any Intervention Is Justified And Exceptional, Temporary And Restricted To What Is Strictly Necessary In The Circumstances Of The Case; (B) Subordinate And Complementary To The Work Of Civil Corporations, Without Their Work Being Extended To The Powers Of Judicial Or Judicial Or Ministerial Police Institutions; C) Regulated, Through Legal Mechanisms And Protocols On The Use Of Force, Under The Principles Of Exceptionality, Proportionality And Absolute Necessity And In Accordance With The Respective Training In The Matter, And (D) Audited, By Competent, Independent And Technically Capable Civil Bodies.

Thus, It Is Impossible To Say That Public Safety Work Generally Corresponds To Police Forces. According To The Constitutional Article 21 At The Federal Level, This Work Rests With The National Guard. However, In View Of The Situation Of Insecurity Due To Organized Crime, Both The Supreme Court Of Mexico And The Inter-American Court Have Built A Line Of Jurisprudence That It Considers A Concept Of Broad Citizen Security, In Which The Armed Forces Emerge With Extraordinary Character. In Fact, On The Other Hand, Their Participation Is Rather Ordinary In Nature. However, By Constitutional Mandate, And Once The President Has Issued The Decree Of May 11, 2020, The Armed Forces' Actions In Police Security Work Is Temporarily Constitutional.

IV. Conclusion: Formal And Material Limits Of Constitutional Reform On Internal Security

Constitutional Reform On The National Guard Is A Clear Example Of Poor Constitutional Norms, As It Was The Establishment Of Concrete Clauses That Leave A Fairly Small Margin For The Judge To Determine Whether The Incorporation Of The Militia Into Internal Security Work Is Justified Or Not. However, This Reform Also Fills An Unobjectionable Legislative Vacuum That Had Been Going On For Just Over Two Decades On The Situation Of The Armed Forces In Internal Security Work. In This Sense, In Establishing The Legislature's Proposal For The Concretion Of Rules, It Adapts To What The Doctrine Has Mostly Delineated And Suggested To The Legislature In Order To Avoid Arbitrary Margins Of Indeterminacy, Inaccuracy Or Vagueness Of Constitutional Rules.

Consequently, In Accordance With The Capacity Of Muller, Constitutional Indeterminacy Is Realized On The Basis Of The Reduction Of Margins Of Discretion. According To This, The Provisions Of Constitutional Law Relating To Internal Security Should Not Be Treated As Mere Requirements, But Must Be Specific In Relation To The Particular Case. The Solution To This Complex Problem Of Regulatory Indeterminacy Requires Control Parameters That Avoid

The Emptying Of The Rules Themselves, Making The Rights And Freedoms Compatible Through Specific Weighting Judgments, That Is, Adjust The Parameters Of Action Of The Armed Forces To Respect And Guarantee Fundamental Rights And Freedoms For Example, Or Restrict The Military Jurisdiction To Situations Inherent In Their Performance Or Exercise As Castrense Elements.

To Guarantee These Citizens' Rights And Freedoms It Is Essential To Configure Constitutional Limits But Also To Establish Restrictions On The Participation Of The Armed Forces Through The Principle Of Constitutional Reserve. This Principle Is Identified As One Of The Undisputed Pillars Of The Modern Rule Of Law, As Well As Obeying The Principle Of Division Of Powers As A Guarantee Of The Democratic And Non-Arbitrary Exercise Of Public Power. Moreover, The Subject Matter Reserved Refers To All Those Rules Other Than The Law, So It Implies That The Legislature Must Establish Regulation Itself. The Aim Is That Regulation Is Subject To Legislative Debate, Which Gives Legitimacy And Guarantees Democratic Pluralism.

However, The Participation Of The Army Through A Reform To A Transitional Article Of The Constitution, In The Light Of The Theory Of Immanent Limits, Is Highly Criticized. This, Since This Theory Holds That The Realization Of Constitutional Rules Occurs From Within, Which Can Occur Through The Weighting Of Assets Carried Out By The Legislator, In This Case, The Reform Of The Permanent Constituent Was Not So. If We Follow This Theory, There Is No Possibility Of Reducing The Content Of A Constitutional Rule Without Having Its Essential Content. Therefore, Those Immanent Limits Which Are Coupled With The Participation Of The Castrense Force In Internal Security Work Must Be Established Very Finely.

The Previous Hypothesis Is Supported As It Has Been Part Of A Kind Of Constitutional And Democratic Normality In Latin American Countries To Intervene In The Army In Internal Security Work. But Above All, When The Permanent Constituent Power Acts As An Advocate Of This Essential Content Of The Fundamental Rules Through The Principle Of Constitutional Reserve, Without Any Limit To Constitutional Mutability, Developing Or Regulating Constitutional Rights Or Goods From Or Through The Fundamental Law Itself. The Development Of A Rule Or Constitutional Through Rules Is Common In The Mexican Constitution And Regulatory (Organic) Laws, Where In Large Part The Essence Of The Essential Content Of The Standard Is Distorted, Through The Emptying Of It Over-Regulation By Over-Regulating Its Exercise Or Denaturalizing It Through The Excessive Development Of Requirements For Its Exercise.

Moreover, As Otto And Pardo Argue To Lead The Interpreter To Extreme Relativization On Deciding That A Limit Is Justified By The Protection Of A Constitutional Good, Then Denying The Possibility Of The Limit From The Essential Content Is As Much As Admitting The Contradictory Nature Of The Constitutional Rules At Stake And Ignoring That Which Provides Protection To The Good By Sacrificing It To The Right. This Position Is Similar To That Advocated By Konrad Hesse When He Points Out That Absolute Theory Could Sacrifice Fundamental Rights To The Legislature's Free Disposal, That Is, In The Absence Of A "Hard Core", The Legislature Is Obligated To Leave That Core Unchanged That Would Not Be Easy To Determine, Leaving Only The Accidental Part Through The Principle Of Reservation Of Law. There Is Specific Talk Of The Rights To Freedom, Security, Personal Integrity And Equality Of Citizens In The Context Of Combating Organized Crime And The Participation Of The Armed Forces.

Therefore, The Proposal We Are Making Is To Extend The Constitutional Framework Of Rules That Guide The Functioning Of The National Guard To The Tasks That The Mexican Army Will Temporarily Perform In Internal Security Efforts. In This Sense, From The Framework Of International Human Rights Law From Which This Reform Is Based, Internal Security Tasks Must Be Defined To The Standards Of Exceptionality, Subordination, Complementarity, Regulation And Control. Any Deviation From The Exercise Of Internal Security Efforts For The Mexican Army To Act Autonomously Would Result In A Serious Setback Not Only In Transit To A Civilian Police, But Also To More Effective Standards Of Protection And Protection Of Human Rights.

References

1. Altamirano-Santiago, M. *El Senado En Las Democracias Contemporáneas. El Caso Mexicano Desde Una Perspectiva Comparada*. México, Plaza Y Valdés Editores, 2010.
2. Annan, Kofi A., Naciones Unidas, Oficina Contra La Droga Y El Delito, Convención De Las Naciones Unidas Contra La Delincuencia Organizada Transnacional Y Sus Protocolos. Austria, 2004, P. Iii. Recuperado De [Http://Www.Un.Org/Disarmament/Convarms/Attprepcom/Background%20documents/Firearms%20pro Tocol%20-%20s.Pdf](http://www.un.org/disarmament/convarms/attprepcom/background%20documents/firearms%20protocol%20-%20s.pdf)

3. Amparo En Revisión 2996/1996. Recuperado De <https://sif.scjn.gob.mx/sifsist/paginas/reportes/reportede.aspx?Idius=6014&Tipo=2&Tema=0>
4. Arteaga Nava, Elisur, “El Engaño Presidencial”, En *Proceso*, 20 De Mayo De 2020.
5. Bachof, Otto, *¿Normas Constitucionales Inconstitucionales?*, Palestra, Lima, 2008.
6. Cárdenas, Jaime, “La Iniciativa De Reforma Constitucional Que Propone La Guardia Nacional”, En *Hechos Y Derecho*, No. 49, México, Unam, 2019.
7. Cárdenas, Jaime, “Ley De Seguridad Interior Y Militarización” En *Cuestiones Constitucionales*, No. 40, México, Unam, 2019, Pp.277-316.
8. Caso Tribunal Europeo De Derechos Humanos (Tedh): Dudgeon Case, Judgment Of 22th. October, 1981, Series A, V. 45, # 51.
9. Corte Interamericana De Derechos Humanos. *Caso Zambrano Vélez Vs. Ecuador*. Sentencia Del 4 De Julio De 2007. Serie C N.º 166, Párrafo 51.
10. Corte Interamericana De Derechos Humanos. *Opinión Consultiva Oc-8/87 Del 30 De Enero De 1987*. Serie A N.º 8, Fundamento 18.
11. Costa, Antonio Maria, *No Security Or Development Without Justice*, Twelfth United Nations Congress On Crime Prevention And Criminal Justice, Salvador, Brazil, 2010.
12. Chincoya Teutli, Héctor, “De La Seguridad Pública A La Política Criminológica En México: 2000-2012 (Los Gobiernos Del Partido Acción Nacional) En *Revista Ius*, No. 34, México, 2014.
13. De Otto Y Pardo, I. “La Regulación Del Ejercicio De Los Derechos Y Libertades. La Garantía Del Contenido Esencial En El Artículo 53.1 De La Constitución”, En *Obras Completas*, Cepc-Universidad De Oviedo, Madrid, 2010, P. 1494.
14. De Otto Y Pardo, I. *Derecho Constitucional. Sistema De Fuentes*, Ariel, Barcelona, 1987, Pp. 132 Y Ss.
15. García De Enterría, E. Y Fernández Rodríguez, T. R., *Curso Derecho Administrativo I*, Tomas, Civitas Ediciones, (15ª Ed.), Madrid, 2011, P. 245.
16. García Ramírez, Sergio, “Recepción De La Jurisprudencia Interamericana Sobre Derechos Humanos: Libertad De Expresión, Jurisdicción Militar Y Control De Convencionalidad”, En *Cuestiones Constitucionales*, No. 29, México, Unam, 2013, Pp. 163-218.
17. García Ramírez, Sergio, “Un Error, Presidente”, En *El Universal*, 16 De Mayo De 2020.
18. Garza, López, Luna, Martín Y Salazar, “Normalizar La Militarización: Análisis Jurídico Del Acuerdo Presidencial”, En *Nexos*, 18 De Mayo De 2020.
19. Guastini, R., *Interpretar Y Argumentar*, Cepc, Madrid, 2014, P. 55.
20. Häberle, Peter, *La Garantía Del Contenido Esencial De Los Derechos Fundamentales En La Ley Fundamental De Bonn*, Dykinson, Madrid, 2008, P. 34 Y Ss.
21. Hernández Hernández, Gerardo, “Análisis De La Política De Seguridad En México”, En *Política Y Cultura*, No. 44, México, Uam, 2015.
22. Hesse, K., *Escritos De Derecho Constitucional*, Cepc, Madrid, Párr. 46, P. 54; En El Mismo Sentido: Pérez Luño, A. E., “La Interpretación De La Constitución”, En *Revista De Las Cortes Generales*, N° 1, 1984, P. 93.
23. Gómez De Arteche, Salvador (Trad.), Edición Bilingüe Alemán-Español, Marcial Pons, Madrid, 2006, P. 267 Y Ss.
24. Günther Jakobs, “Criminalización En El Estadio Previo A La Lesión De Un Bien Jurídico” En *Estudios De Derecho Penal*, Uam Ediciones, Civitas, Madrid, 1997, Pp. 293-324;
25. Günther Jakobs, “Dogmática De Derecho Penal Y La Configuración Normativa De La Sociedad”, Civitas, Madrid, 2004, P. 27.
26. Günther, Jakobs, *Derecho Penal Del Enemigo*, Thomson, Madrid, 2003, P. 42-43;
27. Günther, Jakobs Y Cancio Meliá, Manuel. *Derecho Penal Del Enemigo*. 1ra. Ed., Madrid, 2003, P. 94.
28. Labiano Virginia, “Las Relaciones México-Estados Unidos Durante Las Administraciones Del Cambio Partidario”, *Iv Encuentro Del Cerpi*. 2019. Y En “La Realidad Sudamericana De Cara Al Bicentenario”. *Ii Jornadas Del Censud*. 2019.
29. Martínez Prats, G., Álvarez García, Y.I., Silva Hernández, F. And Tagle Zamora, Daniel. “Environmental Taxes. Its Influence On Solid Waste In Mexico”. En *Journal Of Environmental Management And Tourism*, (Volume Xi, Summer), 3(43). Doi:10.14505/Jemt.V11.3(43).29. 2020.

30. Martínez Prats, G., And Armenta-Ramírez, A.B. Validation Data Of Mexico's Trade Balance. Journal Of Advanced Research In Law And Economics, Volume X, Summer, 4(42). Doi: 10.14505/Jarle.V10.4(42).13. Available From: [Http://Journals.Aserspublishing.Eu/Jarle/Index](http://Journals.Aserspublishing.Eu/Jarle/Index). 2019.
31. Müller, Friedrich, *Arbeitsmethoden Des Verfassungsrechts*, [Métodos De Trabajo Del Derecho Constitucional. Fundamentación General De Una Concepción De Los Métodos En El Trabajo Jurídico],
32. Olvera Rangel, Sergio, ¿Tiene Legitimación La Presidenta De La Cámara De Diputados Para Promover Controversias Constitucionales?, En *El Juego De La Suprema Corte. Nexos*, México, 25 De Junio De 2020.
33. Rangel Cortés, Víctor Manuel, “La Inconstitucionalidad De La Ley De Seguridad Interior Emitida Por La Suprema Corte De Justicia De La Nación”, En *Hechos Y Derecho*, No. 48, México, Unam, 2018.
34. Salazar, Pedro, “Estado De Excepción”, En *El Financiero*, 13 De Mayo De 2020.
35. Salazar, Pedro, “Seguridad Nacional: La Puerta Falsa”, En *Hechos Y Derecho*, No. 4, México, Unam, 2011.
36. Schmitt, Carl, *La Defensa De La Constitución (Estudio Acerca De Las Diversas Especies Y Posibilidades De Salvaguardia De La Constitución)*, Tecnos, Madrid, 1983, P. 190. Recuperado De [Https://Www.Infobae.Com/America/Mexico/2020/05/17/78-De-Los-Mexicanos-Avalaron-El-Uso-Del-Ejercito-En-Las-Calles-Encuesta/](https://www.infobae.com/america/mexico/2020/05/17/78-De-Los-Mexicanos-Avalaron-El-Uso-Del-Ejercito-En-Las-Calles-Encuesta/)
37. Silva, F. Y Martínez, G. “La Justicia Alternativa Como Derecho Humano”. *Jurídicas Cuc*, 15(1). 263-284. Doi: [Http://Dx.Doi.Org/10.17981/Juridcuc.15.1.2019.10](http://dx.doi.org/10.17981/juridcuc.15.1.2019.10).
38. Suprema Corte De Justicia De La Nación. *Amparo Contra El Procedimiento De Reformas A La Constitución*, México, Scjn, 1997.
39. Tesis: 2a. Xxxiv/2007. Recurso De Revisión. La Suprema Corte De Justicia De La Nación Es Competente Para Conocer De Aquel En El Que Se Controvierte La Interpretación Directa De Un Artículo Transitorio De La Constitución.
40. Tesis: I.2o.A.E.10 K (10a.) Artículos Transitorios De Los Decretos De Reforma A La Constitución Federal. El Juicio De Amparo Es Improcedente En Su Contra.
41. Tesis: P./J. 36/2000. Ejército, Fuerza Aérea Y Armada. Si Bien Pueden Participar En Acciones Civiles En Favor De La Seguridad Pública, En Situaciones En Que No Se Requiera Suspender Las Garantías, Ello Debe Obedecer A La Solicitud Expresa De Las Autoridades Civiles A Las Que Deberán Estar Sujetos, Con Estricto Acatamiento A La Constitución Y A Las Leyes.
42. Tesis: P./J. 39/2002. Procedimiento De Reformas Y Adiciones A La Constitución Federal. No Es Susceptible De Control Jurisdiccional.
43. Tesis: P./J. 40/2002. Controversia Constitucional. Es Improcedente Para Impugnar El Procedimiento De Reformas Y Adiciones A La Constitución Federal.
44. Liga Electrónica
45. Entrevista A Arteaga, Elisur. Recuperado De [Https://Www.Razon.Com.Mx/Mexico/Viola-La-Constitucion-El-Transitorio-Para-Guardia/](https://www.razon.com.mx/mexico/viola-la-constitucion-el-transitorio-para-guardia/)
46. [Https://Www.Infobae.Com/America/Mexico/2020/05/17/78-De-Los-Mexicanos-Avalaron-El-Uso-Del-Ejercito-En-Las-Calles-Encuesta/](https://www.infobae.com/america/mexico/2020/05/17/78-De-Los-Mexicanos-Avalaron-El-Uso-Del-Ejercito-En-Las-Calles-Encuesta/)