

## European Union-Mexico Think Tanks Dialogue Initiative

### Fourth dialogue:

### “Security, Rule of Law and Human Rights”

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#### Chronicle

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#### EXECUTIVE SUMMARY

The dilemma between security and human rights provided the framework for debate in this fourth dialogue between the European Union (EU) and Mexico. The issue is a piece of the puzzle in complex political dynamics that complicate sound decision-making. There are specific cases in Latin America and the European Union that reveal the possible scope and limitations on human rights and their architecture when security policies infringe on their protection.

The situation in Argentina in the 1970s is an example of the power of human rights in themselves and their international architecture in bringing violations perpetrated by the country’s government to trial; intensifying a human rights revolution; and giving rise to structural reforms that positioned the country as a leader in human rights. In contrast, in the United Kingdom in the 1970s, the use of emergency powers to resolve the extreme violence in Northern Ireland culminated in widespread patterns of human rights violations. In this process, regional and international human rights mechanisms failed in holding this country’s government accountable for these.

Both cases shed light on the tension between security and human rights in Mexico and the European Union. Furthermore, they expose the limits and reach that national and regional human rights mechanisms can have in changing a country’s reality or not.

#### I. Security and Human Rights: Current Situation in Mexico and the EU

##### Mexico’s security agenda

In Mexico, the main issue is the application of human rights’ laws. Impunity is Mexico’s main problem in terms of security. Eighty percent of crimes committed in the country are violations of local law, with the remaining 20% being federal crimes, which is where the highest impact crimes related to organized crime are found in the statute (UDLAP’s Global Impunity Index). Day-to-day and administrative criminal justice must be strengthened in order to prevent conflictive and/or antisocial behaviour from escalating to criminal activity. One of the country’s most pressing issues—eradicating violence against women and feminicides—are particularly relevant.

Over the last 13 years in Mexico, there have been three public policy proposals on security matters:

- 1) Strengthening institutions and the exercise of mechanisms for implementing security and justice, specifically civil institutions such as police forces.
- 2) Legislation on the participation of armed forces in security matters. This policy resulted in conflicts between the Ministry of the Interior (SEGOB) and the armed forces starting at the end of President Felipe Calderón Hinojosa’s last term (2006-2012), and during Enrique Peña Nieto’s entire term (2012-2018). During this time, the Secretariat of Public Safety lost authority and the National Security Commission was created, with security functions being absorbed by the SEGOB. This culminated with the creation of the military police and politicization of the National

Secretary of Defence to promote the National Security Act. Most recently, this law was made obsolete by the current president, Andrés Manuel López Obrador, through his constitutional reform which established a national guard to act as the national police and prevail in a state of emergency. In regard to the justice system, there has been a change in the federally focused model. However, there is still a lack of transparency in the institutions and professionalization of state police, and they have fallen behind in strengthening their forces.

- 3) Currently, policies have focused on combatting money laundering on a local level, and on organized crime, through bolstering the Financial Intelligence Unit and Financial and Asset Intelligence Units on a state level. There is opportunity for the EU and Mexico to collaborate in this area.

#### Role of the military

In regard to the militarization of Mexico, two visions emerged during the debate. The first highlighted the primary issue of using the military on the streets to combat organized crime in Mexico for over 20 years, along with alarming human rights violations, as occurred in Tlatlaya. It was explained how the presence of the armed forces in matters of public security have always been at the centre of the parliamentary debate and the public agenda. It was highlighted that this presence has not been successful in guaranteeing public safety, with 2019 being the most violent year in the country's recent history (Executive Secretary of the National Public Safety System (SESNSP), 2019). On the other hand, it was also mentioned that Mexico is not a militarized country, and is in 114th place out of 154 countries according to the Global Militarization Index (Bonn International Centre for Conversion) and the armed forces receive 0.05% of the national budget.

The challenge in Mexico of transitioning from armed forces to civilian forces lies in strengthening prevention policies, which is not the responsibility of the armed forces. There is a need to develop a system for the enforcement and administration of justice that is efficient and professional. Specifically, there is a need to successfully implement the instruments already in place to guarantee a violence-free life for girls and women. The creation of a Secretariat of Public Safety for this

transition is positive; it would also be important to strengthen two civil institutions: the Financial Intelligence Unit (UIF) and the National Intelligence Centre. It will also be necessary to clearly define the role of the National Guard on matters of public security and their investigation responsibilities, which goes hand in hand with coordination processes and working with public prosecutors.

#### EU's security agenda

For the EU, security governance is a key factor in working to resolve security issues. Security governance implies a process of analysing, designing, implementing and evaluating security policies and programs involving a variety of stakeholders. Likewise, the EU's security policies stem from the relationship or link between security and development. This link implies that development is necessary for security, and that security is a prerequisite for development and lasting peace.

The EU has a common security and defence policy that includes various government entities and requires the agreement of all Member States. These then also have their own security and defence policies. There are also multi-level policies and programs to combat criminality and organized crime, which rest on the principle of subsidiarity to delimit responsibility for specific problems. When doing so, there is a wide variety of national priorities that sometimes contradict one another, reason for which there is a need for dialogue and ongoing cooperation in order to face security threats with joint positions and actions.

The security agenda in the EU can be divided into traditional and non-traditional threats, including globalization and emerging technologies as two phenomena that impact and intensify these.

#### Traditional threats

Currently, there are no imminent threats of a military attack for the EU. The priorities of the EU are focused on the arms race between China and the United States, as well as Russia. The future of military alliances and the role of NATO are paramount, specifically in relationship to the United States. In regard to nuclear proliferation, the EU has made efforts to manage the Iran nuclear arms

program a priority. In terms of new technologies, the main concern is the impact these have on enhancing military capacity, specifically the role of artificial intelligence in robotics and cyberwars.

### *Non-traditional threats*

Terrorism and political and religious extremism are important topics in debates surrounding security policies and protecting citizens' fundamental rights. Likewise, different aspects of organized crime are being considered in terms of the trafficking of arms, people, stolen property and/or money laundering. Climate change is another element that has repercussions on people's lives, strategic infrastructure, and the economy. Pandemics are also a key challenge for the EU insofar as they put their institutions and values to the test, as been seen with the COVID-19 crisis. Lastly, some hybrid threats have been identified that have come out of the fusion of complex strategies to generate polarization and conflict in societies and governments with the goal of influencing electoral processes, and even implementing undercover military operations. These types of hybrid threats are increasingly used by government stakeholders wanting to weaken the EU.

## II. Reconciling a Commitment to Human Rights with Security Requirements

### *Security and justice with a perspective on human rights in Mexico*

In Mexico there is a need to develop both criminal policies, as well as public policies to support the coordination of these, in the three branches of government (executive, legislative and judicial) and its entities, as well on the different levels of government (federal, state and municipal), which go beyond the mainly punitive focus and include institutional and citizen checks and balances, with clarity on the common objective, roles and responsibilities, and expected results.

This policy must be organized based on three essential elements.

- 1) The criminal phenomenon. This requires a policy that coordinates the persecution of federal and local crimes, with these being treated as criminal phenomenon where there is joint responsibility and concurrence in the process. Efforts should be made to provide an institutional response to the criminal phenomena in terms of capacities, based on mechanisms for coordination and communication, and from a human rights perspective.
- 2) Structural legal reforms to the penal system and in terms of human rights. These processes should be democratized to incorporate mechanisms for effective citizen participation. The construction of public policy must contemplate all stages, from prevention through reinsertion, including tertiary prevention.
- 3) Accountability and transparency. This will allow society to supervise, follow-up with and evaluate these policies. Two important elements will be listening to direct, indirect and collateral victims of criminal phenomena, as well as having quality public information.

### *I. Relationship between security and human rights in the EU*

The connection between security and human rights in the European Union can be analysed through four phenomena with a highly multinational component:

- 1) The political crisis produced by the displacement of refugees and migrants since 2015.
- 2) The challenges digital globalization poses for the protection of fundamental rights and in preventing interference from other countries.
- 3) The terrorist threat, which between 2014 and 2019, has involved 65 attempted attacks with 351 deaths across Europe with 2,505 detentions.
- 4) International organized crime, which has significant impacts on consolidating the space of security, liberty and justice.

Though the EU has made progress in handling these phenomena, it still faces several challenges:

- Inclusion of the area of justice and internal affairs into the community method, which implies the

possibility of sanctioning Member States that fail to comply with approved norms.

- Building cooperation in terms of justice and internal affairs such as security, border control and European intelligence. There is still a need to overcome a distrust between Member States in this area.
- The approval of resolutions and mechanisms to defend the democratic system against the rise of the extreme right in various Member States, as well as guarantee compliance with the state of law and the protection of fundamental rights in handling border matters.
- The protection of European citizens has become the priority for security policies and is reflected in the incorporation of legal guarantees protecting fundamental rights from their design.

The integration of human rights in security measures limits the potentially adverse effects on individuals' rights and reduces the risk of promoting discriminatory policies. In the EU efforts have been made to prioritize the criteria of necessity and proportionality in security policies. This, for example, has allowed limits to be established on security measures and mass surveillance, guaranteeing respect for personal information and non-discriminatory treatment. These advances have occurred in the framework of the approval of the General Data Protection Regulation (GDPR) in the EU.

#### European and Mexican experience on a local level

In Europe, due to the fact that municipalities do not have jurisdiction over criminal matters, there is an increasing use of administrative law as a tool for the repression of human rights and free spaces in specific countries. This implies the use of criminal or legal hybrids to prevent antisocial acts in public spaces. These instruments commonly target marginalized groups and have contributed to creating confusion between public order and citizen safety, which hinders progress towards integral and democratic policies.

After 20 years of work, in 2017 Italy implemented a law to expand the concept of urban security to include more than just public order. This allowed local prevention policies to include elements like urban design, administration and managing public spaces.

In Italy, having a technical team specialized in prevention in municipalities has been essential in implementing effective preventative policies. The efficiency of the municipal technical team depends on five fundamental aspects: composition, stability, location in the organic municipal structure, relationship with public security entities, and ongoing training.

The location of the technical team in the administrative apparatus is key. In general, there are two models for integrating this. The first implies creating a prevention area which is directly dependent on the mayor or a social department. The second proposes inserting a technical team in the public security area, which in practice is subordinate to the chief of police. The latter presents serious risks because, in most cases, it is dependent upon preventative action and the resources allocated to implementing police requirements. It has been observed that police leaders prefer to upgrade equipment rather than invest in prevention. These intersectoral teams work on a local and technical level, promoting transversal strategies, providing guidance to the political class in office. They support the coordination between different municipal services (for example, education, health, public works, transportation, urbanism, urban services, culture and sports), including the municipal police.

In Italy, public participation on a local and community level has been fundamental in the prevention model for combatting organized crime. This model requires the construction of a community attitude and is specifically dependent upon developing community skills that allow tears in the social fabric to be repaired.

In Mexico, it is paramount that work be done with local security and justice institutions to ensure that skills development is focused on consolidating an integral system of inter-institutional mechanisms in order to achieve common objectives with a perspective of joint responsibility. There is a need for institutions to transcend the person in charge during their administration and consolidate a scaffolding of institutional capacities. Institutional capacity must be understood to include the organizational structure, administrative management, evaluation and monitoring, human resources management, and infrastructure and technology for the implementation of daily tasks. More understanding and communication from citizens

regarding the function of these institutions, and from these institutions regarding the expectations of citizens, is necessary.

In Mexico, multidisciplinary groups must also be formed to design, diagnose, evaluate and provide follow-up that facilitates improvements in the functioning of these institutions and their personnel. Monitoring and evaluation should aid in strategic decision-making to pursue common goals that outline a policy which combines security and justice.

## FINAL CONSIDERATIONS

- In the case of Mexico, the margin for discretion on security policies is limited by the structural dynamics implied by its proximity to the United States, including Americans' drug consumption, their drug prohibition policies, and sale of arms.
- Decisions and contributions must be made from citizens on a local level with the three branches of government being involved in prevention, the creation and security policies and strategies, and accountability.
- Regional collaboration between the United States, Mexico and Central America, and other countries in South America is impossible without the participation of the United States. In this context, it is important to keep in mind the bilateral talks between Mexico and the EU, as well as the EU and Latin America. We must view these spaces as opportunities to promote multilateral values that allow the parties involved to find solidarity on debates surrounding international security.

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