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Briefing, analysis, opinion and insight of legal affairs in Mexico. Digital publication by Abogados Sierra

April 15, 2019 year 08 | No. 05

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MARCH NEWS on  
Mexican Commercial Law

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

# The National Guard of Mexico.

by Gerardo Reyes and José Dorantes.

The Mexican House of Representatives has approved President Andrés Manuel Lopez Obrador's domestic security plan to create a National Guard. A central plank of the government's strategy to subdue the violence generated by the Mexican Mafia that has claimed thousands of lives in the past decade, since the start of a militarized crackdown on drug cartels and organized crime in 2006<sup>1</sup>.

In November 2018, the Supreme Court of Mexico (SCJN) had declared unconstitutional<sup>2</sup> an Internal Security Law (approved in December 2017) that, in essence, anticipated the legal figures proposed by the current president<sup>3</sup>.

Mexico's murder rate broke a new record in 2018<sup>4</sup> as the country's drug war dragged on and criminal groups fought for control of an increasingly diversified range of illegal activities. Mexico has experienced increasingly high crime rates, especially in major urban centers. The country's great economic polarization has stimulated criminal activity mainly in the lower socioeconomic strata, which include the majority of the country's population.

The reasons for creating a National Guard are diverse and range from the economic power and fire capability of organized and unorganized crime to harm society to the evidence that other public security bodies do not have the organization and institutional strengths necessary to deal with these groups. Even though resources in security and justice doubled in 10 years<sup>5</sup>, public and internal security for our country has not improved.

The National Guard is a betrayal of López Obrador's promises to deescalate the war on drugs. A man who campaigned on the slogan of "hugs not bullets" and who ridiculed the idea of "fighting fire with fire" has now made permanent the participation of a quasi-military body in domestic security.

The concept of a National Guard in Mexico was created in 1846 by General José Mariano Salas, who was president of Mexico for 4 months (August-December 1846), because he thought it was necessary to defend the country from the invasion of the United States<sup>6</sup>. The National Guard had the task of defending the country from external and internal threats; as well as preserve public order. In the 19th century it had a military character, as do the formations such as the Spanish Civil Guard, the National Gendarmerie of France, and the Italian Carabinieri.

Doing a deep legal study of the National Guard many vices of constitutionality come up and many questions regarding the compatibility of this plan with a democratic state and the rule of law. The main concerns are: one, that the National Guard could promote a state of permanent exception strengthening a notion of military police state; two, a counterproductive delay in the formation and consolidation of civilian police forces.

A National Guard of preponderantly military nature is incompatible with the recommendations and resolutions of human rights organizations. The resolutions of the international human rights organizations have been consistent in considering that the functions of public order should be in the hands of the police and not of the armed forces. As an example, Jose Miguel Vivanco from "Human Rights Watch", who once was arbitrarily detained at "Las Americas International Airport" (AILA) by the government of Dominican Republic due to the accusations he made about human rights violations in that country, urged Andres Manuel Lopez Obrador to "reconsider this misguided and potentially disastrous policy"<sup>7</sup>.

1- Lopezobrador.org.mx. (November 25, 2018). <https://lopezobrador.org.mx/temas/plan-nacional-de-paz-y-seguridad/>

2- Hernandez, Leopoldo. *El Economista* November 15, 2018. <https://www.economista.com.mx/politica/SCJN-declara-inconstitucional-la-Ley-de-Seguridad-Interior--20181115-0087.html>

3- Hernández, L. (November 15, 2017). *SCJN declara inconstitucional la Ley de Seguridad Interior*. *El Economista*, page. 2017.

4- Expansión, January 21, 2019. <https://expansion.mx/nacional/2019/01/21/mexico-toca-record-de-homicidios-en-2018>.

5- Becerril, D. (July, 2018). <https://actualidad.rt.com/actualidad/282112-mexico-gasto-seguridad-aumento-crimenes>.

6- Solano, J. (2018). *La Guardia Nacional*. Instituto de Investigaciones Jurídicas de la UNAM, 26-52.

7- Vivanco, José Miguel, November 16, 2018, <https://www.hrw.org/es/news/2018/11/16/mexico-plan-nacional-de-seguridad-amenaza-los-derechos-humanos>

To reform the Federal Constitution of Mexico a minimum of 17 states have to vote in favor of the amendment. In this case, all the 32 states that comprise Mexico support the creation of the National Guard<sup>8</sup>. Mexican Government modified articles 10, 16, 21, 31, 35, 36, 73, 76, 78 and 89 of the Constitution to create the National Guard. The mentioned security force was already contemplated in the Mexican Constitution of 1917, but until today there is no organic law that supports it. To rectify the situation the studied amendment orders to approve three new secondary laws, which are the “Law of the Register of Detainees”, the “Law of the Use of Force” and the “Organic Law of the National Guard” itself. According to the transitory articles the Mexican House of Representatives has a term of 60 days to issue the Organic Law of the National Guard and 90 calendar days for the issuance of secondary laws<sup>9</sup>.

In January 02, 2019, Andres Manuel Lopez Obrador called the people to registry to the National Guard, the Federal Government will add 21,170 elements: 14,000 to the National Defense Secretariat (SEDENA) and 6,000 to the Secretariat of the Navy (SEMAR)<sup>10</sup>. The requirements to enter are the same as those requested for admission to army or navy:

- Age between 18 and 30 years.
- Be Mexican by birth.
- Be single and not live in concubinage.
- Applicants will undergo a medical, physical and psychological examination.
- You must not have a criminal record.

*“A National Guard of preponderantly military nature is incompatible with the recommendations and resolutions of human rights organizations. The resolutions of the international human rights organizations have been consistent in considering that the functions of public order should be in the hands of the police and not of the armed forces.”*

The National Guard insists on a strategy that has failed in twelve years. During the governments of Felipe Calderón and Enrique Peña Nieto, the security policy based preponderantly on the public force (civil or military) has completely failed. The number of deaths, disappearances and displacements during these twelve years is huge, as are the multiple human rights violations carried out by the armed and police forces. Militarizing the country is simply not the right answer.

An obvious contradiction against the creation of the National Guard and the security system in which Mexican Government fell is that the Mexican Congress recently voted to increase the number of crimes for which people can be held in pre-trial detention, meanwhile, López Obrador’s initial budget reduces spending on the prison system by 26 percent<sup>11</sup>.

Instead of fixing the existing institutions, the self-appointed “Fourth Transformation” new government intends to pass over them and seek to centralize power. The decision of creating a new police-military force to solve the violence and crime crisis that Mexico is living displays one step back in the task of imparting justice. The necessary changes in the justice system point more in strengthening the institutions that prosecute crime and to decrease the costs of holding prisoners, reinstating offenders to society, as well to increase positive relationships between inmates and correctional workers.

8.- Indigo Staff, March 13, 2019. Reporte Indigo. <https://www.reporteindigo.com/reporte/aprueban-la-guardia-nacional-en-los-32-estados-del-pais/>

9.- Congreso de la Unión. (November 20, 2018). Iniciativas año XXI, número 5159-II. Gaceta Parlamentaria. Obtenido de <http://gaceta.diputados.gob.mx/Gaceta/64/2018/nov/20181120-II.html#Iniciativa225>

10.- Gobierno de México. (January 02, 2019). Gob.mx. Obtenido de Comunicado 049: <https://www.gob.mx/presidencia/prensa/presidente-lopez-obrador-convoca-a-jovenes-mexicanos-a-formar-parte-de-la-guardia-nacional>

11.- Corcoran, P. (March 25, 2019). Is Mexico’s New National Guard Just Another Uniform? Obtenido de <https://www.insightcrime.org/news/analysis/new-mexico-national-guard/>

**Mexico City's Congress, supports the creation of the National Guard.**

With sixty-three votes in favor, one against and zero abstentions, Mexico City's Congress, approved the Constitution's reform, regarding the implementation of the National Guard. On the contrary of what it is believed by some, the creation of this security body, does not mean "militarization"; but an institution that will allow the new government to ensure what others couldn't, that the army and the navy, not only combat organized crime, but safeguard security as well. <https://www.excelsior.com.mx/nacional/respalda-congreso-de-la-cdmx-creacion-de-guardia-nacional/1300518> 07/03/2019.

**Mexico reiterates categorical rejection of the use of force in Venezuela.**

In the face of violent clashes last Saturday at points on the border between Venezuela and Colombia, the Mexican government reiterated the call to all parties involved in the Venezuelan conflict, "both internally and externally, to categorically reject the use of force and find a peaceful solution to the situation that this South American country is going through." In a statement, the Foreign Ministry said that the dialogue in Venezuela, with a specific strategic plan, remains an alternative to reach a peaceful solution and becomes more relevant after the clashes on Saturday. <https://www.jornada.com.mx/ultimas/2019/02/25/reitera-mexico-rechazo-categorico-del-uso-de-la-fuerza-en-venezuela-4307.html> 07/03/2019.

**Trumps' Wall: The United States Senate and the president's national emergency declaration to finance the "wall" on Mexico's border.**

The United States Senate, this Thursday declared the annulment of President Donald Trump's National Emergency on the construction of the so called "wall". With a majority of 59 votes out of 41, the US senators rejected the measure considering Trump's excess in his intention to build a border wall without the support of the Congress. <https://www.bbc.com/mundo/noticias-internacional-47572907> 14/03/2019.

**Mexican President, signs commitment of non-reelection.**

Mexico's President Andrés Manuel López Obrador, signed last Tuesday a public letter in which he commits on not attempting to remain in his office. However, he did indicate that around 2021, he may do a citizen consult, in order to verify if they wish for him to remain in the Presidency or if they want him to resign. Therefore, he sent to the Congress an initiative for a Constitutional Reform that will allow him to carry out the mentioned consult. <https://lta.reuters.com/articulo/politica-mexico-reeleccion-idLTAKCN1R024S-OUSLT> 19/03/2019.

**The Chamber of Deputies suspends the ordinary session due to blockades of the CNTE in San Lázaro.**

On March 20, 2019 The teachers of the CNTE by its acronym in Spanish (*Coordinadora Nacional De Los Trabajadores De Educación*), The National Coordinator of Educational Workers, have blocked the Federal Justice Palace, making it impossible for lawyers to work on any case at the time, this being a tremendous setback for all of the current cases being litigated at the federal facilities, because of a protest of the teacher that want a raise in their salary and a close to non-evaluation process for them. <https://mvsnoticias.com/podcasts/mesa-para-todos/nadie-entra-a-la-camara-de-diputados-cnte/20/03/2019>.

**Mexico climbs to fourth place in automoviles exports.**

Mexico climbed in 2018 from the sixth to the fourth position among the world's largest car exporters in terms of value, displacing the United Kingdom and Canada. While Mexican exports presented a year-on-year growth rate of 19%, reaching 49,406 million dollars, those of the United Kingdom remained unchanged (42,048 million) and those of Canada decreased 12% (41,008 million). Of the total Mexican exports of cars (passenger vehicles) in the past year, 70.6% went to the United States, followed by those sent to Germany (8.2%), Canada (5.9%), Brazil (2%), Italy (2%) and China (1.4), according to data from the Ministry of Economy. In 2019, Mexico will have as expanded opportunities for the automotive sector the reopening without tariffs in the car trade with Brazil and the liberalization of the countries that are part of the Integral and Progressive Treaty of Trans-Pacific Partnership. <https://www.eleconomista.com.mx/empresas/Mexico-escala-al-cuarto-sitio-en-exportacion-de-autos-20190326-0158.html> 26/03/2019.

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