

## The Use of Military Forces as Police

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For the last three years the Mexican government has been characterized by a “battle” against drug trafficking and organized crime<sup>1</sup>. Since the beginning this has been the central policy of the current administration, whose legitimacy was symbolically transmitted through military hands as a reaction to the non-acceptance of the Electoral Court resolution by opposition parties voicing fraud accusations, vote recount petitions and demonstrations such as the blockage of Paseo de la Reforma, Mexico City’s central iconic avenue<sup>2</sup>.

In an unprecedented event in Mexico’s historic memory, Felipe Calderon appointed the Secretaries whose functions –as he said in his speech– could not be interrupted: State, National Defense and Public Security..... All this happened just the day before the constitutional inauguration ceremony in Congress, and after President Vicente Fox divested himself of the presidential band and gave it to a member of the “Colegio Militar”. That is the moment when Felipe Calderon announced the battle against drug trafficking and the organized crime, stating the following:

“Drug trafficking and the organized crime has to be faced with energetic actions, an adequate legislation and a more and better organized coordination between the different National and Public Security pertinent authorities. At the same time along with society and citizens I want to begin an effort in order to intensify crime prevention, rescue public spaces and establish a legal culture in Mexico. This is going to be a *great battle* that could take years, that will cost many efforts, economic resources and even, as I’ve said, the sacrifice of Mexican human lives.

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<sup>1</sup> December 11, 2006 when the “*Operativo Michocan*” and the transfer of soldiers to the Attorney General’s headquarters started, can be said as the date when this “battle” began.

<sup>2</sup> On one hand, some has sustained that the lack of legitimacy at beginning of Caderon’s Presidential term was what edge his administration to adopt the facing of drug trafficking as a central politic. On the other hand, a few have implied the possible pressure of the military forces.

Even so, this is a battle that we, as Mexicans, are willing to win and for this purpose we have to be united.”<sup>3</sup>  
 The next day December 1<sup>st</sup>, he took office at the Congress fenced by members of the presidential guard. Just over ten days later, on December 12<sup>th</sup>, the now constitutional President Calderon signed an agreement allowing the transfer of 7500 troops of the third military brigade of the National Defense Ministry to one of Mexico’s federal police forces: the *Policia Federal Preventiva*.<sup>4</sup>

Despite this transference, which seems like an intent to comply with formalities transforming the members of armed forces into police, the first operative in Michoacán was already carried out jointly by the “Policia Federal Preventiva”, the “Agencia Federal de Investigación” (Federal Investigation Agency), the Army, the Air Force and Navy; and the Defense Ministry members established themselves in permanent operating bases.

From that moment on, the numbers of this battle are alarming but not very illustrative: at this time 22,700 deaths are the estimated numbers. This number should be disaggregated in order to show how many soldiers, police force members, criminals and civilians as collateral damage –there is a significant number of dead children–<sup>5</sup> have been killed. This is important because of the Government’s argument, that most deaths are the

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<sup>3</sup> The complete message is available at the official website of the Federal Government: <http://presidencia.gob.mx/prensa/?contenido=28310&imprimir=true>

<sup>4</sup> For a better perspective of this type of transference and its risks until Vicente Fox’s administration see: Sigrid Arzt, *The Militarization of the Procuraduría General de la República: Risks for Mexican Democracy*, en: *Reforming the Administration of Justice in Mexico*, Wayne A. Cornelius David A. Shirk (eds). University of Norte Dame Press and Center for U.S.-Mexican Studies, U of C. 2007.

<sup>5</sup> Even though an “official” report was not available, many publications can be consulted referring to this number, for example: Pablo Ordaz, *El País*, 20/05/2010, “La guerra al 'narco' causa 22.700 muertos en México”, [http://www.elpais.com/articulo/internacional/guerra/narco/causa/22700/muertos/Mexico/elpepuint/20100414elpepuint\\_16/Tes](http://www.elpais.com/articulo/internacional/guerra/narco/causa/22700/muertos/Mexico/elpepuint/20100414elpepuint_16/Tes).

product of the drug cartels attempt to settle their own accounts, hence avoiding official responsibility.<sup>6</sup>

The truth is that today we cannot say whether if we are winning or losing this battle, or if there is any possibility to declare a victory of any kind.<sup>7</sup> The truth is that both, federal and local authorities have been unable to react and face the battle through proper instruments of the rule of law: regular use of police organizations, prevention and crime prosecution, Congress political control and law issuing mechanisms and processes and judicial mechanisms. Most inefficiencies and dysfunctions produced by institutional inertia originate in the normative and acting structures built in eighty years of state party control. Nevertheless, they also result from the actual government incapacity to renovate political institutions.<sup>8</sup>

In this sense, it is important to underline that the transference of military members to police organizations and the normative (constitutional /jurisdictional) justification of Armed Forces assistance to civil authorities, comes from previous administrations –Carlos Salinas’s and Ernesto Zedillo’s–<sup>9</sup>. Consequently, the only way of having a clear

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<sup>6</sup> President Calderon in a statement sustained that more than 90 per cent of the executions related to the war against the organized crime obeyed to the confrontation of organized crime groups. When he was questioned about the civil deaths he said that “they were the less”. “‘Son las menos’ bajas civiles.- FCH”, Recovered from: *Periódico Reforma*, 17 de abril de 2010.

<sup>7</sup> A recent statement made by Hillary Clinton at the inauguration of the 20<sup>th</sup> Conference of the America’s on May 13<sup>th</sup>, 2010 turns out to be illustrative in this matter: “We have good examples about what has to be done but we are not near from an effective strategy” (...) “More intelligent and effective strategies are needed. Only then this persistent threat to civil society, government legitimacy, the government presence in areas that need to be controlled could be dealt” ; Recovered from: <http://www.eluniversal.com.mx/primera/34929.html>

<sup>8</sup> By this I mean that the political institutional have been incapable to process relevant modifications to the authoritarian regime. In the next themes this would be clear, particularly in the military jurisdiction and the National Security Law problems.

<sup>9</sup> For an interesting evaluation of the security problem in previous administrations (Salinas’s, Zedillo’s and Fox’s) and the dysfunctional use of police, see: Jorge Chabat, *México: The Security Challenge*, in Jordi Diez (ed), Canada and Mexico’s Security in a Changing North America. School of Policy Studies, Queens University, Queens.McGill Univeristy Press, 2006. It is important to highlight that the tendency of using military forces in security task is not only a problem in

comprehension of the problem, the normative elements and the institutional inertia that have made this situation possible must be analyzed before trying to give any possible solutions.

I. The context of use of Armed Forces, from the suspension of Constitutional Rights to the intended “interior security affectation”.

A) Suspension of Constitutional Rights and the ordinary use of Armed Forces in peace times.

Firstly, we are not in the exceptional situation constitutionally established as “suspension of constitutional rights”, which would be the outcome of a formal process and decree<sup>10</sup>, so we have to discard this as a starting point for our analysis. The last and only time, since the approval of 1917 Constitution, that the suspension of constitutional rights was declared was with the declaration of war to the Axis-Aligned Countries in World War

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Mexico. In the United States also exists a tendency in favor of the revision of the Posse Comitatus Act, which prohibits armed forces do activities that correspond to civil authorities.

<sup>10</sup> Article 29 of the Mexican Constitution establishes the process and cases of suspension: “ In case of invasion, serious disturbances of public peace, or any other event which may place society in severe danger or conflict, only the President of the Republic, in accordance with the incumbents of Secretariats of State and the Attorney General of the Republic, and with approval of the Congress of the Union, or in the latter’s adjournments, of the Permanent Commission, may suspend throughout the country or in a certain place thereof, those constitutional rights which may constitute obstacles to rapidly and easily confront the situation; but such suspension must be only for a limited time and it must be issued by means of general provisions which must not be restricted to certain individual. Should the suspension occur while Congress is in session, the latter shall grant such authorization as it deems necessary, to enable the President of the Republic to face the situation, but should it take place during an adjournment period, the Congress shall at once be summoned to authorize such measures.” By “authorization as it deems necessary” the article refers to the possibility of granting extraordinary legislating faculties established in the second paragraph of article 49 which refers to the division of powers: “Two or more Powers may not be united in one single person or corporation, nor shall the Legislative Branch be vested in one single person, except for the case where extraordinary powers are granted to the President of the Republic as provided in Article 29.” In subsequent pages I analyze the change on the interpretation of this legislative faculty granting while 1917 Constitution was effective, particularly in the problem of justice and military jurisdiction.

II through a law issued by Congress, as provided in number III of article 73 of the Mexican Constitution.<sup>11</sup>

Secondly, it has to be noted that besides the present battle against drug trafficking and organized crime, the most conspicuous of the army operations have been in humanitarian help, due to natural disasters. For example, the army deployment in Texas and Biloxi, Mississippi to help Katrina's Hurricane victims on September, 2005.<sup>12</sup> Even though the army has usually intervened in drug sowing and control operations, armed movements control in rural areas and mountains, this in any way is near to the use of army for urban control and civil contact.<sup>13</sup>

So, referring to the present government operations against drug trafficking and organized crime, and in order to establish the legal framework of the current military operations we need the constitutional normative structure in relation with army ordinary activities, public security, crime prosecution and its jurisdictional interpretation.<sup>14</sup>

Additionally, it has to be noted that after 1917 the Executive and Legislative competences regarding the National Guard were never actually enacted.<sup>15</sup> Even though

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<sup>11</sup> The National Defense Plan I (DN-I) activation, which refers to Estate defense from external aggression including conventional external threats, terrorism and other non-state international threats ended by sending only one troop of bombardier airplanes.

<sup>12</sup> This kind of cases activates the National Defense Plan III (DN-III) which refers to the protection of the population in emergency cases like natural disasters such as earthquakes, wildfires, floods, hurricanes, etcetera.

<sup>13</sup> The army as a disturbance control instrument has never been used since 1968 unfortunate events. A reference of this from article 128 can be found in: Felipe Tena Ramírez, *Derecho Constitucional*, supra 2, p.365, Porrúa, México, last modification in 1985 in its 22<sup>nd</sup> edition, September 1987.

<sup>14</sup> A brief review of Mexico's military structure, mission and activities, see: Iñigo Guevara Moyano, Mexico's Strategy, National Strategy Forum Review, Fall, 2009.

<sup>15</sup> Article 73. The Congress shall have the powers: (...)

there are clear structural differences with the permanent army, the legal framework was never issued; some authors have even considered both, Army and National Guard, as the same institution.<sup>16</sup>

In this sense, the general norm for the army is in article 129 of the Constitution:

“In peace times no military authority shall perform any functions other than those exactly related with military discipline. There shall be fixed and permanent military commands only in castles, forts and in warehouses immediately subordinated to the Government of the Union, or in encampments, barracks, or arsenals established, outside towns for the quartering troops.”

In order to introduce the new National Security Law, article 129 has to be read along with number VI of article 89, which was recently amended on April, 2004, and with the powers of the Congress provided in article 73 number XXIX-M. This new law establishes that the President has the power to: “maintain national security, under the terms of the respective law, and dispose of all permanent military forces of the Army, Navy and Air Force, for the Federation’s interior security and defense”.<sup>17</sup>

The origin of article 29, which establishes the limitation of the army to the activities who have “exact connection with the military discipline” is not 1917 Constitutional Congress, where there was no discussion about its content, but 1857 Constitutional

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XV. To make regulations with purpose of organizing, arming and disciplining the National Guard, reserving for the citizens composing it, the appointment of their respective commanders and officers, and to the States, the power to train them in accordance with discipline established in such regulations;

Article 76. The exclusive powers of the Senate are:

IV. To give its consent, so that the President of the Republic may dispose of the National Guard outside its respective States, and to determine the necessary forces;

Article 89. The powers and duties of the President of the Republic are as follows:

VII. To dispose of the National Guard for the same purposes mentioned hereinbefore, in accordance with the terms set forth in Section IV of Article 76;

<sup>16</sup> For a description of this power and the different doctrinal opinions see: Raúl M. Mejía y Wistano Orozco, *El Senado y la Política Interior*, Miguel Ángel Porrúa, México 200, Cap. III, p. 43-47.

<sup>17</sup> This article has its origin since 1824 Constitution and, in the same terms was provided in 1857 and 1917 Constitutions; its modifications have only being in order to adequate it to the different historic moments adding, for example, the Air Force.

Congress where there was discussion and the acceptance of deputy Ponciano Arriaga's vote related to this theme.<sup>18</sup> Arriaga's vote makes clear the necessity of subordinating the army to the civil authority and disappearing the general *comandancias*; the military authorities, it states: "are State authorities enemies that take part in civil, political, and administrative matters; that deliberates and commands not only in justice matters but in treasure, peace and public security matters". This *comandancias* were established, the vote continues, because of the wrong perception of the law as the authority and facts as law: "it was not conceived how peace could be kept without the intervention of authority independent weapons; how could personal and public security could be provided without permanent armies; neither how criminals could be chased, guard prisons without those guards and those life resident escorts in towns or on the roads, all acting by their own inspirations, diverting from their purpose, ignoring that the authority is in other place."<sup>19</sup>

The meaning of Arriaga's vote is relevant not just because of the big interest of finding the history of Article 17 of the Constitution, but because it was used by the Supreme Court of Justice to minimally understood the content of Article 129, reducing the later only to the subordination of the military authorities to the civil ones. This, in my opinion and according to a more evolutionary interpretation of the article, ignores the perception element that Arriaga connected with the *comandancias*.<sup>20</sup>

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<sup>18</sup> Francisco Zarco, *Historia del Congreso Constituyente de 1857*, reimpresión Senado de la República enero 2007, pg. 870 and ss. The vote of Arriaga was admitted by the Constitutional Congress with 74 votes in favor and 5 against.

<sup>19</sup> *Ibidem*, pg. 874.

<sup>20</sup> The Supreme Court would name this kind of interpretation "historic progressive". This would be in order to update the meaning of the article and not limiting it to a minimalist interpretation to what was said in 1857. Register Number: 191,673 *Tesis P./J. 61/2000, Junio de 2000, "INTERPRETACIÓN HISTÓRICA TRADICIONAL E HISTÓRICA PROGRESIVA DE LA CONSTITUCIÓN"*.

B) Supreme Court's interpretation. *Acción de inconstitucionalidad 1/1996*.

The constitutional norms previously referred have been interpreted systematically in only one occasion by the Supreme Court of Justice in a resolution of *Action of unconstitutionality* brought forth by the equivalent of 33% of the Congress against the Public Security Law amendment, specifically against the inclusion of Armed forces: army and navy into the Board of Public Security. The resolution was voted by unanimity from eleven members of the Court, who in that time were selected from a list of eighteen proposed by President Zedillo and approved by the Senate as a result of the temporary regime, after the Federal Judicial Power branch amendment on December 1994.<sup>21</sup>

The considerations contained in the *Action of unconstitutionality* refers, specifically, to Article \*\* number III and IV of the General Law that Establishes the National Public Security Coordination System Framework. The article establishes the integration of the National Public Security Board. The arguments of the action are against the inclusion of National Defense and Navy Secretaries in the Board.<sup>22</sup> The articles considered as violated are articles 129 and 21 of the Mexican Constitution, that establishes this National Security Public Security System.

In the aforementioned Action, the Supreme Court considered that the appealed article was not against the constitution according with the following reasoning:

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<sup>21</sup> The amendment ended the term of the then 21 members of the Court returning to the original constitutional integration of 11 members. The terms of the 11 member are staggered. In November 2009 six members were already named with the ordinary designation process which consists in three nominations made by the President of the Republic per vacant and the approval one of the nominees by 2/3 of the Senate.

<sup>22</sup> Article 12. The Board will be the superior National Public Security coordination authority and will be integrated by: I. Secretary of State, who will chair it; II. the State Governors; III. the National Defense Secretary; IV. Navy Secretary; V. the Communication and Transportation Secretary; VI. the Attorney General; VII. the Head of Government of the Federal District; and VIII. the Executive Secretary of the National Security Public System.



- 1) Article 21 of the Mexican Constitution, which establishes the national security public system framework, does not includes or excludes any authority so, in this sense, it is understood that the integration of the Board is delegated to ordinary legislation.
- 2) The inclusion of Defense and Navy Secretaries to the Board is not against the Constitution because, the resolution says: “this administrative board does not have executive powers”. The analysis of the related norms “demonstrates that it has advisory and normative internal functions for the administrative bodies that intervene in the aforementioned Board and not executive functions towards the governed people”.
- 3) An interpretation of the aforementioned article 129 is made in the second part of the resolution. This interpretation argues that since 1857 Constitutional Congress –from where the text of the article comes from, which passed through without discussion to 1917 Constitution and then to the actual one–, the only purpose of the Constitutional Congress was to subordinate military authorities to civil ones, but it was not its purpose to absolutely and permanently maintain them inside the barracks.
- 4) Also, from the acceptance of the incapability of police organizations to face drug criminal organizations, in this second part is where the central –factual and legality– arguments are made on what it concerns to the army intervention necessity for the combat against these criminal organizations.<sup>23</sup>
- 5) By “mayoría de razón” the resolution concludes that if the armed forces can help civil authorities in public security matters therefore the membership of Navy and Defense secretaries in the National Public Security Board is not against the constitution.

Finally, this resolution provides an argument set about the constitutional non-prohibition of cooperation, but in any moment provides a positive constitutional competence argument through which it could be proved this cooperation is allowed. In addition to this absence of prohibition, the central arguments relate to the fact that the armed forces have to help civil authorities due to de gravity of the problems faced, and also prevent this becoming a real emergency that could provoke a suspension of constitutional rights, situation which the armed forces are constitutionally obliged to prevent. Furthermore, in order to keep them

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<sup>23</sup> In this sense, the resolution states following: “it would be desirable that at the three levels of government only police authorities complied by its own public security labors related to this lucrative criminal activity, which has the most powerful weapons to dispose of, ground transportation, airplanes and sophisticated boats that goes through the territory, air space, the economic exclusive zone and territorial sea of our country, nevertheless because of the seriousness of this phenomena there has to be an efficient articulation between the Federal Public Prosecutor, Policia Judicial and the Armed Forces in order to let them help to overcome the circumstances against the interior security”.

well equipped and trained, the armed forces represent a huge investment from the State's Budget, therefore it is not practical to keep them in barracks. Finally, the Supreme Court confronts the hypothesis of the constitutional protection for federated states in case of invasion, external violence, uprising and interior violence provided in article 119; the court answers itself that the Federation cannot provide this kind of help without the armed forces help<sup>24</sup>.

### C) National Security Law

The second article used in the resolution as constitutional basis for armed forces cooperation is article 89 number VI, which provides that the President of the Republic has the power to: “maintain national security, under the terms of the respective law, and dispose of all permanent military forces of the Army, Navy and Air Force, for the Federation's interior security and defense”. The text of this article is the result of a constitutional amendment proposed by President Vicente Fox, published on April 5<sup>th</sup>, 2005, that adds the delegation to ordinary legislation issued by Congress under the power established in article 73, XXIX-M, amended on the same date<sup>25</sup>.

This law is the National Security Law issued by Congress on January 31, 2005, amended only once in December 26, 2005. Nevertheless, this law does not regulate military activity in public security or police functions. It basically regulates judicial authorization

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<sup>24</sup> Taking into account the events that took place after in Oaxaca city: social groups kept the city under siege for a year while the political institutions of Oaxaca ask the Federation for help and their intervention and that at last, the Federation intervened but with the Federal Police instead of the armed forces; this could be the weakest and non pertinent of all arguments.

<sup>25</sup> XXIX-M.- To enact laws in matters of national security, establishing the requirements and limits to the corresponding investigations. Article 73, which establishes the Congress powers is the most amended article of the Constitution—43 times until April, 1994 amendment—, most of the amendments have added powers to the Federation and, consequently, due to the distribution clause of article 124 the later has absorbed original or residual powers of the states. Nowadays, number XXXIX goes up until letter O.

for communication interventions and reserved information. This makes clear that in the Vicente Fox's administration this problem was not as relevant as it is today.

It was not until this year that President Calderon sent an amendment bill to the Senate to regulate these matters.<sup>26</sup> In the legislative process, the Senate added an entire title in which an “interior public security affectation” declaration process is provided. This declaration is more than what in the bill is interpreted as an approval of the Supreme Court of Justice of the Army, Air force and Navy help to civil authorities.<sup>27</sup> The purpose of the declaration is to limit the cases of military interventions to: “the cases in which its participation would be strategic and necessary to solve the interior security affectation, taking into account that, depending on the particular case, the coordination tasks could lie on institutions different to the National Defense and Navy Secretaries”. Nevertheless, after reading the bill it is easy to realize that the result is a materially empty and politically biased process that does not formally cover what is actually happening in the country; it does not even seem able to limit the actual interventions of military forces.

The bill provides in article 68 that interior security is affected: “when acts or facts jeopardize the stability, security, peace or order in a states, municipality, administrative delegation or region; and the capability of the competent institutions is insufficient and not effective to exercise its functions and reestablish normality.” Nevertheless, in the end of article 69 this affectation is materially limited: “The declaration of interior security

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<sup>26</sup> The act was approved by unanimity at the Senators chamber but at last it was “stocked” at the Deputies chamber at the end of regular sessions, this under suspicion of opposition of the Military forces because they were not called to the act negotiation table. See: Periódico Reforma 6/5/2010, “Crítica el Ejército ley de seguridad”.

<sup>27</sup> This is where a resulting thesis of this Action 1/96 is quoted. *Jurisprudencia P./J.* 38/2000. *Rubro: EJERCITO, ARMADA Y FUERZA AÉREA. SU PARTICIPACIÓN EN AUXILIO DE LAS AUTORIDADES CIVILES ES CONSTITUCIONAL (INTERPRETACIÓN DEL ARTÍCULO 129 DE LA CONSTITUCIÓN).*

affectation will not proceed when the origin of the request or cause is the compliance of requirements or resolutions issued by administrative or labor authorities; it will not proceed in case of actions related to political, electoral, or social movements”.<sup>28</sup>

Concerning Military forces, the bill provides that after the compliance of the process the President will issue the declaratory and: “will dispose of the permanent military Forces for these to help the civil authorities”.<sup>29</sup> Another safeguard provided by the law is:

“in the operations when the permanent Military Forces acts jointly with public security institutions, the later would be responsible of giving notice of the facts to the competent authority, transmitting all data and putting the accused to its disposition if they had been detained”.<sup>30</sup>

These are the articles that refer to the Military Forces “help” to civil authorities; no other intervention control provision exists.

On what it takes to the formal declaratory process, it is worth to underline that only the legislatures or the Executive branch of a federate state can request it, this is in addition of the approval of the Executive branch and the Senate legality review. Finally, it is provided that the Congress Chambers: “can exercise their political control functions”.

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<sup>28</sup> This leaves out the possibility of declaring social movements such as Asamblea Popular de los Pueblos Oaxaqueños (APPO) movement, which kept the city under siege for over a year while the Executive and Legislative branches of Oaxaca, as provided in article 119, asked the Federation for help and its intervention, as interior security affectation. This case was analyzed by the Supreme Court, according to the second paragraph of article 97, in exercise of its Investigation Power in matters of serious violation of constitutional rights (Case number FI 1/2007 of October 14<sup>th</sup>, 2009), in which it was solved that there was a serious violation of constitutional rights due to the absence of well trained local police capable of facing this kind of events. At the Court the minority said that in addition to the abovementioned, there was a serious violation due to the intervention omission of the following Federal forces: State and Federal Public Security Secretaries.

<sup>29</sup> Article 69, number VI.

<sup>30</sup> Article 73.

This declaration becomes then as a soft emergency against the constitutional rights suspension established in article 29. This politicizes the intervention process with a clear preference for the states and the Senate. Aside from the affectation process, it is not clear if the jointly, coordinate or the simply parallel activity of the armed forces might be really prevented. Nor it is clear if this declaration is parallel to what it is already happening or if what is intended is to halt all activity, retrieve all soldiers to barracks and wait for the interior security affectation declaratory to be requested by the states and issued and then restart the use of soldiers in “supporting” activities; from missions against organized crime leaders: like Beltrán Leyva’s killing, to checkpoint and tollbooths guard: death of adults and children in tollbooths and checkpoints cases.<sup>31</sup>

This kind of activities, both specific missions and freeway and tollbooth checkpoints, are not carried out under local legislation but under federal jurisdiction.<sup>32</sup> Therefore, this interior security affectation declaratory appears to be subordinating the armed forces “supporting” nature to a local rationale which will comprise only a few events in which soldiers actually intervene.

The alternative is to consider that the interior security affectation declaratory is not intended to enable and regulate military operations but to politically protect the states who have felt harmed by federal authorities. Nevertheless, this would place us in front of a

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<sup>31</sup> Tollbooth death case with military responsibility is what is studied in the Military jurisdiction title. An example of checkpoint cases is the regrettable death of two kids that were in a van and death, as their parents says, by military shooting. At the same time the National Defense Secretary says that the kids were victim of hitmen cross-fire. See: Francisco Gómez, El Universal 1/5/2010, “Sicarios y no militares mataron a niños: Sedena”, <http://www.eluniversal.com.mx/nacion/177412.html>

<sup>32</sup> The act that has to be applied in military checkpoint and freeway tollbooth cases is Ley de Vías Generales de Comunicación, Fire and Explosives Act and offence types provided in the Federal Penal Code.

Congress product that follows a party ratio more than a state ratio, meant to be a protection of states from the federation and not to protect citizens.

In this sense, it has to be taken into account the elements in favor of the battle against drug trafficking and organized crime and ask ourselves if what is wanted is to halt all kinds of activities not performed in compliance of state orders and also if the police is trained to absorb the activities in which now they are helped by the army.<sup>33</sup> This battle has not been only against the drug cartels but also against municipal and state police organizations which has been infiltrated by the drug trafficking organizations and municipal head authorities, and in the future it could be expected against head of states government.<sup>34</sup>

It does not make any sense to limit the initiation process to states will. We are in presence of a legally overwhelmed activity; free from any operative and political control. The real intention of the limitation is to reduce the possibility of the Federal government to take decisions in this matter.

It is important to notice that the original text of the Act allows the possibility of control by a bicameral commission of Congress.<sup>35</sup> However, the power of control given to

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<sup>33</sup> See: Joaquín Villalobos, Doce mitos de la guerra contra el narco, Revista Nexos, enero de 2010. <http://www.nexos.com.mx/?P=leerarticulo&Article=72941>

<sup>34</sup> On May 26, 2009 federal and military authorities carried out a mission in different municipalities at Michoacan State in which, among others, mayors were detained. According to the media the mission was carried out in coordination with soldiers from the 43<sup>rd</sup> military zone. The detained municipality mayors were carried to the 43<sup>rd</sup> zone barrack in Apatzingan and the municipality police was disarmed and barrack in their own stations. From these public servers 12 are now on liberty, and orders of incarceration have been issued for around 20 of them.

<sup>35</sup> Art. 56. The policies and acts related with National Security will be under the control and supervision of the Federal Legislative branch, by the intervention of a Bicameral Commission that will be integrated by 3 Senators and 3 Deputies.

The Commission's chair will rotate between a Senator and a Deputy.

Art.57.- The Bicameral Commission will have the next powers:

the Commission is extremely limited; it does not have an effective power to control the Executive's policies on internal security and disposition of military forces. Also, the Act does not include the Commission to participate in the new process of interior security affectation. As a telling example, we can read the activity report of the Commission (March 2009-March 2010), that details its activities in the most difficult year in the battle against drug trafficking.<sup>36</sup> The activities developed were:

- 1) Development of technical and legal opinions presented to the Congress on National Security.
- 2) Monitoring the implementation of bilateral cooperative projects derived from the Merida Initiative.
- 3) Monitoring the implementation of the Federal Act to Control Chemical Substances.
- 4) Elaboration of project to visit the United States' Congress, in order to know their effectiveness and efficiency of the national security legislative's control.
- 5) Five meetings, one of them was the installation of the "Junta Directiva", and a visit to Washington City.

This shows that one of potentially most important instrument to monitor and control the Executive's policies did almost nothing that could be considered as an effective control of military forces activities. The Senate complains about that armed forces actions with the support of the Supreme Court (Acción de Inconstitucionalidad 1/1996), but it does nothing with the instruments of control it has, needless to say that the structure and functions of the Commission are not modified at all by the bill.

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- I. Request information to the Center, when an Act is discussed or when a matter of its concern is studied.
  - II. Review the annual project of the National Risk Agency and make and opinion about it;
  - III. Review the report is indicated in article 58 of this act;
  - IV. Review the activities' report of the "Director General del Centro al Secretario Ejecutivo";
  - V. Review the general reports of compliance of the guidelines send by the "Secretario Ejecutivo" to the General Director of the Centre;
  - VI. Review the Cooperative Agreements celebrated by the Centre and the actions made in order to fulfill the Agreements;
  - VII. Request to the Centre the results of the reviews, that the centre made;
  - VIII. Send to the "Consejo" any recommendation considered as appropriate; and
  - IX. The other powers that others Acts establish in its favor

<sup>36</sup> The document is available at: [http://www.senado.gob.mx/sgsp/gaceta/61/1/2010-03-23-1/assets/documentos/informe\\_BicamaralSN.pdf](http://www.senado.gob.mx/sgsp/gaceta/61/1/2010-03-23-1/assets/documentos/informe_BicamaralSN.pdf)

Finally, second paragraph of article 72 of the bill establishes that: “In support activities of the Permanent military forces referred in this title, the conducts that its members might do that could constitute a criminal offense that involve civilians, will be prosecuted and sanctioned by the competent courts with strict adherence to the principles of objectivity, independence and impartiality, in accordance with the provisions of Articles 13 and 133 of the Constitution”. So the extraordinary process of affectation uses the ordinary judicial instruments for the prosecution and sanction of crimes committed by military members during their support activities. In this way, the picture of the performance of the military forces cannot be complete without an overview of these instruments.

## II. Status of regular institutional tools to prosecute the crime and the military jurisdiction

As already discussed, whether we are in fact facing a steady and progressive intervention of military forces in police’s activities, or military participation because of the new internal security, the analysis of legal and procedural tools to control those activities, and the tools used to control crimes and irregularities committed by the Armed Forces shows a systematic obstruction by judicial rationality. It is not possible for civil authorities to analyze or review them. Civil authorities cannot review neither violations developed at the time of the arrest by soldiers in checkpoints, nor the limits of military courts when military members commit crimes where civilians are involved. While these problems have arise because of the lack of regulation of Article 72 of the current National Security Act, these problems will continue even with the proposed reform if the Chamber of



Representatives approves it without changes, and the President does not use his veto power on it.

A) Criminal instruments: Military checkpoints and criminal investigations

This problem can be better understood with an example of a case decided by the Mexican Supreme Court in April, 2007 (Amparo Directo en Revisión). In the case, the Supreme Court reviewed a resolution in which a Tribunal Colegiado a person was condemned for drug transportation.

The man was driving on a federal highway in the State of Zacatecas. In a military checkpoint it was found that he had five hundred ninety-one kilograms of marijuana. The military authorities presented him before the Public Prosecutor in order to start the criminal investigation (in which the military were also the witnesses) that concluded in his conviction.

The public defender brought an amparo in which he claimed the interpretation of articles 11, 16, 128 and 133 of the Mexican Constitution and 1, 7.1 of the “Pacto de San José de Costa Rica”. He argued that an interpretation of articles 11 and 16 of the Mexican Constitution showed the only two cases in which the right to free transit can be limited and that those cases does not included any possibility for the authority to stop and investigate vehicles that travel though a highway. He argued that it can only be done when constitutional rights were suspended, according to the procedure established in the article

29 of the Mexican Constitution, in presence of a flagrant violation to criminal law, an infraction to transit regulation, in *flagrante delicto*, or in observance to a judicial mandate<sup>37</sup>.

In any other case, the attorney argued, it must exist a mandate by a competent authority to justify these acts; on the contrary, the evidence obtained will not be useful in any criminal procedure.

The claimant's arguments were rejected because of formal reasons by the Tribunal Colegiado; claimant appealed and argued that if the Court considered that the detention was not constitutional, the consequences must be the invalidation of all the acts related with it.

The Supreme Court, in a divided decision (6-5), confirmed the decision of the Tribunal. The Court considered that the case did not qualify as "important" and "transcendent", which are necessary elements to admit an extraordinary review of an amparo directo. The majority of the Court stated that:

"Notwithstanding that claimant argued a constitutional issue, the Tribunal Colegiado decided not to study it, because would be useless. It considered that even if that argument was correct, it would only dismiss what the captors said about how the apprehension was made; but it would not nullify the other elements recovered in the criminal investigation for the determination of claimant's guilt (...)"

B) The problem of the military jurisdiction.

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<sup>37</sup> Art. 11. Every person has the right to enter and depart the Republic, to travel through its territory and to change his residence without necessitating a letter of safe passage, a passport, safe-conduct or any other similar requirement. The exercise of this right shall be subordinated to the judiciary, in criminal and civil liability cases, and to those of the administrative authorities when it concerns limitations imposed by the laws on immigration and general public health of the Republic or in respect to undesirable aliens residing in the country.

In the case of military actions, we also faced another obstacle to its control by civilian authorities: the military courts established by Article 13 of the Constitution and its current interpretation by the Supreme Court.<sup>38</sup>

Until the enactment of the “Ley sobre Administración de Justicia y Orgánica de los Tribunales de la Nación, del Distrito y Territorios” in 1855, the also called “Ley Juárez”, the military jurisdiction was not limited to established competence in favor of special courts to judge militaries; it also included rules with privileges and exemptions to military members in civil cases, in ordinary crimes and in those included in the “military order”. The criteria for granting these privileges was personal: being a member of the military forces.

Article 42 and article 4° transitorio of the “Ley Juárez” removed special courts with the exception of ecclesiastic and military courts, and established that military courts can only judge of military crimes or cases of individuals subject to military jurisdiction. The Act established that military courts should send to ordinary courts any cases on civil affairs and common crimes.<sup>39</sup> The relevance of the Law lies in the change of perspective of the

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<sup>38</sup> Article 13. No one may be tried under private laws or by *ad hoc* courts. No person or corporation may have any privileges nor enjoy emoluments other than those paid in compensation for public services and which are set forth by the Law. Military jurisdiction prevails for crimes and faults against military discipline; but under no cause and for no circumstance may military courts extend their jurisdiction over persons which are not members of the Armed forces. When a crime or a fault to military law involves a civilian, the case shall be brought before the competent civil authority.

<sup>39</sup> Art.42. Special tribunals are suppressed, except ecclesiastics and militaries. Ecclesiastic courts will not continue to rule over civil cases, and will continue judging on common crimes of individuals subject to its jurisdiction, until an Act in this matter is published. Military courts will also stop on ruling civil cases and will rule on strictly military crimes or mixed of individuals subject to military jurisdiction. This disposition is general for the entire Republic, the States cannot modify it.  
Temporary art. 4. Military Courts shall send civil cases and common crimes to ordinary courts. Ecclesiastic courts also shall do the same in civil cases.

implementation of military jurisdiction: it changes from personal criteria to material criteria for the existence of a military crime.<sup>40</sup>

During the Constitutional Congress of 1857 the competence of military courts was again reduced. Article 13 of the Mexican Constitution of 1857 established that jurisdiction of war subsisted only for crimes and infractions related with military discipline, reserving to complementary statutes the definition of the exceptional cases.<sup>41</sup> In the Constitutional Congress of 1917, the subsistence of military jurisdiction was strongly debated. The project pretended to maintain, but it was clear that with important restrictions. The project said that: “the military jurisdiction system responds to the social need that makes necessary its subsistence, it provides security for the society, rather than a privilege granted to the military class, as happened before”.<sup>42</sup>

It is also illustrative how the Courts had interpreted military jurisdiction. Between 1919 and 1933, the Mexican Supreme Court stated an interpretation of article 13 of the

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<sup>40</sup> The same criterion is used in the “Estatuto Orgánico Provisional de la República Mexicana” of May 15, 1956, which established that the military courts could only judge crimes committed by militaries in functions. Article 77 of the Estatuto established that: “This rights are generals, include all the habitants of the Republic, and binding for all its authorities. General statutes shall only regulate: I. The way to proceed against militaries in crimes done on military service.

<sup>41</sup> Article 13 of the Mexican Constitution of 1857: “In the Mexican Republic no one can be judge by neither privative acts nor especial tribunals. No person nor corporation can have neither especial jurisdiction nor emoluments that are not compensation for a public service and provided by an act. The war jurisdiction continues only for crimes and infractions that have strict connection with military discipline. An Act will set clearly the cases considered in this exception.

<sup>42</sup> Ignacio Marván, *Nueva Edición del Diario de Debates del Congreso Constituyente de 1916-1917*, Volume I, Suprema Corte de Justicia de la Nación, México, 2005, pp. 646 and ss. In his dissident opinion, General Múgica criticized the maintenance of the jurisdiction of war, and noted the desirability of eliminating it, in order that ordinary courts could analyze transgressions to military discipline. Hilario Medina criticized the militarism, arguing that one of the goals of the Mexican Revolution was to eliminate it and that if the Congress approves the article that included the military jurisdiction, it will remain, as a legacy for future generations, its final abolition. At the end, article 13 was approved as we know it today by 122 votes in favor and 61 against it.

Mexican Constitution accordingly with the 1917 Framers intention: to establish strict material criteria to determine the jurisdiction of military Courts, and clearly state that Civil Courts should judge any case that involve civilians.<sup>43</sup>

In 1933, using extraordinary powers, the President enacted the “Código de Justicia Militar”.<sup>44</sup> As a consequence, the interpretation of the Supreme Court changed, as an attempt to harmonize the text of article 13 of the Constitution and article 57 of the “Código

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<sup>43</sup> There are many examples that show that criterion, for example: DELITOS DEL FUERO DE GUERRA. El fuero de guerra subsiste solamente para los delitos y faltas contra la disciplina militar, cometidos por militares, de suerte que no basta que un delito haya sido cometido por un individuo perteneciente al Ejército, porque si no afecta de una manera directa la disciplina militar, ni constituye un delito cometido en ejercicio de funciones militares, o contra el deber o decoro militar, o en contra de la seguridad o existencia del Ejército, no puede caer bajo la competencia de los tribunales del fuero de guerra. (Tesis aislada, Quinta Época, Pleno, Semanario Judicial de la Federación, tomo VII, página 1140). FUERO DE GUERRA. Si los delitos que cometan los militares, no afectan a la disciplina militar, no son de la competencia del fuero de guerra. (Tesis aislada, Quinta Época, Pleno, Semanario Judicial de la Federación, tomo XII, página 70). ARTÍCULO 13 CONSTITUCIONAL. El espíritu de esta disposición, en cuanto previene que cuando en un delito o falta del orden militar, estuviere complicado un paisano, conocerá del caso la autoridad civil que corresponda, es que un mismo tribunal resuelva sobre la responsabilidad de los paisanos y de los militares, a fin de que no se divida la continencia de la causa; por lo que, aun cuando en el curso de la averiguación no se formulen conclusiones acusatorias contra los paisanos, debe continuar conociendo del proceso el Juez Civil, hasta fallar para que aquella continencia subsista. (Tesis aislada, Quinta Época, Pleno, Semanario Judicial de la Federación, tomo XII, página 913). FUERO DE GUERRA. El artículo 13 constitucional limita la órbita de los tribunales militares, fija su jurisdicción exclusivamente sobre aquellas personas que pertenecen al Ejército, y manda, además, que cuando en los delitos del orden militar aparezca complicado un paisano, conocerá del caso la autoridad civil correspondiente; y dados los términos categóricos de ese precepto, aun suponiendo que se trata de investigar el delito de rebelión militar, en el que se hallen inmiscuidos algunos paisanos, los jefes militares no están capacitados para asumir las funciones que el artículo 21 constitucional concede al Ministerio Público, ni para proceder a la detención de los acusados, si en el lugar en donde residen dichos jefes existen autoridades judiciales comunes y funciona normalmente el Ministerio Público. (Tesis aislada, Quinta Época, Primera Sala, Semanario Judicial de la Federación, tomo XXX, p. 1643).

<sup>44</sup> Enacted by the substitute President Abelardo L. Rodríguez, published on January 13, 1933. The articles that are relevant for this paper established:

Article 57 Will be considered crimes against military discipline:

I. The specified in the Second Book of this Code.

II. Common or Federal crimes, in presence of one of the next circumstances:

- a) the committed by militaries in service or derived from acts of it;
- b) the committed by militaries in a vessel of war, in a military building or military spot, or military taken, when the crime produce disturbance or disorder in the troop.
- c) the committed by militaries in a territory declared under siege, or in a territory is subject to military law, according to law of war;
- d) the committed by militaries against a formed troop or before the flag;
- e) that the crime were committed by militaries in connection with another established in part I.

In the cases of section II, if militaries and civilian participate on it, the first ones will be judged by a military Court.

de Justicia Militar”; this interpretation is still valid.<sup>45</sup> The problems is that the new interpretation does not make clear if the criteria adopted by the Supreme Court is “personal”, as legally established or the “material” derived from the constitution. What has happened is that most of the cases where military personnel are involved, even if civilians are also involved, are sent by civil authorities to the “Procuraduría General de Justicia Militar”, in order to be solved by a military court, at least, regarding militaries involved.<sup>46</sup>

Recently, the Supreme Court, in a similar case as the analyzed previously, solved an Amparo in which some civilians, while driving though the road near city in Sinaloa, received gunshots from another vehicle manned by personnel of the Mexican Army. Four civilians were killed.<sup>47</sup>

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<sup>45</sup> This is not a rare situation, but an historical deference by the Supreme Court to the Congress in cases of interpretation of constitutional rights, that has just started to be recently reverted. Vid, Francisca Pou, Roberto Lara, Raúl Mejía, “¿De verdad deseamos una Corte Redentora?” En *Corte, Jueces y Política*, Rodolfo Vázquez (comp.), Nexos-Fontamara, México, 2007. Originally published in revista Nexos, number 344, August, 2006.

<sup>46</sup> There are many contradictory “thesis” in which it is discussed the continencia de la causa when militaries and civils are involved in the same act. The first one divide the cause: (Tesis aislada, Quinta Época, Pleno, Semanario Judicial de la Federación, XXXIX, p.240) “FUERO DE GUERRA:” that concludes: “I. el artículo 13 constitucional prohíbe que los civiles sean juzgados por los tribunales militares, en todo caso; II. manda que las personas que pertenezcan al ejército, deben ser enjuiciadas ante los tribunales del fuero de guerra, cuando se trata de delitos del orden militar, y III. que cuando en la comisión de un delito del orden militar concurren militares y civiles, la autoridad civil debe conocer del proceso, por lo que toca a los civiles, y los tribunales del fuero de guerra, del que se instruya a los militares”; the second one also favored civil authorities: (Tesis aislada, Quinta Época, Pleno, Semanario Judicial de la Federación, XL, p. 139): FUERO DE GUERRA., that concludes: “que ni los antecedentes históricos del artículo 13 constitucional, ni las condiciones sociales reinantes cuando fue expedido, ni las ideas expuestas por los legisladores al expedirlo, ni la significación gramatical de las palabras de su texto, pueden autorizar la interpretación de que cuando en un delito militar estuviese complicado un paisano, las autoridades del fuero de guerra juzgarán a los miembros del Ejército y las autoridades civiles al paisano; y por tanto, son las autoridades civiles quienes deben de conocer de un proceso militar en el que se encuentren inmiscuidos militares y paisanos (...)”. Finally, the la Tesis aislada, Quinta Época, Pleno, Informe 1938, p.72, Rubro: “ARTÍCULO 13 CONSTITUCIONAL. SU INTERPRETACIÓN EN ORDEN A LA COMPETENCIA PARA CONOCER DE LOS DELITOS MILITARES, CUANDO CONCURRAN AGENTES CIVILES Y MILITARES EN LA COMISIÓN DE AQUELLOS”., by the Supreme Court when it solved the “competencia 118/37”. On it, The Supreme Court interpret article 57 of the “Código de Justicia Militar” establishing a personal criterion to determine the competence of military courts.

<sup>47</sup> Amparo en Revisión 989/2009 failed by the Supreme Court in August, 10, 2009.

The Public Prosecutor after making an investigation, declined its jurisdiction in favor of military authorities. The “Procuraduría General de Justicia Militar” sent the criminal investigation to a Military Court. In the investigation five militaries were considered as suspects.

The wife of one the civilians killed brought an Amparo claim –as an offended party by the homicide crime– arguing that number II, letter a) of article 75 of the “Codigo de Justicia Militar” violated the limits established in article 13 of the Mexican Constitution for military jurisdiction, because it allowed a Military Court to solve cases not only related with military discipline but cases in which the victim is a civilian.

The District Judge considered that claimant did not have any (standing) “interés jurídico”; claimant appealed the resolution, and the case was “attracted” by the Civil and Crime Chamber of the Supreme Court in order to determine if the wife could bring an amparo in a criminal trial against military law or acts of military authorities. However, the Chamber of the Supreme Court sent it to “Pleno” (en bank) of the Supreme Court.

Unfortunately, the Supreme Court in a 6 vote decision, considered that it could not rule on the case, and confirmed the determination of the District Judge. The Court considered that claimant could not bring a claim of amparo. The court did not accept the admissibility of the amparo for the victim or offended party even in restricted cases, even when the question asked to the Court was to determine what judge had competence to solve the case, and not a substantive determination that involved the rights of the accused.

The Supreme Court's reasoning is summed up in the following paragraphs:

The catalog of rights of the victims or offended established in part B of article 20 and the fourth paragraph article 21 of the Constitution is limitative, such the victim's intervention in criminal proceedings is not equivalent to the role of the accused or the Public Prosecutor. Otherwise, both articles would have established another disposition to allowing, at least, the possibility of an analog incorporation of other rights of similar nature as the ones expressly provided.

(...)

If those Constitutional norms established limited number of rights for the victim and the offended, it is because, had it not done so, would have generated a broad field of discretionarily in to their margin of participation in the criminal process, and the rights of the accused would had been left at the mercy of the courts' interpretation, with the risk of legal uncertainty that is so important to criminal law that is particularly sensible to the absence of clear and precise rules, in which it is desirable to confine jurisdictional discretion to the fundamental principles of the process, such as the assessment of the evidence and the individualization of punishment.

(...)

If an unwarranted meddling in the criminal process was allowed, because they are not the offender or because no constitutional norms allows them to participate in a certain phase of the proceedings, an unlimited number of assumptions would affect the reparation of damage directly or indirectly

### III. Conclusive remarks

We have shown a constitutional, political and jurisdictional overview of the relations of the military forces with civil authorities and citizens, in activities in which citizens should be expecting acts of ordinary police. This is not merely a perception problem. Regardless of the current situation of the battle against drug trafficking, the institutional challenges to modernize the normative structure of the Mexico are enormous.

The battle against drug trafficking is a decision that must be jointly taken by the representative institutions of the State. Despite the obvious advantage of Executive related to the information obtained by the different ministries, Congress has its own instruments of



control than can be used in an exercise of political responsibility, in order to legitimate and make their decision transparent. However, their rationality cannot be political or partisan, pretending that the Executive becomes hostage to the state's or Senate's decisions under these conditions.

On the other hand, Courts must begin to review what is necessary to strengthen fundamental rights, and this not always refers to its direct interpretation. As we have seen in the examples, it also refers to issues of admissibility of the claim and the definition of such basic things as the competence of a court or the control of acts in the apprehension and prosecution of criminals. It is precisely in these moments of crisis in which the virtues or deficiencies of the legal and political instruments are more evident, and it is moment to take off references to the great theories and develop practical approaches and specific solutions to problems that have been carrying since several decades.

The situation, however, is not completely negative. In the case of the jurisdiction, the majorities of the Supreme Court are changing and the problems of admission of claims approved by a tight majority of 6 votes have the possibility to advance in the future, especially with the incorporation of new justices in November, 2009. Some decisions of the First Chamber of the Supreme Court show clearly a tendency change: cases in which it is changing the criterion regarding the possibility to analyze irregularities in criminal investigations; cases in which the Court is defining new thesis about illegal evidence,

evidence that violate the Constitution and the consequence of the invalidity of the proceeding that used them.<sup>48</sup>

Also, the last two resolutions of the Inter-American Court of Human Rights in which Mexico had been involved are related with situation in which the Supreme Court had *sobreseído* or dismissed a claim about this topic. The first one is directly related with a Court resolution: the Castañeda case, in which the Court determined that it cannot analyze political rights, following a criterion from 1800's. The second, indirectly and with declarative consequences, is the Rosendo Radilla case, which refers to the limits of military jurisdiction in cases of violations of human rights.<sup>49</sup>

Finally, there is a bill to the the Amparo's Act that had been approved by the Senate that make substantive modifications to Amparo's proceeding, reducing several requirements in order to facilitate brings of Amparo's claims<sup>50</sup>.

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<sup>48</sup> The cases related with the possibility of analyze irregularities in criminal investigation are: Amparo Directo en Revisión ADR 1236/2004 and ADR 808/2005. In the Acteal case were discharged more than 40 condemned because of the use of illegal evidence during the criminal proceeding (Amparo Directo 9/2008).

<sup>49</sup> Case Castañeda Gutman vs. The United States of Mexico, failed on August 6, 2008 and Radilla Pacheco vs. The United States of Mexico, failed on November 23, 2009.

<sup>50</sup> The bill had been elaborated since 2000, when the "Comisión para la Reforma del Juicio de Amparo" of the Supreme Court presented some modifications to the amparo's proceeding. After an unsuccessful attempt in the Congress, a national conference of lawyers, and the drafting of the "Libro Blanco de la Reforma Judicial", it seems that now it is possible to predict the adoption of the constitutional bill necessary to make possible the comprehensive changes to amparo's proceeding.