

Who Holds the Reins of Power in Chaos? Military Involvement and the Emergence of a *De Facto* State of Exception in Mexico

¿Quién tiene las riendas del poder en el caos? Participación militar y el surgimiento de un estado de excepción de facto en México

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ABSTRACT

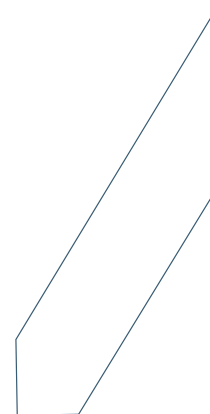
Mexico's public security has been progressively moving towards militarization for at least eighteen years. The army's participation, previously reserved for war and exceptional junctures, has normalized. This article critically reviews the military's role in Mexico's bloodshed and human rights crisis during the 2006-2024 period. I argue that the ongoing phenomenon has perpetuated the cycle of violence, threatened democratic standards, and severely impacted human rights. In this framework, I question whether the policy of militarization can be placed in the context of a *de facto* state of exception. My aim, in short, is to assess the ways in which militarization reinforces exceptionality and how they both signal a counter-phenomena to human rights.

Keywords: State of exception; Militarization; Violence; Mexico; Human Rights.

RESUMEN

La seguridad pública de México ha ido avanzando progresivamente hacia la militarización desde hace al menos dieciocho años. La participación del ejército, antes reservada a la guerra y a coyunturas excepcionales, se ha normalizado. Este artículo revisa críticamente el papel del ejército en la escalada de violencia y la crisis de derechos humanos en México durante el periodo 2006-2024. Argumento que el fenómeno en curso ha perpetuado el ciclo de violencia, amenazado los estándares democráticos y afectado gravemente los derechos humanos. En este marco, cuestiono si la política de militarización puede situarse en el contexto de un estado de excepción *de facto*. Mi objetivo, en suma, es evaluar las formas en que la militarización refuerza la excepcionalidad y cómo ambas señalan un fenómeno contrario a los derechos humanos.

Palabras clave: Estado de excepción; Militarización; Violencia; México; Derechos humanos.



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1. INTRODUCTION

The question of how the state should respond to crisis is one of the oldest dilemmas of legal and political theory. Frequently linked to the state's *raison d'être*, exceptional times are typically related with warfare, internal conflicts or sudden events that threaten public order and must be immediately overcome. At such times, democratic values and human rights standards are seriously challenged. It is in moments of crisis, as Oren Gross explains, that liberties and rights are seen as “legal niceties that may be cast aside as luxuries to be enjoyed only in times of peace and tranquility” (Gross, 2003, p. 1028).

Historically regarded as a “a point of imbalance between public law and a political fact” (Agamben, 2005, p. 2), the “state of exception” is an abstract and ambiguous concept that is often neglected in “normal times”. But when violence strikes and crisis is uncovered, exceptionality theory exits the “dark corner at the edge of the legal universe” to take the center stage (Gross, 2003, p. 1011).

In Mexico, criminal violence has shattered any semblance of democratic normalcy, and the state's armed response, with massive military deployment, indicates exceptional crisis management policies. In this article I will argue that the militarization of public security signals unbalanced civic-military relations that jeopardize democratic checks and human rights. Under this framework, I question whether the consistent use of this policy can be seen as the ongoing manifestation of a *de facto* state of exception in Mexico.

Existing literature has studied the consequences of the militarization of public security for democracy and human rights. This set of research has studied these phenomena both under the lens of an international trend (Felice, 1998; Grewal, 2023; Robledo Hoecker, 2022) and as a Mexican particular paradigm (Flores-Macias & Zarkin, 2024; Gaussens & Jasso-González, 2020; Magaloni & Rodríguez, 2020; Padilla-Oñate & Pérez-Ricart, 2023; Treviño-Rangel et al., 2021; 2020; Zepeda-Gil, 2018). Within the Mexican framework, case-law, human rights bodies, and NGOs have documented and alerted the risks associated with the military's increasing involvement in civilian tasks (Amnesty International, 2022; Human Rights Watch, 2022; United Nations, 2022).

While this body of work provides an overview of the ways in which militarization harms human rights, the study of this issue through the lens of a state of exception remains largely understudied. My aim with this research is to help amend that gap by assessing the ways in which militarization reinforces exceptionality, and how they both act as a counter-phenomena to human rights.

The research focuses on Mexico, mainly on the period between 2006 and 2024. As I will further develop, during this period, the Mexican State (under three different administrations) intensified the massive deployment of the military to address the security crisis. Within this historical-conceptual framework, I study how this ongoing phenomenon, deemed “militarization”, echoes what legal and socio-political theory has labeled as a “state of exception” (also referred to as a state of emergency, martial law, suspension of rights or state of siege). Throughout the research I will rely on Flores-Macias & Zarkin typology, in which militarization should be understood as “the use of the military for domestic policing” (2024, p. 410).

With this setting, the primary research question at hand is: Does the ongoing militarization in Mexico signal a *de facto* state of exception? If so, what implications and challenges does it pose for democracy and human rights in Mexico? To fully address the research questions, I used a combination of existing literature, case law and secondary data.

Critical to my study on exception is Carl Schmitt, Giorgio Agamben, Oren Gross, Børnskov and Voigt. Schmitt (1985) and Agamben (2005) approach to the state of exception was significant to understand some of the theoretical problems and ambiguities that surround the concept. I focused specifically on the complex relationship between law and exception, and the troublesome history on the use (and abuse) of emergency tools. The studies of Gross (2003), Børnskov and Voigt (2018) served to give the concept a contemporary connotation, framing the tensions, in practice, between democratic values and emergency states.

To frame the complexities of militarization in Mexico I draw mainly in secondary literature and data. To measure the extent of homicidal and criminal violence, I rely primarily on government sources and estimates from the National Institute of Geography and History (“INEGI”)¹. To assess the militarization phenomenon in Mexico, I studied a range of authors as Fix-Zamudio (2004); Flores-Macias & Zarkin (2019); Gaussens & Jasso González (2020); Madrazo-Lajous et al. (2018); Pérez-Correa et al. (2021); Padilla-Oñate & Pérez-Ricart (2023); Zepeda et al. (2020); and Treviño-Rangel et al. (2021). Although a particular evaluation of each author is beyond the scope of this research, the corpus of literature will allow me to grasp the historical evolution of military deployment in Mexico and the armed force's record in human rights compliance, lethality and use of force, impunity and accountability. I also relied on case law to evaluate the exceptionality of the military involvement in

1 As a side note, Mexico has two official institutions that measure homicides in the country: the National Institute of Geography and Statistics (INEGI) and the National Public Security System (SNSP). Results and measurements often vary depending on which official registry is shown. As stated before, I will rely on the official count of INEGI.

the Mexican constitutional system. I focused mainly on the Supreme Court's ruling in the *Action of Unconstitutionality 1/96*, where the Court allowed, for the first time, military action without a prior state of exception.

The article's roadmap will be divided into six sections. I will begin by addressing the state of exception and its conceptual problems, including a discussion on its close ties with extraordinary powers and restriction on rights. Section two will focus on the different models' democracies have adopted to cope with emergencies without over compromising democratic values or human rights. In the third section I frame Mexico's violent context, and the state's military response. Section four will draw on literature and comparative studies that signals risks between militarization and human rights and section five will give an overall assessment of militarization as an exception in the Mexican context. In section six, conclusions are presented.

2. THE STATE OF EXCEPTION AND ITS CONCEPTUAL PROBLEMS

"The exception is more interesting than the regular case. The latter proves nothing, the exception proves everything."

Carl Schmitt, *Political Theology*

At the heart of Carl Schmitt's political philosophy, at the center of his idea of sovereignty, at the core of his critique of liberal constitutionalism and legal rationalism, stands the concept of "exception". Both his texts in *Dictatorship* and *Political Theology* speak to this question and serve as a proxy for broader enquiries on who wields power in a state and how it is exerted in emergency situations. For Schmittians, the logics and dilemmas of the exception entails the "ultimate test of political power and reveals in whom that power is vested" (MagShamhráin, 2023, p. 90).

Schmitt is one of the most prolific, yet most problematic jurists of the twentieth century (Schwab, 1985). An unapologetic Nazi, Schmitt's bet for Hitler in 1933 has historically obscured the assessment of the work he produced during the Weimar Republic (1918-1933). The state of exception, as a concept deeply rooted to Schmitt political thought in that period², renders troubling from the outset. "Wherever we employ the phrase (state of exception)" says MagShahrain, "we deal *per force* with its problematic and profound associations with National Socialism and dictatorship" (2022, p. 92).

In the aftermath of World War One, Schmitt "focused his attention on the role of crises in a state's existence" (Schwab, 1985, p. 44). Unconvinced by legal rationalists and neo-Kantians who sought to frame every remedy under the law³, Schmitt believed that legal provisions were unable to predict, solve, and fully comprehend emergency situations. "There exists no norm that is applicable to chaos" (1985, p. 13).

In Schmitt view "for a legal system to make sense, a normal situation must exist" (1985, p. 66). In exceptional situations, he follows, the legal state of affairs renders ineffective and thus can be suspended in order take concrete action to end the emergency, restore the normal

2 The State of Exception was largely understudied as a philosophical concept until the twentieth century. For De-la- Durantaye, the Enlightenment and modern philosophy had focused on the state of nature and the state of culture, but they both neglected to study the state of exception "in which the usual state of nature and culture is suspended" (2005, p. 179). For Agamben, "the most rigorous attempt to construct a theory of the state of exception was made by Carl Schmitt" in the 1920s (2005, p. 32).

3 For the Kantian tradition, "emergency law was no law at all" (Schwab, 1985, p. 14). For Schmitt, "it is precisely the emergency that makes relevant the subject of sovereignty" (Schwab, 1985, p. 6).

legal order or replace it⁴ (Lars, 2019; Schwab, 1985). As it obvious, the practical problem that arises is that the distinctions of what constitutes a “normal situation” and an “emergency situation” are fraught with ambiguities and may change depending on different political judgments. The question, then, is who gets to decide when we are in one scenario or the other. In whom is invested that political power?

Schmitt's *Political Theology* revolves around this philosophical dilemma. Based on an underlying assumption that both the normal legal order and the exceptional order depends on appreciation and political *decision*⁵, he delivers his famous formula: “sovereign is he who decides on the exception” (1985, p. 5). This premise reflects the core idea of his theory. It is the sovereign, in Schmitt's view, who ultimately “decides whether there is an extreme emergency as well as what must be done to eliminate it” (1985, p. 8).

It is crucial to remember, though, that Schmitt's ideas on exception were more than abstract formulations of legal philosophy; they spoke both to a global trend and to concrete concerns in Weimar politics. After all, as recounted by Giorgio Agamben (2005), the end of the Weimar Republic and the rise of Hitler was sustained largely by a state of exception that effectively suspended rights and liberties of the Weimar Constitution while tilting the equilibrium of power⁶. The use of the state of exception as governmental technique, however, was not unique to the Nazi State.

Agamben traces back the modern state of exception to the French Revolution⁷. As he recalls, the debate of the 1789 Constituent Assembly marked important distinctions between the *état de paix* and *état de guerre*. In the former, civil and military authorities work separately and, in the latter, civil authorities respond to military command. More importantly, the Assembly distinguished these states from the *état de siege* “where all the functions entrusted to the civilian authority for maintaining order and internal policing passed to the military, who exercises them under exclusive responsibility” (Agamben, 2005, p. 16). As I will explain in section five, these distinctions are key to grasp Mexico's constitutional clause for exception. For now, it is important to note that the French *état de siege*⁸ was later “emancipated from the wartime situation to (...) be used as an extraordinary police measure to cope with internal sedition and disorder” (Agamben, 2005, p. 16).

4 In *Dictatorship*, Schmitt distinguishes between commissarial and sovereign dictatorship. In the former, the legal order was suspended due to unexpected threats, while the dictator sought to restore it through extraordinary powers (McLoughlin, 2016). In the latter, “the whole existing legal order is rendered obsolete, and a completely new order is intended” (Schmitt, 2014, p. 35). In both cases, what Schmitt does according to Agamben is to “inscribe the state of exception within the context of dictatorship” (2005, p. 33). In Agamben's account, Schmitt theory of sovereignty in *Political Theology* “acquires its sense solely on the basis of the theory of state of exception already elaborated in *Dictatorship*” (2005, p. 35).

5 Hence Schmitt is commonly referred as a *decisionist* that reproaches the positivist views of the neo-Kantians like Hans Kelsen (Schwab, 1970).

6 In 1933 the Third Reich issued the “Decree for Protection of the People and the State” which effectively activated Article 48 of the Weimar Constitution. This provision stated that “if in the German Reich, public security and order are considerably disturbed, the Reichspräsident may undertake necessary measures to restore public security and order, and if necessary, may intervene with the aid of armed forces.” (Agamben, 2005, p. 3)

7 Having the French Revolution as a key part of the concept's origin story, he emphasizes that “the modern state of exception is a creation of the democratic-revolutionary tradition and not the absolutist one” (Agamben, 2005, p. 5).

8 It is important to note that the state of siege was later complemented by the possibility to suspend the French Constitution in 1799. Over time, in Agamben's (2005) account, it was the combination of both the military overhaul of civic authorities in the state of siege *vis-a-vis* the suspension of constitutional rights and liberties, that gave rise to the juridical phenomena of the state of exception.

The adoption of exceptional measures -martial law, states of siege, emergency laws- during ordinary times then became a global phenomenon. From European democracies to the United States, Agamben “Brief Story of the State of Exception” traces how the concept underwent a shift from being an emergency tool in warlike or exceptional scenarios, to a mechanism increasingly used in ordinary times, when democracies began to rely on it to control social disruption and economic distress (Humphreys, 2006). This period also saw the increasing expansion of extraordinary executive power and the overall “acceptance of the practice by all political sides” (Agamben, 2005, p. 15).

By 1940, the normalization of exceptional rules led to Walter Benjamin’s fatal political evaluation: “the emergency state (...) is not the exception, but the rule” (Benjamin, 2003, p. 392). Agamben has echoed this assessment, arguing that in contemporary politics the state of exception “appears increasingly as a technique of government, rather than an exceptional measure” (Agamben, 2005, p. 6). From that standpoint, he framed it as a “threshold of indeterminacy between democracy and absolutism” (2005, p. 3).

In the next section, I will examine how modern democracies (in general) and how the Mexican state (in particular) have responded to this threshold of uncertainty, attempting to shift the scales in favor of democracy and seeking to balance, in practice, the “tension of tragic dimensions” between fundamental rights and emergency response (Gross, 2003).

3. CHAOS AND HUMAN RIGHTS.

3.1. The rules of the game in emergency situations

From its enlightenment past, liberal democracies have embraced the idea of separation of powers and checks and balances within the state institutions. From the revolutionary politics of the eighteenth century and the natural rights tradition, they have grasped the notion that all people are created equal and possess certain unalienable rights⁹ (Beitz, 2009). Today, limited power and human rights are two key features of constitutional democracies. Yet, these guiding principles are the first casualties in critical times. In such moments, Gross explains, “the temptation to disregard constitutional freedoms is at its zenith, while the effectiveness of traditional checks and balances it at its nadir” (2003, p. 1027).

There is no magical formula to address emergencies and democracies have designed different models to cope with crises without overly compromising human rights and democratic values. Oren Gross divides these models into two main categories: the “business as usual model” and the “model of accommodation”. In the first case, ordinary legal rules also apply in extraordinary times. This model operates under the assumption that safeguarding public order during emergencies while upholding democratic standards are compatible goals. In the business-as-usual model “the law in times of war remains the same as in times of peace” (2003, p. 1021).

9 Some traced them back to Ulpian and Aquinas, while others traced them to Locke or Rosseau’s enlightened notions. The United States Declaration of Independence (1776), the French Declaration of the Rights of the Man and of the Citizen (1789) and the Universal Declaration of Human Rights (1948) are frequently used in popular historical narratives. Contemporary accounts have situated human rights as a much modern concept, dating back to the Cold War (Moyn, 2010). For the purposes of this thesis, I echo Beitz’s contention that “as a thesis in the history of ideas, human rights are indeed the legacy of natural rights” (2009, p. 50).

The “model of accommodation”, on the contrary, tends to stretch the rule of law to provide the state with extraordinary tools to overcome the emergency. The model operates under the assumption that “extraordinary powers are, in fact, going to be used in times of great peril (...) and the legal system ought to retain enough flexibility to allow such use” (Gross, 2003, p. 1069). In this model, the interpretation of existing rules is more sensitive to the crisis, emergency decrees can be introduced, and exceptional executive powers may be put in place.

While some countries still respond to emergencies with the same legal and political framework as regular times (“business as usual model”), democracies have been increasingly inclined to address emergencies with tailor-made constitutional provisions that enables exceptional tools for crisis management (Bjørnskov & Voigt, 2018, p. 101; Keith & Poe, 2004). These emergency provisions can serve to clarify¹⁰, among other things: *who* can declare a state of exception; *what* political or judicial controls are permissible; *which* fundamental rights cannot be suspended; and *how* the exception must be handled within the confines of space and time. In Bjørnskov & Voigt account, by 2018, “nine of ten countries have emergency provisions, and (...) between 1985 and 2014, 137 countries declared a state of emergency at least once” (2018, p. 101). In the end, as Humphrey cautioned, constitutional clauses¹¹ enabling state of exceptions “have effectively globalized” (2006, p. 683).

However, as Carl Schmitt (1985) has taught, the legal lens is insufficient to fully assess the exception’s ramifications as a socio-political topic. Since 1988 the International Law Association (“ILA”) noted that: “exclusive focus on formal states of emergency barely scratches the surface of the widespread phenomenon of human rights abuses associated with states of emergency” (Mörth, 2023, p. 69). They are not alone in this claim: political theory has shown that there exist a considerable number of states of emergency that occur dodging, ignoring, or bypassing legal frameworks (Keith & Poe, 2004).

In the light of this, specialized literature has distinguished between so-called “*de iure* state of exceptions”, as those that have been legally declared and developed under institutional framework; and “*de facto* states of emergency”, as those cases where the state respond to crisis through exceptional power and suspension of rights, but with no formal declaration and no constitutional accountability (ILA Committee on Human Rights in Times of Emergency, 2020; Mörth, 2023).

In the ILA’s taxonomy, a “classic” *de facto* state of exception will involve a proper emergency with exceptional response, but with no formal declaration. An “ambiguous or potential” *de facto* emergency, will have no real emergency conditions, no formal declaration, but a sudden change in application of security laws (ILA, p. 3). Although in both cases the state avoids formally declaring a state of exception, this does not mean that extraordinary powers will not be seen or that the state will not use the law to restrict rights.

As the Committee on Human Rights in Times of Emergency warned very clearly, in *de facto* states of exception governmental power will “transfer emergency provisions into ordinary law that limits severely human rights (...)” (ILA, 2020, p. 4). Naturally, a *de facto* state of exception analysis is more concerned with the practical implications of emergency provisions for right-bearers than in a positive evaluation of the law.

10 Democracies handle crises in different ways. In some cases, the authority to declare a state of exception is on the parliament, in others it is the executive branch. Judicial control could or could not take place. Provision could instruct spatial and temporal limits and ban the possibility of suspending certain rights.

11 In addition to domestic constitutional provisions, numerous treaties on human rights envisage states of exception clauses in which member states may validly suspend rights and alter the balance of power. Importantly, Mexico is part of the American Convention of Human Rights (ACHR) which, in article 27, states that: “in time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention (...)”.

Between these conceptual categories, it is important to highlight the obvious: “one can only have an exception if one has a rule” (Schwab, 1985, p. 22). The exception, states Schmitt, “not only confirms the rule, but also its existence” (1985, p. 15). What is key to note in this dichotomous logic is that any exception (in every model or status) must contradict or in any way depart from the social, political and legal establishment. It must necessarily contrast the ordinary “rules of the game”. In the next sub-section, I will shortly analyze what has been Mexico’s political *status quo* and its historical relation with exceptionality

3.2. A brief review on exception. How does this concept play out in Mexico’s history?

As other democracies, Mexico has formally adopted the “model of accommodation” theory to deal with emergency situations and has enacted a constitutional provision pertaining to the state of exceptions since 1821. Even though this clause was repealed and reinstalled on several occasions throughout history¹² Mexico embraced it in the 1857 Constitution and has retained it as part of its constitutional structure ever since.

In 1857 two important provisions were approved by the Constituent Assembly. The first one, related to the state of exception, mentioned that “in case of invasion, serious breach of the peace or any other event which may place society in severe danger or conflict, only the president can suspend, (...) with the approval of the Congress (...), the rights granted by the Constitution”.¹³ The second provision, regarding the role of military, stated that “during peacetime, no military authority may perform any functions other than those directly related to army training”¹⁴.

In the constitutional arrangement, the military could intervene only in war scenarios and in formally declared states of exception but was explicitly banned from engaging in civilian matters “during peacetime”. This framework was key to the development of historical events in the following years.

Shortly after the 1857 Constitution was enacted, Mexico entered a civil war period historically known as the “Reform War”. Foreseeing an internal strife, President Ignacio Comonfort promptly declared a state of exception, requested extraordinary powers from Congress, and deployed the armed forces to counter the conservative side (Fix-Zamudio, 2004). Comonfort’s petition was granted, and the Constitution was suspended, signaling the onset of an ongoing trend in Mexican politics of the nineteenth century. The state of exception became a commonplace in the following years, when the country coped with both internal uprisings attempts and threats of foreign invasion. Under president Benito Juarez, emergency provisions enabling exceptional power and suspension of rights were triggered from 1861 to 1862, 1862 to 1867, and 1868 to 1871 (Fix-Zamudio, 2004).

Between the end of the nineteenth century and the beginning of the twentieth century, Mexico saw three major events: a dictatorship rule under General Porfirio Diaz, a democratic revolution to overthrow him, and the adoption of a new Constitution in 1917, which would mark the end of the revolutionary upheaval¹⁵. Importantly, the state of exception clause and

12 The Constitution of 1824 and 1836 abolished the state of exception clause and the Constitution of 1843 restored it, allowing the suspension of certain rights.

13 Furthermore, the norm specified that the right to life could not be interrupted and placed restrictions on both time and space. The translation is mine; the original text is in Spanish.

14 Mexican Constitution, Article 129

15 For some historians, the end of the revolution was marked by the death of President Alvaro Obregon in 1920.

the prohibition on military involvement during peacetime were upheld on the same grounds by the 1917 Constitutional Assembly.

Mexico then entered a period of 70 rule by a single political party¹⁶. In that period the country was formally a democracy, but with no real separation of power. The executive branch was popularly known as a “six-year emperor” (Cosío-Villegas, 1974, p. 31) and the partisan autocracy was understood at the time as a “perfect dictatorship” (Vargas Llosa, 1989). During this period, the Mexican government completely ignored the state of exception clause, turning it into a dead letter throughout the twentieth century.¹⁷

Given its autocratic nature, it is only natural that the Mexican government avoided using the exception clause. As literature has shown, quasi-totalitarian governments do not need special regimes. Paraphrasing Bjørnskov and Voigt, “If the head of the executive is unconstrained, why would he need special provisions giving him powers he already enjoys?” (2018, p. 27).

Although no formal state of emergency was declared in those years, governments had to deal with numerous crises, which were usually met with extraordinary power and military force. The army’s role during emergencies was extremely diverse. Their duties ranged from aiding society during natural disasters, to disappearing and torturing political dissidents that threatened the ruling party in the so-called “dirty war” (Aviña & Smith, 2024). From helping society rebuild after the 1985 earthquake, to repressing the Zapatista uprising movement in Chiapas, 1994 (Gaussens & Jasso-González, 2020). The armed forces’ close ties with exceptionality run through Mexico’s 70-year rule of partisan autocracy.

Mexico attained the transfer of political power in the year 2000. The “democratic transition” viewed the military as a reliability standpoint during an uncertain political scenario (Coste, 2022). In the years that followed, extraordinary military intervention became critically normalized. As I will show in next section, from 2006 to 2024 Mexico has experienced a scenario of unprecedented violence with unparalleled military deployment, which begs the question of whether the country is witnessing a “classic *de facto* state of exception”. That is to say: 1) violent contextual emergency; 2) a militarized exceptional response, but 3) with no formal declaration of siege, emergency or exceptionality. To make that analysis, it is critical to set the scene and provide some context on Mexico’s situation regarding security, violence and militarization.

Section IV. Mexico’s violent context and the states armed response

I have underscored some of the exceptions’ legal and socio-political problems. From Schmitt and Agamben, to Gross and Bjørnskov & Voigt, it is safe to say that the state of emergency shows pressing issues for contemporary democracies and human rights. The concept is related to totalitarian governments, relies largely on a gray zone area of political appreciation, its exercise often jeopardizes rights and liberties, unbalances democratic values, and disregards constitutional checks. In this section I give some context on Mexico’s human rights crisis and the state’s military response. With this, I wish to underscore trends that signal a state of emergency, not as a legal assessment, but as a *questio facti*.

Data showing that Mexico is witnessing a spike in criminal violence with serious human rights implications is overwhelming. The country has more than 100,000 people disappeared, 6,000 clandestine graves (Comisión Nacional de Búsqueda, 2024), more than 350,000 homi-

16 The Institutional Revolutionary Party (PRI) governed Mexico from 1930 to 2000.

17 The only time a state of emergency was declared was during WWII, for a brief period (Fix-Zaudio, 2004).

cides (Prado-Veiras & Arredondo, 2021) and an overall population that tends to feel insecure in their own cities (INEGI, 2023). Impunity rates hover around 96%, implying that prosecution of crimes is extremely rare, and punishment is an unusual exception (México Evalua, 2023). Not surprisingly, Mexico's relationship with violence and impunity has been widely framed as a "serious human rights crisis" (Amnesty International, 2022).

Mexico has a lengthy record on violence, but 2006 marked a starting point to grasp it as a contemporary phenomenon. In that year, Felipe Calderon won the national presidential election with a 0.56% margin of victory over his opponent Andres Manuel Lopez Obrador ("AMLO"). Under accusations of fraud and massive social protests, Calderón's first days in office saw a political crisis that intertwined problems of legitimacy and governability. These politico-electoral problems crossed with a summer of "spectacular criminal violence in Mexico" (Moon & Treviño-Rangel, 2020, p. 726) especially in Michoacan and Veracruz, places with drug-related crime groups.

In this socio-political context, Calderón announced a "war on drugs" in his first days in office, framing the state's long-standing conflicts with the drug cartels under a warlike discourse (Cervantes-Porrua, 2017; Padilla-Oñate & Pérez-Ricart, 2023). Appealing to childhood, family safety, and civil security, Calderon announced a direct fire-on-fire assault on criminal groups, labeling the conflict as a national security emergency.

As scholars have pointed out, Calderon's moral crusade against drugs and cartels was not inspired in the protection of family values or the youth, but by a pragmatic vision aiming "to gain political legitimization (...) and draw attention away from the highly controversial 2006 election" (Zepeda et al, 2020, p. 238). It was through this vision that, in December 2006, Calderón "initiated the war by means of a symbolic sovereign act: sending the army to the streets" (Cervantes-Porrua, 2017, p. 307).

As noted in Section II, Felipe Calderon was not the first president to use the armed forces in his political agenda. The military served different tasks in the past and, importantly for this section, the Mexican military was key in the development of another "war on drugs", the one launched by Nixon in 1971 and intensified by Reagan during 1981-1989. During that period, the United States and the Mexican State cooperation agreed that "military forces would be more effective to fight well-armed wealthy drug cartels and, also, less corrupt than Federal, state and municipal police forces" (Zepeda et al, 2020, p. 237).

In that sense, as explained by Rodrigues and Zepeda, "Calderon's declaration of war was not the beginning of militarization of Mexican public safety, but a new and more intense phase in its history" (Zepeda et al, 2020, p. 238). Indeed, although military forces have been an important component of the Mexican state during the twentieth century, their participation in public security intensified dramatically under Calderón.

From 2007 to 2012 large-scale militarized operations were launched at record high levels (Brewer, 2009; Padilla-Oñate & Pérez-Ricart, 2023). The first massive deployment of military forces occurred on December 11, 2006, when the "Joint Operation Michoacán" was launched. Continuing in 2007, these "Joint Operations" (where the military was heavily involved) were deployed in Baja California, Guerrero, Chihuahua, Durango, Sinaloa, Nuevo Leon, Tamaulipas and Veracruz. By 2012, the military operated regularly in sixteen states with approximately 48,000 members doing public security-related jobs (Madrado-Lajous et al., 2018).

As the clashes between criminal groups and the armed forces grew and intensified, so did the expression of violence and reports of human rights violations on both sides of the spectrum. As I will show in section IV, a series of studies proved that insecurity was not only a product of criminal violence, but of the state's decision to massively deploy the military in

public security tasks (Espinosa & Rubin, 2015; Gaussens & Jasso-González, 2020; Hope, 2013; Padilla-Oñate & Pérez-Ricart, 2023).

What is important to note is that the decision to deploy the army during 2006-2012 brought disastrous security results. Since the 1990s Mexico had achieved a historic drop in homicide figures reaching a national rate of 8 homicides per 100,000 inhabitants in 2007 (INEGI, 2019). Calderon's six-year term saw those figures triple. By the end of 2011 Mexico had 24 murders per 100,000 inhabitants (INEGI, 2019). Although there are several explanations for the abrupt rise in violence during that time¹⁸, studies show militarization as a major contributing factor.

Despite the evidence, President Enrique Peña Nieto (2012-2018) doubled-down on militarization as the route to tackle organized crime. In the early years of Peña Nieto's presidency, military deployment decreased but by 2018 the army's presence had reached all-time highs with over 50,000 soldiers engaging in civil security operations (Padilla-Oñate & Pérez-Ricart, 2023). Also, in 2018, Mexico experienced the most brutal homicide figures on record up to that point. Nearly 40,000 murders in one year and 29 deaths per 100,000 inhabitants (INEGI, 2019).

Three significant developments concerning militarization occurred under Peña Nieto's administration. First, the armed forces penetrate more regularly in the civil security corps' hierarchical ranks and establish internal authority. This phenomenon, which the literature has labeled "indirect militarization"¹⁹ (Hall & Coyne, 2013) stabilize in Peña Nieto's six-year term²⁰. At the local level, by 2017, eleven Ministers and seven Heads of Public Security had a military background (Padilla-Oñate & Pérez-Ricart, 2023). The top-down military influence in the civil security corps changed the training methods and the operational techniques, especially at the subnational level (Padilla-Oñate & Pérez-Ricart, 2023).

Secondly, and crucial for this study, Peña Nieto attempted to normalize the exceptional nature of the armed forces' operations. In 2017, Congress enacted the Internal Security Act, which essentially gave the military permission to engage regularly in public security activities. As I will explain in section IV, the Supreme Court ruled the legislation unconstitutional (Hernández-Hernández, 2018).

A third major (and tragic) event was the violent abduction of 43 students in Ayotzina, Guerrero, in September 2014. The brutality of the case triggered widespread protests across the country. Although the official government version attempted to blame state police and organized crime, further inquiries revealed that the army was also involved (Buitrago-Ruiz et al., 2022). Interestingly, AMLO, the opposition's political leader at the time, exploited this episode to rally against the security strategy and "vehemently opposed the militarization of public security" (Zepeda et al., 2020, p. 245).

Despite former views and campaign promises, when AMLO won the 2018 presidential election, he chose the armed forces as his closest ally. In the beginning of his term, AMLO declared "the end of the war on drugs" and symbolically inaugurate the path towards paci-

18 Militarization is only one of several overlapping factors that contribute to the abrupt increase in violence during *Calderonismo* and onwards. This will be explained in section IV.

19 Hall and Coyne state that indirect militarization "occurs when domestic police forces acquire military characteristics over time" (2013, p. 487).

20 As shown by Padilla Oñate & Perez Ricart (2023), in the subnational level, the worst year was 2011, where 15 heads of state had a military background.

fication,²¹ but despite the discursive twist, the security strategy stayed somewhat unchanged (Treviño-Rangel et al., 2021).

AMLO's first institutional move was proposing multiple constitutional amendments to replace the federal police with a hybrid militarized security force deemed the National Guard (Treviño-Rangel et al., 2021). These constitutional amendments were approved by Congress in 2019, with wide opposition from civil society and human rights bodies.

The National Guard is legally a civilian entity, but its hierarchical structure incorporates military rules, its integration relies in military elements and its formation embraces the education, training, professionalization and promotion system of the armed forces (International Crisis Group, 2024). As if that were not enough, 8 out of 10 elements in the National Guard have a military background (Giles-Navarro, 2023) and the commander and chief is a former military General²². With military elements, military training, and military supervision, the National Guard has been widely regarded as a military institution disguised under the civilian cloak.²³

Beyond the National Guard, the military has participated directly with AMLO as both its armed wing and political ally. As his political ally, the armed forces were increasingly used to take charge of key projects that were previously held by civil authorities. This new phenomenon deemed "militarism" (Arana & Anaya, 2020), saw in AMLO a closed companion. In 2021 a study conducted by the Center for Research and Teaching in Economics ("CIDE") found that 246 government functions "previously overseen by civilian authorities were transferred to the Mexican Armed Forces" (Berg & Polo, 2023; Pérez-Correa et al., 2021). Among others, the military was involved in infrastructure projects, social support distribution, and overseeing the management of customs and ports.

As his armed wing, the military has taken on a protagonism like never before in Mexico's modern history. In 2020, using a transitory constitutional clause²⁴, AMLO issued a Military Decree (Diario Oficial de la Federación, 2020) ordering the massive deployment of the army in national territory. In a one-page document, the Decree ordered the armed forces to participate on "extraordinary" basis in public security matters.

In simple terms, under AMLO public security was handled by a militarized body called the National Guard and the direct participation of the Armed Forces (México Unido Contra la Delincuencia, 2021). The result was the deployment of 281,209 soldiers in Mexican streets, "more than any time in the nation's history" (International Crisis Group, 2024, p. 6). Although the trend in homicides has seen small improvements, AMLO's term has been the most violent in history with almost 200,000 homicides in the last five years (INEGI, 2024). The findings, in sum, indicate a scenario of spectacular violence with an unprecedented military response. Still, no declaration of emergency has been formally issued.

21 In 2019, AMLO published the "National Security and Peace Plan" (2018-2024) that proposed cross-cutting solutions to crime, including drug policy and transitional justice measures. The plan, for the most part, was ignored.

22 General Luis Rodríguez Bucio was educated at Heroic Military College and served in battalions and presidential guards before becoming the Commander of the National Guard.

23 Following Flores-Zarkin taxonomy, Mexico's National Guard can be categorized as a "paramilitary police. That is, a gendarmerie-style force that embraces military training, hierarchical structure and, in some cases, accountability to the Ministry of Defense. Other examples of this hybrid-militarized bodies may include Chile's Carabineros and France's Gendarmerie (Flores-Macías & Zarkin, 2019).

24 In 2019 the Constitutional Amendment regarding the incorporation of the National Guard had come into effect. The transitory provision stated that the president was able to "use the Armed Forces for public security tasks" until 2024.

5. ON THE ROUGH RELATION BETWEEN MILITARIZATION AND HUMAN RIGHTS

Several explanations have been put forward to explain the abrupt increase in violence in Mexico since 2006. As recounted by Zepeda-Gil (2018) some of the main explanatory thesis include the rivalry and turf war between criminal groups (Hope, 2013; Ríos, 2013); state weakness in the control of conflict zones (Kenny & Serrano, 2012); economic dynamics and social inequality (Merino, 2013); and external influence in Mexico's politics and security agenda (Garzón & Bailey, 2016). In this section I will focus on the set of scholars that have established a link between the state's massive deployment of the military on national territory and the increase in violence and human rights violations (Espinosa & Rubin, 2015; Flores-Macías & Zarkin, 2019; Gaussens & Jasso-González, 2020; Madrazo-Lajous et al., 2018; Padilla Oñate & Pérez Ricart, 2023; Silva-Forné et al., 2019).

According to specialized literature on the subject, human rights complaints rose as military involvement in civil security responsibilities expanded, while the lethality rate broke the normal limits on use of force. For instance, since the armed forces' massive deployment in 2006, the number of human rights complaints skyrocketed. The National Human Rights Commission ("CNDH") went from having 182 complaints against the Army in 2006 to 1,695 in 2011 (Gaussens & Jasso-González, 2020). This tenfold rise in complaints made the military the institution with the worst human rights compliance record, surpassing the police, the judiciary and the prosecutor's office (Gaussens & Jasso-González, 2020).

The military's involvement also led to an increase in lethality rates and arbitrary executions. Research by Silva-Forné et al. (2019) showed that in violent clashes with criminal groups in the 2006-2012 period the police had an overall ratio of 4.8 civilians killed for every civilian wounded, while the Army had 7.9 civilians killed for every other wounded. These metrics far exceeded the limits of a normal lethality rate which should be less than 1 (Treviño-Rangel et al., 2021). What these measurements show is that when the Army is involved in confrontations "there are more civilians killed than wounded, and more wounded than detained" (Gaussens & Jasso-González, 2020, p. 38). Put it simply, in confrontations "the military was not shooting to subdue alleged members of organized crime, but to kill them" (Treviño-Rangel et al., 2021, p. 538). This rationale speaks closer to the logic of a state of war or a state of exception, than to a regular public security role in a constitutional democracy.

It is important to note that the military's rough relation with human rights is not a unique Mexican phenomenon, nor does it respond exclusively to pathologies of its system. Military participation escalated the use of lethal force in countries like Venezuela and El Salvador²⁵ (Colocho & Olivares, 2024; Silva-Forné et al., 2019) and NGOs like Amnesty International (2022) and Human Rights Watch (2022) have been very vocal on the dangers of militarization for democracy and human rights in the region. Furthermore, international bodies have routinely imposed sanctions on states for the normalization of military involvement in civilian matters. In this regard, the Inter-American Court of Human Rights ("IACHR") have ruled against countries like Venezuela, Chile and Brazil for cases involving military participation in security tasks²⁶.

25 The case of Salvador is particularly interesting because the lethality in the use of force increased in tandem with militarization which soared by 65% between 2019 and 2022 (Colocho & Olivares, 2024). These two phenomena occurred, in turn, in the context of the states of emergency decreed in El Salvador in 2020 and 2022 followed by unprecedented increase in homicidal violence in the state's capital (Colocho & Olivares, 2024).

26 Among others, the Interamerican Court of Human Rights have rule cases regarding armed forces and human rights in *Gomes Lund et al. v. Brazil* (2010); *Usón Ramírez v. Venezuela* (2009) and *Case of Palamara-Iribarne v. Chile* (2005).

In Mexico, both human rights organizations and international bodies have warned of the threat that the military poses to human rights. In the past 15 years Mexico has received seven rulings²⁷ from the IACHR regarding the generalized use of armed forces for public security. In these cases, the Mexican state has been instructed by the IACHR to keep military involvement as a strictly “exceptional” measure²⁸.

Between the increase in human rights complaints, the breach in lethality standards, and Court rulings, literature has sought to explain why the Armed Forces are more prone to commit human rights violations. Flores-Macías & Zarkin (2024) have suggested three main reasons. First, the authors contended that the military’s training and warlike mindset make them more likely to react violently to a threat. As observers have noted, “the soldier’s commitment is to the state (...) while the police commitment is to the citizen” (México Evalúa, 2024, p. 16). Because the military operates under war logics (enemy annihilation and state protection) the aggressive use of force is both acceptable and occasionally required. By contrast, the police’s objective is to protect the people and prevent crime. If police and army operate under different rationales, overlapping their functions may be a first explanation for the increase in violent incidents and excessive use of force.

Secondly, soldiers and commanding troops are accustomed to highly vertical and hierarchical settings. Following (and not questioning) commands is deeply rooted in military discipline. Because “soldiers are trained to follow orders in low-discretion contexts” concludes Flores-Macías & Zarkin, “when assigned to policing tasks, judgments about appropriate levels of force become secondary to strategies of saturation patrols and aggressive intimidation” (2024, p. 391). In addition, authors like Padilla-Oñate and Perez-Ricart have shown that military training and the order-giving-receiving line “focuses more on the combat of criminal groups rather than on citizen proximity” (2023, p. 16). Objectives and means change between the police and the military, giving a second explanation as to why the latter is more likely to breach human rights.

A third explanatory thesis is the impunity rates and institutional protections of the military. Even when soldiers have proven wrongdoings, they usually have structural “protections from persecution” (Flores-Macías & Zarkin, 2024, p. 391), which prevents deterrence for future cases of human rights violations. Evidence in this sense is overwhelming in Mexico. Despite the rise in human rights complaints, between 2007 and 2012, less than 1% of military officials faced punishment or sanctions (CMDPDH, 2013, p. 2).

Other accounts on the escalation of violence and human rights breaches when the military intervenes have focused on the army’s heavy weaponry, the secrecy and lack of accountability on its operations (Treviño-Rangel et al., 2021) and the violent response of organized crime in fire-on-fire dynamics (Flores-Macías & Zarkin, 2019). Furthermore, a set of literature has argued that an additional trait of militarization is the “naturalization of the exception either by its frequent (irregular) use or by its constitutional standardization” (Robledo-Hoecker, 2022, p. 21).

Recent accounts have contended that the armed forces have conducted law enforcement tasks “either against legal restriction seeking to prevent the practice or without laws

27 One of the most important rulings on military jurisdiction is the Case of Radilla-Pacheco v. Mexico (2009) and the case Cabrera García y Montiel Flores v. Mexico (2010). In the latter, the IACHR ruled that the Mexican State was internationally responsible for having failed to comply with the duty to adopt provisions of domestic law regarding military criminal jurisdiction. Furthermore, in the landmark case Alvarado Espinoza et al. v. Mexico (2019) the IACHR imposes guidelines on how the military should act in public security tasks.

28 *Ibid.*

regulating it” (Flores-Macías & Zarkin, 2019, p. 530). While some countries like Dominica or El Salvador need an explicit declaration of exception to deploy the military, other countries like Brazil, Nicaragua or Peru have sought to legally standardize the military’s involvement in domestic policing without formally declaring an emergency²⁹ (Flores-Macías & Zarkin, 2019; Goizueta-Vertiz, 1997). As I will further develop, this seems to be the case of Mexico.

6. MILITARIZATION AS EXCEPTION: UNVEILING MEXICO’S SCENARIO

“The military should not execute public security responsibilities; it is not constitutionally allowed. The military was deployed during the security emergency, but we must return to normality. (...) We can’t remain in a state of exception.”

Andrés Manuel López Obrador, July 2012³⁰

In October 2009, the United States Director of National Intelligence, Dennis Blair, and Mexico’s Minister of National Defense, General Guillermo Galván, met at a secret location in Mexico City to discuss matters related to the “war on drugs”. Years later, the records of this conversation would be leaked as part of the diplomatic communication cables exposed by Wikileaks, giving key insight of the military’s role in the counter-narcotic fight in those years (Castillo, 2010).

According to the account, U.S. officials had serious concerns on the armed forces performance under Mexican rule of law. At one point, Blair explicitly asks “how can the Mexican government transition the armed forces to a strictly civilian domestic counter-narcotics fight” (Embassy Mexico, 2009a). Galvan asserts that the internal deployment of the military will continue for, at least, 7 to 10 years, but recognizes that the lack of legal framework complicates their mission. The general then suggests the solution: “trigger a state of exception,” under article 29 of the Constitution (Embassy Mexico, 2009b).

A few days later, John Feeley, Deputy Chief of Mission, met with Fernando Gomez Mont, Mexico’s Minister of the Interior, to discuss the feasibility of formally declaring a state of exception (Carroll, 2010; Tejada, 2010). The records of that meeting confidentially labeled: “Mexico: Article 29 ‘State of Exception’ -Uncertain Results, Few Benefits” (2009) shows Gómez Mont’s struggle to explain U.S. officials on the reasons why it was not desirable for the Mexican state to formally declare a state of emergency.

Gomez Mont first contended that the declaration would have to be approved by a Congress controlled by the political opposition and, if denied, it would leave the impression that the security strategy had been unlawfully implemented. Then, he argued that a state of exception would endanger popular and political support of the armed forces. Finally, he contended that a Supreme Court ruling may provide legal basis for military involvement, without a state of emergency being declared. Blair and other U.S. officials agreed with the Mexican Minister of Interior. In their report they concluded: “the legal benefits of invoking a state of emergency are uncertain at best, and the political costs appear high.” (Carroll, 2010; Tejada, 2010).

At the core of this conversation, elements of what the ILA (2020) referred to as a “classic” *de facto* state of exception can be seen: a scenario of unprecedented violence in both cause and response, but with political resistance to formally declare an emergency. In a broader view,

29 For Goizueta Vertiz the state of exception has been denaturalized in Latin America where there has been an “institutional mutation that implies the subordination of the Judicial and Legislative powers to the Executive, and of the latter to the Military power” (1997, p. 189).

30 AMLO’s full speech can be accessed here: <https://lopezobrador.org.mx/temas/ife/page/2>. The document is in Spanish, the translation is mine.

one can also see Schmitt's appeal to Hobbes's apothem that "is the authority, and not truth, that makes the law" (Strong, 1985, p. 20). Although both the violent context and the military intervention where exceptionals, Calderon's government had the final call, and decided not to declare formally a state of emergency under political calculus, social concerns and a dubious judicial precedent.

The report does not mention it clearly, but Gómez Mont was alluding to the 1996 landmark Supreme Court ruling that established the military's faculty to act in regular times even in absence of a state of exception. Before that ruling, Mexico only allowed lawful military intervention in two scenarios: states of exception or states of war. Following the French Assembly distinction *état de paix*, *état de guerre* and *état de siege* (Agamben, 2005), Mexico, as other democracies like as Spain, Dominica or El Salvador, only contemplated military involvement in war scenarios or in formally declared states of exceptions. "During peacetime", stated the Constitution, "no military authority may perform any functions other than those directly related to army training"³¹.

But despite the constitutional framework, as asserted in sections II, during the twentieth century the armed forces served the state in different roles. In 1996³², the Supreme Court had to assess this issue and decide whether high military officials could engage in civilian function (Gaussens & Jasso-González, 2020; SCJN, 1996). The stakes couldn't be higher, as the Court ruled the first interpretation of the military's involvement in "peaceful times".

To answer the legal question, the Court studied the drafters of the Constitution (Juanes-Laviada & Torres, 2023). In the 1857 debates, the Court focused on congressman Ponciano Arriaga who, explaining the military prohibition clause stated that: "(in peaceful times) military officials have nothing to do for themselves and before themselves, if they are not required, commanded or authorized by civilian powers" (SCJN, 1996, p. 21). Based on that statement, the Court argued that the military prohibition clause was not absolute. Even in the absence of a formally declared state of exception, the Supreme Court concluded, the military forces may act as long as they fulfill the drafter's criterion on being required or authorized by civilian powers.

With this case, the Court opened a window for the lawful involvement of the military in ordinary times, but it also imposed restrictions, stating that any engagement by military officials must be explicitly mandated, under civilian control, and limited to extraordinary circumstances (SCJN, 1996). As Gomez Mont conversation with U.S. officials reveal, that interpretation was later stretched for abusive use of the military forces and became the touchstone for massive deployment of soldiers under Calderón, Peña Nieto and AMLO (Gaussens & Jasso-González, 2020; Hope, 2013).

Beyond the Court's ruling, in the Mexican socio-political *nomos* military action was still largely associated with exceptional times. The increasing use of the armed forces to combat criminal groups caused a reaction in academics (Cárdenas-Gracia, 2019; Flores-Macías & Zarkin, 2019), NGOs (Fundar, 2017), social activists (Sicilia, 2021), and politicians who argued Mexico's security policy signaled a *de facto* state of emergency. They were not to decide, though, the Court's ruling made it very clear that although "reality may generate a series of exceptional situations", the formal declaration of emergency was "at the discretion of the President of the Republic" (SCJN, 1996, p. 197).

31 Mexican Constitution, Article 129. As explained in Section II, this article was approved by the 1857 Constitutional Assembly. In September 2024, this article was amended to allow for more regular military involvement. The current text of the statute now states: "In time of peace, no military authority may exercise more functions than those provided for in this Constitution and the laws emanating therefrom."

32 The Supreme Court ruled the *Action of Unconstitutionality* 1/96 on a 5th march, 1996, in a unanimous vote.

Although the executive branch decision on exception was subject to Congress approval and judicial control, one can see Schmitt's specter entrenched in the Court's logic. The exception regime was regarded as a *decision* deeply rooted in political appreciation were the tenants of state power, the states authority -the sovereign, in Schmitt's terms- transcends the legal order and "stands outside the normally valid legal system (...) to decide whether the constitution needs to be suspended" (Schmitt, 1985, p. 7).

Relying on the Court's ruling, political power abandoned the idea of formally declaring a state of emergency, and rather focused on mimicking and inserting exceptional measures and rights restriction into the legal system. This technique should come as no surprise, as discussed in previous sections, in *de facto* states of exception it is common for the governmental power to "transfer emergency provisions into ordinary law" (ILA, 2020, p. 4).

In the 2006-2024 period, each governmental administration attempted to codify the army's involvement in civil duties. The first bid to normalize the exception was Calderon's unsuccessful attempt to amend the National Security Bill and handle control in joint operations to the army (Acosta, 2011). Peña Nieto then proposed a highly controversial "Internal Security Act" that sought to legitimate the military's role in public security affairs. The Security Act was enacted, but later overturn by the Supreme Courts which labeled the legislation military *telos* as a "Constitutional Fraud" (Zepeda et al., 2020; Escobedo-Suárez & Hernández-Juárez, 2018). The most aggressive legal hardball came in 2019, when AMLO managed to inscribe a constitutional provision allowing him to use the military for five years in "exceptional" basis³³. This clause, which originally gave permission to deploy soldiers until 2024, was later amended to extend the term until 2028 (Ramos, 2023). While there is still no formal declaration of emergency, military exceptional involvement has become the standard measure for coping with public security. This signals an alarming scenario for Mexico.

7. CONCLUSIONS

Mexico's violent context illustrates some of the pressing issues that exceptional times pose to democracy and human rights. At a legal-theoretical level, the emergency state challenges the notion of legality and rule of law as foundations of the modern state. If, as Schmitt argues, "no legal norm can be applied to chaos" (1985, p. 13) then there is an implicit assumption that the crisis will be addressed with political action whose force and authority rests beyond the rule of law.

Like other democracies, Mexico has sought to temper the political spectrum of decision-making and to inscribe the exception in the realm of law. Since 1821, the country has enacted provisions establishing the possibility of suspending rights and accumulating power in emergency situations. This provision clarifies in whom the power to declare the exception lies and what limits that power has. But, as argued by Wendall Kisner, a constitutional clause cannot foresee in advance "how exactly these 'situations' will be, (...) and they will depend on the unforeseeable empirical contingencies that exist at the time" (Kisner, 2007, p. 226). From a broader theoretical view, this article shows that it is political appreciation, and not the rule of law, what defines emergency.

Constitutional democracies like to believe that law guide the rulers' actions, but in exceptionality scenarios it is the ruling class who determines how the law is applied (and suspended). The sample of this, in the case of Mexico, can be seen at the core of the government

³³ Transitory article five of the Decree amending the Constitution on National Guard matters states that "during the nine years that follow the enforcement of the Decree, (...) the president may use the military in public security (...)"

decision not to declare a state of emergency in 2009. As the leaked conversations reveal, more than the subsumption of the case to the law, the decision is full of political considerations and social evaluations. For human rights, this would imply that their enjoyment in regular or extraordinary contexts will be contingent upon political appreciation of the holders of power at a particular period of time.

Due to time and space constraints, this research focused solely on the relationship of exception *vis-a-vis* militarization, and the impact of the army's involvement on human rights such as liberty or life. Future research could explore how other human rights, such as truth, accountability or access to justice are affected by militarization and exceptionality. Also, from a social standpoint, this article may serve further research that explores not only how a state of exception can become entrenched by political decision, but also how it can become normalized in society by acceptance of the social *polity* itself. The case of Mexico and other countries in the region is particularly interesting, as the military remains a highly popular institution (Flores-Macías & Zarkin, 2019).

Despite other routes of research that emerged during the investigation, I consider that the work provides valuable and novel reflections on the understanding of human rights in states of exception. As a legal, social and political concept, the exception is full of ambiguities that orbit on a theoretical level. The ambition of this research was to look for points of convergence that could give content to the concept in a specific case. With that in mind, I hope to demonstrate indications of a *de facto* state of emergency in Mexico from a historical, legal and socio-political evaluation³⁴.

This assessment showed that, in Mexico, the exception presupposes militarization and is reinforced by it. It is under an umbrella of abnormality where the permanent function of the armed forces in public security is inserted. Consequently, and perhaps more importantly, it is within the exceptionality framework that human rights and democratic controls are enforced.

The attempt to legally normalize the exception is perhaps the last bet of militarization in Mexico³⁵. A bet that will allow, in practice, the state to restrict rights using the contours of the law. Both Walter and Agamben glimpsed on this trend, warning that “(the) transformation of provisional and exceptional measure into a technique of government threatens radically to alter the structure and meaning of the traditional distinction between constitutional forms” (Agamben, 2005, p. 3).

Perhaps this view may serve as a last reflection. Civic-military relations in Mexico will change, and the balance of democratic power will shift, if military involvement becomes entrenched in the system as the rule, rather than the exception. As a social and legal phenomena, exceptional military power signals a dire scenario for human rights, but also a worrisome outlook for Mexico's political system. Echoing Tigenstain warning, followed by Agamben: “a systemic and regular exercise of *emergency power* leads to the liquidation of democracy” (Agamben, 2005, p. 7).

34 From a historical standpoint, I studied how the emerging use of the military at different times traces roots that equate situations of national crisis with the use of the military. From the legal standpoint, I showed how constitutional provisions and the Supreme Court's rulings view military intervention as an exceptional feature of Mexican democracy. As a factual matter, I assessed the role of the military corps in the rise of violence from 2006 to 2024. The conclusions in this regard are twofold: never in Mexico's modern history have levels of violence been as high as they are now, and never in history has the military had so much power and deployment.

35 One clear example of this effort can be seen in the National Guard constitutional amendment of September 2024. In this amendment, Article 129 was modified to allow military involvement—even during peacetime—if the functions align with the powers provided in the Constitution and the laws derived from it.

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7.2. Case Law

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