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THE INFLUENCE OF CIVIL SOCIETY IN THE DEMOCRATIZATION OF INTELLIGENCE, A SLOW PACE PROCESS IN MEXICO'S DEMOCRACY.

Abstract:

The conceptualization and the practise of national security in the Mexico's political dynamic during most of the twentieth century symbolized the security of the regime. Civil society as such was poorly developed. The intelligence services operated with a high level of discretion due to the absence of a legal framework preventing them being subject to any oversight.

In this context, the right for access to information introduced by the first democratic transition government was a turning point. Isolated civil society efforts done before 2000 were empowered and their pressure for openness of the intelligence sector finally became feasible for the very first time in Mexico's modern history.

To date, the Centre for Investigation and National Security (the main national intelligence agency) seems to have taken off its image of political police and made considerable efforts to prevent human rights abuses. There are still massive opportunity areas. Mexico's democratic transition aftermath could be the right time for civil society to continue pressuring and thus continuing helping in building the state institutions Mexico, as a global actor, needs.

Keywords:

democratization of intelligence services, openness, transparency, civil society, democratic consolidation in Mexico, the right of access to information.

JEL Classification: L40, H73, R59

From mid 1970's and what Samuel Huntington (1993) called the "third democratization wave", several countries in Europe, Asia and Latin America undertook transitions from non-democratic regimes to democratic ones. This democratization brought a massive change in the way governments and citizens interacted. Experts underline that, as a result of this democratic wave, along the last 25 years individual and political freedoms have allowed civil society to shape national and international public agendas. At the national stage, civil society has successfully achieved an each time higher influence on policies surrounding domestic issues by demanding accountability particularly throughout promoting transparency and access to information (FOCAL, 2006).

Nevertheless, this influence has turned out to be very challenging when it comes to the performance of the intelligence services in democratic states. The essential need intelligence agencies have to operate with a high level of secrecy enhances the potential for abusing their powers and capabilities undermining democratic governance. For instance, they might infringe human rights, interfere in domestic politics inducing specific outcomes, intimidate members of the opposition, or use intelligence for purposes other than national security (Nathan, 2012).

In Latin America the notion of intelligence tend to have a negative meaning due to its linkage with illegal espionage and "dirty wars" (Rodríguez, 2003). In the case of Mexico it was not until 2005 that its legal framework comprised a reference to national security. This anomaly made the notion of national security and its decision-making processes emerged as a political tool the successive administrations -alongside 71 years- of the Revolutionary Institutional Party used for their own interests and benefits. In 2000, the aftermath of Mexico's first freely contested elections set out the political conditions for the civil society to push the new elected authorities undertaking the so looked-for reform of the intelligences services (Leroy, 2004).

Despite transparency is by far superior than it was 20 years ago, and thus there is much more information available regarding the precedents and the current situation of the Mexican civil intelligence agency, a great deal of opacity persists.

This essay will focus on the extent to which the democratic transition in Mexico, started almost 20 years now, has democratized its main civil intelligence agency: the Centre for Investigation and National Security (CISEN). To this purpose, it will outline the foremost characteristics of the context in which the country's intelligences services operated, as well as the role played by civil society in their democratization soon before and after the first democratic transition government took office in 2000. To illustrate the empowerment of civil society and its growing influence on the intelligence agenda, the essay will briefly discuss the importance of the right for access to information and its impact on CISEN accountability.

Liberal democratic theory considers that the state must deliver a government emerged from free and fair elections and subjected to accountability, whilst civil society ought to be granted with civil and political rights and the freedom of association (Merzel, 2002). According to Brysk (2000) civil society might be define as a "public and political association outside the state. (...) Its political role is not just to aggregate, represent, and articulate interests, but also to create citizens, to shape consciousness, and to help define what is public and political". In this democratic setting, the role played by civil society may differ, depending on the phases of the democratization process. Political analysts believe a democratization process comprises two different phases: democratic transition and democratic consolidation (Merzel).

Subsequently, civil society is alleged to perform a central function in democratic transitions due to its large capacity of getting political change throughout nongovernmental social mobilization. Accordingly, student and religious groups, farmers and entrepreneurial associations, human rights organizations, the media, unions and academia have significant influence in prompting democratic reforms (Ibid).

Over the last 40 years, constant successions of democratic elections and key institutional reforms have taken place. Civil society's influence in initiating or supporting them has been decisive. Several cases illustrate this. In Portugal in 1974 when the 24 April military coup, known as the Carnation Revolution, ended up the longest dictatorship in Europe installed five decades before; in Greece, three months later, when the military junta ruling Greece since 1967 collapsed giving in to democracy. The following year -November, 1975- when the death of dictator General Franco, who ruled Spain since 1939, opened up the doors to democracy (BBC, 2014). During the late 1970's when political openness took place in Bolivia, Brazil, Ecuador and Peru or in the 1980's when strongest authoritarian regimes like those ruling Mexico and Chile started to show shifts towards liberalization, as well as the military dictatorship governing Argentina (Remmer, 1985). Moreover, the designation of the Pope John Paul II in 1979 enhanced the falling of the communist regimes in Eastern Europe, and in 1985 the reformist Michail Gorbachov gave great internal support to the liberalization process in the URSS, which gave the rest of the soviet republics the historic opportunity for building authentic and competitive democracies (Curzio, 2011).

The Geneva Centre for the Democratic Control of Armed Forces claims that the intelligence sector is the very last layer in a democratization process (Hans and Mesevage, 2012). This might have to do with the large limitations civil society faces when demanding the democratization of intelligence services, for instance, their increasing threats, resources and secrecy.¹

In totalitarian and authoritarian regimes intelligence services have normally been used to silence internal critics and

¹ For the purposes of this essay the terms intelligence service/agency/sector/apparatus are indistinctly used to refer to "a state organization that collects, analyses and disseminates information related to threats to national security" (Born and Mesevage, 2012).

opposition movements, for instance KGB in the former Soviet Union, the Stasi in former German Democratic Republic, and the Securitate in Romania (Caparini, 2007). The use of intelligence services to keep society under control has been a regular practice in Latin America as well, and Mexico has not been the exception.

Since 1929, Mexico's political system was virtually dominated by one single party² -the Partido Revolucionario Institucional (PRI)- rigorously controlling all branches of government and society. The government civilian intelligence services, created by presidential decree, were certainly free of any external oversight or control granting them secrecy and impunity for committing all sorts of unlawful doings (Rodríguez, op cit). This tendency increased from the 1960's to the 1980's when anything that could be considered as political and social dissidence was repressed, from left-wing and student movements, to labour unions, rural and urban guerrillas (Leroy, op cit). All these groups were identified, analysed, and afterwards disabled or neutralized by recurrently excessive coercive measures, being this the solely relationship the intelligence agencies had with civil society (Rodríguez, op cit). In this context for instance, the student movement emerged in Mexico in 1968 was the only one in the world ending up in a massacre performed by the Army and the security and intelligence services on October the 2nd (Poniatowska, 2008). The rally took place in the Tres Culturas Square, where a military brigade apparently responding to a previous aggression killed numerous students.

In a moment when civil society seemed to be incapable of fighting against authoritarianism, the combination of two external events forced an initial change of the intelligence sector (Rodríguez, op cit). First, the assassinations of Carlos Buendía, a well-know journalist, by intelligence agents in 1984 and Enrique Camarena, a Drug Enforcement Administration agent, by drug-traffickers in 1985 with the protection of security agents, revealed longstanding connections between agencies and drug cartels (Leroy, op cit). A shocked public opinion and a bilateral conflict with the U.S. obliged the government to dismantle both agencies (Rodríguez, op cit). Then, the liberalization of the Mexican economy in early 1990's made domestic and foreign economic actors get relevant influence on the public agenda, situation that boosted civil society faculty for making its demands heard for more democratic institutions and respect of human rights without having to pass by political parties (Villa-Aguilera, 1996).

Despite the foundation in 1989 of a new chief civil intelligence agency: the Centre for Investigation and National Security (CISEN) and the implementation of some changes aimed at increasing its professionalization³, little public debate took place. Moreover, as the government remained the unique responsible for intelligence activities and national security policymaking, the CISEN as well as other intelligence sub-divisions created during the 1990's kept operating largely unaccountable to Congress or society (Leroy, op cit).

Whilst managing political and financial resources towards democratic reform, standing democratic transitions have had to deal at some point in time with the civil society groups' demand of disclosing intelligences services' records and activities elaborated and performed whilst ensuring the permanence of authoritarian regimes (Roberts, 2007). Thus, many transition governments have adopted laws allowing access to former intelligence services files. East Germany, for instance, permitted broad public access to government records previous the German reunification and the Czech Republic made the required legal modifications letting public general review the material related to its communist past (Banisar, 2002). In some cases, getting access to this information was a necessary precondition for launching national reconciliation processes, in other cases getting the historical evidence seemed to be less urgent. Either way, such a demand shows that beyond the opportunity of celebrating free elections, real democratic processes lay on the task of developing, guaranteeing and institutionalizing a culture of accountability within societies and bureaucratic structures (Curzio, op cit).

Furthermore, in order to minimize future potential risks coming from intelligence agencies misconduct, democratic transition governments have had to foster two main aspects: 1) to see transparency as a fundamental component of accountability; and 2) the establishment of review, controls and oversight mechanisms (Ibid); so the intelligence apparatus could be seen as an pre-eminent state institution, performing within the rule of law, and always held accountable to elected authorities through effective oversight mechanisms (Caparini, op cit)

Mexico's democratic transition paved its way with the opposition victory in the presidential election of July 2000, ending 71-year rule of a single party. The election outcome portrayed a historic opportunity for a wide-ranging democratic transition. There was a general expectation that ancient political and institutional practises would be reformed. The intelligence sector was, certainly, one of them (Rodríguez, op cit).

Given the centralized structure of governments, intelligence agencies remained very close institutions in Mexico; it was practically unthinkable for outsiders to have access to intelligence evidence; therefore, very little contact was developed between the intelligence services and civil society, academia and the media. The official information feeding the public debate was normally contradictory, limited or false (Benitez, 2012). Little time passed after President Vicente from the Partido Acción Nacional (PAN) took office when a couple of breakthroughs marked the starting point of the

² The PRI as such was founded in 1946 but represents the very same political elite of its predecessors: the Partido Nacional Revolucionario (PNR) that ruled from 1929 to 1938 and the Partido Revolucionario Mexicano (PRM) that ruled from 1938 to 1946 (Padilla and Walker, 2013).

³ Efforts to openness, the creation of a civil service, broader use of technology, the designation of intelligence professionals in high-rank posts, amongst others.

democratization of the intelligence service. CISEN granted Sergio Aguayo, a Mexican scholar, controlled access to intelligence files. Product of this unparalleled situation in the country's modern history was his book "La Charola: una historia de los servicios de inteligencia en México" (2001). The book focused on revealing fragments of the secret, organizational and operational history of the civil intelligence services (Rodríguez, op cit). Aguayo's effort to document part of the history of intelligence agencies in Mexico was indeed of the greatest importance. It brought to light a series of abuses and wrongdoings committed by such agencies regarding some of the most sensitive political cases, supported with declarations of current and former intelligence officers; something unconceivable just 5 years before. Additionally to Aguayo, CISEN also granted José Luis Soberanes, President of the National Commission on Human Rights, to visit its headquarters and review some of the reserved records keeping there (Ibid).

In 2000, months before President Vicente Fox took office, CISEN started to build links with scholars, academic institutions, public general and the media. The intelligence agency sought to promote intelligence studies in universities, high-ranked officials started to overtly explain the agency's mission and goals in conferences and interviews, an official website was launched and even internships were offered to students (Ibid). Despite these efforts, very little success was achieved in changing public general perception on the nature and role of intelligence and the government body in charged of it. For instance, of 17 articles published between September 2000 and January 2001 in national newspapers, 12 mentioned in their headings the phrase "political espionage" or the word "secrecy" (Aguayo, 2001). This scenario, however, showed a nascent independent press but more specifically the interest of the media in actively participating in the oversight of intelligence related issues.

As part of the democratic transition agenda, President Fox ordered an extensive and independent evaluation of the main intelligence agency functioning. On July 2001, the Director General of CISEN presented in a press conference the conclusions of the high-level panel. The head of the agency officially recognized intelligence fiascos, the involvement of the services in political espionage and information leakage, and the causes of the institution's weakness (Artz, 2011). One of the most sounded conclusions stated that the intelligence body was essential for the correct performance of the democratic government, but it was needed a legal framework to regulate its functions and the agency should be open to a culture of accountability and transparency in a permanent basis (Curzio, op cit).

The disclosure of information that doesn't need to remain secret or hidden from public knowledge tends to be a starting point in the democratization of intelligence services and at the same time it might be a much more efficient way to interact with society. In this sense, President Fox ordered in 2002 the declassification of thousands of secret intelligence reports. The released material, gathered by the Ministry of Interior for most of the twentieth century, comprised intelligence records on the 1968 student rally as well as the so-called dirty war (Rodríguez, op cit) a term used to refer the government acts of repression undertaken in the decades between the 1960's and early 1980's against political and armed dissident groups.

Furthermore, the disclosure derived in the creation of the Special Prosecutor for Social and Political Movements of the Past post, attached to the Attorney General Office, in charged of investigating the crimes committed throughout the abovementioned period of time. Undeniably, the declassification wouldn't have been possible without the activism of civil society. Nonetheless, the new Special Prosecutor office apparently saw its mission blocked by the animadversion of the very same government. It then came out two versions of the findings. The first one was leaked to some writers in fear of censorship. The second and official one was released just days before the end of President Fox administration – November 30, 2006- not without being the objet of a severe criticism pointing out the emptiness and inaccuracy of the findings.

Although no responsible for the dirty war crimes was prosecuted and the Special Prosecutor Office was dissolved, the disclosed information importantly contributed to the public debate on the country's past. Once advocacy groups and participants of the repressed movements had access to this previously secrete material, they used it for writing independent analysis or diaries that, disseminated by printed means or through blogs⁴, became a basic reference for direct or collateral victimized, those analysing Mexican repressive past, or for those demanding justice and accountability (Padilla and Walker, 2013).

Democratic values and norms require internal and external oversight mechanisms to hold the intelligence services accountable. By accountability one might broadly understand the mechanisms through which the practise of providing accounts is institutionalized (Farson, 2012). Schedler (1999) suggests three different types of mechanisms to explain the accountability of security and intelligence services. The first one is the horizontal accountability, which involves a relationship between co-equals, state institutions being overseen by other state institutions. For instance, within the executive branch, ministers control intelligence agencies through directives and policy guidelines. In the legislative branch, legislatures may review reports submitted by the intelligence services to specialists committees in parliaments. The judiciary can review the constitutionality of intelligence services powers and government prerogatives.

On the contrary, the vertical accountability is about the control exercised in a hierarchical relationship, unequal in terms of power, within the same intelligence agency. For instance, the oversight exercised by high-ranking officials over subordinates or the existence of institutional channels to report illegal behaviour. It also refers to the policy monitoring

⁴ "Examples of blogs created by civil society groups for deepen public analysis on Mexico's dirty war: *Caidos en combate*": <http://centrodeinvestigacioneshistoricas.blogspot.com> and "La Guerra Sucia Mexicana": <http://guerrasuciamexicana.blogspot.com>; accessed August 6, 2014.

made by citizens, the media and civil society over the performance of governments, taking into account the disproportionate power and resources the state has versus civil society groups.

And lastly, the “third dimension” type of accountability is in which a state agency is held to account by an international actor –foreign states, supranational institutions or international NGO’s. For instance, the pressure exercised by international organizations or stakeholders on governments for democratic change (Caparini, op cit).

Most analysts agree that civil society is a fundamental variable for governmental accountability. Its potential for limiting state abuse of power, inhibiting possible returns to authoritarian practises, boosting pro-accountability institutions and encouraging policy monitoring provide the legitimacy that a democratic state needs to govern (Mercer, 2002). The challenge, thus, remains in the civil society capacity of documenting the gap between state prerogatives and actions. Consequently, in order to have major influence on holding governments to account, civil society sectors need to have access to official information for producing sound independent evaluations of state performances (Fox, 2000).

Access to government information not just keeps citizens and civil society updated on state performances and incites public debate about them, it also constitutes a powerful safeguard against mismanagements and corruption practises. Experts claim that a state transparency policy can help governments building public trust towards their own agendas, strategies and programmes, feature that turns out to be particularly important concerning intelligence and security bodies (Banisar, op cit).

Over the last two decades, governmental authorities from a large number of countries have passed access to information acts at a pace never seen before. According to Transparency and Accountability Initiative (2010), the number of countries having adopted access to information laws has been steadily increasing over the last 20 years or so. From the 13 countries having passed such sort of law by 1990, they were around 80 by 2010. Moreover, most important basic human rights conventions⁵, human rights regional documents⁶ and courts⁷, and international and regional mechanisms⁸ recognize the right to information as an inherent component of the right of freedom of expression (Commonwealth Human Rights Initiative, 2014).

In this context, some legislatures have passed the laws when going throughout democratic transition periods, others have done it aiming at modernizing their information dissemination processes and some others due to political outrages or structural corruption practises (Relly and Sabharwal, 2009). In the case of Mexico, it might have been due to all four factors. Mexico’s Congress passed in 2002 a Federal Law on Transparency and Access to Public Governmental Information by the transition government initiative. This legislation played a vital role on the country’s political opening since the previous political system led by the PRI used to act surrounded by complete opacity. Like the PRI 71-year rule used secrecy as an omnipresent tool for providing the country with political viability, the PAN used the culture of transparency as one of its political strategic tactics to conduct the democratic transition (Padilla and Walker, op cit).

Though some policymakers were reluctant on whether its full implementation was feasible, arguing the complexity of the political and administrative structure of the Mexican government, the new law has undoubtedly represented a breakthrough in Mexican political life (Relly and Sabharwal, op cit). The media, non-governmental organizations and specialists slowly started to empower themselves gaining greater influence on the intelligence agenda by mainly two means.

Firstly, they were now holding to account the chief civil intelligence agency of the state through the means provided by the access to information legislation. This is illustrated by the frequent newspaper articles disseminating and analysing intelligence facts; for instance, the number of agents -41- to have died on duty over the last 12 years (Camacho, 2013); or the amount of private communications tapped by the intelligence services -759- from December 2012 to June 2013 in comparison with those taken place between 2005 and 2012 -340- (Cabrera, 2014).

And secondly, civil society had gotten an important place in the national debate on the role the intelligence agency should have in a much more democratic system. For instance, President Felipe Calderón, the second Head of State coming from the PAN, was driven by civil society to call for a national evaluation of the government strategy implemented against drug trafficking organizations. On August 3, 2010, the academic sector made the President to designate CISEN as the entity in charge of the death toll records due to the contradictory figures and statistics published by the different state institutions (Benítez, op cit).

As globally, the growth of transparency in Mexico⁹ is the result of the demands made by civil society organizations, the media and different stakeholders (Banisar, op cit). 12 years after the access to information act was passed the debate

⁵ For instance, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

⁶ For instance, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human and People’s Rights.

⁷ For instance, the Inter-American Human Rights Court and the European Court of Human Rights.

⁸ For instance, the mandates on freedom of expression at the United Nations, Organization of American States, Organization for Security and Cooperation in Europe, African Commission and the Inter-American Judicial Committee.

⁹ There has been a steady growing number of access to public information requests made to local and federal governmental entities since the access to information legislation was passed: from 3,534 requests made in 2003 to 142,382 made in 2013 (IFAI, 2003, 2013).

among civil society and the authorities in Mexico has gone from whether the information that government produces and guards is public or secret to when and how this information should be made public (Trinidad and Cruz, 2011). Nonetheless, transparency of intelligence still faces important challenges. The preponderant responsibility of the intelligence sector towards preserving the safety of the state, and sometimes its very survival, makes it a unique activity. This uniqueness is translated in the crucial need for secrecy (Caparini, 2007). Secrecy as a key element in intelligence activities discourages internal control procedures such as audits or complaints as well as any sort of information request coming from external oversight.

Furthermore, the active international intelligence cooperation and the increasing powers of intelligence and security services that emerged from the September 11, 2001 events has since privileged the pursuit of security and has given little attention to democratization intended to strengthen the oversight of intelligence (Gill, 2012). Also, this situation has encouraged within intelligence bureaucracies the tendency of over-classifying information assuming its dissemination will somehow damage the national security (Guerrero, 2010).

The dramatic change in the security priorities of the US after the 9/11 tragedies had a massive impact on the US-Mexico cooperation. The creation of the Department of Homeland Security made that all intelligence and law enforcement cooperation was treated from an antiterrorist perspective. Besides, the violent context under which President Calderón took office in 2006 increased the bilateral cooperation to levels never seen before (Artz, 2010). Information of cooperation programmes like Initiative Merida, which consisted in the transfer of financial resources and equipment for fighting against drug cartels, was kept secret at least in Mexico for reasons of national security (Benitez, op cit).

Intelligence services will continue to performance the functions and activities they are asked to, regardless the interest of society in their democratization. Therefore, the participation of civil society is indeed meaningful to temperate the existing tensions posed by the nature of intelligence services between secrecy and transparency, and efficiency and accountability (Rodríguez, op cit).

In summary, the conceptualization and the practise of national security in the Mexico's political dynamic during most of the twentieth century symbolized the security of the regime, the promotion and protection of particular interest and above all the permanency in power of one political party. In this logic, the intelligence services created in 1918 had for a long period of time an obscure list of performances. Since they were firstly subordinated directly to the President and afterwards to the Ministry of the Interior they could act with total impunity, which transformed them into the perfect political repression tool giving the PRI the social and political stability needed to maintain itself in power.

In this context, civil society as such was poorly developed. The political conditions indeed condemned any attempt to influence on the course of government actions or policies. It was until mid 1980's when a major restructure intended to professionalize the intelligence services. However, the absence of a legal framework prevented the main civil intelligence agency for a quite long time of being subject to any oversight and therefore continued operating with a high level of discretion.

Some scholars argue that national security issues and the numerous democratic transitions that took place during the 1990's are amongst those contributing factors behind the unprecedented rising global concern on openness and transparency of state and government affairs. That was precisely the case of Mexico's democratic transition in 2000. Transparency was missing in the relationship state-society. The right for access to information introduced by the first democratic transition government drew a massive difference with the former political system. Isolated civil society efforts done before 2000 were empowered and their pressure for openness of the intelligence sector finally became feasible for the very first time in Mexico's modern history.

Almost every national intelligence agency to some extent has to evolve in order to be capable of acting efficiently towards the neutralization of threats, whatever they are wherever they come from. Many years have gone by for CISEN to leave behind its operational and institutional shortcomings and civil society has been a crucial factor over all the agency's process of democratization. To date, CISEN seems to have taken off its image of political police and made considerable efforts to prevent human rights abuses. However, there are still massive opportunity areas. Stronger oversight mechanisms for instance. Mexico's democratic transition aftermath could be the right time for civil society to continue pressuring and thus continuing helping in building the state institutions Mexico, as a global actor, needs.

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