

# Mexico Expresses Restrictive Position at the UN on the Use of Force in Foreign Territory

## Mexico's Position at the United Nations

The government of Mexico has submitted a document to the UN General Assembly and Security Council, dated January 13, 2025, rejecting the expansive interpretation of Article 51 of the UN Charter as a basis for justifying the use of force against non-state actors in foreign territory. In its statement, Mexico emphasizes that:

- The use of force in the territory of another State without its consent is contrary to the UN Charter and violates the principle of sovereignty.
- The “inability or unwillingness doctrine” is a concept in international law that establishes that a State may use force in the territory of another State without its consent if the latter is unable or unwilling to eliminate a threat affecting the former. This doctrine has been primarily invoked by the United States to justify military interventions against terrorist groups in countries such as Pakistan, Syria, and Somalia.
- The “inability or unwillingness doctrine” lacks broad recognition in international law and undermines the collective security system.
- The expansion of this criterion poses a threat to global stability, as it could allow any country to justify military interventions without clear restrictions.
- The UN Security Council should be the sole body authorized to validate the use of force in situations affecting international security.

Mexico highlights that the increasing tendency to invoke the “inability or unwillingness doctrine” in broader contexts endangers the international security system and opens the door to arbitrary justifications for the use of force in various regions worldwide.

## U.S. Executive Order on Terrorist Designation

In this context, the recent executive order issued by the White House on January 20, 2025, reinforces Mexico's expressed concerns. The designation of certain international cartels as Foreign Terrorist Organizations (FTO) or Specially Designated Global Terrorists (SDGT), based on the Immigration and Nationality Act (INA) and the International Emergency Economic Powers Act (IEEPA), could represent a step toward a broader interpretation of self-defense in international law.

While Mexico's document before the UN does not focus on any particular country, its analysis is applicable to the U.S. case. By categorizing cartels as terrorist organizations, the U.S. government could, in the future, argue that it has the right to act unilaterally in Mexican territory under the justification of self-defense.

## **U.S. Executive Order on Tariffs**

Subsequently, the U.S. president issued another executive order expanding the national emergency of that country, arguing that Mexico has played a central role in drug trafficking and illegal migration. In this order, the U.S. government asserts that:

- Mexico has not allocated sufficient resources to curb drug trafficking and illegal migration.
- Mexican criminal organizations have an "intolerable alliance" with the Mexican government.
- The Mexican government has provided a safe haven to cartels, allowing drug production and transportation.
- The lack of action by the Mexican government represents an unusual and extraordinary threat to U.S. national security.

Based on these claims, the executive order imposes an additional 25% tariff on all imports from Mexico, with the possibility of increasing or expanding its scope if the Mexican government does not take adequate measures according to the U.S. government's assessment. While this executive order is currently "on hold," the premises used in the document are relevant to this analysis—especially regarding allegations of intolerable alliances between the Mexican government and criminal groups.

### **The Álvarez-Machain Precedent**

A clear precedent is the case of *United States v. Álvarez-Machain*, in which the U.S. Supreme Court ruled that the capture of a Mexican citizen in Mexico by U.S. agents, without the Mexican government's consent, did not violate the extradition treaty between the two nations.

Just as in the *Álvarez-Machain* case, the U.S. executive orders and interpretation of self-defense could lead to the implementation of direct measures against individuals linked to cartels in Mexican territory. This would significantly impact security dynamics—and cooperation—between both countries.

### **Compliance and Risk Management Measures**

Given this scenario, it is important for businesses and economic actors in Mexico to consider the potential legal and regulatory implications arising from recent and future U.S. national security decisions. At VWyS, we recommend strengthening compliance programs to refine the identification and mitigation of risks related to possible sanctions or trade restrictions, as well as monitoring the evolution of U.S. policy regarding the application of these measures and their impact on international transactions.

At VWyS, we will continue to provide information and advice on this matter to our clients. For any specific inquiries, please do not hesitate to contact our team.

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S I N C E R E L Y

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