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TOWARD A NORTH AMERICAN ECONOMIC SPACE

MIGUEL JÁUREGUI ROJAS*

This paper will commence the 11th edition of the U.S.-Mexico Law Journal by providing an overview of the status of U.S. – Mexico relations at the end of 2002. It will touch on the status of political and economic affairs.

POLITICAL AFFAIRS

The paper will start with political affairs, and later it will relate the politics to pending legislation and the legal consequences of each of those issues. The first point is “the erratic Fox.” President Fox is an “erratic Fox” because it is apparent to Mexicans that the President is very concerned about the polls. Therefore, people who do not understand the President’s agenda think that the President is more concerned with the polls than he is with national affairs. In examining the Fox agenda, one can understand not only his concerns, but also that they are very important to the country. Unfortunately, many politicians are trying to stalemate his presidency. However, he remains a very popular president.

The stalemate is traceable to an unknown number of groups that are trying to make Mr. Fox and his legislative agenda fail. In-fighting among the Mexican political parties is a result of the *Partido Revolucionario Institucional*, Institutional Revolutionary Party, or PRI¹ rule for 70 years, and the current rule of the *Partido de Acción Nacional*, National Action Party, or PAN² as an opposition party. The PAN “rules” as an opposition party because it has not yet awakened to the fact that it is the party in power and that it should be supporting its President. Changing this situation is a daunting task, and it will be an important factor in the future of Mexican democracy.

Therefore, the political landscape is littered with mines. The PRI would like to return to the era of its historical rule over Mexican politics. It is doing everything it can to show how inadequate the PAN is governing, how inadequate Mr. Fox has been, and how he cannot pass anything through congress. The PRI has been

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1. The Institutional Revolutionary Party, or PRI, was ousted from power in 2000 elections ending 71 years of unbroken rule in Mexico. The official web-page of the PRI is available at: www.pri.org.mx (last visited 2/23/03).

2. The PAN, Vicente Fox’s political party, is considered politically center-right. More information about the party is available at <http://www.pan.org.mx> (last visited 2/23/03).

reminding the Mexican public of Mr. Fox's promise upon taking office in 2000 that he would propose the agenda, and then congress would decide. Therefore, decisions on important legislation in the President's legislative agenda are still pending. In sum, the PRI is obviously in total opposition to Mr. Fox being successful; the PAN is aloof as to what Mr. Fox or Mexico needs; and the *Partido de la Revolución Democrática* (PRD)³ is the party of the "no." Other small political parties are like family businesses because the public funding of elections has allowed small, inconsequential political parties to survive in Mexico.⁴

Mexico has a complex political scenario that is very difficult for the *Secretaría de Gobernación* (SEGOB), or Secretary of Interior, Mr. Creel.⁵ Mr. Creel has tried to bring about a national alliance since he took office. The national alliance allegedly has been in negotiations since 1999, and began because the PRD wanted to initiate a meaningful discussion with PAN. It matured by July 2nd 2000 when popular elections decided the PAN would be the governing party. This national alliance has faltered, and important legislation has not been enacted as a result. A country cannot be successful when integral legislation is stalemated for partisan reasons.

While the U.S. and other countries of the world have developed democracy with partisan politics, Mexico does not yet possess the skills to deal with such politics. It is developing them quickly by defining what lobbying means. Lobbying today is applied in a different manner, and may mean a whole career in public policy-making that will enable the Congress, the Senate and the Executive branches to principally decide which topics are important for Mexico. Currently, the situation is evolving.

The year 2003 will be very important because it will decide whether the Mexican electorate will reelect the PAN as a majority party, leave the Congress as it is now stalemated, or increase the power of another party.⁶ Parties such as the PRD are jokingly called "family parties" because they do not command sufficient political respect from the other parties, nor from the Mexican electorate at large. The issue is what will Mexico do in 2003: how many seats is PAN going to win, how many seats will PRI lose, or vice versa. What will the PRD do? Is it going to remain the party of the "no" by keeping its same characteristics and continue to have the internal interests of the party divided? This begs the question whether a person's political view has anything to do with belonging to a party in Mexico, or is everybody independent. Does everybody think that to belong to a party is just to have a vehicle to be elected, or a vehicle to be heard, or a vehicle to have some access to the political scenario of Mexico?

Definitions are hard to find because commentaries on the TV, radio, the general public, and the media have always said the PRI is the party of center-left, but sometimes it is the party of center-right. PAN has always been regarded as the

3. The PRD is Mexico's third most powerful political force nationally. More information about the party is available at <http://www.prd.org.mx>.

4. The Mexican *Instituto Federal Electoral*, Federal Election Institute, or IFE coordinates and governs elections and political parties in Mexico. The IFE web-page is available at: www.ife.org.mx (last visited 2/23/03).

5. Santiago Creel Miranda is Mexico's *Secretaría de Gobernación del Ejecutivo Federal*. The *Secretaría de Gobernación* web-page is available at: www.gobernacion.gob.mx

6. See IFE, *supra* note 4.

center-right party, but that has not always been true. The PRD has always been to the left of the PRI. Farther left are the greens, the environmentalists, the workers party, and the communist party, which have less clout politically than the other three.

Mexico, or Mexicans at large, will have to decide whether to resolve the nation's political stalemate. Unlike other years in Mexican judicial history, there is a great change in the judiciary that has to do with politics. For the first time, the judiciary is making decisions that it never made before regarding the constitutionality of laws, such as the *Ley Indígena*, the Law of Indigenous Peoples.⁷ There are many discussions regarding whether issuing rulings that go beyond the letter of the law has violated the constitution.

The Mexican judiciary is dealing with a series of very delicate issues concerning natural gas. The natural gas regulations were revised and expanded by the *Secretaría de Energía*, Secretary of Energy, Ernesto Martens Rebolledo.⁸ Under the new regulations, a supplier could sell excess capacity of its installed capacity that was not used by third parties. This development was unexpected because it could be tantamount to creating de facto or bi-regulation, contrary to the law governing the distribution of electricity.⁹ The issue was sent to the judiciary. The judiciary decided the issue in a clever, unprecedented way by issuing an extensive decree that goes to the heart of the issue: how far can Mexico modernize with the Constitution the way it is written?

The 1917 Constitution has been amended multiple times, but not necessarily updated. Mexican law developed over the last thirty years in a restrictive environment that called for the direction of the state in economic and political matters. Therefore, the fact that the judiciary, through the Supreme Court, issued a ruling regarding natural gas and the electricity generation excess capacity sales is an anomaly in Mexican history and will be an important development to follow in the future.

The decision will be examined carefully because if the law is not constitutional, it will create many problems. The problems will come from independent power producers that are being financed through a government agency. What will happen to their investments and the concessions on which they bid? Most importantly, what will happen to the safety of electric generation in Mexico?

The resulting chaos has led to possible revisions to the electricity law by Congress.¹⁰ The new draft law attempts to grant ultimate consumption to the main industrial large-consumer market to private enterprise. It also leaves the domestic market, the people's market, to the *Comisión Federal de Electricidad* (CFE)¹¹ and

7. The *Ley Indígena* is Mexico's Law of Indigenous Peoples. The Declaration by the National Indigenous Congress about the *Ley Indígena* is available at <http://www.globalexchange.org/campaigns/mexico/news/declaration050101.html>

8. Secretary of Energy web-page: www.energia.gob.mx (last visited [cite down on 2/23/03]). Regulations of Natural Gas can be found at the Comisión Reguladora de Energía (Energy Regulatory Commission) web-page: www.cre.gob.mx (last visited 2/23/03).

9. Ley de Servicio Público de Energía Eléctrica. Diario Oficial de La Federación de 22 de diciembre de 1993. Available at www.cre.gob.mx (last visited 2/23/03).

10. The text of Mexico's Ley del Servicio Público de Energía Eléctrica (Law of Public Service of Electrical Energy) is available at <http://www.cddhcu.gob.mx/leyinfo/99> (last visited, 2/23/03).

11. The CFE is Mexico's state-owned power company.

to the generation by the state. This is an oversimplification of complex draft legislation, but it explains the basic balance that was struck.

The other issue that the judiciary is dealing with is how to handle natural gas production so that those dual-fueled plants can receive the necessary feed stock for them to deliver natural gas. Congress must deal with this problem holistically. It is paramount that the stalemate is avoided and the dinosaurs of the PRI are kept out of the process.

ECONOMIC AFFAIRS

It is important to distinguish between the political and economic affairs of Mexico. These fields are intertwined but different. The macro economy of Mexico is good and it remains good, albeit with some doubts. Mexico still has a bad deficit in the balance of trade. Mexico imports too much, and it is difficult to know where this will lead without a sufficient influx of foreign investment. Mexico has been very fortunate in the merger of Citibank and Grupo Financiero Banamex Accival (Banacci),¹² which was in excess of \$12 billion. Obviously that purchase heralded an excellent year for 2001 from the balance of payments point of view.

Foreign Investment

Mexico must open up areas of interest to foreign investors to continue the influx of foreign investment. Mexico's success in this area will be tested by the extent the macro stays competitive; it if it will trickle down. Economic benefits must penetrate deeper into the Mexican economy for foreign investment to be considered a total success. The miracle of trickle down economics that took place in the U.S., which worked to a great degree, is now trying to revamp itself. This is something that has not occurred in Mexico yet.

The Mexican market condition is disastrous. Notably, there is not enough consumption and the reasons may be two-fold. One reason may be that consumers do not have enough money to consume; another may be that they are afraid of the future and they are not consuming even though in real terms many of the wage reviews or revisions have been upgraded to beyond inflation levels. If that is true, then why is the Mexican market sluggish and why are Mexican consumers afraid or simply not spending?

Once Mexico's problem is defined as one of growth, that raises issues of investing in durable consumer goods, job creation in the service industry, and other issues that stem from micro economics and trickle down economics. The Ministry of Treasury and the Central Bank are doing their jobs. They are pursuing the proven avenues of implementing austere public spending and finance policies. It remains to be seen whether the political stalemate and divisiveness mentioned above will adversely affect these ministries from implementing the policies. It is doubtful that they will be negatively affected because the democratization of Mexico is progressing.

12. Latin American Data Base (LADB), SourceMex, "Mexican and U.S. Regulators Approve Sale of Banamex to U.S.-based CitiGroup." August, 8, 2001. LADB is available for subscribers at: www.ladb.unm.edu (last visited 2/23/03).

The meaning of Mexico's infant democracy hinges on these problems. Mexicans were accustomed to direct rule by the President: if the President wanted it, the people would get it; if the Congress did not want it, it made no difference; if the President wanted a law to be constitutional, the Supreme Court would say that it was constitutional. Mexico is changing and evolving into the kind of democracy the United States enjoys, but it is still developing. If Mexicans do not help democracy mature, Mexico may return to the pattern of the PRI: faulty education, stalemated growth, lack of training in the labor force, lack of infrastructure, and lack of public policy-making. Even today Mexico is not able to define a national consensus in the public policies that should guide the country.

That is why the development of lobbying as a profession is important. Mexico is beginning to move toward making public policy statements for each economic endeavor. To the extent that democracy is maintained, public policy will probably become a reality. If Mexico returns to the rule of the PRI, democracy and public policy will probably not exist. Therefore, Mexican economic competitiveness hinges on the maintenance and development of a culture of democracy.

NAFTA and the further development of Free Trade

Mexico's legislature continues to ignore the structural reforms that Mexico desperately needs. As a country, Mexico is open-minded about free trade. However, the people do not necessarily understand the consequences of free trade. Thus, there is opposition to NAFTA from those who understand and have been damaged by free trade. Those who have benefited from NAFTA favor free trade. The balance is in favor of free trade. The Mexican private sector experienced a sort of fatigue or wariness about free trade, especially during the last two years of President Zedillo. Leading businessmen did not want another free trade agreement because they did not want to adjust to a new period of tariff reduction and trade with another series of countries.

Despite the fatigue, currently there seems to be a renaissance in free trade. The Mexican private sector has expressed interest in a free trade agreement with Japan.¹³ Japan has stated willingness to enter into a free trade agreement with Mexico. Due to the crisis in South America, Brazil is now willing to start seriously negotiating a free trade agreement with Mexico.¹⁴ Certainly, if Brazil decides to enter into a free trade agreement with Mexico, Argentina and Uruguay will follow. Therefore, Mercosur will not be disrupted, which is why I call it the Mercosur-Mexico Free Trade Agreement.

Mexico is trying to energize the agreement with Colombia and Venezuela without much success because of the conditions of each of those countries. Mexico is also trying to expand its trade agreement with Chile, which has been very successful. However, the Chilean market is small. Certainly Mexico's economic

13. See Bumpy Road Ahead For Japan FTA Talks With Mexico, *Nikkei Report*, 2003 WL 7483865, Jan. 31, 2003; Mexico and Japan plan free trade deal, *BBC News*, Oct. 28, 2002, available at <http://news.bbc.co.uk/1/hi/business/2367925.stm> (last visited 2/23/03).

14. Mercosur, also known as the Southern Cone Common Market, links Brazil, Argentina, Uruguay and Paraguay in trade. It is the world's fourth largest economic bloc, with a combined population of nearly 200 million. Mexico conducted a cumulative annual trade of US \$5 billion with Mercosur in 2001. *Emerging Markets Daily News*, 2003 WL 8168329, Feb. 14, 2003.

and commercial turf—meaning Central America—is moving in a productive direction, although all the economies are too small individually to be meaningful for free trade with Mexico.¹⁵

Therefore, what is Mexico trying to accomplish? In Mexico, there are foes of NAFTA and friends of NAFTA, as there are in the U.S. and in Canada. This brings up the future of NAFTA. The biggest mistake the three countries could make at this point is not to deepen NAFTA. The deepening of NAFTA would mean creating a common market for North America. Many Mexican thinkers opine that a Mexican-U.S.-Canada common market is undesirable. The U.S. is not thinking in terms of a common market, nor is Canada.

The future of NAFTA is of great concern because it must evolve into a more meaningful relationship because it will lose value through the years if left in its current state. As it is, no company wants to discuss changing NAFTA because it has been so beneficial to business. I was debating with a client who is coming to Mexico to manufacture automobiles. They are starting with auto parts and they were saying they plan to open their fourth plant in the United States, which will be much larger than their other plants, and they plan to open a plant in Mexico within the next two or three years. Even though they want to start building this year, the announcement from their home office cannot be made because it may offend the U.S. workers or the U.S. foes of NAFTA. We had a serious debate as to how to announce the building of these plants: the U.S. plant is huge and therefore it will make the Mexican plant look small, and the Mexican plant will infuriate the United States due to the flight of jobs.

If these discussions are occurring in the private sector, how can NAFTA be re-energized? The idea of a common market is unpopular in some quarters given the current political conditions, the legal traditions, and sovereignty concerns of the three countries. It may not be possible to have a common market. Obviously the Treaty of Rome and the Common Market were born for totally different reasons.¹⁶ If it is not possible to have a common market, then a North American economic space must be developed. If the countries of North America fail to do that, the three countries will lose competitiveness.

The China Threat

This goes to the main issue. Mexican newspapers today announce the demise of Japan as a U.S. trading partner. Further, U.S. trade with China is now surpassing by a small amount U.S. trade with Mexico. If that is true, then the issue must be raised: Is the China threat to Mexico's position as a U.S. trading partner a reality? From a U.S. perspective, China can produce their products more cheaply, obviously benefiting the United States. That much is clear.

15. Latin American Data Base (LADB), NotiCen, "Region: Free Trade Treaty Between Mexico and Northern Triangle Countries Goes Into Effect." March 22, 2001. LADB is available for subscribers at: www.ladb.unm.edu (last visited 2/23/03).

16. The Treaty of Rome, signed in 1958, established the European Union (EU) and formed the EU's initial agreement with basic principal of freedom of movement of goods, persons, services, and capital. The basic institutional mechanisms were created: European Court of Justice, The Council of Ministers, the European Commission, and the European Parliament. The full text of the treaty is available at <http://www.tufts.edu/departments/fletcher/multi/texts/rome/contents.html> (last visited 2/23/03).

What will happen in the trends of investment of the U.S. in China, the U.S. in Mexico, and the trend of exportation of goods from China to the U.S. and the exportation of China's products to Mexico? How does trade with China affect NAFTA? What impact will it have if the North American economic space is not further defined? The Mexican private sector fears China on the one hand; on the other, some Mexican companies have already established plants in China because it makes our products cheaper. There are some plants disguised as Chinese companies that are, in fact, owned by Mexican capital.

Clearly there are distinguished U.S. law firms, economic firms and investment-banking firms dealing with these issues. What is the future of Mexico and China? Mexico's vision of that future involves strategic alliances and joint ventures. Mexico must move proactively to attract Chinese companies so that Mexico does not become irrelevant in the trade relationship between China and the U.S. Obviously Mexico cannot cover the entire relationship, but if it can cover an important part of it, Mexico will not become obsolete in the China-U.S. trade relationship. For Mexico, the ominous presence of cheaper Chinese products looms large.

To that extent, Mexico will have to define its role and the composition of what value Mexico can add if labor remains cheap in China. How can Mexico become competitive enough to keep the U.S. interested? How can Mexico finish Chinese products in order to keep its trade relations with the U.S. within safe borders?

Another issue tied to the finishing of Chinese products in Mexico has to do with education and training of the Mexican work force and a new labor law.¹⁷ Mexico has been stalemated for twenty years on tax reform and is thus twenty years behind. The legislature changes the tax regulations and makes them more complex, then makes them less complex; it increases taxes, and then it lowers them. Therefore, there currently is no tax reform to make Mexico competitive. Labor laws are another matter. The labor law is old. Mexico is trying to promulgate a new labor law. It is written, and hopefully it will be passed as drafted. This is important progress toward making the labor force more competitive, less paternalistic, and generally more flexible.

The legislation of natural gas and electricity are also hugely important, as is the maturing of the Mexican electorate. All of these things are at stake, and these issues inform Mexico's competitiveness and its reaction to the China factor and the North American economic space.

THE STATUS OF U.S.-MEXICO RELATIONS

This brings me to the status of U.S.- Mexico relations. Is Mexico dependent on the U.S.? This is important for a discussion of the future of the North American economic space because Mexico is indeed dependent on the United States. If the U.S. economy experiences a rough period, Mexico's economy experiences are worse. If the U.S. economy slows, Mexico's economy slows more. If Washington

17. La Ley Federal de Trabajo, Mexico's Federal Labor Law, is available at: <http://www.cddhcu.gob.mx/leyinfo/pdf/125.pdf>

is angry at Mexico, Mexico suffers. If Washington is aloof, Mexico's voice is not heard.

U.S.-Mexico Immigration Policy

At present, this burgeoning relationship is stalemated because Mexico has become irrelevant to Washington once more. Immigration is a major point of contention between the two countries; it is a major issue between North American economic space and the well being of the two nations and it is a major issue of human rights. The killings and deaths along the U.S.-Mexico border of undocumented Mexicans are of great concern for the morality and conscience of both countries. These killings create great concern for the future and especially the well being of the two sides of the border and present an obstacle to the North American economic space.

The U.S. is free to deal with its laws, with its borders and with its territory. By the same token, dealing with those territories must not infringe negatively or damage human rights and must recognize the need for economic unity, in the North American economic space. Therefore, immigration issues—though out of vogue in Washington today—will have to become at some point the day's agenda.

This immigration stalemate has created havoc within Mexico because Secretary of State Jorge Castañeda took a personal interest in this issue. He even talked about running for president of Mexico because he thought he could gain legal status for the majority of Mexicans living in the United States, and therefore have sufficient political popularity to run for the presidency. However, Washington never accepted his idea.

Although immigration-border issues will have to come to the forefront at some point, one must wonder whether the U.S. is really interested in safe borders. If so, what does that mean to Mexico? Safe borders must account for immigration, the North American economic space, and must put the border farther south at Guatemala. The U.S. border does not end at Laredo, Texas; it ends at Guatemala. If that is true, what will we do about a program that is already again losing interest? The Puebla-Panama Program (P.P.P.) was envisioned to create an economic development zone from Mexico to Panama, focused on economic infrastructure development projects financed by Mexico.¹⁸ Mexico is going to make the Central American countries come up to speed in terms of economics, education, democracy, and other issues. Central America is evolving rapidly into a good economic environment, but so far it has not developed enough. How can Mexico prevent Central Americans from walking through Mexico and arriving in the U.S. in the same numbers or similar numbers as Mexicans?

In my opinion, all these things are coming together but are doing so haphazardly. This is because of new laws in the U.S. dealing with security issues.¹⁹ There is a nascent idea about safety on the borders. It is nascent because there has been discussion about it, but there has not been any activity. Whatever plan the two

18. A detailed explanation of the Plan Puebla-Panama can be found on the Inter American Development Bank's web-page at: <http://www.iadb.org/ppp/> (last visited 2/23/03).

19. Uniting and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism. (The USA PATRIOT Act of 2001) Pub. L. 107-56, 115 Stat. 272 (Oct. 26, 2001); Pub. L. 107-108 (Dec. 28, 2001); and Pub. L. 107-173 (May 14, 2002)

countries create, it must not ignore the realities of border crossings, or our mutual dependence in immigration matters. Any plan must account for human rights and, most importantly, must not ignore the benefits of the North American economic space.

Comprehensive North American Energy Policy

The next important issue involves how to make a sound North American energy policy when Mexico and the U.S. are really one big inter-dependent country speaking different languages with different perspectives. Mexico, the U.S. and Canada have been dodging that issue for many reasons. How can Mexico develop the necessary resources on its side of the border to feed the Northern side of the North American territory? How can Mexico exploit its natural resources in an orderly manner – especially natural gas in the Gulf of Mexico, dry gas on the border with the U.S., and liquefied natural gas (LGN) plants – to supply gas to the U.S. and at the same time supply gas to Mexico? How can Mexico produce competitive materials for the chemical industry? How will Mexico order refining?

Mexico can no longer continue in the pattern it is following. One threat is the deficit in Mexico's balance of payments because of over importation. One of the main imports, which is equal in amount to the exports of Mexican crude, is refined products and chemicals. We are reaching an excess of \$8 billion per year in importation. This is because refining is not a privatized industry, nor has it been allowed to be private. Mexico does not produce enough natural gas, basic petrol chemicals, or secondary petrol chemicals. Existing production is largely inefficient. Though Mexico is growing industrially, it does not have enough feed stock to nourish that growth.

Those in the know say a comprehensive North American energy policy is the answer. However, a North American energy policy is impossible to contemplate without considering the North American economic space. The next step is to turn the *Nada Bank* into the something bank. The North American Development Bank (NAD Bank)²⁰ never had any funding, never had any projects, and never did anything. A recent decision was made to broaden its charter and increase its territorial coverage.²¹ Hopefully, with enough funding the resulting projects will benefit both sides of the border with much-needed infrastructure. Water issues will be paramount for the U.S. and Mexican Congresses and will have to be coordinated with the North American energy policy, immigration policy, and production policy as the North American corridor policy. How are the corridors going to develop relationships within the two countries? How can relations among the border states be improved without the government leading the way in economic terms, in growth and competitive terms?

20. North American Development Bank web-page: www.nadbank.org. The NAD Bank was created through the North American Free Trade Agreement (NAFTA).

21. NAD Bank cite doesn't contain any info on this.

CONCLUSION

While it is true that Mexico is dependent on the United States, the U.S. is also dependent on Mexico. We are neighbors; we share the same space and there is nothing to do but develop it. The tragedies of September 11, 2001, and the war with Iraq have pushed certain issues to the back burner, including how to develop, as President George W. Bush has said, the friendliest relationship in the history of the two countries. This relationship could be the kind of prosperous and realizable relationship that translates into increased well-being of people on both sides of the border.