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INTRODUCTION TO MEXICO'S LEGAL SYSTEM

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INTRODUCTION TO MEXICO'S LEGAL SYSTEM

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INTRODUCTION

The application of Mexican law in cases decided by American courts during the last two decades –as *the* applicable foreign law– has been impressive. In a quick survey of cases involving foreign law resolved by California courts in 2004–2005, a total of 100 cases were governed by Mexican law, 57 by Canadian law, 29 by Japanese law, 28 by German law and 12 by Chinese law.¹

The impetus that has triggered the growing presence of the law of this civil law neighboring country in the largest nation with an Anglo-Saxon legal tradition may be associated with these three factors: (i) the geographical contiguity of Mexico to the United States; (ii) the increasing number of a Mexican and a Mexican-American populations in California, Texas, Illinois, Florida, New York, Arizona and New Mexico, having become today’s largest ethnic minority in our country; and (iii) the immense volume of wealth that circulates between these two countries on a daily basis, especially after NAFTA entered into force in 1994. According to the latest data, the volume of trade between Mexico and the United States amounts to \$890 million per day.²

Indeed, the pervasive effects that geography, Mexican people and wealth are producing to bring Mexican law to the forefront of American courts, international business and foreign investment rather than ameliorating are likely to become more visible and more powerful in the years to come. Moreover, these effects cannot be limited to the legal and business realms but are already being felt and are gradually transforming the culture and the social fabric of our country.

All of this suggests the practical convenience, if not the growing necessity, for judges, legal practitioners and certain government officials, of becoming familiar with certain aspects of Mexican law.³ Recent data indicates that the commonest areas of Mexican law addressed by American courts include, *inter alia*, acquisition of real estate and *fideicomisos*, arbitration, contracts, corporate law, criminal law, family law matters, immigration law, import-export questions, intellectual property,

¹See Jorge A. Vargas. *The Emerging Presence of Mexican Law in California Courts*. 7 SAN DIEGO INTERNATIONAL LAW JOURNAL (Fall 2005) at 215-221. For a general overview of Mexican law, *see also*, by the same author, *An Introductory Lesson to Mexican Law: From Constitutions and Codes to Legal Culture and NAFTA*. 41 SAN DIEGO INT’L L.J. (Summer 2004) at 1337-1372.

²Franklin L. Lavin, Under Secretary of Commerce for International Trade, International Trade Association, Speech at the American Chamber of Commerce of Mexico City: Improving U.S.- Mexican Competitiveness (May 8, 2007).

³Interestingly, the need of becoming familiar with Mexican law is running in parallel with the convenience of learning Spanish so legal practitioners can communicate in this language with their Mexican (and other Latino) clients. Over the last few years, certain law schools –such as the University of San Diego School of Law and Thomas Jefferson (both in San Diego) and the University of Denver College of Law– are including courses on “Legal Spanish” in their academic curricula.

personal injury cases, and certain conflict of laws areas, especially those relating to international judicial cooperation, letters rogatory and enforcement of judgments and arbitral awards.⁴

The purpose of this article is to provide a general description of the major features and current characteristics of the Mexican legal system, its principal components and some of its distinct legal institutions, including –as an introduction to what is an eminently descriptive work– a brief historical background and basic information about Mexico as a country, its territory, people, culture and economy. It would be absurd and inappropriate to make an attempt to learn about Mexican law devoid of its historical background and without an interest to learn about its people, their problems and tragedies, failures and successes, hopes and dreams. And then proceed to place this universe of information within the political and diplomatic context of its old but uneven and sometimes prickly relationship with the United States.

1. MEXICO AS A COUNTRY

During three centuries (1519-1821), Mexico, as a colony, was politically and economically controlled, and militarily dominated by Spain. Spanish law governed all aspects of the social and economic life of its largest possession in the New World, initially by the direct application of the Spanish laws, codes and regulations, and later on by the enactment of the *Recopilación de las Leyes de los Reinos de las Indias*,⁵ a collection of important pieces of Spanish legislation adapted to suit the specific and peculiar conditions prevailing in the *Nueva España* (New Spain) at that time.

Historically, Mexico served three fundamental objectives for Spain’s expansionist policies: first, its vast and varied natural resources and numerous indigenous peoples were perceived and treated as a source of immense wealth and cheap labor for the exclusive benefit of Spain.⁶ Second, the New Spain was utilized as a strategic territorial base for the conquest and domination of other lands and resources in the Americas; and, third, the new Spanish colony provided Spain with the

⁴For an overview of over 42 major Mexican law areas involving corporate, international business transactions and conflict of laws, see Jorge A. Vargas (Ed.). *MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS* (West Group), 4 vol. (1998 and 2001).

⁵See Juan Manzano y Manzano. *HISTORIA DE LAS RECOPIACIONES DE INDIAS (History of the Compilations of the Indies)*. Ediciones de Cultura Hispánica, Madrid (1956). See also José Luis Soberanes. *HISTORIA DEL DERECHO MEXICANO (History of Mexican Law)*. Porrúa, México (2006) at 67-91; Oscar Cruz Barney. *HISTORIA DEL DERECHO MEXICANO* Oxford Univ. Press, México (1999), pp. 1-31; and Stephen Zamora *et al.* *MEXICAN LAW*. Oxford Univ. Press (2004) at 1-42.

⁶Demographers estimate that the country’s population at the time of the Spanish conquest in the early 1500s consisted of some 20 million. By 1600, however, barely one million remained, the result of deadly European diseases and brutal treatment of the indigenous peoples by the Spanish colonizers. At the onset of the Mexican revolution in 1910, Mexico’s population stood at some 15 million people. Not until 1940 did Mexico reach the population level it had in 1519. *Mexico: Library of Congress Country Studies*, Washington, D.C. (1996).

opportunity to propagate the Catholic faith –as a component of Spain’s culture, jointly with the Spanish language– by evangelizing the indigenous peoples in the Western Hemisphere. The sword and the cross were the salient symbols of Spain during this long colonial period.

Accordingly, it should only be logical to expect certain remnants and influences of Spanish law in today’s Mexican law.

1.1 *Mexico’s Physical Setting*

The Republic of Mexico’s territorial base encompasses 1,972,550 square kilometers (*i.e.*, 761,600 sq. mi.) which is about three times the size of Texas. In addition, Mexico enjoys sovereignty over numerous islands, rocks and cays in the Pacific Ocean, the Gulf of California, the Gulf of Mexico and the Caribbean.⁷

With the United States, Mexico shares 3,346 km. (1952 mi.) of international boundary formed by a combination of (a) an *artificial boundary* established by straight lines which unite specific points defined by their coordinates of latitude and longitude (179.96 mi.); and, (b) an *arcifinious* or natural boundary formed by the Rivers Grande (1254 mi.), Colorado and Tijuana (376.98 mi., including 24 mi. of the Colorado in Arizona, and 140.73 mi. in California). This boundary was established in accordance with the Treaty of Guadalupe Hidalgo (Art. V) of 1848, which put an end to the unjust war between both countries, as amended in 1853 by the Gadsden Purchase (Art. I) (known in Mexico as Tratado de La Mesilla).⁸

Article 42 of Mexico’s Constitution of 1917 enumerates the component parts comprising its national territory, which are: 1) thirty-one states; 2) one Federal District (*i.e.*, Mexico City, which serves as the venue for the federal powers and operates as another state); 3) the offshore islands, including those of Guadalupe and Revillagigedo in the Pacific Ocean; 4) the submarine continental shelf around the mainland and islands; 5) a twelve nautical mile territorial sea around the country’s 10,000 km. coastline, including certain islands; and, 6) the superjacent airspace above the national territory pursuant to the rules established by international law.

The International Boundary and Water Commission (IBWC), a binational U.S.-Mexico

⁷Today, Mexico does not have an official number as to the total of its islands due to problems associated with the legal definition of an “island.” Their number has been estimated to be around 250. In Mexico, the marine spaces are governed by the Federal Oceans Act (*Ley Federal del Mar*), published in the *Diario Oficial de la Federación* (hereinafter *D.O.*) on January 8, 1986. See Jorge A. Vargas. *Mexico’s Legal Regime over Its Marine Spaces*. 26 INTER-AMERICAN LAW REVIEW (Winter 1994-95) at 189-242.

⁸Jorge A. Vargas. *Is the International Boundary between Mexico and the United States Wrongly Demarcated?* 30 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL (Spring 2000) at 233, 215-274.

structure established in 1889 to properly demarcate, keep and maintain the boundaries between both countries, and whose jurisdiction was enlarged in 1944 to include the waters of three international rivers (*i.e.*, the Rio Grande, the Colorado and the Tijuana) pursuant to the Treaty for the Utilization of the International Waters signed on February 3, 1944.

1.2 *Population*

According to a 2007 estimate, Mexico's population has reached 110 million, the second largest in Latin America (after Brazil) and the 13th at the global level. Demographers estimate its annual growth rate at 1.16% (2006 estimate). Mexico is the largest Spanish speaking country in the world.

Endowed with the largest and most varied indigenous populations throughout Latin America, Mexico's estimated ten million indigenous people are divided into 56 ethnic groups.⁹ Most of these groups have their own language, authority structure, culture and customary normative systems, and they date back to the times of the conquest, such as the Nahoas, Toltecs, Chichimecs, Tlaxcaltecs, Mayans, Tzotzil, Purépechas, Tarahumaras, etc. In a country where poverty affects about half of the total population (located principally in the center and south of the country), the indigenous peoples are the poorest of the poor (\$1 dollar per day/person).

The existence of indigenous groups and its vital role in the country's early history had not been explicitly recognized in the language of the current 1917 Federal Constitution. It was not until 1992 when President Carlos Salinas de Gortari, in response to firm demands advanced by indigenous groups and mounting political pressure, amended Article 4 of said Constitution, to add the following paragraph:

The Mexican nation has a pluriethnic composition originally based on its original peoples. The law shall protect and promote the development of their languages, cultures, uses, customs, resources and specific forms of social organization, guaranteeing to their individual members an effective access to the jurisdiction of the state. In the agrarian suits and proceedings in which those members are a party, *their legal practices and customs shall be taken into account in the terms established by the law.*¹⁰

⁹See Fernando Benítez *et al.* *CULTURA Y DERECHOS DE LOS PUEBLOS INDÍGENAS (Culture and Rights of Mexico's Indigenous Peoples)*. Fondo de Cultura Económica, México, 1996; and José Ordóñez Cifuentes. *PUEBLOS INDÍGENAS Y DERECHO ÉTNICOS (Indigenous Peoples and Ethnic Rights)*. UNAM, México (1999).

¹⁰See Jorge A. Vargas. *NAFTA, the Chiapas Rebellion, and the Emergence of Mexican Ethnic Law*. 25 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL (Fall 1994) at 44, 1-79 (*Emphasis added*). The philosophy of this constitutional mandate has been placed –slightly changed but expanded– at the beginning of Article 2 of Mexico's Federal Constitution of 1917. In essence, this provision enunciates the government's policies, at the federal

Therefore, from a historical legal perspective, the existence of various customary normative systems that were formulated and practiced by the most sociologically advanced indigenous peoples in pre-colonial Mexico, such as the Aztecs, the Toltecs and the Mayans (including specialized courts) antedated the arrival of the Spanish conquistadors in Veracruz in 1519, and the subsequent imposition of Spanish law throughout that country. As a result of the banning of these ethnic customary systems by Spanish law and the passage of time, most of these indigenous systems gradually decayed and others became extinguished. Today, Mexican law appears to be devoid of any legal principles or institutions extracted or inspired by those ancient pre-Columbian customary normative systems.¹¹

Other ethnic groups include *Mestizos* 60% (people with a mixed origin, initially connoting a mixture of European and indigenous people); Caucasian 9%; and 1% other. Most of the population has become urban, and the largest cities include Mexico City (20 million, approximately), Guadalajara, Monterrey, and border cities along the border with the U.S. such as Tijuana, Ciudad Juárez, Nuevo Laredo, Piedras Negras, etc.

Pursuant to Article 3 of the Federal Constitution, Mexicans must undergo eleven years of compulsory education (including (elementary, junior high and high school, and since 2001 pre-school education). This constitutional provision is among the most extensive in that important legal instrument, and its language provides the policies that the federal government has formulated for the conduct of public and private education in the country, enunciating the right to education; its laic, democratic, and nationalistic goals. This provision establishes the bases for regulating private education, higher education by public universities, and the important role Federal Congress plays in this important area through the enactment of laws and regulations. In Mexico, public education is strongly perceived as a fundamental constitutional right, it must be laic and provided at no cost by the state.

Today, the country's literacy is 90%. The country devotes the largest portion of its federal and state budgets to public education. Public universities provide free university education to form lawyers, engineers, medical doctors, architects, veterinarians, etc. Mexico's National Autonomous University (UNAM) is among the largest in the world, and the first one to be established in the

and state levels, towards indigenous peoples. However, despite the constitutional language, indigenous groups remain today as the most marginalized sector of the Mexican society.

¹¹It has been claimed that the "*Ejido*," a real estate system of communal property in Mexican rural areas (similar to the Russian "kolhoz" and the Israeli "kibutz"), included in the original version of Article 27 of Mexico's Federal Constitution in 1917, dates back to the ancient Aztec notion of the "Calpullis" or communal neighborhoods in Tenochtitlan, the capital of the Aztec empire. The *ejido* system of communal property was repealed by President Salinas in 1989?. See Jorge A. Vargas. *Does Mexican Law really contain Aztec Law?* in §1.13, *Contrasting Legal Differences between the U.S. and Mexico. MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS* (West Group, 1998), Vol. I at 9-11, 1-35.

Americas in 1551.¹² Private education is quite elitist and very expensive.

Most Mexicans professed to be Roman Catholic (90%) although Protestant (6%) and other religions are beginning to gain adepts. Religion is strictly regulated at the federal level¹³ and is controlled and monitored by *Secretaría de Gobernación*, who must legally authorize the practice of any religion in that country. Pursuant to Article 130 of the Federal Constitution, in Mexico there is a drastic separation between Church and State, and this official policy is interpreted as a “historical constitutional principle.” Dating back to the Reformation Acts (*Leyes de Reforma*, Nationalization Act of July 12, 1859)) enacted by President Juárez in the mid-19th century, the official and diplomatic relations between Mexico and the Holy See remained severed until 1993. Interestingly, in Mexico all religious churches, temples and other places of worship, belong to the State, in accordance with Article 27 of the Federal Constitution. Legally, Mexico is a secular country where “Freedom of religion” prevails as a constitutional right guaranteed by Article 24 of the Federal Constitution.

The infant mortality rate is 21.69/1000, and the life expectancy has been gradually increasing to reach today 72 years for males and 78 for females (2007 estimate).

Mexico’s working force has been estimated at 41% (some 42 million), distributed in these areas: agriculture, forestry, hunting and fishing, 22%; services 33%; commerce 19%; manufacturing 20%; construction 7%; transportation and communications 6%; and mining 1%. Most of the work force (97%) in *Maquiladoras* (*i.e.*, assembly plants), the majority of which is located along the border with the United States, is formed by women.

Pursuant to Article 34 of the Federal Constitution, Mexicans become citizens when they reach 18 years of age. The Mexican nationality is acquired by birth or by naturalization, and since 1995 when Mexico amended Articles 30, 37 and 38 of its Constitution, and the corresponding Nationality Act of 1993, Mexican nationals may end up having a “Dual nationality.”¹⁴ The rights and

¹²The University of Mexico was established by royal decree (*Cédula Real*) of Charles V signed by Prince Phillip on September 21, 1551, created to benefit “the naturals and the children of Spaniards,” receiving from Pope Clement VIII the pontifical sanction and for its law graduates the right to teach everywhere (*Ius ubique docendi*). ENCYCLOPEDIA OF MEXICO, Vol. XII, México (1972) at 531.

¹³Act of Religious Associations and Public Worship (*Ley de Asociaciones Religiosas y Culto Público*) published in the *D.O.* of July 15, 1992 (as amended) and its Regulations. In this regard, see Jorge A. Vargas. *Freedom of Religion and Public Worship in Mexico: A Legal Commentary to the 1992 Federal Act on Religious Matters*. 2 BRIGHAM YOUNG UNIVERSITY LAW REVIEW (Vol. 1998) at 421-478.

¹⁴See Jorge A. Vargas. *Nationality, Naturalization and Dual Nationality under Mexican Law*. (Published by what law review 2008?); *Dual Nationality for Mexicans*. 35 SAN DIEGO LAW REVIEW (Summer 1998) at 823-853, and 18 CHICANO-LATINO LAW REVIEW (Fall 1996) at 1-58.

obligations of foreigners are enunciated in Article 33 of said Constitution, which reads:

Foreigners are those who do not possess the qualifications set forth in Article 30. They are entitled to the guarantees granted by Chapter I, First Title, of the present Constitution; but the Federal Executive (*Ejecutivo de la Unión*) shall have the exclusive power to compel any foreigner whose presence may be considered inconvenient to abandon the national territory immediately and without the need of a previous trial. Foreigners may not in any way get involved in the political affairs (*Asuntos políticos*) of the country.¹⁵

According to the latest report, about half a million Americans live in Mexico on a permanent or semi-permanent basis. They reside principally in Mexico City, Guadalajara, Monterrey, and in other places like Cuernavaca, Chapala, San Miguel Allende, Ajijic, Mazatlán, La Paz, etc.¹⁶

From a population viewpoint, Mexico's most difficult challenges in the early 21st century include: (i) the ability to provide adequate jobs to one million young Mexicans who enter the market labor force every year; (ii) to provide proper education at all levels for a growing Mexican population, but in particular to Indigenous peoples; (iii) to educate most Mexicans to stay healthy and active, given the increasing numbers of Mexicans affected by diabetes, heart and cardiovascular problems, arthritis and, recently, drug abuse problems.

Unquestionably, the most difficult and sensitive problem Mexico confronts with the United States today is the millions of Mexicans who enter illegally into this country in search of a better and more prosperous life. Armed with their firm intention to work and if possible to lawfully reside in the United States, many of them perish in their attempt to cross the border in remote and dangerous areas, others are exploited by unscrupulous employers and many more are subject to human rights violations and mistreatment, and the target of racial epithets. Many remain in this country because they have found a stable job.

Millions of Mexicans live and work in the United States in an array of occupations ranging from agricultural and construction workers, janitors and hotel service personnel, maids and babysitters, gardeners and swimming pool cleaners, chefs and kitchen assistants, nurses and elderly care helpers, teachers of Spanish, etc. to the benefit of Americans and of the American economy. Many of these temporary migratory workers (jointly with Mexican-Americans) are reported to send back to Mexico billions of dollars every year. According to the latest estimates, these Mexicans sent

¹⁵Art. 33, Mexico's Federal Constitution. Taken from AGENDA DE AMPARO 2006. ISEF, México, D.F., 2006 at 29.

¹⁶See Jorge A. Vargas. *Rights and Obligations of Foreigners in Mexico in Immigration Law and Other Areas of Mexican Law*. UNIVERSITY OF RICHMOND LAW REVIEW (forthcoming March 2008).

to Mexico \$25 billion dollars in 2007.¹⁷

It is only evident that our immigration system is in disarray, despite the stricter measures taken as a consequence of the tragic September 11 events. It is inconceivable to recognize that eleven million undocumented persons live and work in our country, and only very limited and implausible measures are taken in an attempt to solve this problem. Unilateral measures by the U.S. are not the way to address and solve this chronic problem. The solution must be provided by a joint and concerted effort by both the United States and Mexico.

Some of the components that may lead to the crafting of a viable and practical solution should include:

- a) To structure a binational program of Mexican temporary workers in agriculture and construction (to be possibly extended to include teachers of Spanish, nurses and elderly care providers);
- b) Substantially increase the quota of Mexican nationals permitted to lawfully immigrate to the U.S., thus recognizing Mexico as a country of “privileged nationals” for the mutual benefit of both nations (this should be principally done for “Family-reunification” purposes); and
- c) Induce Mexico to build temporary housing installations in rural areas where the Mexican agricultural labor is needed; temporary clinics, and temporary elementary schools for Mexican children by Mexican teachers, as a *quid pro quo* for the billions of dollars that benefit the Mexican economy; and
- d) Allow Mexico to assist the United States in developing a U.S.-Mexico data base of Mexican migratory workers, co-financed by both countries.

1.3 *Form of Government*

Mexico’s form of government and political structure derive from its current Federal Constitution, formulated by a National Constitutional Congress held in the City Querétaro in 1916-1917. Mexico’s constitution adheres to the European model and is composed by 136 articles. Notwithstanding that its text has been amended some 500 times since its enactment on February 5, 1917 (having entered into force on May 5, 1917), the original structure of this fundamental document continues to be in force today.

¹⁷SOURCE OF REMITTANCES HERE
AND HERE

Since its emergence as an independent nation in 1821, Mexico appears to have been fascinated by the form of government established by the Constitution of the United States.¹⁸ Indeed, its first Federal Constitution of 1824 which established the first republican government in that country, and later on the Federal Constitution of 1857,¹⁹ which strongly influenced the current Constitution, all of these fundamental documents were clearly inspired by the political philosophy and the form of government created by the Constitution of the United States. Accordingly, pursuant to Articles 39 and 40 of the Federal Constitution of 1917,

The national sovereignty resides essentially and originally in the people, who decided to organize themselves as a representative, democratic and federal Republic, composed of free and sovereign States in all that concerns their internal government; but united in a Federation established according to the principles of this fundamental law.

Mexico's current constitutional document emanated from the most violent revolutionary movement that engulfed that country in the early 20th century, in response of the popular and nationalistic demands massively advanced by laborers, peasants, and indigenous peoples against the oppression and harsh working conditions imposed by a powerful minority of landlords, merchants and factory owners.

Characterized as the very first revolutionary social movement of the 20th century, the *Revolución Mexicana* of 1910 provided the substance for numerous popular and social demands that found their way into the language of the Constitution of 1917.

Some of these demands included, *inter alia*, the Nation's sovereign and exclusive rights over its natural resources, land for the peasants and a nationalistic regime over real estate property and foreign investment (Art. 27); fair working conditions for laborers recognizing them the right to work and to strike, to have an eight-hour labor schedule, special working conditions for women and children, a seven-day working week, special labor courts at the federal and state levels (Art. 123); free, non-religious public education from elementary all the way up to university studies, regulation of private education (Art. 3); freedoms protecting the right to work, of expression, the right to get an official answer from authorities and the right of association (Arts. 5, 6, 7 and 8); the abolition of nobility titles (Art. 12); the right to possess weapons for self defense (Art. 10); the banning of special

¹⁸According to Mexico's leading constitutional law expert Felipe Tena Ramírez, quotes Lorenzo de Zavala, President of the 1824 Constitutional Congress saying that "the deputies of the newly formed Mexican states attended the Congress full of enthusiasm for the federal system and that their manual was the Constitution of the United States, which provided the text and model to the new legislators." See Felipe Tena Ramírez. LEYES FUNDAMENTALES DE MÉXICO, 1808-1991. Porrúa, México (1991) at 194-195.

¹⁹For a brief historical background and a commentary of these federal constitutions, see Jorge A. Vargas. *An Introductory Lesson on Mexican Law: From Constitutions and Codes to Legal Culture and NAFTA*. 41 SAN DIEGO LAW REVIEW (Summer 2004) at 1344-1346, 1337-1372.

courts and special laws, and the right to a fair and expeditious judicial proceedings (*i.e.*, due process) (Art. 13); the banning of retroactive application of laws, and right not to be molested at home, family, personal documents or possessions without a judicially mandated order (Arts. 14, 16); freedom of religion (Art. 130), etc. All of these constitutional rights (in close legal symmetry with those in the U.S. Constitution), and many others, are recognized in Mexico as “Individual guarantees” (*Garantías individuales*) and constitute fundamental freedoms and rights firmly protected against unconstitutional intrusions by public authorities through the special federal *sui generis* judicial proceedings known as *Amparo*.

Many of the provisions of the current 1917 Constitution may be characterized as “aspirational.” They represent certain ideals that emanated from the political, socio-economic and legal philosophy of the revolutionary movement of 1910 that although unreachable at that time—and even in the present day—they constitute a goal that Mexico hopes to materially reach in the not too distant future. For example, free and public education, true equality between men and women, to own a house, to have a steady and well-paid job, to enjoy a national health protection system, fair and expeditious justice, to have a clean and adequate environment, efficient and honest public authorities, etc.

Another characteristic of the Federal Constitution is that its language has been amended so many times since 1917 that its text appears to be covered with patches that break its uniformity and continuity.²⁰ This has led, in recent years, to politicians, entrepreneurs and academicians to propose that Mexico needs a more modern and progressive constitution in symmetry with the principles of justice, democracy and peace to make it more apt to operate in the 21st century.

The federal government is divided into three powers: the legislative, the executive and the judicial (Art. 50).

A. The Legislative Power

The legislative power is vested in a federal congress (*Congreso General*) divided into two chambers: the Chamber of Deputies (*Cámara de Diputados*) and the Chamber of Senators (*Cámara de Senadores*) (Art. 50).²¹ The deputies’ chamber is composed by 500 representatives of the nation (*Diputados*), all elected every three years by the Mexican citizens. 300 of these are elected by direct

²⁰See, for example, Articles 2-4, 18-21, 27, 41, 89, 99-100, 122, and 123.

²¹The official web site of the Chamber of Deputies: www.cddhcu.gob.mx as well as that of the Senate: www.senado.gob.mx contain valuable information about the legislative activities taking place within each Chamber, such as text of legislative bills, discussion and approval, publication of laws and decrees, including information about individual congressmen. In addition, both web sites give access to all of the official Spanish text of codes, statutes, and regulations in force in Mexico today.

majority vote and the other 200 according to the principle of proportional representation (Arts. 51-52). The senators' chamber is composed by two members of each of the 31 states (and two more for the Federal District, *i.e.*, Mexico City), all directly elected every six years (Art. 56). The federal congress assembles in ordinary and extraordinary sessions, and during its recess its functions are performed by a Permanent Commission (*Comisión Permanente*) composed of 37 members (Arts. 65 and 78).

Every resolution of Congress shall have the character of a law or of a decree (*Ley* or *Decreto*) (Art. 70). The right to legislate belongs to the President, the deputies and senators of the Congress, and the legislatures of the states (Art. 71).

According to Article 73 of the Federal Constitution, Congress has most ample powers, including the power, *inter alia*, to admit new states; define the boundaries of states; change the seat of the powers of the federation; levy taxes; prevent restrictions to commerce between states; to legislate on hydrocarbons, mining, movies, commerce, games and lotteries, financial services, electric and nuclear power, and labor laws; to declare war; on military matters; nationality, foreigners, citizenship, naturalization, colonization, emigration, immigration and public health; general means of communication; to establish mint houses; rules regarding the occupation and alienation of vacant public lands, and fix their price; consular and diplomatic matters; on questions pertaining to faults and crimes against the Federation, and impose the corresponding sanctions; on educational matters and archeological monuments; to grant leave of absence to the President; on foreign trade; utilization and exploitation of natural resources; credit institutions and insurance; for the programming, promotion, and implementation of actions of an economic nature (*Acciones de orden económico*); to promote the Mexican investment and regulate the foreign investment, and technology transfer; sports; tourism; national security, etc. (Art. 73).

Therefore, all of the areas of special interest to foreign investors are governed in Mexico by federal statutes enacted by the Federal Congress, such as the Foreign Investment Act, the General Companies Act, the Federal Labor Act, the General Means of Communications Act, the General Petroleum and Hydrocarbons Act, the Radio and TV Act, the Professional Activities Act, the *Amparo* Act, the Environmental Act, etc.

Similar to the areas enunciated by the Constitution of the United States, Article 76 of Mexico's Federal Constitution prescribes as exclusive powers of the Senate, to analyze the foreign affairs policy conducted by the President of the Republic and approve treaties and diplomatic conventions, to ratify appointments of Mexico's Attorney General (*Procurador General de la República*) and for high members of the foreign service the Treasury (*Secretaría de Hacienda y Crédito Público*) and high military officers (*Ejército, Armada y Fuerza Aérea*); to give its consent for the President to permit the departure of national troops (*Guardia Nacional*) outside the country; resolve political questions which may arise between the internal powers of a given State; designate the Justices (*Ministros*) of Mexico's Supreme Court from the three candidates proposed by the

President; settle boundary disputes between States, etc.

B. The Federal Executive Power

Pursuant to Article 80 of the Federal Constitution, the exercise of the “Supreme Executive Power of the Union” (*Supremo Poder Ejecutivo de la Unión*) is vested in a single individual who is designated “President of the United Mexican States” (*Presidente de los Estados Unidos Mexicanos*). The election of the President is direct and under the terms prescribed by the electoral law. The President assumes the office on December 1st and the presidential period lasts six years and “the President in no case and under no reason can serve again as President.” (Art. 83). During his/her tenure, the President of the Republic can only be accused of treason or of serious crimes of the common order (Art. 108).

Prior to 2000, the Revolutionary Institutional Party (*Partido Revolucionario Institucional* or PRI) exercised absolute control in political matters throughout the country, having won each and every presidential election for the preceding 71 years. During those years, the PRI controlled Congress with an absolute majority to the extent that amending the Federal Constitution at the initiative of the Executive during that period of time was a mere formality, notwithstanding that the Constitution required the amendment to be approved by two thirds of Congress and by the majority of the State legislatures, since the PRI politically controlled both organs during that long period of time.²²

This situation radically changed in 2000 with the election of President Vicente Fox Quesada, member of the National Action Party (*Partido Acción Nacional* or PAN), which used to be the PRI’s strongest opposition party. Today, the almost unlimited powers (explicit and implicit) that used to be exercised by the President of the Republic no longer exist and the country appears to be gradually moving towards a truly democratic regime.

Pursuant to Article 89 of the Constitution, the powers and duties of the President include, *inter alia*, to promulgate and execute the laws enacted by Congress; to appoint and remove freely the members of the Cabinet; to appoint ministers, diplomatic agents and consuls general, with the approval of the Senate; to appoint, with the approval of the Senate, superior officers of the Army, Navy and Air Force; preserve the national security; other higher federal officials; to declare war; to designate the Attorney General of the Republic (*Procurador General de la República*) with the Senate approval; to give the Judicial Power whatever assistance it may need for the expeditious exercise of its functions; to submit to the Senate the names of three candidates to be considered for the position of Justice to the Supreme Court, etc. (Art. 89).

²²Article 135 of Mexico’s Federal Constitution closely adheres to the system established by the United States to amend its Constitution.

As a middle-size power, Mexico has traditionally engaged in an active and constructive foreign affairs policy at the bilateral, regional and international levels. Traditionally, this policy has been inspired and guided by very important international law principles in consonance with Mexico's history, culture and diplomatic practice. Unlike other nations, these principles are explicitly enunciated in Article 89, para. X, of the Federal Constitution, which reads:

ARTICLE 89. The powers and duties of the President are the following:

.....

- X. To direct the foreign policy and enter into international treaties, submitting them to the approval of the Senate. In the conduct of said policy, the head of the Executive Power shall observe the following normative principles: self-determination of peoples; non-intervention; peaceful settlement of disputes; proscription of the threat of or use of force in international relations; juridical equality of States; international cooperation for development; and the endeavor for peace and international security.²³

In July of 2006, Mexico held its presidential elections. The presidential candidates nominated by several political parties included Felipe Calderón Hinojosa, PAN's running candidate, Manuel Andrés López Obrador, from the Party of the Democratic Revolution (or PRD), and others (such as the PRI, the Green Ecological Party (*Partido Verde Ecologista*), the Labor Party (PT) and several small parties). Given the closeness of the results in the final counting of the ballots between the PAN and the PARM candidates (having a margin of less than 2% of a total of almost 40 million ballots), the case was taken to be decided by the Federal Electoral Commission (*Comisión Federal Electoral*).

This Commission rendered a decision favoring the current "Panista" President Felipe Calderón Hinojosa. However, these results were questioned and did not satisfy most members of the PARM who challenged the "legitimacy" of the election. PARM attempted (but failed) to thwart the taking of office of Calderón who took place on December 1st, 2006, as mandated by the Federal Constitution. The losing PARM candidate López Obrador later held a ceremony in Mexico City's major public square –known as the Zócalo– declaring himself the sole and legitimate President of Mexico. With the passing of time, President Calderón has been gradually gaining more adepts and continues to politically consolidate its electoral triumph.

a) First Government Report by President Calderón

As mandated by Articles 69 of the Constitution, and 6 of the Planning Act, on September 1, 2007, President Calderón submitted to Congress his First Government Report (*Primer Informe de Gobierno*). This Report was divided into these five parts: 1) State of Law and Security; 2) Competitive Economy that Generates Employment; 3) Equality of Opportunities; 4) Environmental

²³Art. 89. Mexico's Federal Constitution. Taken from AGENDA DE AMPARO 2006, *supra* note 13 at 54.

Sustainability; and 5) Effective Democracy and Responsible conduct of Foreign Affairs.²⁴

Some of the highlights of this *Primer Informe de Gobierno* (2007) include:

- a) Considering the problems Mexico has had to construct a country of laws and free of violence, it is proposed to strengthen a popular culture favoring legality, to fight back impunity and corruption, to promote citizen participation in denouncing and diminishing crimes, jointly with a comprehensive modernization of the administration and rendering of criminal justice.
- b) In order to abate poverty and inequality –that continue to affect some fifty million Mexicans– the Report enumerates a number of strategies to strengthen the economy: promote and attract foreign investment, promote exports, support strategic sectors such as agriculture and tourism, and to increase productivity. Special attention will also be given to telecommunications and transports, energy and water resources.
- c) The social and economic development of Mexico does not have to be accomplished at the cost of exhausting the natural resources such as forests, water and the breathing air. To assure environmental sustainability it is imperative for President Calderón's administration to undertake a rational and efficient management of Mexico's natural resources as the only manner to guarantee the improvement of the present generations without risking the well-being of future Mexicans. The *Informe* established a number of innovative environmental programs which harmonize environmental objectives with programs for social development, productivity and a competitive economy.
- d) Mexico needs to consolidate a democracy with quality. A democracy that respects the human rights and liberties of all Mexicans, where transparency and the rendering of clear accounting by public servants and government institutions takes place.
- e) According to this *Primer Informe*, Mexico's foreign policy must be responsible and active, directed at strengthening development, defending the rights of those Mexicans who live abroad (*i.e.*, in the United States) and promoting the interests of Mexico in the international order. Special attention is to be given to relations with Latin American countries.²⁵

b) Mexico's Foreign Affairs Policies

²⁴This *Primer Informe de Gobierno* by President Calderón is available at the official web site of Mexico's government at: www.informe.gob.mx/contenido/?=310

²⁵*Ibid.*, Presentación (Presentation) at 1-3.

One of the major commitments advanced by President Calderón in his *Primer Informe de Gobierno* was to “diversify” Mexico’s foreign affairs agenda.

This commitment becomes evident when one examines his very intense agenda in the areas of diplomacy and foreign affairs: until the end of August 2007, the Mexican Executive headed seven international tours to Nicaragua, El Salvador, Germany, Switzerland, the United Kingdom, Guyana, Italy, the Holy See, France, Belgium, Denmark, the venue of the European Union, Belize and Canada. In addition, he participated in 16 meetings of Heads of State in Belize, Canada, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Tanzania, United States of America, Chile, Colombia, Spain, Argentina and Brazil.²⁶

From analyzing the agenda for these meetings, it becomes evident that Mexico is not only extending but strengthening its political, economic and cultural contacts with Latin America and the Caribbean.

Mexico’s stated goals with the United States and Canada include to construct a safer and more prosperous region through the strengthening of bilateral and trilateral mechanisms for dialogue and consultation, with the objective of promoting the social and economic development of North America. On August 20-21, 2007, Mexico participated at the “Alliance for Security and Prosperity for North America” where these four initiatives were launched: i) global competition; ii) food and agricultural produce safety; iii) sustainable energy and the environment; and, iv) management of emergencies and natural disasters and border expeditiousness.

On March 12-14, 2007, President George W. Bush and President Calderón met at Mérida, Yucatán (Mexico), where they discussed a number of bilateral questions, including trade and investment, infrastructure and communications, given special priority to these border topics: migration, environmental protection and the fight against organized crime. In this regard, special concerted efforts have been accomplished in the fight against drugs, organized crime and terrorism through the sharing of mutual responsibilities.²⁷

Mexico recognizes that Canada is one of its major and most strategic partners both at the hemispheric and global levels. Since the entering of NAFTA, the relations between these two countries have been considerably strengthened and today Canada is Mexico’s second largest consumer of Mexican exports (after the United States) and the fourth largest country for Mexican

²⁶See *Primer Informe de Gobierno*, §5.6.2. To Diversify the Foreign Affairs Agenda.

²⁷Recently, the United States and Mexico signed a bilateral agreement whereby the U.S. will provide Mexico \$25 billion dollars in technical equipment and other services and programs in the fight against drugs and organized crime. Another positive development between both countries has been a considerable increase in the number of Mexican nationals who are being extradited to the United States in 2006 and 2007.

imports. In addition, Canada is the fourth largest foreign investor in Mexico. On August 21-22, 2007, President Calderón traveled to Canada visiting with Stephen Harper, Canada's Primer Minister, and his cabinet, and then visiting the First Minister of the Province of Quebec, and meeting with some leading entrepreneurs.²⁸

One of the programs that President Calderón included in his *Primer Informe* was the area relative to "The Defense and Promotion of the Rights of Mexicans Abroad." This section provided a detailed enumeration of the programs and strategies formulated by Mexico to protect the constitutional, immigration and human rights of Mexican temporary laborers and Mexican nationals in the United States. The First Government Report reads:

The Federal government protects the migrant [workers]; it is vigilant to see that their human rights, labor rights and social rights are respected. For this reason, it maintains a respectful and permanent dialogue with the federal, state and local authorities of the United States, in which the migrant contributions to the economy and society of that neighboring country are emphasized. Mexico's consular presence in the world is composed by 71 Consular Sections, 31 General Consulates, 32 Career Consulates, one Office of Commercial Representation, two Consular agencies and 156 Honorary Consulates.²⁹

C. The Federal Judicial Power

Article 94 of the Federal Constitution prescribes that the "Judicial Power of the Federation (*Poder Judicial de la Federación*) is vested in a Supreme Court of Justice, in an Electoral Tribunal, Circuit Collegiate and Unitary Courts and in District Courts." The administration, monitoring (*Vigilancia*) and discipline of this judicial power (except the Supreme Court) take place under the Council of the Federal Judiciary (*Consejo de la Judicatura Federal*) pursuant to the bases established by the Constitution and the applicable laws (Art. 94).

Mexico's Supreme Court of the Nation is composed by eleven Justices (*Ministros*) and shall function as a full court (*en Pleno*) or in chambers (*Salas*). Its sessions shall be public with the exception of cases in which morals or the public interest require secrecy (*Sesiones secretas*). The work and jurisdiction of all of these federal courts, as well as the responsibilities of those who work for the Federal Judicial Power are regulated by the pertinent federal legislative enactments, in particular the Organic Act of the Federal Judicial Power (*Ley Orgánica del Poder Judicial de la*

²⁸Primer Informe, *To Increase Bilateral and Trilateral cooperation with the United States and Canada*.

²⁹*Ibid.*, *Defensa y Promoción de los Derechos de los Mexicanos en el Exterior (Defense and Promotion of the Rights of Mexicans Abroad)*.

Federación),³⁰ the *Amparo Act*,³¹ the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*),³² the Federal Act of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*)³³ and the Reglimentary Act of Paragraphs I and II of Article 105 of the Federal Constitution (*Ley Reglamentaria de las Fracciones I y II de la Constitución Federal*).³⁴

The Council of the Federal Judiciary is empowered to determine the number, circuit divisions, territorial jurisdiction and, when appropriate, the subject matter jurisdiction of the Circuit Collegiate and Unitary Courts, and of the Federal District Courts (Art. 94).

The remuneration received for their services by the Supreme Court Justices, by Circuit Magistrates, District Judges and Counselors of the Federal Judiciary, and by the Electoral Magistrates, may not be reduced during their term in office (Art. 94).

Appointments of Justices of the Supreme Court are made by the President of the Republic who submits the names of three candidates to the Chamber of Senators who approves one after examining each of the nominees. Supreme Court Justices serve for fifteen years, and may only be removed for serious cause pursuant to Title Four of the Federal Constitution (*i.e.*, Responsibility of Public Servants and of the State's Patrimony, Arts. 108-114).

II. SOURCES OF THE LAW IN MEXICO

From a constitutional viewpoint, the sources of the law in Mexico –and their corresponding legal hierarchy– are: 1) the Federal Constitution of 1917; 2) International treaties and conventions to which Mexico is a party, closely followed by 3) federal statutes; 4) codes; 5) doctrine; 6) custom; and, 7) general principles of law.

2,1 The Federal Constitution of 1917

³⁰Organic Act of the Federal Judicial Power, as published in the *D.O.* of Nov. 7, 1996 (as amended, *inter alia*, by *D.O.* of Feb. 14, 2006). See, as a historical legal background, J.A. Vargas. *The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995*. 11:2 AMERICAN UNIV. JOURNAL OF INTERNATIONAL LAW AND POLICY (1996) 295-341.

³¹*Amparo Act*, published in the *D.O.* of Jan. 10, 1936 (as amended, *inter alia*, by *D.O.* of April 24, 2006)

³²Federal Code of Civil Procedure, published in the *D.O.* of Feb. 24, 1943, as amended, *inter alia*, by *D.O.* of Dec. 18, 2002.

³³Federal Act of administrative Procedure, published in the *D.O.* of Aug. 4, 1994, as amended, *inter alia*, by *D.O.* of May 30, 2000.

³⁴Reglimentary Act of Paras. I and II of Article 105 of the Federal Constitution, published in the *D.O.* of May 11, 1995 (as amended by *D.O.* of Nov. 22, 1996).

Mexico's Federal Constitution is at the apex of that country's legal system. Adhering to a European format, composed by 136 Articles and having been amended close to 500 times, the Mexican Constitution was the first fundamental document adopted in the 20th century.

Historically, the Constitution of 1917 (with its long official name: *Constitución Política de los Estados Unidos Mexicanos*) emerged during the popular and violent revolutionary movement of 1910 and represents the most complete constitutional document whose first antecedents can be traced back to the *Sentimientos de la Nación*, formulated by José María Morelos y Pavón in 1813 and to the Apatzingán Constitution of 1814, both of them produced during the independence war and later followed, among others, by the federal constitutions of 1824 and 1857.³⁵

The fundamental law of Mexico offers a number of varied and intriguing facets, especially when perceived by observers from the common law system. Some of these facets include the fact that the Mexican constitution (i) was inspired by the Constitution of the United States, (ii) that it introduced the innovative Mexican legal notion of "Social law," and (iii) that it is a public document that should be considered as strongly programmatic and aspirational.³⁶

As discussed earlier, the entire governmental structure, the republican form of federal government and the separation of powers doctrine were taken directly from the U.S. Constitution. The creation of the notion of "Social law" resulted from the clear purpose that animated the discussions of the Constitutional Congress of 1916-1917 to formulate legal principles directed at protecting two of the then most exploited social classes: the peasants and the laborers. This led to the content of Articles 27 and 123 of the Federal Constitution as the essence of a panoply of "social rights" protecting those two classes.³⁷ Its programmatic content was embedded in it by different presidents in order to leave their personal implant in the constitutional text whether, for example, to impart a socialist public education by Lázaro Cárdenas; to enunciate the directing principles for the conduct of foreign affairs done by Miguel de la Madrid; or the elimination of the original collective features of the *ejido* system and the belated recognition of Mexico as a pluri-ethnic nation accomplished by the Carlos Salinas de Gortari administration.

Given the rich and varied content of the Federal Constitution of 1917, it should only be evident to reiterate that this fundamental public document is the primary and most important source

³⁵For a codifying work containing all the Mexican independence legal and constitutional documents, see Tena Ramírez, *supra* note 18, at 28 and 32, respectively.

³⁶Jorge A. Vargas. *The Constitution of Mexico*. MEXICAN LAW. A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS. West Group (1998), §2.5 A Programmatic, Aspirational and Readily Amendable Public Document, Vol. 1 at 38, 42-45.

³⁷*Ibid.*, §2.4 The Creation of "Social Law," Vol. 1 at 40-42.

of Mexico's legal system.

In the Republic of Mexico, having adopted again the system established by the United States, each of its 31 states (plus the Federal District) has its own constitution—known as “State” or “local” constitution (*Constitución del Estado* or *Constitución local*). All of these constitutions strongly follow the format and content of the federal model and their language must be in conformity with that of the Federal Constitution.

A. “*Jurisprudencia*”

As a country that belongs to the civil legal tradition, in Mexico the term “*Jurisprudencia*” has two distinct meanings: first, the universally recognized meaning of the science of law or the philosophy of law.³⁸ Second, it refers to those special decisions rendered by Mexico's Supreme Court and by the Circuit Courts which are legally binding to lower courts. Under this connotation, the term *Jurisprudencia* becomes a term of art.

Mexico does not adhere to the *stare decisis* principle. In other words, courts in Mexico are to decide the cases submitted to them not based upon precedents (like in the United States) but according to what is mandated by Article 14 of the Federal Constitution, which reads:

ARTICLE 14.

.....

In law suits of a civil nature, the definite judgment shall be according to the letter or to the legal interpretation of the law and, in the absence of the latter, it shall be based on the general principles of the law.

Therefore, *Jurisprudencias* are the only exception to the *stare decisis* principle within Mexico's legal system since the tenor of these federal judicial pronouncements, as precedents, are legally binding upon lower courts.

What is a *Jurisprudencia* under Mexican law? According to Articles 192 and 193 of the Federal Amparo Act:

ARTICLE 192. Constitute obligatory *Jurisprudencias* the resolutions dictated by the Supreme Court of Justice functioning in plenary (*Pleno*) or in chambers (*Salas*),³⁹ provided

³⁸BLACK'S LAW DICTIONARY (1979) at 767.

³⁹Pursuant to Article 15 of the Organic Act of the Judicial Power of the Federation (*Ley Orgánica del Poder Judicial de la Federación*, published in the *Diario Oficial* of May 26, 1995 as last amended February 14, 2006), the Supreme Court of Justice has two chambers (*Salas*) each formed by five Justices, sufficing four Justices to

that what is resolved in them is based upon five consecutive and uninterrupted decisions (*Ejecutorias*) that have been approved by at least eight Justices (*Ministros*) when issuing a *jurisprudencia* by the plenary, or by four Justices when a *jurisprudencia* is produced by a chamber. In addition, *jurisprudencias* are the resolutions that harmonize the contradictory decisions (*Contradicciones de tesis*) issued by the chambers or by the plenary.

The *jurisprudencia* established by the Supreme Court of Justice, whether functioning in plenary or in chambers, is obligatory for these with respect to the *jurisprudencia* decreed by the plenary, and [legally binding] also to the Unitary and Collegiate Circuit Courts, the district courts, the military courts and ordinary judicial courts of the States and of the Federal District, and administrative and labor courts, local or federal.

ARTICLE 193. The *jurisprudencia* established by each of the Circuit Collegiate Courts is obligatory for the unitary tribunals, district courts, military and ordinary judicial courts of the States and of the Federal District, and the administrative and labor tribunals, local or federal.

The resolutions of the Collegiate Circuit Courts constitute *jurisprudencia* provided that what is resolved in them is based upon five consecutive and uninterrupted decisions, and that they have been approved by unanimity of votes of the magistrates who compose each collegiate court.

ARTICLE 194. The *jurisprudencia* is interrupted, thus losing its obligatoriness, when a contrary resolution (*Ejecutoria en contrario*) is pronounced by eight Justices, when rendered by the plenary, or by four *ejecutorias* when produced by a chamber, and by unanimity of votes when involving a Circuit Collegiate Court.

In any case, the respective *ejecutoria* shall enunciate the reasons supporting the interruption, referring to those taken into consideration for establishing the corresponding *jurisprudencia*.

The same rules established for the formation of *jurisprudencia* shall be observed for its modification.

Said Amparo Act prescribes that the Supreme Court shall publish, within fifteen days of its formation, the “jurisprudential resolution” (*Tesis jurisprudencial*) in the judicial reporter “Federal Judicial Weekly” (*Semanario Judicial de la Federación*); send it to the plenary and chamber of the Supreme Court and to all pertinent Circuit Collegiate Courts, and add it to the respective file (*Archivo*) for information and dissemination purposes. In addition, the *Semanario* is to publish the

function. Article 21 of said Act –closely patterned after the U.S. Federal Judicial Act of 1789– details the numerous attributions of the chambers.

jurisprudencia in a special monthly gazette.

Jurisprudencias are a peculiar institution of Mexico's legal system. However, it should be pointed out that somewhat similar institutions exist in other civil law countries, such as Belgium, France, The Netherlands and Spain, as well as other countries in Latin America (Argentina) and Asia (The Philippines).⁴⁰

2.2 International Treaties and Conventions.

Article 133 of Mexico's Federal Constitution prescribes:

This Constitution, the laws of the Congress of the Union and the treaties that have been made and shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of the entire Union. The judges of each State shall conform to said Constitution, laws and treaties, in spite of any contradictory provisions that may exist in the [local] constitutions and laws of the States.

This Article should be read in conjunction with paragraph X of Article 89 of the Constitution which prescribes that the President has the exclusive power to direct that country's foreign policy and to enter into international treaties, submitting them to the approval of the Senate.⁴¹

Mexico adheres to the well-known definition of "treaty" provided by the Vienna Convention on the Law of Treaties (March 21, 1986): "an international agreement governed by international law and concluded in written form (i) between one or more states and one or more international organizations or (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation."⁴²

⁴⁰See André Tunc and Suzanne Tunc. LE DROIT DES ÉTATS-UNIS D'AMÉRIQUE. *Sources et Techniques*. Paris (1956), §116 at 305.

⁴¹See *supra* note 23 and the accompanying text and Article 76, para I, of the Federal Constitution for the exclusive faculties of the Senate.

⁴²See Article 2.1, Act Pertaining to the Entering into Treaties (*Ley sobre la Celebración de Tratados*), D.O. of January 2, 1992. This Article reproduces verbatim, in Spanish, the language of the Vienna Convention defining a treaty. See also LEY DE TRATADOS. SRE, México (1992). Mexico distinguishes between a treaty and an inter-institutional agreement which is "[A]n agreement governed by international law, entered into in writing between any agency or decentralized entity of the Federal Public Administration, State or municipal, and one or several foreign governmental organs or international organizations, whatever their particular designation, whether it may derive or not from a previously approved treaty." (Art. 2.2), *Ibid.* at 153.

Pursuant to said Convention, international treaties are considered to have a higher legal hierarchy over contrary domestic law, as predicated by Articles 27 (1) and 46 (1) of said Convention. Addressing the question of the hierarchy of the Mexican legal norms the Supreme Court of Mexico, in a 1999 thesis, held that “only the Constitution is the Supreme Law” adding:

[T]his Supreme Court of Justice considers that international treaties are placed on a second plane immediately below the Fundamental Law and above the federal and local law. This interpretation of Article 133 of the constitution derives from the fact that these international engagements are assumed by the Mexican State in its entirety and obligate all of its authorities vis-à-vis the international community; this explains why the Constitutional Assembly has empowered the President of the Republic to sign the international treaties as Head of the State and, in the same manner, the Senate intervenes as representative of the will of the federal entities and, through its ratification, obligates its authorities.

.....

.....the interpretation of Article 133 places on a third plane the federal and the local law at the same hierarchy pursuant to what is prescribed by Article 124 of the Fundamental Law, which mandates that: “The powers not expressly granted by this Constitution to federal officials are understood to be reserved to the States.”

This High Tribunal does not lose sight of its previous resolution when it adopted a different opinion in its plenary thesis PC/92 published in the *Gaceta del Semanario Judicial de la Federación*, No. 60, of December 1992, page 27, titled: “Federal Laws and International Treaties. They Have the Same Normative Hierarchy.” However, this plenary Tribunal considers timely to abandon said ruling and assume what considers the higher hierarchy of treaties even above federal law.⁴³

2.3 Federal Statutes

A. Regulatory Acts and Ordinary Laws

Any legislative enactments by the Federal Congress published as laws, acts and regulations fall under the category of federal statutes. Article 73 of the Federal Constitution enumerates the ample powers of the Federal Congress, including its exclusive authority to enact federal legislation.⁴⁴

⁴³P. LXXVII/99, *Amparo en revisión* 1475/98. SEMANARIO JUDICIAL DE LA FEDERACIÓN (*Federal Judicial Weekly*), Ninth Epoch, Vol. X, November 1999 at 46 (*Emphasis added*).

⁴⁴For an idea of areas regulated by federal legislation, *see supra* note 21, and the accompanying text, and also the section titled: A. Legislative Power under 1.3 Form of Government.

From the viewpoint of their legal importance, federal statutes are divided into two categories: a) Regulatory Acts and b) Ordinary laws. Regulatory laws (*Leyes reglamentarias*) are those that develop, expand and detail the language of certain provisions of the Federal Constitution –such as those addressing natural resources (oil, hydrocarbons and natural gas, minerals, waters and lakes), marine spaces, fishing, “*Amparo*” protections, constitutional controversies, etc.– in order to establish the legal bases for their effective implementation. For example, the Regulatory Act of paragraph VI of Article 76 of the Constitution to Resolve Political Questions within a Given State, the Regulatory Act of Article 27 of the Constitution on Oil Matters, etc.

Ordinary laws (*Leyes ordinarias*) are the statutes enacted by the Federal Congress that do not derive or emanate from a specific constitutional provision but legislate on a specific subject matter under the exclusive jurisdiction of the Federal Congress, such as the Customs Act; Foreign Trade Act; Roads, Bridges and Auto-transportation Act; Nationality Act; Ports Act, etc.⁴⁵

B. Regulations and Organic Acts

Regulations (*Reglamentos*) are legislative enactments that detail and supplement the language of a given statute or Act for interpretation or implementation purposes. Article 89, para. I, of the Constitution endows the President of Mexico to issue regulations for the purpose of interpreting, clarifying, expanding or supplementing the language of legislative enactments. For example, Mexico’s Nationality Act (*Ley de Nacionalidad*) is to be read in conjunction with the corresponding *Reglamento*, similar to a statute and its regulations in the United States. Organic Acts (*Leyes Orgánicas*) regulate in detail the organization, powers and functions of governmental agencies, such as the Organic Act of the Mexican Navy, the Organic Act of PEMEX (Mexico’s oil industry) or the Organic Act of the National Institute of Anthropology and History (INAH).

2.4 Codes

A. Codification Efforts in Mexico

Mexico’s efforts to produce the five basic codes which sustain the legal system in any country belonging to the civil legal tradition –that is, the Civil Code, the Code of Civil Procedure, the Penal Code, the Code of Penal Procedure, and the Code of Commerce– date back to 1822, one year after Mexico acquired its political independence. However, the most fruitful results did not materialize until the late 1880s.

⁴⁵In its web site: www.cddhcu.gob.mx the Chamber of Deputies of the Federal Congress (referred to as *Congreso de la Unión* or Congress of the Union) provides free access to the complete and current texts in Spanish of 251 legislative enactments (laws, codes, statutes, Acts, decrees, etc.) and 80 regulations, with date of publication and text to be downloaded in PDF, Word or Zip. Indeed, this is the most complete free library of Mexican legislation.

Following the European tradition, the important task of codifying a major branch of Mexican law was the work of an eminent group of jurists working as a special commission appointed by the executive at the federal level (and at the local level for the enactment of the corresponding State codes). Interestingly, in Mexico, some of the most important pioneering codification efforts were initiated at the state level.

From a substantive viewpoint, three major sources appear to be a constant in all of these codification efforts. The first is the powerful influence exercised by leading European countries, in particular Spain and France, followed by Italy and Germany. The second is the doctrinal authority of certain European and Mexican authors. And the third is the official policies advanced by the government of Mexico in certain areas of the law, as reflected in contemporaneous legislative enactments.

a) Civil Code

The Civil Code is of central importance to Mexico's legal system. In general, this code is present at each and every step of the life of Mexicans, as well as that of foreigners when they are present in Mexico and engage in certain acts or transactions. In a nutshell, the Civil Code is so important because it is at the core of Mexico's social fabric: it incorporates the country's family law, regulates personal and real property, details a variety of major contracts, and governs trusts and estates. A section at the end of this code sets forth and details the services provided by the Civil Registry and by the Public Registry of Property and Commerce in Mexico.⁴⁶

Traditionally, the Civil Code is divided into four major sections, known as "Books." The Book of Individuals (*Personas*) addresses the legal capacity and rights of individuals and legal entities, ranging from birth, paternity, and guardianships to marriage, divorce, kinship and support, parental authority, emancipation and majority. The Book of Assets (*Bienes*) includes laws relating to real estate, personal property, usufructs, easements and servitudes, and adverse possession. The Book of Decedent's Estates (*Sucesiones*) relates to last wills and testaments, testamentary and intestate successions, concubinage relations, and executors. The Book of Obligations (*Obligaciones*) and contracts comprises general obligations, payment, associations and companies, and guarantees in general.

The first Mexican Civil Code was enacted by the State of Oaxaca in 1828. This code was not only the first one in Mexico but the first throughout Latin America. The Civil Codes of Zacatecas

⁴⁶For a discussion of the history and content of this code, see Jorge A. Vargas. *The Federal Civil Code of Mexico*. 36 INTER-AMERICAN LAW REVIEW (Winter/Spring 2005) at 229-247. For an English translation of this code, see MEXICAN CIVIL CODE ANNOTATED. *Bilingual Edition*. Thomson/West (2005), annotated with precedents rendered by Mexico's Supreme Court and Circuit Collegiate Courts.

(1829), Jalisco (1833) and Veracruz (1860) followed.⁴⁷

At the national level, President Juárez asked Justo Sierra, an eminent jurist who served as his Minister of Education, to produce a draft of a federal civil code. The draft, which was composed of four books, was completed in 1860. This draft was greatly influenced by the Spanish Civil Code draft authored by García Goyena in 1851, the French Civil Code of 1804, and the Civil Code of Louisiana. From the domestic tradition, the Federal Constitution of 1857, the *Leyes de Reforma*, and the Civil Marriage Act of 1859 were also influential in the drafting of this national work. The Sierra draft was revised in detail and was later published as the Civil Code of the Mexican Empire by Maximilian of Hapsburg in 1866.⁴⁸

Other major codification efforts attributed to Minister of Justice Antonio Martínez de Castro and the civil codes produced for the Federal District and the Territory of Baja California in 1870. In turn, this code was supplanted by the Civil Code of 1884, whose text was virtually adopted by all states in the Republic of Mexico. The 1910 revolution generated a heavy load of social, economic, and political transformations, which required profound changes in Mexico's legal system. Thus, a drafting commission composed by four jurists and chaired by Ignacio García Téllez produced the current Civil Code of 1928,⁴⁹ which entered into force on October 1, 1932. The sources of this code include the Civil Codes of Switzerland, Spain, France, the Soviet Union, and other Latin American nations (Chile, Argentina, Brazil, Guatemala, and Uruguay).

The legal innovations introduced by the Civil Code of 1928 include the legal equality of men and women (Art. 2, Federal Civil Code or FCC), property rights (Art. 840), civil liability in tort cases (Art. 1910), strict liability in personal injury cases (known in Mexico as “Extra-contractual objective liability”) (Art. 1913), professional liability (Arts. 1935-1937), the promise to contract (Arts. 2243-2247), the exercise of judicial discretion in certain cases (Art. 21), the recognition of unions as legal entities (Art. 25), and the equal authority and privileges of husband and wife regarding the household (Art. 168).

Two closing commentaries should be made regarding the Civil Code. First, the Civil Code of the Federal District had a traditional dual role in Mexico. It was the local code for the Federal District (that is, Mexico City) in ordinary matters, and for the entire Republic in federal matters.

⁴⁷See Oscar Cruz Barney. HISTORIA DEL DERECHO EN MÉXICO, *supra* note 1 at 563, 565. See also Rodolfo Batiza. LOS ORÍGENES DE LA CODIFICACIÓN CIVIL Y SU INFLUENCIA EN EL DERECHO MEXICANO (1982) at 168.

⁴⁸*Ibid.* At 565-566.

⁴⁹D.O. of March 26, 1928, as amended by D.O. of July 14, 1928, August 3, 1928, and August 31, 1928.

However, this legal duality changed in 2000. Today, Mexico has a Federal Civil Code,⁵⁰ and a separate Civil Code for the Federal District. This change, consisting in having two separate codes, introduced substantive reforms and updated the legislation of the Mexico City code in the area of family law.⁵¹

Secondly, the Civil Code for the Federal District, given Mexico's highly centralized political system (until 2000 when the nation's political control by the PRI crumbled), was reproduced almost verbatim by each of the 31 States since 1884. Until now, there has been little, if any, difference between the Federal Civil Code, on the one hand, and each of the Codes of the thirty-one States, on the other. It is likely that in the future, as changes occur throughout the country, each State will revise and update its own local civil code in order to reflect these changes.

b) Code of Civil Procedure

The Code of Civil Procedure of the Federal District was promulgated on May 15, 1884, which reproduced most of the provisions contained in the corresponding code enacted twelve years earlier, on August 13, 1872. The current code was published on August 29, 1932, and has been amended several times. In 1896, Porfirio Díaz, then President of Mexico, published the Federal Code of Civil Procedure, which was then amended in 1908. The current Federal Code of Civil Procedure dates back to 1942,⁵² and was amended in 1988 to adopt the policy of "Limited Territorialism," which allowed the application of foreign law to Mexico. This amendment also added a new section on "International Procedural Cooperation."⁵³ This code was recently amended.

c) Penal Code

The first Mexican Penal Code was enacted by the State of Veracruz on April 28, 1835, and was amended in 1849. It was not until 1871 that the Penal Code of the Federal District, known as the Martínez de Castro Code, was promulgated. After the 1910 revolution, a new Penal Code was published in 1929.⁵⁴ This code was then substituted by the current 1931 Code which, in turn, has

⁵⁰Published in the *D.O.* of May 29, 2000.

⁵¹See Jorge A. Vargas. *Family Law in Mexico: A Detailed Look into Marriage and Divorce*. 9 SOUTHWESTERN JOURNAL OF LAW AND TRADE IN THE AMERICAS (2002) at 5-20.

⁵²*D.O.* of February 24, 1924, as amended by *D.O.* of January 7, 1988, and more recently on May 29, 2000 and December 18, 2002.

⁵³For a detailed discussion of this new section of the Code, see Jorge A. Vargas. *Conflict of Laws Rules in the Federal Code of Civil Procedure* (forthcoming 2008).

⁵⁴*D.O.* of December 15, 1929, as later amended by *D.O.* of August 14, 1931.

been amended many times.

d) Code of Penal Procedure

The Code of Penal Procedure for the Federal District appeared on September 15, 1880, to be repealed by the 1890 Code. The sources for this code included pertinent legislative enactments from France, Spain, Italy, Belgium, Portugal, Germany, and Japan. This code was replaced by a code promulgated on October 2, 1929. The current Code of Penal Procedure dates back to 1931.⁵⁵

The first Federal Code of Civil Procedure was published in the *Diario Oficial de la Federación (D.O.)* Of December 16, 1908. The current code dates back to 1931, and has been amended many times, including a major revision in 2002.⁵⁶

e) Code of Commerce

In a country where codes and other legislative enactments play an important role in the daily conduct of legal, political, social, and economic interactions, Mexico's Code of Commerce is not only the oldest in that nation, but also one of the most venerable throughout Latin America.

Originally enacted in 1889 during the dictatorship of Porfirio Díaz,⁵⁷ whose public policies created a nation of landless and illiterate peons exploited by a wealthy oligarchy, the Mexican Code of Commerce has barely survived until today. For a 19th century code to govern commercial matters at the dawn of the 21st century, a thorough overhaul was needed. This was made possible only after numerous formal amendments were made to most of the Code's language and the passing of derivative laws in a number of commercial areas—both traditional and novel—at the price of carving out large and important portions of the Code's original language.⁵⁸

This Code governs the conduct of business transactions throughout the Republic of Mexico, although not in an exclusive manner. This regulatory power is shared, first, with the applicable provisions of the Federal Civil Code, and secondly, with numerous specialized federal statutes that address specific matters of commercial importance, such as companies, negotiable instruments,

⁵⁵A Commission formed by Alfonso Teja Zabre, Luis Garrido, Ernesto G. Garza, José Angel Cisneros, José López Lira, and Carlos Angeles, prepared the code, which was published in the *D.O.* on August 14, 1931.

⁵⁶*D.O.* of February 6, 2002.

⁵⁷*D.O.* of October 7-13, 1889. Its provisions entered into force on January 1, 1890.

⁵⁸For a discussion of the history and content of this code, see Jorge A. Vargas. *Mexico's Code of Commerce*. ASPER REVIEW OF INTERNATIONAL BUSINESS AND TRADE LAW. Winnipeg, Canada, Vol. V (2006) at 1-25.

insurance contracts, bankruptcies, maritime law, etc.⁵⁹

The application of the provisions of the Federal Civil Code to commercial matters is explicitly authorized by Article 2 of the Code of Commerce as a mechanism for supplementing its provisions in the absence of commercial rules. Given the paramount importance the Federal Civil Code plays in the conduct of civil and commercial matters throughout the republic of Mexico, it is only logical to expect that this Code is to fill in the gaps found in the Code of Commerce. This is especially true when one considers that the Federal Civil Code addresses in detail *inter alia*, contractual matters –including the formation, interpretation, enforcement and breach of contracts, civil associations and companies, movable and immovable assets, mortgages, the Public registry of Property and Commerce, etc.– all significant legal avenues for the conduct of business transactions.

Adhering to the legal philosophy of the epoch, the 1889 Code of Commerce may be described as a comprehensive and systematic legal *corpus* that contains the major principles, rules, and institutions of a mercantile nature, both substantive *and* procedural, divided into five books. Out of these books, books 3 and 4 have been repealed. The Code was originally composed of 1,5000 Articles (similar to Sections) but 649 of them (approximately 43%) have since been abrogated or statutorily replaced, resulting from 29 major amendments that took place from 1932 through 2003. Today, the Code of Commerce is effectively composed of 780 Articles.⁶⁰

2.5 Doctrine

From a Mexican law perspective, legal doctrine is formed by the ideas, interpretations, written opinions and general commentaries advanced by legal scholars through their writings, law courses or oral presentations relative to any Mexican law issues or questions. The general legal body of these scholarly contributions do not carry the force of law and, as such, are not legally binding.

Depending upon the prestige and recognition of his/her author, doctrinarian opinions in that foreign country are recognized to be endowed with some persuasive authority which may influence the formation and development of positive law. A few Codes of Civil Procedure direct the judge to request that any *Jurisprudencia*, “doctrines” or State legislation be formally submitted as evidence in a given civil proceeding.⁶¹ It is not unusual to cite the opinions of Mexican doctrinarians by

⁵⁹For an English translation of this code, see MEXICAN COMMERCIAL CODE ANNOTATED. *Bilingual Edition*. Thomson/West (2005), annotated with precedents rendered by Mexico’s Supreme Court and Circuit Collegiate Courts.

⁶⁰The current text of the Code of Commerce (jointly with the complete texts in Spanish of all of the other federal Codes, and even the corresponding State versions) are available at the web site of the Chamber of Deputies (and of the Senate) at www.cddhcu.gob.mx

⁶¹See, for example, Article 395 of the Code of Civil Procedure of the Federal District.

litigating parties in their motions before a court and even in the judgments rendered by Appellate Courts, in symmetry with a practice that continues to prevail in countries belonging to the civil legal tradition.

The list of Mexican doctrinarians is impressive and quite long. Some of the well-recognized and respected names include, *inter alia*, Rafael Rojina Villegas and Javier Becerra Acosta in civil law; Ignacio Burgoa and Héctor Fix Zamudio in Amparo and constitutional law; Néstor de Buen and Alberto Trueba Urbina in labor law; Andrés Serra Rojas in administrative law, Jorge Barrera Graf and Roberto Mantilla Molina in mercantile law, Antonio de Ibarrola in trusts and estates, Manuel F. Chávez Asencio in family law, etc.⁶²

2.6 Custom

Rules, principles or norms formed through a gradual but uniform passage of time recognized as a custom or habitual practice in a given place and time. Unlike international law, where the formation of customary law rules and principles are considered to be legally binding to States based on the notion of *Opinio juris sive necessitatis*, at the domestic level the rules, principles or norms created through custom are not legally binding *per se*.

In other words, under Mexican law the rules, principles or norms developed through custom are recognized as a source of law only when this recognition is based upon an explicit provision of the applicable law allowing for such recognition. The typical example may be found in Article 2607 of the Federal Civil Code when it prescribes that “In the absence of an agreement for compensation, fees shall be determined in accordance with *the custom of the place*,” among other factors. The very limited and clearly circumscribed role that custom plays as part of Mexico’s legal system is evident in Article 10 of the same Code when it prescribes: “Disuse, *custom* or contrary practice cannot be alleged for noncompliance with the law.” In the mercantile area, Article 2, para. III, of the General Act of Credit Instruments (*Ley General de Títulos y Operaciones de Crédito*) recognizes custom as a supplement when the law is lacking in a given area. This supplementary character attributed to custom is also present in Article 17 of the Federal Labor Act which reads:

ARTICLE 17. In the absence of an express provision in the Constitution, this law or its regulations, or in the treaties..., consideration shall be given to other provisions of such laws which govern similar cases, the general principles arising therefrom, general legal principles, general principles of social justice arising under Article 123

⁶²Mexico City’s old legal publisher, Porrúa (www.porrua.mx.com), has published for decades most of the well-known scholarly works of leading Mexican doctrinarians.

of the Constitution, binding case law, *custom*, and equity.⁶³

It may be interesting to point out that in the Republic of Mexico today there are two parallel legal systems: the official legal system, derived from Spanish law or other foreign legal systems, on the one hand, and the normative customary systems of a number of Indigenous peoples, such as the Huicholes, Triquis, Mixtecos, Tarahumaras, etc., on the other.⁶⁴

Unfortunately, most of these normative customary systems attracted little or no attention during most of the 20th century. Over the last two decades, in large part due to the “Zapatista rebellion” and the subsequent recognition of Mexico as a pluri-ethnic nation, as declared by Article 2 of the Federal Constitution, an academic and sociological wave of interest has emerged in Mexico endeavoring to describe and understand some of these normative customary systems.⁶⁵

2.7 General Principles of Law

In Mexico, the general principles of law –expressly cited by Article 14 of the Federal Constitution, reproduced earlier (under the *Jurisprudencia* section)– have not been expressly enunciated neither by a statute nor by a code. Among them, equity, good faith, the obligation to comply with what was agreed upon (*Pacta sunt serbanda*), an individual’s right to defend himself/herself when attacked, etc. and others even more general, such to give to each what belongs to them and not harm anyone (derived from the ancient Roman law principles of *Suum cuique tribuere* and *alterum non laedas*), tend to be cited by Mexican legal specialists as general principles of law.

In the constitutional law area, more modern principles under this category include, *inter alia*, the rule of law, the principle of legality, the principle of equality, and the principle of security, with a very clear relationship to U.S. constitutional law principles.

Circuit Collegiate Courts and the Supreme Court have rendered a number of resolutions which have referred to the general principles of law; however, none of these decisions have provided a clear definition of what should be understood for those principles. For example, in 1989 a Circuit

⁶³Taken from MEXICAN LAW LIBRARY. *Commercial Codes*. Vol. 1: Business and Commercial by W. D. Signet. West Publishing (1997) at 323.

⁶⁴See Carmen Cordero Avendaño de Durand. *CONTRIBUCIÓN AL ESTUDIO DEL DERECHO CONSUECUDINARIO TRIQUI (Constitution to the Study of the Triqui Customary Law)*. Comisión Nacional de Derechos Humanos, México, D.F. (1995); Magdalena Gómez (Ed.). *DERECHO INDÍGENA (Indian Law)*. INI, México (1997); and José Ramón Cossío Díaz *et al.* *DERECHO Y CULTURA INDÍGENA (Law and Indigenous Culture)*. M.A. Porrúa, México (1998).

⁶⁵Jorge A. Vargas. *Nafta, the Chiapas Rebellion, and the Emergence of Mexican Ethnic Law*. 25 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL (Fall 1994) at 1-79.

Collegiate Court wrote:

...The applicability of these principles... is not restricted to matters of a civil nature which may be deduced from a strict interpretation of Article 14 of the Constitution... but frequently admitted in the measure that said principles are deemed as the general formulation of the values inherent in the current concept of law. Their function does not become exhausted in the task of filling in legal vacuums ; it encompasses above all the interpretation of the law and the application of the law. Therefore, the courts are empowered and in many cases obligated to render their resolutions taking into account... the general principles of law considering that these are the authentic and pristine manifestation of the community's aspirations for justice.⁶⁶

A Circuit Collegiate Court sentenced, in 1997, that “the general principles of law are not applicable when there is an explicit legal text governing a specific legal situation,” and another one asserted that, in labor law matters, said principles “are applicable... only in those cases not contemplated in the law, in the regulations or when the case cannot be resolved based on custom or use.”⁶⁷

III. COURT SYSTEM

In general, Mexican courts may be divided into three large groups: 1) Federal courts; 2) State courts; and, 3) Other courts.

Patterned after Article III of the United States Constitution, Mexico adopted a dual system of federal and state courts.

3.1 Federal Courts and Articles 94 and 104 of the Federal Constitution

Federal courts form a part of the Federal Judicial Power (*Power Judicial de la Federación*) to which Article 94 of the Federal Constitution of 1917 refers to.⁶⁸ This Power is vested in a Supreme Court of Justice, in an Electoral Tribunal, Circuit Collegiate and Unitary Courts and in District Courts.

⁶⁶Third Collegiate Court on Administrative Matters of the First Circuit, Complaint 93/89, April 27, 1989. Federal Judicial Weekly, Eighth Epoch, Vol. III, Second part-2, Jan.-June 1989 at page 573.

⁶⁷Third Collegiate Court, Amparo directo October 2, 1997. Federal Judicial weekly, Ninth Epoch, Vol. VII, June 1998, page 692 (Isolated thesis); and Supreme Court, Fourth Chamber, Federal Judicial Weekly, Fifth Epoch, Vol. CXXI, page 2552 (Isolated thesis).

⁶⁸See the section devoted to “The Federal Judicial Power,” *supra*.

More specifically, the Organic Act of the Judicial Power of the Federation prescribes in that this Power is exercised by:⁶⁹

1. The Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*);
2. The Electoral Tribunal (*Tribunal Electoral*);
3. The Circuit Collegiate Tribunals (*Tribunales Colegiados de Circuito*);
4. The Circuit Unitary Tribunals (*Tribunales Unitarios de Circuito*);
5. The District Courts (*Juzgados de Distrito*);
6. The Council of the Federal Judiciary (*Consejo de la Judicatura Federal*);
7. The Federal Jury of Citizens (*Jurado Federal de Ciudadanos*); and
8. The State Courts and those of the Federal District in the cases established by Article 107, para. XII, of the Political Constitution of the United Mexican States and in those in which, by mandate of the law, these courts should act as auxiliaries of the Federal Justice.

Pursuant to Article 104 of the Federal Constitution, the courts of the Federal Judicial Power have jurisdiction over:

- I. All controversies of a civil or criminal nature regarding the implementation or application of federal laws or of international treaties entered into by the Mexican State. When said controversies only affect the personal interests of individuals, the ordinary judges and courts and those of the Federal District may exercise concurrent jurisdiction, at the election of the plaintiff. The judgments of first instance may be appealed before the immediately superior judge who took cognizance of the matter in the first place.
- I. B. Appeals for review (*Recursos de revisión*) filed against the definite resolutions of the administrative tribunals referred to in paragraph XXIX-H of Article 73 and paragraph IV, sub-para. E) of Article 122 of the Federal Constitution, but only in the cases prescribed by the applicable laws. The appeals (*Revisiones*) over which the Circuit Collegiate Courts exercise jurisdiction shall follow the provisions of the Reglamentary Act of Articles 103 and 107 of the Constitution (*Ley de Amparo reglamentaria de los Artículos 103 y 107 de la Constitución Federal*) established in the cases of *Amparo indirecto*;
- II. All controversies involving maritime law;
- III. Those in which the Federation is a party;

⁶⁹Article 1, Organic Act of the Judicial Power of the Federation.

- IV. Of controversies and causes of action referred to in Article 105, all of which shall be exclusively decided by the Supreme Court of Justice;
 - V. Those that arise between a State and one or more neighboring States; and
 - VI. All cases that involve members of the diplomatic and consular corps.
- A. *Supreme Court of Justice of the Nation*

This is the highest court of the country. Pursuant to Article 105 of Mexico's Federal Constitution, the Supreme Court exercises exclusive jurisdiction over:

- I. Constitutional controversies that may arise between:
 - a) the Federation and a State or the Federal District;
 - b) the Federation and a municipality;
 - c) the Federal Executive Power and the Congress of the Union;
 - d) one State and another State;
 - e) One State and the Federal District;
 - f) the Federal District and a municipality;
 - g) Two municipalities of different States;
 - h) Two powers within the same State;
 - i) One State and one of its municipalities;
 - j) One State and the municipality of another State; and,
 - k) Two organs of the government of the Federal District; and
- II. Inconstitutionality causes of action raising the issue of a possible contradiction between a general law and the Constitution (according to the percentages established by the latter); and
- III. At its own initiative or based on a well-founded request of the corresponding Unitary Circuit Court or of the General Attorney's Office (*Procurador General de la República*), it may take cognizance of the appeals (*Recursos de apelación*) against judgments of the Federal District Courts rendered in those proceedings in which the Federation is a party, and given their interest and importance.⁷⁰

In general, in accordance with Article 106 of the Federal Constitution, the Judicial Power of the Federation is empowered to resolve, pursuant to the pertinent law, the controversies that may arise, regarding their jurisdiction, between: a) federal courts and those of the States and the Federal District; b) the courts of one State and those of another State or of the Federal District; or, c) between

⁷⁰Article 105, Federal Constitution.

the courts of one State and those of the Federal District (Article 106, Federal Constitution).

In addition, this Power is to resolve the controversies alluded to in Articles 103 and 107 regarding “Amparo” proceedings, pursuant to the “bases” prescribed by Article 107, and the respective *Amparo* Act.

B. *Circuit Collegiate Courts*

These courts, composed by three magistrates, and a secretary (*Secretario de Acuerdos*), and pursuant to Article 37 of the Organic Act of the Judicial Power of the Federation, they exercise jurisdiction over:

- I. Direct *Amparo* lawsuits against definite judgments, awards or resolutions that have ended Amparo proceedings for alleged violations contained in said judgements, awards or resolutions, or during the course of the corresponding proceedings (as detailed by Article 37 of the Organic Act of the Judicial Power of the Federation);
- II. Appeals (*Recursos*) validly filed against the resolutions rendered by the District judges, Unitary Circuit Courts or the superior tribunal of the responsible court, in the cases of paras. I-II-III of Article 83 of the Amparo Act;
- III. *Queja* appeals in the case of paras. V-XI of Article 95 of the *Amparo* Act;
- IV. *Revisión* appeals against judgments rendered in the constitutional hearing by District judges, Unitary Circuit Courts or the superior tribunal of the responsible in the cases referred to by Article 85 of the *Amparo* Act, or in certain extradition cases;
- V. *Revisión* appeals established by the laws under para. I-B of Article 104 of the Federal Constitution;
- VI. Jurisdiction conflicts between Unitary Circuit Collegiate Courts or District Courts in *Amparo* lawsuits;
- VII. Disqualifications and excuses in *Amparo* matters between District judges, and in any other matter between Circuit Court magistrates, or the authorities referred to in Article 37 of the *Amparo* Act;
- VIII. *Reclamación* appeals according to Article 103 of the *Amparo* Act; and
- IX. Any other expressly established by the law or the general accords issued by the Supreme Court whether functioning in plenary or in chambers.

C. *Unitary Circuit Courts*

The Unitary Circuit Courts are composed by a single magistrate and the number of secretaries, *Actuarios* and employees determined by the law. Pursuant to Article 29 of the Organic Act of the Judicial Power of the Federation, they exercise jurisdiction over:

- I. *Amparo* lawsuits against the acts of other Unitary Circuit Courts that are not definite judgments;
- II. Appeals in matters decided in first instance by District Courts;
- III. In the case of appeals of *Denegada Apelación*;
- IV. In the determination (*Calificación*) of disqualifications, excuses and recusals (*Recusaciones*) of District judges;
- V. In controversies between District judges within their jurisdiction (except in *Amparo* lawsuits); and
- VI. In any other matters dictated by the laws.

D. *District Courts*

Pursuant to Articles 50, 51, 53 and 54 of the Organic Act of the Judicial Power of the Federation, District judges may either have specialized federal jurisdiction in criminal areas (Art. 50), in criminal *Amparo* cases (Art. 51), in civil matters (Art. 53), in civil *Amparo* cases (Art. 54) and in labor matters (Art. 55), or be District judges in general cases.⁷¹

All federal proceedings before a federal court are regulated by the Federal Code of Civil Procedure⁷² (*Código Federal de Procedimientos Civiles*) jointly with, in *Amparo* cases, by the federal *Amparo* Act.

E. *Council of the Federal Judiciary*

⁷¹Please refer to the specific article of the Organic Act of the Judicial Power of the Federation (*D.O.* of May 26, 1995, as amended) for the specific type of jurisdiction of the District judge in question.

⁷²The Federal Code of Civil Procedure was published in the *D.O.* of February 24, 1943, and it has been amended several times. This Code governs matters pertaining to international judicial cooperation, letters rogatory, enforcement of U.S. (and other foreign) judgments and arbitral awards, etc. See Jorge A. Vargas. *Conflict of Laws*. MEXICAN LAW TREATISE, *supra* note 4, Vol. 2 at 241-273.

The administration, supervision, discipline and judicial career of the Judicial Power of the Federation (with the exception of the Supreme Court of Justice and the Electoral Tribunal) are under the control of the Council of the Federal Judiciary, as mandated by the Federal Constitution. This Council endeavors, at all times, to protect the autonomy of the organs of this Judicial Power, as well as the impartiality and independence of its members.

This Council is composed of seven members (known as *Consejeros* or Counsellors): one is the Chief Justice of the Supreme Court of Justice, who also presides the Council; three of them are designated by the Plenary of the Supreme Court from among Magistrates of Circuit and District Judges; two other by the Senate, and one by the President of the Republic. All of them must have distinguished themselves by their professional and administrative capacity and honesty in the performance of their activities.

The Council's functions are quite numerous including, *inter alia*, to determine the number and territorial boundaries of the judicial circuits throughout the Republic of Mexico; appoint Circuit Magistrates and District Judges (and suspend them when necessary); issue the bases to control the acquisitions, leases and alienation of real estate and other property for the rendering of judicial services; grant licences to members of the judiciary; resolve labor conflicts within the Judicial Power of the Federation; convoke national or regional conferences of magistrates, judges, professional associations and higher education institutions to evaluate the performance of organs of this federal power; to exercise and allocate the spending budget (*Presupuesto de egresos*) of the Judicial Power of the Federation; investigate and determine the responsibilities and sanctions of public servants and employees of the Council, Circuit Courts and District Courts, under the terms and proceedings established by the law; issue provisions for the reception, control and destiny of confiscated or attached assets, etc.⁷³

The Council has an Institute of the Judiciary (*Instituto de la Judicatura*) to assist the Council in matters of investigation, training and continuing legal education of members of this federal power. In addition, the Council includes an Office for Judicial Visits (*Visitaduría Judicial*) to inspect the handling and daily operations of Circuit and District Courts, and to supervise the work of judges and administrative personnel through a number of *Visitadores* (Roving inspectors). There is also a Judicial Controller's Office which investigates and overlooks the administrative functioning of the organs, public servants and employees of all of the courts and offices belonging to this federal power, except the Supreme Court.⁷⁴

⁷³Article 81, Organic Act of the Judicial Power of the Federation.

⁷⁴Arts. 103 and 104, *Ibid.* For a discussion of the radical changes that led to the establishment of the Council of the Federal Judiciary, see Jorge A. Vargas. *The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995.* 11 AMER. UNIV. J. OF INTR'L LAW AND POLICY (1996) at 295-341.

F. *Federal Jury of Citizens*

This jury is empowered to resolve, through a verdict, questions of fact submitted to it by District judges in accordance with the law. In addition, this body shall take cognizance of criminal offenses committed through the mass media (*Prensa*) against the public order or the external or internal security of the Nation, and of any other crimes as determined by the laws.

This Federal Jury is to be composed by seven Mexican citizens designated by a drawing of lots (*Sorteo*) as prescribed by the Federal Code of Criminal Procedure (*Código Federal de Procedimientos Penales*).⁷⁵

G. *Electoral Tribunal*

Pursuant to Article 99 of Mexico's Federal Constitution, this Tribunal is the specialized organ of the Judicial Power of the Federation, and the highest tribunal on electoral matters in that country.

The Electoral Tribunal has jurisdiction to resolve, in a final and unimpeachable manner, the challenges to the federal elections of Deputies (*Diputados*) and Senators, and those involving the elections of the President of the Republic; any controversies regarding acts and resolutions of federal electoral authorities; labor conflicts or differences between the Tribunal and its officials; the establishment of *Jurisprudencias* with respect to federal elections; the determination and imposition of sanctions for violations to federal electoral provisions; to issue the internal regulations for its operation, etc.⁷⁶

3.2 State Courts

Each of Mexico's thirty-one States and the Federal District (*i.e.*, Mexico City, which administratively operates as a "State") have their own local courts as part of the Judicial Power of the respective State (*Poder Judicial del Estado*), as recognized by Article 116 of the Federal Constitution, which prescribes:

The public power of the States shall be divided, for its exercise, in Executive, Legislative and Judicial, and two or more of these powers cannot be reunited in a single person or corporation, nor deposit the Legislative in a single individual.

The powers of the States shall be organized in accordance with the Constitution of

⁷⁵Arts. 56-67, *Ibid.*

⁷⁶Arts. 184-186, *Id.*

each of them, subject to the following norms:

.....

III. The Judicial Power of the States shall be exercised by the courts established by the respective Constitutions.

The independence of the magistrates and judges in the exercise of its functions shall be guaranteed by the Constitutions and the organic laws of the States, which shall establish the conditions for the entering, formation and duration of those who serve in the Judicial Power of the States.

.....

The State courts administer justice within the territorial boundaries of the political entity in question under the applicable Code of Civil Procedure (*Código de Procedimientos Civiles*) of the corresponding State (or of the Federal District). The structure and functions of these local courts are outlined by the respective State Constitution and the corresponding State Act establishing its own judicial power.

In general, State courts consist of: (i) the Superior Tribunal of Justice (*Tribunal Superior de Justicia*), of a collegiate composition, that functions as appellate court; (ii) Courts of First Instance (*Juzgados de Primera Instancia*) which resolve ordinary matters of certain economic significance usually divided into civil, familial and criminal; (iii) Minor courts (*Juzgados Menores*) resolving controversies of small economic significance; and, (iv) Small Claims Courts (*Juzgados de Mínima Cuantía*) which use different names (*Juzgado de Paz, Juzgado Local or Municipal, etc.*). State judges tend to be appointed by the Governor of the State in question with subsequent approval by the local Congress.

3.3 Other Courts

Mexico has established several specialized courts to resolve labor, tax, agrarian, military, etc. controversies.

Labor Courts have been established by Article 123 of the Federal Constitution, they may operate at the federal and state level (*Juntas Federales y Locales de Conciliación y Arbitraje*) and their procedure is governed by the Federal Labor Act (*Ley Federal del Trabajo*).

a) Federal (and Local) Conciliation and Arbitration Boards

This Board resolves labor disputes between workers and employers that arise from the employment relationship or from acts or events that are intimately connected with the employment relationship.

The Board is composed by one governmental representative and of representatives of workers and employers, who are designated for industrial and other sectors pursuant to the categories established by the Secretariat of Labor and Welfare (*Secretaría del Trabajo y Previsión Social*). The Board operates in plenary or Special Boards.⁷⁷

The Local Conciliation and Arbitration Boards (*Juntas Locales de Conciliación y Arbitraje*) function in each State and have jurisdiction over labor disputes that do not fall within the jurisdiction of the Federal Boards.⁷⁸

b) Agrarian Courts

These courts are established by Article 27 of the Federal Constitution and they resolve matters pertaining to the Federal Agrarian Act (*Ley Agraria*) in order to render “honest and expeditious agrarian justice to guarantee the legal security of the communal, small property, and *ejido* lands,” including solving controversies regarding the demarcation of boundaries between different types of lands or different agrarian communities.

c) Tax Courts

In Mexico, the Federal Tribunal of Fiscal and Administrative Justice (*Tribunal Federal de Justicia Fiscal y Administrativa*) is the administrative court that resolves any and all fiscal and administrative matters involving individuals or legal entities, national or foreign, on the one hand, and the Secretariat of the Treasury and Public Credit (*Secretaría de Hacienda y Crédito Público*, Mexico’s counterpart to the IRS), on the other.

The procedure before this Tribunal is governed by the Federal Act of Contencious-Administrative Procedure (*Ley Federal de Procedimiento Contencioso Administrativo*).⁷⁹

IV. THE “AMERICANIZATION” OF MEXICAN LAW

The influence exercised by United States’ law upon Mexican law can hardly be characterized as a novel development. It may suffice to recall that Mexico’s first two constitutions –those enacted in 1824 and 1857– were clearly influenced by the Constitution of the United States.

⁷⁷For their composition, jurisdiction, powers and obligations, *see* Articles 604-620, Federal Labor Act.

⁷⁸Articles 621-624, *Ibid*.

⁷⁹Published in the *D.O.* of December 1, 2005.

In the past, the influence of U.S. law in Mexico was, at best, sporadic and superficial. It was sporadic because the interminable political conflicts that culminated in the 1910 Revolution did not provide the country with a stable political legislative environment conducive to a steady and progressive legal system. It was superficial because of the evident contrasting differences not only between the respective legal systems of each country but, more importantly, because of the drastic economic and industrial asymmetries between these nations.

The “Americanization” of Mexican law started in the 1970s. At that time, the United States, and later the United Nations, played a decisive global role in emphasizing the importance of protecting the environment. In the late 1960s, a strong environmental crusade was vigorously initiated in U.S. college campuses and soon took off to first embrace the entire nation and later the whole world. This environmental movement led not only to the establishment of the Environmental Protection Agency (EPA) –which became the model of similar structures in numerous countries– but to the emergence of “Environmental Law.” At the international level, this trend culminated a few years later in the signing of the Stockholm Declaration at the conclusion of the United Nations Conference on the Human Environment in 1972. This conference awakened the international community to the importance of protecting the environment and was followed by the establishment of international and domestic institutional arrangements specifically designed to protect and regulate environmental matters.

Mexico was one the very first countries in the world to establish a governmental structure “for the improvement of the environment” (*Subsecretaría para el Mejoramiento del Medio Ambiente*) and to promulgate federal legislation, and the corresponding regulations, to control and regulate environmental matters. Mexico’s first environmental statute, published in 1972, was multidisciplinary, its content directed at protecting the environment as a whole, and more specifically the soil, the water, the air, the marine environment, and certain natural resources, against the adverse effects of solid wastes, hazardous materials.

Interestingly, from a substantive legal viewpoint, the Mexican statute was a sort of *collage* of texts taken from a number of U.S. statutes, including, for example, the National Environmental Policy Act, the Resources Conservation and Recovery Act, the Federal Land Policy and Management Act, the Endangered Species Act, and the Coastal Zone Management Act.

With the adoption of U.S. legal texts and their adaptation to the Mexican environmental conditions, certain U.S. legal definitions (for example solid waste, hazardous materials, and pollutant), legal notions (such as environmental impact statements), technical standards (for example, the so-called Official Mexican Technical Standards (NOMS) and administrative procedures (for example, environmental visits or inspections, administrative appeal of an environmental decision) also found their way into Mexican environmental law. All of this served to “Americanize” Mexican law.

Obviously, there is no scientific definition of what constitutes the “Americanization” of Mexican law. However, one may say that the use of the word “Americanization” denotes the idea that the adoption, adaptation or incorporation of U.S. law as part of Mexican law (or one of its branches) is present not only in a number of specific legal areas where the United States has already enacted legislation (*i.e.*, human rights, privacy rights, women protection from domestic violence, etc.) but also by the addition of certain terms or novelties in the process of upgrading or modernizing Mexican law enacted some time back (*i.e.*, the right to remain silent, request the presence of an attorney or make a telephone call, etc., as part of the criminal law constitutional rights enunciated by Article 20 of the Federal Constitution, for example).

The “Americanization” of Mexican law is by no means an instantaneous phenomenon, but rather a gradual, fluid and dynamic process. The process may be slow, such as the legal interactions that take place on a daily basis in Mexican border cities which transact business with their counterparts on the U.S. side of the border. The “Americanization” process may also occur at a very accelerated pace when a set of special and complex factors bring about an important legal outcome, as with NAFTA.

Very few administrations in Mexico have produced such dynamic changes in the Mexican legal system as those made under President Carlos Salinas de Gortari (1988-1994). The scope and breadth of the legal transformations which he undertook were so vast and deep that in those days it was common to refer to them as a “legal revolution.” Those changes directly revamped about one hundred statutes and regulations in the areas of foreign investment, real estate, corporations, banking and financial services, international business transactions, environmental questions, import-export, energy, fishing activities, public administration, foreign trade, the *Ejido* reform, budgetary and monetary issues, and taxes.

Moreover, the strong adherence to a “neo-liberal economic philosophy” provided the economic and financial bases to drastically transform the country’s economy, thus offering an unprecedented *Apertura*, or Opening, which clearly favored foreign investment, international competition, and vigorous private sector involvement in key areas of the economy. During the Salinas administration, all of these occurred under the vague concept of “globalization.” The country’s public opinion during the last years of that administration—opinion that was equally shared by capitalist groups, the general populace, and high ranking federal officials—enthusiastically proclaimed that Mexico had already become a “first world country,” as proven by the fact that Mexico had already become the member of the OECD.

The process of “Americanization” of Mexican law has not faded away. On the contrary, it has emerged with vigor in the tax and criminal law areas. For example, in late December of 2007, the Mexican Congress engaged in lengthy and controversial discussions to amend the Federal Constitution in matters of the administration of justice and public security. The proposed amendments expand the new legal concept of *Juicios Orales* (Oral trials) in criminal law matters and

establish novel measures to strengthen the powers of Public Prosecutors (*Agentes del Ministerio Público*), create “Control Judges” (*Jueces de Control*) to privately authorize and within hours, wiretaps involving individuals associated with organized crime, etc.⁸⁰

V. AMPARO

A. Definitions

Mexico’s *Juicio de Amparo* is among the most original, deeply revered and highly utilized causes of action before Mexican federal courts to protect individuals from laws or public authorities’ acts that violate any of the constitutional rights explicitly enunciated in the first twenty-nine articles of that country’s Federal Constitution (rights commonly known in that foreign nation as *Garantías individuales* or individual guarantees).

In other terms, the *Juicio de Amparo* is a federal lawsuit filed by any individual or corporation (legal entity) (*Quejoso* or petitioner), whether national or foreigner, who challenges the official acts of any authority (federal, state or municipal) (*Autoridad responsable* or Responsible authority) for considering said acts to be contrary to or in violation of the specific rights granted by the Political Constitution of the United Mexican States. This lawsuit aspires to restore and maintain the Principle of Legality.

In the opinion of Drs. Fix Zamudio and Fix Fierro, two of the leading Mexican experts on this matter at UNAM’s Legal Research Institute, *Juicio de Amparo* represents the very last resort, at the appellate level, in most of the judicial and administrative proceedings, and even those of a legislative nature. In this context, it becomes evident that the *Amparo* oversees and protects the legal order against any violations produced by any authorities, provided that these violations constitute a present, personal and direct breach or violation inflicted to an individual, whether a person or a corporation.⁸¹

B. Historical Background

Amparo specialists have traced back the most remote legal ancestors of the Mexican *Amparo*

⁸⁰The President’s legislative bill (dated March 9, 2007) proposing “Constitutional Amendments in Matters of Justice and Public Security” intend to amend Articles 16, 17, 18, 20, 21, 22, 73, 111 and 123 of the Federal Constitution was already approved by the Chamber of Deputies and sent to the Senate who made certain changes on December 13, 2007, and sent it back to the Chamber of Deputies for reconsideration. It is expected that the proposed constitutional changes will take place in 2008.

⁸¹See Héctor Fix Zamudio and Héctor Fix Fierro. “*Amparo*. ” NUEVO DICCIONARIO JURÍDICO MEXICANO (*New Mexican Legal Dictionary*). Instituto de Investigaciones Jurídicas, Ed. Porrúa-UNAM, México, 1998, Vol. I at 180.

to the Roman Law *Intercessio*; to a special injunction practiced in the Kingdom of Aragón, Spain, during the Middle Ages; and to the *Habeas corpus*, in the Anglo Saxon legal tradition.⁸² In essence, the overall objective of the original *Amparo* has been said to consist in “the natural right of any individual to defend himself against the abuses inflicted by any authority, whether represented by the King or by the Church.”⁸³

Historically, *Amparo* is recognized to have appeared for the first time in the Constitution of the State of Yucatán of 1841, created by Manuel Crescencio Rejón, and also present later on in the Reformation Act (*Acta de Reformas*) to the Federal Constitution of 1824, enacted in 1847 at the initiative of Mariano Otero. As an institution, the Mexican *Amparo* was definitely established in Articles 101 and 102 of the Federal Constitution of 1857. Constitutional law experts unanimously recognize Crescencio Rejón and Otero as the authors and legal architects of the *Amparo*.⁸⁴

Dr. Moreno Cora defines the original *Amparo* as “an institution of a political nature whose object is to protect, under the tutelage forms of a judicial proceeding, the guarantees that the Constitution confers upon, or to maintain and preserve the balance between the different powers that govern the Nation, with respect to the invasions [of these powers] which offend or harm the rights of individuals.”⁸⁵

Interestingly, the name “Amparo” given to this *sui generis* Mexican lawsuit, derives from the Spanish word “Amparo” which means defense, protection or shelter. So every time a federal court in that foreign nation grants an *Amparo*, the corresponding judicial resolution traditionally reads: “The Judicial Power of the Federation grants its “amparo and protection” in favor of so and so.”

C. Controversies governed by *Amparo*

According to Article 1 of the Organic Act of Articles 103 and 107 of the Political Constitution of the United Mexican States (generally known as *Amparo Act*”),

The object of the *Juicio de Amparo* is to resolve any controversy that arises:

⁸²See HISTORIA DEL AMPARO EN MÉXICO (*History of the Mexican Amparo*). Supreme Court of Justice, México, Vol. I, 2000 at 13, 15 and 23.

⁸³Guillermo S. Margadant. *El Recurso de Fuerza en la Epoca Novohispana* (The Recourse to Force in the New Spain Epoch), *Ibid.* at 59-69.

⁸⁴See Fix Zamudio and Fix Fierro, *supra* note 1 at 180-181.

⁸⁵Rafael de Pina and Rafael de Vara. *Amparo*. DICCIONARIO DE DERECHO (*Law Dictionary*). Porrúa, México, 2006 at 79.

- I. From laws or acts of the authority that violate the individual guarantees;
- II. From laws or acts of the federal authority that harm (*Vulneren*) or restrict the sovereignty of the States; and
- III. From laws or acts of the States' authorities which invade the sphere of the federal authority.

This federal lawsuit is to be litigated and resolved pursuant to the forms and proceedings determined by the *Amparo* Act (*Ley de Amparo*), which governs both the substance and the procedural aspects of this lawsuit. Mexican constitutional law experts are emphatic to assert that the *Juicio de Amparo* is a very special and complex lawsuit and not merely a procedural appeal or recourse. It is also known as “*Juicio de Garantías*” (Constitutional guarantees lawsuit).

D. Expansion of the Scope of *Amparo* Proceedings

Paragraph one of Article 1 of the *Amparo* Act clearly enunciates the original intention of *Juicio de Amparo*, as conceived by its legal architects. Paragraphs two and three represent the expansion of the legal scope of this important institution of Mexican law. As a result of the enactment of *Amparo* regulations, including the *Jurisprudencia* of Mexico's Supreme Court, this institution gradually expanded the protections granted in several areas: it not only served to protect the constitutional rights of citizens and foreigners but also the rights derived from secondary legislation, in order to restore and protect the “Control of Legality” (*Control de la Legalidad*). This was achieved especially through the challenging of the judgments rendered by the judges throughout the country, whether local or federal.

Articles 14 and 16 provide the legal bases upon which the overwhelming majority of *Juicios de Amparo* are legally based upon. The legislative sources of the Mexican *Amparo* are found in three legislative enactments, namely: i) the *Amparo* Act (*Ley Reglamentaria* of Articles 103 and 107 of the Federal constitution of 1917; ii) the Organic Act of the Judicial Power of the Federation; and, iii) the Federal Code of Civil Procedure.

E. Several Types of *Amparo*⁸⁶

Today, the *Juicio de Amparo* is quite a complex procedural institution that practically protects the entire Mexican legal order, from the highest constitutional provisions to the more modest norms found, for example, in a code of municipal regulations. Taking into account the kind

⁸⁶These five characterizations are reproduced (and summarized) from Drs. Fix Zamudio and Fix Fierro, *supra* note 1 at 181-186.

of protected rights and its procedural functions, the *Juicio de Amparo* may present five distinct facets:

1. *Juicio de Amparo* similar to the *Habeas corpus*. In this sense, this may be called “Amparo for liberty” (*Amparo de libertad*). The protection may be requested by an individual whose life is threatened by acts of a given authority; an individual detained without a judicial order; an individual who is being deported or being subject to torture, confiscation of assets or any other acts prohibited by Article 22 of the Federal Constitution (Article 17, *Amparo Act*).
 2. *Juicio de Amparo* to fight legislative provisions in a general sense (*i.e.*, laws approved by the Congress of the Union and the States’ Legislatures, as well as international treaties approved by the Senate and regulations decreed by the President of the Republic, governors of the States, Head of the Federal District and also those produced by municipal authorities, when the victim considers that said provisions go contrary to the Federal Constitution. In this facet, this is known as *Amparo contra Leyes* (*Amparo* against laws).
 3. *Amparo* against Judicial Resolutions (*Amparo contra Resoluciones Judiciales*). This type of *Amparo* has a close legal symmetry with the French appeal (*Cassation*). Its goal is to examine the legality of the resolutions rendered at the last resort by Mexican courts, as prescribed by Article 14 of the Federal Constitution. (Art. 46; 114, paras. III-V; and 85, para. II, *Amparo Act*, and Art. 37, para. IV, Organic Act of the Federal Power of the Federation).
 4. *Juicio de Amparo Contencioso-Administrativo* (Administrative *Amparo*). Utilized to challenge acts and resolutions of the Administration, both at the federal and State levels, due to the lack (until recently) of administrative courts.
 5. Social Agrarian *Amparo* (*Amparo Social Agrario*). Established pursuant to some amendments to the *Amparo Act* in 1963 and 1976, as a special system for the procedural protection of peasants subject to the Agrarian Reform.
- F. *Juicio de Amparo* Judgments.

The purpose of the *Amparo* judgments is to restore to the victim the recognition and enjoyment of the violated or breached rights, attempting to restore the *status quo ante* (when possible) when the requested act (*Acto reclamado*) is a positive one. When it is a negative act, *i.e.*, an omission, the effect is to obligate the sued authority to act and comply with which was demanded by the victim as a result of the violation (Art. 80, *Amparo Act*).

The protective judgment must be complied with by the authority who caused the infringement or violation, or incurred in the omission, including those that (although not a party in the lawsuit) must take part in the execution of the judgment, considering that said compliance is to take place within a reasonable period of time. If the responsible authorities do not voluntarily comply with the judgment, the *Amparo* judge has the power to require them to do it (Arts. 104-107, *Amparo* Act). Furthermore, if said authorities insist in not complying with the judgment, then the *Amparo* judge is to send the judicial docket to the Supreme Court of Justice. This highest tribunal has the power to fire the authorities in cases of inexcusable delay or evasive behavior or request the competent organs to initiate a responsibility lawsuit (*Juicio de Responsabilidad*) when the authorities enjoy constitutional immunity. In certain cases, the Supreme Court may dictate, *motu proprio*, the substitute enforcement of the judgment (Arts. 107, para. XVI, Federal Constitution, and Arts. 108-113, *Amparo* Act).

G. International Influence in Latin America.

The Mexican *Juicio de Amparo* has exercised a profound influence throughout Latin America, as reflected in the constitutional provisions of countries like Argentina, Bolivia, Brazil, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

At the same time, the Mexican nomenclature used in *Amparo* proceedings has been also incorporated in the language of important international treaties and conventions, such as the American Declaration of the Rights and Duties of Man (Bogota, May 1948); the Universal Declaration of the rights of Man (Paris, December 1948); the American Convention of Human Rights (San José, Costa Rica, November 1969); and the U.N. International Covenant on Civil and Political Rights (New York, December 1966).⁸⁷

SIGUE ABAJO

⁸⁷*Ibid.* at 186.

VI. BEST MEXICAN LAW WEB SITES

Given the extraordinary presence Mexican law has acquired before American courts as the applicable “Foreign law,” particularly in California, Texas, Illinois, Florida, New York and Washington, D.C.,⁸⁸ over the last years there has been a growing demand for reliable and authoritative sources (*i.e.*, treatises, law review articles, legislative compilations, dictionaries, etc.) on Mexican law, as these sources are needed by legal practitioners, judges and magistrates, investors and business persons, government officials, librarians, academicians, and law and business students.

Ideally, the easiest way of accessing Mexican law materials would be to have all of them properly translated into English and readily available in our country. However, this is not the case today. The vast and varied statutory and other judicial and legal materials of Mexican law are only found in their original Spanish language; in addition, most of these materials tend to grow every year and all of them are subject to constant or periodic changes. As of this day, relatively few works and materials on Mexican law have appeared in print in English (or bilingual) translations in the United States. (A list of these printed works appears in **Appendix One**).

As explained in this article, the *stare decisis* principle does not apply in Mexico. Accordingly, courts and law firms in that country do not need to have the traditional thousands of volumes containing the millions of precedents accumulated through centuries of judicial history in the United States. Accordingly, for Mexican judges and magistrates, legal practitioners, and law professors and students, the most important sources of Mexican law is to have in their hand the applicable code, the statute in force (and its regulations) and a *Jurisprudencia* (or an *Ejecutoria*) addressing the legal issue at hand. With these legal tools, probably ninety percent of Mexican law cases may be properly analyzed, discussed and resolved.

A. Free Internet Access to the Best “Mexican Law Library” in Spanish

As part of this *Introduction to Mexico’s Legal System*, a virtual “Mexican Law Library” has been added as the most practical tool for the benefit of all those who are interested in Mexican law (and are fluent in the Spanish language). This library is in Spanish and may be accessed by visiting the web sites posted in the Internet and listed below. These web sites are official sites sponsored by

⁸⁸See Vargas, *supra* note 1.

the federal government of Mexico and by each of the States and Federal District.⁸⁹ The total number of virtual pages included in these fifty web sites may reach some 25,000 pages!

This “Mexican Law Library” is authoritative, current and complete. It is *authoritative* because the language of each of the legal and legislative materials included in it has been taken either from the *Diario Oficial de la Federación* (Federal Official Daily, usually cited as *D.O.* and similar to the FEDERAL REGISTER) or from the respective Official State Gazettes (*Gaceta Oficial del Estado*). Each code, statute or regulation appears in Word Perfect, Microsoft Word or ZIP format, and may be downloaded in its entirety or by page numbers.

This virtual library is *current* because the legal materials presented are the materials in force the day when the web site is visited since all the materials are updated on a daily basis. In other words, they are—as title indicates—: the “Leyes Federales Vigentes” (*Federal Statutes in Force*). And it is *complete* because it includes not only 1) federal statutes; but also 2) federal regulations; 3) federal codes; and, 4) federal administrative regulations (A total of 251 federal statutes). In addition, the section titled: *Leyes y Poderes Estatales* (Laws and State Powers) includes 5) the laws and the political structure of each of the 31 States, with the texts of all of the State codes in each State and other “local” legislation

As part of the section “Leyes Federales Vigentes” the reader may have access the complete and current text of 6) the *Constitución Política de los Estados Unidos Mexicanos* (Political Constitution of the United Mexican States); as well as 7) *Reformas a la Constitución* (Amendments to the Constitution); 8) *Sumarios de Reformas* (Summaries of Amendments); 9) *Reformas por Legislatura* (Amendments to the Federal Constitution by Legislature); 10) *Leyes Federales Abrogadas* (Federal Laws Repealed); 11) *Compilaciones Temáticas* (Legal Compilations) which enlists the latest 134 international treaties and conventions, agreements, etc. to which Mexico is a party; 12) *Marco Jurídico del Congreso* (Legal Framework applicable to the Federal Congress); 13) *Leyes Mexicanas, 1687-1866* (Mexican Laws, 1687-1866); and, 14) *Indices del Diario Oficial* (Indexes of the Federal Official Daily).

B. *Internet web sites containing the “Mexican Law Library”*

www.cddhcu.gob.mx

- This web site is sponsored by Mexico’s Chamber of Deputies (*Cámara de Diputados*) of the Federal Congress (*Congreso de la Unión*). The main page (but not the materials) may be accessed by clicking in the “English” or “French” button.

⁸⁹Jorge A. Vargas. *Electronic Guide to the Best Mexican Law Web Sites*. 32 INTERNATIONAL JOURNAL OF LEGAL INFORMATION (Spring 2004) at 34-108; also posted at www.LLRX.com

- This web site contains:
 - 1) *Constitución Política de los Estados Unidos Mexicanos* (Political Constitution of the United Mexican States)

- 2) *Leyes Federales Vigentes* (Federal statutes in force)

The list of 231 federal statutes in alphabetical order from *Ley Aduanera* (Customs Act), *Ley Agraria* (Agrarian Act) to *Ley sobre la Celebración de Tratados* (Act regarding the Entering into Treaties).

More specifically, this section contains, *inter alia*, the complete and current Spanish texts of these legislative enactments (all in PDF, Microsoft Word or ZIP formats):

- 1) Political Constitution of the United Mexican States;
- 2) Federal Civil Code;
- 3) Code of Commerce;
- 4) Code of Military Justice;
- 5) Code of Electoral Institutions and Procedures;
- 6) Federal Code of Civil Procedure;
- 7) Federal Code of Criminal Procedure;
- 8) Fiscal Code of the Federation;
- 10) Federal Criminal Code; etc.

With each legislative enactment appears the date of publication in the *Diario Oficial*.

- 3) *Reglamentos de las Leyes Federales* (Federal statutes' regulations)

A list of 80 Regulations in alphabetical order

- 4) *Normas Reglamentarias* (Administrative norms).

It contains 174 administrative regulations, norms and manuals published in the *D.O.* since 2002.

- 5) *Leyes y Poderes Estatales*

Web sites of each of the individual States of the Republic of Mexico from *Aguascalientes* to *Zacatecas* (and the *Distrito Federal*) Each State site contains a) General information about the State; b) *Congreso del Estado* (Congress of the State); c) *Poder Judicial del Estado* (Judicial Power of the State describing activities of the highest court of the State); d) *Leyes Estatales* (State laws, including each of the State Codes; and, e) *Periódico o Gaceta* (Official newspaper or Gazette). The list of each of the 31 web sites of the States, as well as that of the Federal District, appears as **Appendix**

Two.

- 6) *Marco Jurídico del Congreso* (Legal framework of the Federal Congress: Sessions, committees and its members, legislative debates, legislation approval, etc.
- 7) *Compilaciones Temáticas* (Legal Compilations).
Actually, this section contains the list of 134 international treaties and conventions to which Mexico is a party (The complete and more detail list is posted in the web site of Mexico's *Secretaría de Relaciones Exteriores* (Secretariat of Foreign Affairs or SRE) at www.sre.gob.mx
- 8) *Leyes Mexicanas 1687-1866* (Mexican Laws, 1687-1866).
This section reproduces the classical multi-volume compilation by Montiel y Dublán. (This section was prepared under the auspices of the Program for Library and Archives in Latin America, financed by Harvard University); and
- 9) *Indices del Diario Oficial* (Federal Official Daily's Indexes). It covers 2006 and 2007. Under Mexican law, each and every legislative enactment must appear in print in the *Diario Oficial* indicating the date when said enactment is to enter into force. The *D.O.* reproduces the official text of each legislative enactment.
- 10) *Biblioteca Legislativa* (Centro de Documentación, Información y Análisis).
This Center provides library and information services on matters pertaining to the Congress of the Union, legislation, legal questions, history of Mexico, etc. The library catalogue may be accessed on line by author or subject matter. It also assists to those seeking information about the Federal Congress, the Chamber of Deputies, legislative bills, etc.

www.scjn.gob.mx

- This web site is sponsored by the Supreme Court of Mexico and it provides information on the work and resolutions of the Council of the Federal Judiciary and the Electoral Court of the Judicial Power of the Federation. In addition, this site contains information about the Supreme Court Justices, the Court's Proposal for the Judicial Reform in Mexico, annual reports by the Chief Justice of the Supreme Court, judicial activities in the States, etc.
- In addition, the reader should know that the Supreme Court of Mexico has produced a long *Catálogo de Publicaciones y Discos* (Catalogue of

Publications and CDs)⁹⁰ on a) Jurisprudence by Contradiction of Thesis; b) Jurisprudence of the Supreme Court, 1917-2007; c) Relevant Decisions of the Supreme Court of Mexico; d) Essays and Lectures; e) Judicial Reform, etc. All of these publications and CDs may be acquired directly from the Supreme Court's *Dirección General de la Coordinación y Sistematización de Tesis*, Pino Suárez No. 2, Colonia Centro, Puerta 1018, Planta Baja, C.P. 06065 or via phone: (011-525) 5130-1171, 5522-5097 or switchboard: 5522-1500, Extensions 2280, 2031, 2038 and 1171. Or by fax: (011-525) 5130-1127 or e-mail: ventas@mail.scjn.gob.mx

www.presidencia.gob.mx

- This web site is sponsored by the Presidency of the Republic headed by Lic. Felipe Calderón Hinojosa. In addition to providing daily information on President Calderón's activities, and associated events, it gives access to the President's activities and speeches, his Cabinet, Press Releases, etc. including the full text of his First Government Report and his National Development Plan.
- Accessing this web site leads to the web sites of the nineteen federal agencies (*Secretarías de Estado*) which compose Mexico's Federal Public Administration, namely: 1) *Secretaría de Gobernación* (Segob: Political matters, immigration and national security); 2) *Secretaría de Seguridad Pública* (SSP: Public security); 3) *Procuraduría General de la República* (PGR: Attorney General's Office, extradition); 4) *Secretaría de la Defensa Nacional* (Sedena: National defense, Army, drugs); 5) *Secretaría de Economía* (SE: National economy, NAFTA, trade); 6) *Secretaría de la Función Pública* (SFP: Administrative coordination); 7) *Secretaría de Marina/Armada de México* (Semar: Mexican Navy); 8) *Secretaría de Hacienda y Crédito Público* (SHCP: Treasury, finances and taxes (Mexico's IRS)); 9) *Secretaría de Relaciones Exteriores* (SRE: Foreign affairs, diplomatic service, treaties and international agreements, extradition); 10) *Secretaría de Comunicaciones y Transportes* (SCT: Communications, transportation, radio and TV); 11) *Secretaría de Turismo* (Sectur: tourism and FONATUR); 12) *Secretaría de Energía* (Sener: Energy and oil); 13) *Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación* (Sagarpa: Agriculture, livestock, rural development, fishing and

⁹⁰Suprema Corte de Justicia de la Nación. CATÁLOGO DE PUBLICACIONES Y DISCOS. MÉXICO, D.F. (Mayo 2007).

food); 14) *Secretaría de Desarrollo Social* (Sedesol: Social development); 15) *Secretaría de Educación Pública* (SEP: Public and private education, colleges and universities); 16) *Secretaría de la Reforma Agraria* (SRA: Agrarian reform, “Ejidos”); 17) *Secretaría de Salud* (Salud: Health, well-being and pharmaceuticals); 18) *Secretaría del Trabajo y Previsión Social* (STPS: Labor, strikes, minimum wages); and, 19) *Secretaría del Medio Ambiente y Recursos Naturales* (Semarnat: Environmental protection, natural resources, global warming and hazardous materials). The individual web site of each of these federal agencies provide additional legal information regarding the specific area of activities. **Appendix Three** contains the individual web sites of these agencies.

www.juridicas.unam.mx

- This web site is sponsored by the *Instituto de Investigaciones Jurídicas* (IIJ: Legal Research Institute) of Mexico’s National Autonomous University (UNAM) which is the largest and most prestigious legal research institute in Latin America and has been a part of UNAM for sixty years. The IIJ has the largest number of researchers and it possesses the most important and largest Mexican law library in its installations at UNAM in Mexico’s Ciudad Universitaria. The IIJ is open to legal practitioners, judges and magistrates, academicians and law students from Mexico and abroad. The IIJ has published a large collection of publications and CDs on a multitude of Mexican law topics. Periodically, it also organizes seminars and conferences on current and important topics of Mexican law.
- Through its *Navegador Jurídico Internacional*, the IIJ has well classified legal information and materials at the domestic and international level, on: a) Mexico’s government; b) *Legislación y Jurisprudencia* (Legislation and Jurisprudence); c) International organizations; d) Law Schools; d) Other legal research institutes, etc. Its collection of *Diarios Oficiales* dates back to 1890, including the State gazettes, dailies and other official publications of Mexico’s 32 political entities (*i.e.*, 31 States and the Federal District). The IIJ has created a *Biblioteca Jurídica Virtual* (Virtual Legal Library) that may be accessed on line.
- The *Instituto de Investigaciones Jurídicas de la UNAM* may be contacted by phone: (011-525) 5622-7474 or 5622-5478 or by fax: (011-525) 5665-2193. Its mailing address is: Instituto de Investigaciones Jurídicas de la UNAM, Circuito Maestro Mario de la Cueva s/n, Ciudad Universitaria, CP 04510, México, D.F., Mexico City.

www.mexlaw.com

- This web site is in English and is sponsored by the author of this article. It contains a Mexican synopsis of Mexican law, an Electronic Guide to Mexican Law Web Sites, and information about the author's books and articles.

VI. CONCLUSIONS

The legal origins of Mexican law can be traced back to the establishment of Villa de la Vera Cruz by Hernán Cortés in 1819. Undoubtedly, this constitutes the oldest legal act in the western hemisphere, not to refer to the ancient customary normative systems formulated and practiced by the numerous Indigenous peoples that populated –and continue to inhabit– the territory of what it is known today as Mexico. Despite tragedy and violence, Mexico continues to be the nation in this part of the world with the largest number of different types of Indigenous peoples.

It becomes increasingly evident, as time goes by, that the geographical contiguity of Mexico to the United States has proven to be one of the most influential factors in the formation, transformation and progressive development of Mexican law. The powerful economic forces present in the close relationships between these neighboring countries, and the growing links and the eventual emergence and disappearance of family networks that constantly take place between the populations of both nations, represent a most significant force not only in the strengthening of the Mexican economy but in the shaping in the social fabric of both countries and in the crafting of a constantly changing Mexican law.

The progress Mexico has accomplished over the last decade in a number of areas of its domestic law has been remarkable. Special attention should be given to the progress made in family law, human rights, environmental protection, foreign trade, electoral law, privacy rights, political transparency, organized crime and extradition, intellectual property, and respect for constitutional rights in criminal proceedings. It has also been laudable the unwavering support given to oral trials in criminal law, very much patterned after similar developments that took place in Europe during the 1990s, particularly in Spain.⁹¹ However, other areas are crying for modernization and transparency, in particular those associated with the administration of justice in civil, criminal and labor matters. The success that the Council of the Federal Judiciary has been achieving with federal courts and especially in the training and development of federal judges has to be somewhat extended to include state courts and state judges.

⁹¹Jorge A. Vargas. *Jury Trials in Spain: A Description and Analysis of the 1995 Organic Act and a Preliminary Appraisal of the Barcelona Trial*. 18 NEW YORK LAW SCHOOL JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW (1999) at 181-232.

Probably the relative prominence that Mexican law is beginning to acquire in certain parts of our country –notably in the Southwest and in California, Illinois, New York and Washington, D.C.– clearly suggest that this is a trend that is likely to become stronger and much wider in the years to come.

Appendix Two Mexican States Websites

Aguascalientes

www.aguascalientes.gob.mx

Click: *Leyes Estatales*→*Leyes o Códigos*

This homepage also links to the *Periódico Oficial del Estado* on line.

Baja California

www.congresobc.gob.mx

Better to use: www.precisa.gob.mx Click: *Leyes del Estado de Baja California*.

Baja California Sur

www.gbc.s.gob.mx

Click: *Cortes y Tribunales*→*Tribunal Superior del Estado*→*Códigos y Leyes*.

Campeche

www.campeche.gob.mx

Click: *Gobierno*→*Poder Legislativo*→www.congresocam.gob.mx→*Compendio de Leyes*.

Chiapas

www.chiapas.gob.mx

No legal materials available.

Chihuahua

www.chihuahua.gob.mx

No codes only a few statutes

Click: *Gobierno*→*Leyes del Estado*.

Coahuila

www.coahuila.gob.mx

Click: *Legislación*→*Selecciona la Ley*.

Durango

www.durango.gob.mx

Legal materials only through: www.congresodurango.gob.mx →*Legislación*.

Estado de México

<http://gem.edomexico.gob.mx/portalgem/>

Better to use: www.precisa.gob.mx Click: *Leyes Vigentes/Códigos Vigentes*.

Guanajuato

www.guanajuato.gob.mx

Better to use: www.precisa.gob.mx Click: www.congresogto.gob.mx

Guerrero

No legal materials available.

Hidalgo

www.hidalgo.gob.mx

No legal materials available.

Some information relevant to foreign investment in English. Click: *Business/Negocios*.

Jalisco

www.jalisco.gob.mx

Legal materials only through: www.congresoal.gob.mx → *Legislación Estatal*

No the State Codes available.

Michoacán

www.michoacan.gob.mx → *Gobierno* → *Legislación Estatal*

No State Codes available.

Morelos

www.morelos.gob.mx → *Gobierno* → *Nuestras Leyes* Also: → *Leyes del Estado de Morelos*.

Nayarit

www.nayarit.gob.mx

No legal materials available.

Nuevo León

www.portal.nl.gob.mx → *Leyes y Reglamentos*

Also through Precisa. Click: *Poder Judicial del Estado de Nuevo León*.

Oaxaca

www.oaxaca.gob.mx → *Gobierno del Estado* → www.congresoosaxaca.gob.mx → *Legisla*

Puebla

www.puebla.gob.mx → *Gobierno* → *Compilación Legislativa*

No State Codes available.

Better through: www.congresopuebla.gob.mx → *Legislación en Línea* → *Códigos*

Querétaro

www.queretaro.gob.mx → *Marco Jurídico*

Quintana Roo

www.quintanaroo.gob.mx → *Legislación*

This site is easy to navigate and includes helpful legal, cultural and historical information.

San Luis Potosí

www.sanluispotosi.gob.mx

Better to use: www.precisa.gob.mx Click: → *Congreso del Estado* → *Documentos*.

Sinaloa

www.sinaloa.gob.mx → *Leyes y Códigos*

Sonora

www.sonora.gob.mx → *Gobierno* → *Poder Judicial*

Tabasco

www.tabasco.gob.mx → *Leyes y Códigos*

Tamaulipas

www.tamaulipas.gob.mx → *Leyes*

Only State Constitution and Civil Code.

Tlaxcala

www.tlaxcala.gob.mx

Better to use: www.precisa.gob.mx Click: → www.congretlax.gob.mx → *Legislación*

Veracruz

www.veracruz.gob.mx

Better through: www.legisver.gob.mx → *Leyes*

Yucatán

www.yucatan.gob.mx → *Gobierno* → *Leyes y Normas* → *Compendio de Leyes*

Zacatecas

www.zacatecas.gob.mx

No legal materials available.

Better to use: www.precisa.gob.mx Click: → Only some State laws

No State Codes available.

Appendix Three
Mexican Government Departments Website

Agrarian Reform (SRA)

(Reforma Agraria)

www.sra.gob.mx

No legal materials available.

Agriculture, Livestock, Rural Development, Fishing and Food (SAGARPA)

(Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación)

<http://ganaderia.sagarpa.gob.mx>

No legal materials available.

Communications and Transport (SCT)

(Comunicaciones y Transportes)

www.sct.gob.mx/inicio

Legal materials ⇒ *Marco Jurídico del Sector*

Economy (SE)

(Economía)

www.economia.gob.mx

Inversión extranjera (Foreign Investment) *Tratados* (Free Trade Agreements)

No legal materials available.

Energy (SENER)

(Energía)

www.energia.gob.mx/wb/distribuidor.jsp?seccion=1

Marco Jurídico (Legal Framework).

Environment and Natural Resources (SEMARNAT)

(Medio Ambiente y Recursos Naturales)

www.precisa.gob.mx/index/php?Direcotrio=precisa&viewCat=392

For description of legal materials *see supra*.

Foreign Affairs (SRE)

(Relaciones Exteriores)

www.sre.gob.mx

Tratados (Collection of treaties entered into by Mexico).

Health (SSA)

(Salud)

www.precisa.gob.mx

No legal materials available.

Interior (SEGOB)

(Gobernación)

www.gobern...

Marco Jurídico (Legal Framework).

Labor and Social Welfare (STPS)

(Trabajo y Previsión Social)

www.precisa.gob.mx

Sistema de Información Jurídico Laboral (Labor Law Information System).

National Defense (SEDENA)

(Defensa Nacional)

www.sedena.gob.mx

Administración y Procuración de Justicia

No legal materials available.

Navy (SEMAR)

(Marina Armada de México)

www.semar.gob.mx/index.php

No legal materials available.

Public Education (SEP)

(Educación Pública)

www.sep.gob.mx/wb2/

La Educación y sus Normas Jurídicas (Education and Its Legal Norms).

Public Function (SFP)

(Función Pública)

www.funcionpublica.gob.mx

Normateca (Collection of Administrative Norms and Rules by subject and key words).

In addition *Comisión para la Transparencia y el Combate a la Corrupción* (Commission for Transparency and Against Corruption).

Public Security and Justice Services (SPSJ)

(Seguridad Pública y Servicios de Justicia)

www.precisa.gob.mx

No legal materials available.

Social Development (SEDESOL)

(Desarrollo Social)

www.sedesol.gob.mx/index/main.htm

Mexicanos en el Exterior (Mexicans Abroad)

No legal materials available.

Tourism (SECTUR)

(Turismo)

www.turismo.gob.mx

Marco Jurídico y Normativo

Treasury and Public Credit (SHCP)

(Hacienda y Crédito Público)

www.precisa.gob.mx

Legislación (Tax legislation) *Documentos* (Tax forms and other documents)

In addition *Investor Relations Office* (English site created in 1995 “to enhance disclosure of economic data and develop an ongoing dialogue between investors and analysts with Mexican financial authorities.”).

Attorney General’s Office (PGR)

(Procuraduría General de la República)

This is not a Secretariat of State but an important component of Mexico’s Federal Public Administration

www.pgr.gob.mx

Marco Jurídico (Legal Framework)

In addition *An English Site*