Message from the Co-Chairs

It is a delight to present you with the 52nd issue of MEXICO UPDATE. This issue brings highlights of our co-sponsored panel series NAFTA Renegotiated, and several interesting and timely articles on the Supreme Court, anti-corruption, the impact of violent crime on hospitality, and the upcoming Presidential election in June. In addition, we are happy to provide information about the Committee’s publication of MEXICO AND ITS LEGAL SYSTEM: LAWYERS’ ESSAYS ON THE CONTINUING EVOLUTION, along with information on how to order.

As this issue goes to press, incoming chair of the Section of International Law, Robert Brown, has just completed his second trip to Mexico City to meet with various members and groups in the planning of the upcoming 2018 Conference on International Trade and Investment in Mexico City in November. You will find more details on the conference on page two. Thanks to all who are working to make this event a success, with special thanks to Robert for his hands-on approach and effective leadership.

We look forward to connecting with many of you in New York at the Section Annual Meeting on April 17. Stay tuned for email updates on Mexico Committee panels, breakfasts, joint dinner with the Latin American and Caribbean Committee, and the not-to-be-missed after hours party.

Thanks to each of you for your contribution to the success of this Committee. Hope to see you in New York.

Susan Burns, co-chair

Message from the Editors

This issue of MEXICO UPDATE addresses key issues of legal interest in Mexican public life as follows. Mexico will face a Presidential election next July, and one topic in that election is crucial for the country right now: corruption. From the legal perspective, this means implementation of the National and Local Anticorruption Systems. In addition, presidential candidates are making reference to specific regulations, as to some of which they hold contradictory positions, e.g. energy regulations. Their positions on recent legal reforms, as well as on relations with United States, merit attention. As NAFTA negotiations continue, the specifics of their impacts merit analysis. Also, security and the fight against crime have economic consequence worthy of attention.

We are excited about the November 2018 Mexico Conference; it will be a great opportunity to strengthen our Mexico Committee.

Finally, a special recognition to Patrick Del Duca; this issue has been possible because his leadership and support.

Dra. Yurixhi Gallardo, editor
About the Mexico Committee

Anchored by coordinators in cities in Mexico and the United States, the Mexico Committee seeks to grow its members’ involvement in dialog on current and potential developments of Mexican, United States and other law relevant to their practice of law and to the establishment of sound policy. Current substantive focuses of the Committee’s work include arbitration, antitrust law, criminal procedure reform, data privacy, environmental law, legal education, secured lending, and trade law. The Committee contributes to the annual Year In Review publication, is developing its newsletter in partnership with a leading Mexican law faculty, maintains its website, and actively organizes programs at the spring and fall meetings of the Section of International Law.

The Mexico Committee’s membership is its most important asset. We encourage all Committee members to be involved in Committee activities and to communicate freely their suggestions and ideas.

Upcoming Events — Save the Date

ABA Section of International Law 2018 Conference on International Trade and Investment—Mexico City

Eduardo Sánchez Madrigal

The American Bar Association Section of International Law—renowned as the world’s leading institution for international law practitioners—seeks constantly to bring together legal professionals, academics and law students from around the globe to promote diverse substantive expertise and strengthen the rule of law through a wide variety of continuing education programs.

On November 6-9, the ABA Section of International Law will host the 2018 edition of its Conference on International Trade and Investment at the Presidente InterContinental Hotel in Mexico City. The conference will feature 26 programs led by distinguished legal experts, addressing hot topics such as anti-corruption, energy, immigration, and international trade and investment. The conference includes a Home Hospitality Night, two offsite receptions in venues chosen to highlight Mexico’s cultural heritage and history, a special tour of Mexico City, and opportunity to earn up to twelve hours of continuing legal education credits. The conference agenda is further enriched by networking events and luncheons where attendees will have an invaluable opportunity to interact with world-class speakers and colleagues from the most diverse professional backgrounds.

Interested members are encouraged to register to gain access to the events included in the 2018 Conference on International Trade and Investment agenda and to special reduced rates.

Planning the November 6-9, 2018 Conference on International Trade and Investment in Mexico City:
Luis Perez, Rene Alva, Robert Brown, Mario Piana, Carlos Velásquez
Fellow Mexico Committee members,

Some years ago, our Committee considered how best to reinforce the good work of our Committee newsletter, MEXICO UPDATE, in spotlighting the important developments in Mexican law. We started from the premise that too little is written in English about Mexican law, and that even Mexican lawyers can benefit from thoughtful analysis of how Mexico and its legal system are addressing the challenges of assuring the rule of law in the context of an economically and socially dynamic environment. We chose to activate our Section’s book publication capabilities through ABA Publishing.

Those deliberations have now produced their fruit, in the form of the Mexico Committee book: MEXICO AND ITS LEGAL SYSTEM: LAWYERS’ ESSAYS ON THE CONTINUING EVOLUTION. We all have reason to be proud of this achievement of our Committee.

You can learn more about the book and how to purchase it from the attached flyer and the following links:


Here is the challenge to each of us as Committee Members—we need to assure that as many eyes as possible are on this book. Here are some ways to do this:

- Buy the book. Our Committee has achieved that it be for sale at a modest price. No matter what your specialization or focus on Mexican law, you will benefit from the unique and insightful perspectives offered by the book’s ten contributors. For those of us participating in the April 2018 New York meeting, the book can be purchased in the meeting’s exhibition space. Indeed, at 10:30 am, Thursday, April 19, one of the co-editors will be present to sign books purchased!

- Convince a friend to buy the book, and to join our Association, Section and Committee, using the information in the Membership Flyer attached (If you have purchased your own copy, you will be more convincing in your pitch to a friend).

- Organize a book club or presentation event. The Committee Co-Chairs and the Co-Editors of the book are available for coaching and brainstorming on how to do this.

- Promote bulk sales, e.g. in connection with a law school course, a bar group or a chamber of commerce. As examples, we have already reached out to the ABA Rule of Law Initiative and US State Department as organizations whose teams may benefit from engagement with the book and its content. The Committee Co-Chairs and the Co-Editors of the book are available for coaching and brainstorming on how further to do this.

All thoughts on how to celebrate this important achievement of our Committee are welcome. Keep in mind that a key indicium of how many eyes are on the book is the number of copies sold, hence the emphasis on the collective focus to facilitate sales of the book. This topic is on the agenda for further discussion in our forthcoming Committee calls.

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As a lead-in to the jointly sponsored NAFTA panel at the ABA SIL Spring Meeting in New York, the Mexico Committee, along with the Canada and International Trade Committees, is sponsoring a series of three panels on NAFTA.

The first panel NAFTA Renegotiated: Agriculture was held at the Chicago offices of Faegre Baker Daniels on January 24. The stellar panel included John Cruickshank, Canada’s Consul General in Chicago, Luis Martinez, Agricultural Office, Embassy of Mexico and Robert Brown, ABA Section of International Law, ABA SIL Chair-elect (who also moderated the panel). We were assisted in our efforts by the Chicago offices of ProMexico.

The panel discussed the material impact of NAFTA on agricultural trade, including the significant negative impact were NAFTA to be terminated. While everyone agreed that NAFTA could be updated, it is widely viewed as a benefit to all three countries. It has united the three countries into one of the most powerful trading blocks in the world. Uniquely, NAFTA was originally opposed by the agricultural sector, and in a major turn-around, the sector has united in support during the current negotiations.

“It is great to join efforts the public and private sector from Mexico and the United States to expand knowledge of the NAFTA benefits for our countries.” Esteban Rodrigues Pizarro, Deputy Trade & Investment Commissioner, ProMexico

The panel was well-received, and according to participant Catherine C. Gryczan:

It was interesting to gain a broader perspective on the mutual benefits of NAFTA for the US, Canada and Mexico and its overall impact on our imports and exports. I found the discussion about certain sticking points of the current negotiations interesting, particularly the US call for an automatic five year “sunset” clause that by all accounts would create perpetual uncertainty which would not foster long term planning and economic investments. It is energizing to have access to high level representatives through the ABA International Section’s programs for better insights on these important developments.

The report on the second panel is from Dunniela Kaufman, co-chair of the Canada Committee. This panel focused on the trilateral energy relationship and was held at the Toronto offices of Bennett Jones on February 27. It was co-hosted by the Energy and Environment Committee and the International Law Section of the Canadian Bar Association. Moderated by Jesse Goldman, Bennett Jones, the panel included of Andy Shoyer, Partner in Sidley Austin’s International Trade Practice, Alex Dewar, Senior Manager of Boston Consulting Group, John Langrish, President of the Energy Round Table (Canada), Daniela Flores of EC Legal Rubio Villegas and Sacha Kathuria of the Association of Oil Pipelines.
The panel started with Alex Dewar providing a historical and current overview of the North American energy markets, which contextualized the discussion that followed. The market analysis was given industry perspective by both John Langrish and Sacha Kathuria. The lawyers on the panel were able to build off of the industry and market perspectives with not only the current analysis, but, due to his participation in the original NAFTA negotiations, Andy Shoyer was able to provide fascinating historical details. Daniela’s perspective was also key, especially to lawyers who love to talk about Constitutions, as she was able to explain the changes to the Mexican Constitution, which facilitated the opening of the Mexican markets, while also providing the necessary political context that accompanies any constitutional discussion. The speakers’ diverse backgrounds and perspective provided the audience with great insight into how the paradigm has changed since the original NAFTA was negotiated and what each Party hoped to get out of the current negotiations.

The third panel, focused on the auto industry, will be held in early April in Mexico City. For more information on that panel, please contact Rene Alva (ralva@ecrubio.com).

We hope to see you all at the capstone program, NAFTA-The Next Generation at the Annual Meeting in New York City, on Thursday, April 19 at 9:00 AM.

Photo Gallery

Mexico Committee members and leaders of the San Diego Tijuana City Chapter, University of San Diego “Justice Mexico” dinner, August 11, 2017

Luis Perez, Rene Alva, Susan Burns, and Vice-Chair, Mario Piana, recently at lunch in Mexico City at La Unica

Mexico Committee members and leaders of the San Diego–Tijuana City Chapter, dining in San Diego’s Little Italy, February 5, 2018
Profiles for Mexico’s Forthcoming Presidential Elections
Oliver Fernando Buenrostro Figueroa, Barbara Avalos and Matías Medina

As Mexico’s presidential elections approach, the importance of 2018 for Mexico becomes increasingly evident. On July 1, 2018, every Mexican, 18 years and older, will be able to vote, thereby enjoying the benefits of being part of a true democracy. In this 2018 election year, Mexicans will vote for a new president for the next six years. They will also vote for representation in both chambers of the federal congress. And, in some states, Mexicans will be voting for a new governor, mayors and the state congress.

This essay reviews the profiles of the candidates for the presidency of Mexico, including notable achievements, and their relevance in Mexican politics.

Andrés Manuel López Obrador (AMLO) is candidate for third time in a row for the Presidency of the México, on this occasion by the coalition “Together we will make history”

Andrés Manuel López Obrador (AMLO) is candidate for the third consecutive time for the Presidency of México. On this occasion, he is the candidate of the coalition Together we will make history, comprised of the political parties: Movimiento de Regeneración Nacional (MORENA), Partido Encuentro Social (PES) and Partido del Trabajo (PT).

AMLO holds a degree in Political Science and Public Administration from the National Autonomous University of Mexico (UNAM), earned over the course of fourteen years (1973-1987). His political career rose under the auspice of various parties, until he created his own. In 1976 he joined the Partido Revolucionario Institucional (PRI). In 1988 he left PRI and, together with other former PRI members, founded the Partido de la Revolución Democrática (PRD). In 2000 he was elected Head of Government of the Federal District, now Mexico City, as candidate of the PRD. Subsequently, in 2006 he ran for President. In this first Presidential run, he was candidate of the coalition For the good of all formed by the political parties PRD, PT and Convergencia, the latter now under the name of Movimiento Ciudadano. In 2011 he founded the civil association called Movimiento de Regeneración Nacional (MORENA), which would become a political party in 2014, when he left the PRD. In the current elections, AMLO presents several campaign proposals, leading with his attack on the alleged “Power Mafia”, associating it with allegations of ties of corruption in public management between the PRI and the Partido Acción Nacional (PAN) and others. Further, he advocates the idea of creating a Constitution of Morality, described as: “It will be an interreligious dialogue, between religious and non-believers to moralize México”. He has said that he will review Pemex’s contracts with foreign investors to ensure that everything accords with law, this in relation to the recent energy reform that allows private investment in what was once a monopoly of the Mexican state and which he opposes. Another of his proposals that has caused controversy in the country is to grant amnesty to drug traffickers, as a new strategy to address the problem of insecurity and violence. Finally, one of his central proposals is that the “fueros” (legal immunity) will be eliminated for the President and high public officials, through amendment of article 108 of the Constitution, expressed categorically as “when our movement triumphs, there will be no impunity.”

José Antonio Meade Kuribeña is candidate for the political coalition “Everyone for México” made up of the political parties: Partido Revolucionario Institucional (PRI), Partido Verde Ecologista de México and Nueva Alianza.

José Antonio Meade Kuribeña is candidate for the political coalition Everyone for México, comprised of the

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Ricardo Anaya Cortés is the candidate for the presidency of Mexico for the “Por México al Frente” coalition, which is formed by the National Action Party (PAN), the Party of the Democratic Revolution (PRD) and Citizen’s Movement (Movimiento Ciudadano).

Ricardo Anaya Cortés is the candidate for the presidency of Mexico for the “Por México al Frente” coalition, which is comprised of the National Action Party (PAN), the Party of the Democratic Revolution (PRD) and Citizen’s Movement (Movimiento Ciudadano). He graduated with honors from the Autonomous University of Querétaro with a degree in law, earned a master’s degree in tax law at the Universidad del Valle de México and obtained a Doctorate in Political and Social Sciences, with honorable mention, from the National Autonomous University of Mexico (UNAM). At just age 39 Ricardo Anaya is former National President of the PAN (2015-2017), and has held various public offices, both at the state of Querétaro and national level. At the age of 21, Anaya ran as a deputy in Querétaro for its District XIV, and although he did not win, he managed to increase the vote for the National Action Party by 400 percent relative to the previous election. Later, he became the coordinator of the PAN Parliamentary Group in Legislature LVI of the State of Querétaro, and in 2011 Felipe Calderon, then President, appointed Anaya as Undersecretary of Tourism Planning of the Secretariat of Tourism of the Federal Government. In 2013, he was president of the Chamber of Deputies of the Federal Congress. He became PAN’s president in 2014, and a year later he was appointed coordinator of the Parliamentary Group of the National Action Party in the federal Chamber of Deputies. He was State and National Counselor, and member of the State Steering Committee and National Executive Committee of the PAN. Among Anaya’s most important proposals is to create a Universal Basic Income (IBU), described by him as the best way to end poverty by providing individuals with an amount that allows them to live with dignity. He advocates re-prioritizing social policy, which he would do by reviewing which programs work or not, and reducing bureaucratic expenses, by reducing the number of officials in these social programs. Finally, Ricardo Anaya would seek to strengthen the domestic market, so as to make the national economy flow and to generate well-paid jobs.

The forthcoming election will be the first presidential election in which independent candidates participate. Margarita Ester Zavala Gómez del Campo, spouse of former President Felipe Calderón Hinojosa, is running.
Mexican Courts Are Bigger Than Agricultural Giant Monsanto

Susan Burns*

In a critical case, the first chamber of the Mexican Supreme Court of Justice of the Nation (SCJN) rejected an appeal by Monsanto regarding the issuance of commercial permits for sowing of GMO—or transgenic—maize. The rejection of the appeal has the effect of upholding the lower court ban on GMO corn.

This decision is significant for many reasons, not the least of which it maintains the toe-hold of indigenous and peasant farmers in their fight to protect Mexico’s unique status as the center of origin and diversification of maize.

The appeal stemmed from a September 2013 precautionary measure banning authorizations for GMO maize plantings, which considered the risk of environmental damage and included a declaration that the benefits of GMO maize remained unproven. The precautionary measure was in effect, pending demonstrations of safety and economic benefits of GMOs. In January 2017, the Collegial Court was scheduled to rule on whether to maintain the precautionary measure, but suspended its ruling because Monsanto submitted a petition to the SCJN.

However, none of the SCJN justices endorsed Monsanto’s request (a requirement to place it on the SCJN docket), thereby returning it to the Collegial Court, and effectively upholding the lower court ban on GMO maize. It also allowed the appeals court to verify the suspension of permits for planting of GMO maize and uphold the enforcement of the ban throughout the country.

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Had the court ruled otherwise, it not only would have resulted in destruction of Mexico’s unique status as the center of origin for maize (and the 59 varieties that have been preserved and are still available), it would have permitted Monsanto to monopolize planting and growing of maize. That monopolization comes with additional adverse consequences such as expense, pollution, food safety and nutrition issues. The decision of the SCJN paves the way for Mexico to be a unique leader in this case, as well as provides an opening for the government to not cede to the demands of free-trade based on pragmatism or economic and political expediency, but rather to fulfill its obligation to provide food security for indigenous and peasant farmers and to step up as a world leader in guarding the environment and safety for its country and its peoples. Preserving Mexico as the center or origin and maize diversification is a win-win for all.

To understand why this seemingly simple decision has such a large ripple effect, it is necessary to examine what would have been the impact had the SCJN decided otherwise. First, few people understand that it is not a simple matter of planting a field of GMO maize in one area and planting a field of original native corn in another. Because of the unique and miraculous way in which corn is pollinated, the native corn is easily contaminated by pollen from the GMO maize through cross-pollination.

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The unfortunate and eventual result is that anyone who wants to grow corn will have to buy their seed from Monsanto. Monsanto’s seed is patented, and the U.S. Supreme Court has held that a farmer who buys patented seeds may not reproduce them through planting and harvesting without the patent holder’s permission, meaning that the current practice of saving and sharing seeds among rural farmers would not be permitted.

Genetically engineered crops can be classified as a “living pollution” because they can reproduce themselves. Once a GE crop exists in the environment, its pollen—containing unique combinations of genetic traits whose long-term effects have not been studied—can be passed on, causing contamination in other plants from the same species.

Because Monsanto owns the corn seed it sells, it controls the price. It also can increase price—which it does with regularity. Seeds have become the most expensive component of farming; corn seed prices in the U.S. have quadrupled in the last two decades, while corn prices have risen and then fallen close to the original price. In addition, farmers who buy GMO seeds from Monsanto sign contracts that dictate how their crop is grown—including what chemicals to buy. This would give Monsanto control over production of Mexico’s staple and heritage crop.

It does not take much imagination to realize that most indigenous and rural people would be priced out of being able to grow their own corn under this scenario—not to mention that Monsanto, an aggressive litigator, has sued farmers for seed piracy. This would put an end to the current practice of saving and sharing corn seed from year-to-year.

Other problems include the environmental impact of the chemicals that are applied to the food, the health impacts of those chemicals and the very real question of the nutritional value of food grown from GMO seed. The unfortunate thing, as the Collegial Court noted, is that not enough research has been done to determine the short- and long-term effects of cultivating GMO crops. In addition to genetic contamination, there are multiple other problems:

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These undesirable effects are in addition to the multitude of other environmental disasters caused by cultivation of GMO crops. One of the side-effects of planting GMO crops is that in response to the use of the required herbicide, nature creates herbicide-resistant weeds. This requires the development and application of new technology, such as the herbicide “dicamba” and the accompanying dicamba resistant GMO seeds, recently introduced by Monsanto.

In the U.S., dicamba technology was released without adequate study of impacts. It is estimated that 3.1 million acres of crops have been damaged by dicamba drift. The U.S. Environmental Protection Agency listed the product as a “Restricted Use Product” after more than 2,700 formal dicamba-related complaints were filed in 23 states during the 2017 production season.

In addition, both the nutritional value and safety of GMO foods is questionable, according to non-industry sources. A recent article, entitled “The Great Nutrient Collapse”, outlines factors that have led to the decline in the nutritional value of food, including the increase in atmospheric CO₂ and the change in agricultural practices opting for higher yield at the expense of nutritional value. It cites a 2004 landmark study of fruits and vegetables, which found that everything from protein to calcium, iron and vitamin C had declined significantly across most...
garden crops between 1950 and 1999. The researchers concluded this was due to changes in cultivated varieties, “in which there may be trade-offs between yield and nutrient content”\(^{15}\). The article also discusses current research estimating that the increase in \(\text{CO}_2\) results in increased plant photosynthesis, suggested by some as a good thing. However, this increase also leads plants “to pack in more carbohydrates like glucose at the expense of other nutrients that we depend on, like protein, iron and zinc”. The problem is that plants are a crucial source of protein for people in the developing world. As a result, the study suggests, approximately 150 million people could be at risk of protein deficiency by 2050.

The Mexican newspaper, Reforma, reported on November 23, 2017 that Mexico’s agriculture sanitation authority (Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria—SENASICA by its acronym in Spanish) revoked Monsanto’s permit to commercialize GMO soy in seven Mexican states.\(^{16}\) According to the report, citing a SENASICA document, the permit was revoked after authorities detected Monsanto’s GMO soy in unauthorized areas. The permit revocation applies to the states of Tamaulipas, San Luis Potosi, Veracruz, Chiapas, Campeche, Yucatan and Quintana Roo.

Presumably this revocation also impacts the administrative lawsuit brought by Mexican beekeepers to prevent Monsanto from planting GMO soybeans. Originally Monsanto received a permit to plant their GMO seeds (MON-04032-6) in a large area of land, in spite of protests organized by thousands of beekeepers, citizens, major environmental groups, the National Institute of Ecology, and Mayan farmers. Nevertheless, district judges overturned the Monsanto honey production in the state of Campeche and in the Yucatan peninsula. The Judges in Campeche and Yucatan held that the communities should be consulted and prohibited Monsanto to sell its seeds until a decision had been reached.\(^{17}\) These cases were appealed by the Public Prosecutor’s Office in Campeche and by Monsanto and the Department of Agriculture, Livestock, Rural Development, Fishery and Food (“SAGARPA”) in Yucatan. The circuit courts that heard the appeals remitted them to the SJCN through a writ of certiorari, and there it was ruled in favor of the communities on November 4, 2015.\(^{18}\)

In addition to the many problems with GMO corn mentioned in this article, Mexico is widely viewed as the cradle of corn evolution.\(^{19}\) Regardless, Monsanto has persisted in its relentless pursuit of dominating corn in Mexico.

Due process in Mexico is a tangled and lengthy juridical process and Monsanto has exploited the *amparo* rights clause of the Mexican Constitution to prolong and intensify its attacks on Indigenous and peasant farmers. These are the farmers who sustain the living seed libraries of the vital Mesoamerican Vavilov center of Origin and Diversification of corn among more than three dozen other native crops that literally feed the world.\(^{20}\)

With the current political and economic forces to be “pragmatic” and accept the inevitability of a world governed by GMO food and its unknown implications, it is all the more remarkable that the court exercised its independence and correctly decided that adverse effects of GMO maize should be explored. Although, beginning in 2003, indications were that GMO corn exported to Mexico had already contaminated indigenous corn in Oaxaca,\(^{21}\) it is not too late to stop further genetic contamination. The SJCN made the correct decision in returning the matter to the Collegial Court. The Collegial Court is correct in extending a ban on GMO corn and, in fact, should make it permanent.

This also provides an open invitation to the government of Mexico to work with the Indigenous and peasant farmers to preserve Mexico’s heritage, environment and the economic and physical health of its people. In a demonstration of how a true democracy functions, the Mexican courts have exercised the independence of the judiciary. The government ought to follow. As an emerging world economic force, this is the perfect opportunity for Mexico to jump off the GMO treadmill and lead us toward a healthier, more sustainable food supply for all. It is not too late.

*The author is a solo-practitioner at her own law firm in Minneapolis, Minnesota and a May 2018 University of Arkansas Agriculture Law & Policy LL.M candidate. An abridged form of this article is forthcoming in the Section of International Law’s THE YEAR IN REVIEW, publication expected June 2018.*
Mexico Update


2. A precautionary measure operates like an injunction in the U.S. Court system.

3. Most sweet corn is in pollination mode for about 10 days. Here’s how it works: a pollen grain falls on a sticky strand of silk and imbeds itself. For the next 12 to 24 hours, the pollen grows a tube down the length of the silk to a waiting ovary. If all goes well, a corn kernel is born. Excellent pollination produces ears that are filled with wall-to-wall kernels; poor pollination leads to ears with lots of missing kernels. See Pleasant, Barbara, “The Sex Life of Sweet Corn”, GROW VEG, 08-14-2009, available at https://www.growveg.com/guides/the-sex-life-of-sweet-corn/.


10. In the U.S. approximately 80% of all crops are genetically modified. According to the USDA, agriculture accounts for approximately 80% of the Nation's consumptive water use and over 90% in many Western States. The Gulf of Mexico dead zone is one of the largest in the world and is caused by nutrient enrichment from the Mississippi River, particularly nitrogen and phosphorus primarily from the agricultural industry.

11. Critics say genetically modified corn plantings will contaminate age-old native varieties and that toxins designed to protect the GMO grain against pests may be linked to elevated insect mortality. See DeSantis supra at 9.


13. Consider also that no one knows or has seriously studied the impact of feeding GMO crops to animals—although there have been reports of pigs fed GMO corn exhibiting signs of pregnancy. See DeSantis, supra Note 9 at 7.


18. The amparos in review with file numbers 241/2015, 270/2015 and 410/2015 derive from the amparo number 753/2012, filed by the communities Pac-Chen and Cancabchen, and were heard by justice Fernando Franco González; the amparos in review with file numbers 498/2015, 499/2015 y 500/2015, derive from the amparo number 762/2012, filed by five Mayan beekeeper communities in the state of Campeche, and were heard by justice Eduardo Medina Mora; and the amparo in review with file number 198/2015, derived from the amparo number 286/2012, filed by five Mayan beekeeper communities in the state of Yucatán, and was heard by justice Margarita Luna Ramos.

19. [Botanists] discovered that all maize was genetically most similar to a teosinte type from the tropical Central Balsas River Valley of southern Mexico, suggesting that this was the cradle of maize evolution. Sean B. Carroll, Tracking the Ancestry of Corn Back 10,000 Years, N.Y. TIMES, May 24, 2010.


21. “[T]he North American Free Trade Agreement (NAFTA) has allowed the United States to dump millions of tons of corn onto Mexico”. According to this author, this significant amount of corn exported to Mexico has contaminated indigenous corn in Oaxaca with DNA from GMOs. Thus, the marriage of freed trade and GMOs created the ugly offspring of genetic pollution of corn in Mexico’s center of origin. Other reports of contamination have been made since 2003. DeSantis supra Note 9 at 9.
Impacts of Violent Crime on the Hospitality and Tourism Industry in Baja California Sur

Bruce D. Greenberg

Baja California Sur is known for its beautiful stretches of sand and sparkling blue ocean waters, making it a mecca for beach lovers and drawing millions of tourists to the area each year. But, a recent wave of violence in the state – most of it “narco violence” related to drug trade and warring cartels – has the area’s hospitality and tourism industry worried about the effect such crime may have on its business. However, government and business leaders in Cabo San Lucas have taken steps – increasing surveillance, communication and security personnel – to assure visitors to the area’s beachfront resort communities of their safety. As a result, tourism numbers are up and the industry is expected to grow.

Context

Mexico is no exception to the scourge of narco violence that has affected communities worldwide. Historically, urban centers such as Mexico City, Monterrey, and Tijuana have been the site of gang violence. Today, major violence in those areas is on the decline and no longer “front-page” news thanks to steps taken to control the narco gangs in these communities.

During the years of gang violence within the larger metropolitan cities, tourists were not adversely affected or harmed, as most of the violence occurred in the less affluent areas of these communities. However, narco violence eventually began to occur in Mexico’s beachfront resort communities, raising concerns among those planning to travel to the area. Fortunately, by understanding what drives the violence, where it occurs and the types of incidents that result, those vacationing in Mexico can enjoy their trips without incident.

The increase of violence in Baja California Sur is associated with the national rise in violence as Mexico’s powerful drug cartels have splintered since the late 1980s. Before then, the larger cartel organizations controlled significant territory and wielded immense power. As the cycle of splintering and violence deepened, each major cartel crumbled into smaller, competing organizations. By 2015, the once-mighty cartels were but shadows of their former selves. This increased violent competition among remnant groups and spread the mayhem within the territories over which large cartels had previously exercised monopoly control.

Government and business leaders in Cabo San Lucas have taken steps – increasing surveillance, communication and security personnel – to assure visitors to the area’s beachfront resort communities of their safety.

The Gulf Cartel, which once held sway over the state of Quintana Roo (the greater Cancun region), viewed the state’s resorts as places to launder money and to profit from drug sales to visitors. Its control began to slip after Los Zetas broke away from the larger group in 2010. Baja California Sur is now caught in a similar predicament. Cabo was long considered one of the safest places in Mexico, and the Sinaloa Cartel’s dominance in the region kept violence at bay. However, as this cartel fragmented, a splinter group, the Cártel de Jalisco Nueva Generación, began to press its parent organization hard. Baja California Sur is now one of the battlegrounds between Nueva Generación and the Sinaloa Cartel. Like other smuggling corridors, the Baja Peninsula route to Tijuana is a point of contention. In addition, both groups seek opportunities for money laundering and retail sales with resort visitors and local users. As in Quintana Roo, most of the violence largely remains outside the resort areas and is limited to inter-cartel fights with occasional flare-ups following police and military operations. But, the statistics are alarming: there were

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more than 230 homicides in the state in 2017, four times as many as in 2016 and seven times as many as in 2012.

**Effect of Violence on Hospitality and Real Estate Sectors**

Some analysts advise against travel to Mexico, but tourists and expats who practice good situational awareness and employ common sense security measures can, and do, avoid misfortune.

Chances of encountering trouble greatly increase after dark. As in the United States and other countries, certain sections of cities are more prone to crime than others and should be avoided, especially at night. Many victims of crime in Mexico have drunk irresponsibly, used drugs, or visited shady clubs or bars where drugs are sold, and criminals, including cartel figures, often gather. When it comes to personal security, an ounce of prevention is truly worth a pound of cure, and by taking simple precautionary measures, a vacation or business trip to Mexico can be fun and safe.

To date, no tourists have been hurt in Los Cabos, but local businesses and hotels are not taking chances. The private sector is playing a critical role in addressing the violence. Hospitality organizations are paying the government a reported US$130,000 monthly for extra police and military security for specific tourist areas. Following a shooting at La Palmilla beach, municipal police began making rounds on the beach. In addition, the local branch of the Business Coordinating Council contributed almost US$7.5 million toward construction of a new military base in Los Cabos, a permanent station for 250 military personnel. Furthermore, federal and state governments are investing US$16.1 million in a base that will house 600 combat engineers, trained in disaster relief efforts, in the state capital of La Paz, which is located less than 100 miles north of Los Cabos. According to Mexican Navy Secretary Vidal Francisco Soberón Sanz, these two new bases, which will house 850 personnel, should be fully operational between May and June this year.

Despite the current U.S. State Department travel advisory and reports of violence, many tourists still feel safe. In fact, tourism is up in Baja California Sur compared to 2016, and according to the Los Cabos Hotels Association, new hotel rooms continue to be constructed, with more than 2,350 more rooms projected to open in 2018 in Los Cabos alone. In 2017, Los Cabos reported 27.7% growth in hotel occupancy, reaching about 11,000 reserved rooms per day out of a total inventory of about 16,000 available rooms.

To strengthen security and promote a safe travel environment, the Los Cabos Tourism Board (Fideicomiso de Turismo de Los Cabos [FITURCA]), an organization composed of local hospitality resort members and government officials and funded by private and public businesses, has developed a four-point security action plan to be implemented this year.

### Inventory/projections of new Los Cabos Rooms

<table>
<thead>
<tr>
<th>Year</th>
<th>Rooms</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>474</td>
</tr>
<tr>
<td>2017</td>
<td>558</td>
</tr>
<tr>
<td>2018</td>
<td>2,357</td>
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<tr>
<td>2020</td>
<td>479</td>
</tr>
<tr>
<td>2021</td>
<td>180</td>
</tr>
</tbody>
</table>

**Responses**

To strengthen security and promote a safe travel environment, the Los Cabos Tourism Board (Fideicomiso de Turismo de Los Cabos [FITURCA]), an organization composed of local hospitality resort members and government officials and funded by private and public businesses, has developed a four-point security action plan to be implemented this year. The plan:

- creates a Rapid Response Network to provide real-time and ongoing communications among local hoteliers and businesses;
- accelerates and expands the security surveillance system, installing 200 new cameras in tourist hot spots and across Los Cabos;
MEXICO UPDATE

- establishes a hotel security committee, which meets biweekly to share best practices and ensure tourist security; and,
- sets new training and security protocols by implementing new security training aligned with Overseas Security Advisory Council (OSAC) standards.11

Other recent, important security developments in Los Cabos include:12
- A new attorney general for the state of Baja California Sur took office in December 2017;
- The Secretaría de Seguridad Pública del Estado (State Ministry of Public Safety) was elevated to Cabinet status;
- The Mexican Navy took command over members of the state and municipal police in Los Cabos in November 2017;
- 150 new federal police and navy personnel were assigned to Los Cabos with a focus on training community police forces;
- Specific positions within the main police force were reassigned to the Mexican Navy, including the director of police of Los Cabos;
- The private sector, through the Consejo Coordinador Empresarial, invested US$100,000 to support additional training for community police officers; and
- The state has worked to improve cooperation and communication with OSAC.

Public monetary resources are limited and sometimes inefficient in Mexico, mostly due to corruption. However, the involvement of the private sector in the fight against violence gives locals and tourists confidence in the actions taken to enhance security in the Los Cabos area. Cabo San Lucas is a prime example of collaboration between business and government stakeholders to address the narco issue. Positive press and media coverage are also required to reinforce public and tourist reliance and trust.

Cabo San Lucas is a prime example of collaboration between business and government stakeholders to address the narco issue. Our investigation concluded that the violence issue has had a direct yet temporary adverse impact on tourism and hotel occupancy, but our interviews with local real estate agents and developers indicate that the price of real estate and the volume of buyers has not been affected by narco violence. We attribute this to the positive business/real estate community response.

6. “Baja California state – Level 2: Exercise Increased Caution Criminal activity and violence, including homicide, remain an issue throughout the state. According to the Baja California State Secretariat for Public Security, the state experienced an increase in homicide rates compared to the same period in 2016. While most of these homicides appeared to be targeted, criminal organization assassinations, turf battles between criminal groups have resulted in violent crime in areas frequented by U.S. citizens. Bystanders have been injured or killed in shooting incidents.” https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html.
Interview with Gerardo De La Cruz, Anticorruption Prosecutor
Ana Paula Madrigal & Regina Ancira

Given the novelty of the freshly-established Anti-Corruption System in the State of Jalisco, we decided to interview the elected Prosecutor, Gerardo Ignacio de la Cruz Tovar. Our purpose was to enable him to share with us the process of his election, the obstacles that he encountered, and the goals that he pursues so as to achieve the most success of his office.

He observed that the electoral process in the State of Jalisco was particularly long and tedious, as there were several hurdles in the process, because of the importance of the position and the expectations for it.

The process, as the Prosecutor mentions, was the following:

“After the vote that on December 24, 2017, what followed was for the Congress to appoint the Prosecutor elected. Once I had been chosen, the next step was to take the confidence control tests. Having these approvals, the Congress summoned me back to session to formally accept.”

However, what delayed the process the longest was:

“the amparo that an applicant for the position presented when he felt that his rights had been violated because he had not been included in any of the groups that, of course, with or without reason, which is not for me to say, he had the right to promote. Finally, the amparo proceeding was abandoned and the process continued. I think what led to the withdrawal of the claim was the realization that with its legitimate appeal it was preventing the fulfillment of a constitutional mandate and that in the long run the opinion of the Council for Social Participation was not formally binding.”

As for the interests involved in the election of the Prosecutor, Gerardo De la Cruz Tovar mentions:

“There are many interests involved in this process, it is somehow normal that some political groups intend to support a particular profile. In my case, being an independent professional who was not part of any political party, I naturally did not have the support of any political party with influence in the State. Finally, the pressure of society made a profile like mine stand out since there were clear manifestations that things could not be as they were before. There could not be a proposal of a person as a candidate for Prosecutor who depended directly on one of the powers. The aim was to change the way the system works.”

We believe that is the most interesting, original and above all effective thing about this particular system.

As for the goals to be achieved during the period that the Prosecutor will be in charge of, the main goal is to “have a different Prosecutor’s Office from the ones we know”, as mentioned by De La Cruz Tovar. He further observed:

“We know that the Attorney General’s Office and the Central Prosecutor’s Office are in charge of investigating and prosecuting crimes. In this case, the Specialized Anti-Corruption Prosecutor’s Office, which is also responsible for investigating and prosecuting crimes, aims to influence the culture of our society by generating training programs to disseminate a culture of non-corruption. It is therefore more a preventive than a repressive function. In this regard, the main limit that we have is inertia, the model of conduct with which we have performed as a society. It is the breaking of paradigms that is going to be difficult, but no doubt, little by little we will do our part to achieve it.”

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Anti-Corruption State Prosecutors: A Cornerstone

Ana Paula Madrigal & Regina Ancira

In 2015, fourteen articles of the Mexican Constitution were amended, as the first of many significant measures adopted by the federal government to address corruption. The amendment introduced the new National Anti-Corruption System. Thereafter, four complimentary laws were adopted (General Law of the Anti-Corruption System, General Law of Administrative Responsibilities, Organic Law of the Federal Court of Administrative Justice, and Federal Auditing and Accountability Act), and three laws were amended to conform to the new norms (Organic Act of the Attorney-General’s Office, Federal Criminal Code, and the Organic Act of the Federal Public Administration).

Mexican Constitution article 113 defines the National Anti-Corruption System as:

“(…) the instance in charge of the coordination among authorities in all the levels of government, with competence on the prevention, detection, and sanction of administrative responsibilities and corrupt activities, and to audit and control public resources (…)”

This system includes a Coordinating Committee, a Civic Participation Committee, a Preceding Committee of the National Anti-Corruption System, Local Anti-Corruption Systems, an Executive Department and an Executive Commission. Seven institutions are linked to the Coordinating Committee through its leading offices: the Superior Audit Office, the Specialized Prosecutor’s Office against Corruption, the Secretary of Public Affairs, the Federal Judicature Council, the Civic Participation Committee, the National Institute of Transparency, Information Access and Personal Data Protection, and the Federal Court of Administrative Justice.

The National Anti-Corruption System required the States to enact legislation on the subject – along with corresponding amendments to their local constitutions – to provide the System the necessary legal effectiveness. For example, on July 13, 2017, Jalisco’s State Congress approved amendments to its local constitution in preparation to the relevant legislative enactments. A Coordinating Committee, a Social Participation Committee, and a State Audit Office comprise Jalisco’s State Anti-Corruption System.

Jalisco’s Coordinating Committee links the national and local anti-corruption systems and public policies. Jalisco’s State Audit Office is in charge of inspecting public resources. Jalisco’s Social Participation Committee contributes to accomplishment of the Coordinating System’s purposes and links social and academic organizations and the local anti-corruption system.

As the Social Participation Committee plays a key role bringing together the new System, especially in election of the State Prosecutor, Jalisco’s deputies designated a special commission of citizens known as the “Selection Committee”, to be in charge of electing the members of the Social Participation Committee. The Selection Committee is comprised of nine citizens, of whom five are members of higher education and research institutions, and four of civil society organizations. Membership in the Social Participation Committee is earned after a rigorous process of evaluation of documents and credentials, and a series of interviews. Once formed, one of the first official duties of the Social Participation Committee was key to the election of the anti-corruption State Prosecutor. Based on the Committee’s expression of technical opinion concerning the candidates for the role, Jalisco’s Governor presented a final list of candidates to the State Congress for deliberation. The State Prosecutor appointed was professor Gerardo Ignacio de la Cruz Tovar, elected with a 30-to-9 vote of deputies present, and with a high score from the Social Participation Committee. Once elected, the State Prosecutor passed the corresponding confidence and control exams and assumed his new role.

The most relevant and distinct aspect of the selection process, and of the system itself, as expressed by Mr. De la Cruz Tovar, is the legitimacy achieved under the direction of the civil society. In the words of the newly elected prosecutor:

“…A candidate for the role of prosecutor could not be an officer of any of the three levels of power. The desired outcome was not a continuation of the same course of action, but a new work dynamic.”

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The Mexico Committee continuously seeks qualified professionals prepared to contribute their time and talents to continue developing a more active Committee. This is a prime opportunity to become involved with a community of lawyers that share an interest in Mexico and Mexican law, who are fellow American Bar Association members.

The Mexico Committee welcomes any suggestions, ideas or contributions to enhance this periodic publication. The current submittal deadline for contributions to the next issue is July 13, 2018, but please do not wait until the deadline. Rather, be in touch now with any member of our Editorial Committee with your offer of help, be it as an editor or a contributor. We can offer topic suggestions and provide translation and editing as needed.

If you are interested in participating actively with the Committee and in joining its steering group, please contact any member of the Committee leadership.

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Visit the student headquarters link, currently featuring the profile of a key member of our Mexico Update editorial team:
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