Message from the Co-Chairs

Our Mexico Committee is enthusiastic to see all of our members in Mexico City for the forthcoming meeting of our Section of International Law. The conference will be held November 6-9 at the InterContinental Presidente in Mexico City. As this issue of Mexico Update goes to publication, we have confirmed registrations of Section and Committee members and friends in excess of 200. We expect more to join, as we warmly welcome colleagues from the Barra Mexicana, ANADE, and AbogadasMX.

There is still time to register. The relevant link is: https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=326057211.

The program brochure is available through the link and reflects the sustained efforts of a broad swath of our Committee in the recruitment of great keynote speakers, cutting edge panels and the best venues in Mexico City for receptions and events.

Here is a hint for non US lawyers who have not yet registered. Of course the non member rate is more than the member rate. But, it is possible for non US lawyers to join the ABA and the Section of International Law for the balance of this bar year, i.e. through August 2019, for just US$80. This is in fact less than the difference between the member and the non-member registration rate. Be sure to join the ABA, our Section and our Committee. You will find us numerous and welcoming at the forthcoming Mexico City meeting. There is no better way to begin to appreciate the benefits of becoming an active member of our community.

Susan Burns, Luis Perez-Delgado, John Walsh, co-chairs

Message from the Editors

This issue of MEXICO UPDATE addresses a sampling of the key issues of Mexican law to be explored at the forthcoming November 2018 Mexico City meeting of the Section of International Law. It merits a thorough read from first to last page. Looking forward to seeing you in Mexico City in November!

Dra. Yurixhi Gallardo, Patrick Del Duca, editors
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 International Conference
Mexico City
November 6-9, 2018
Ana Paula Madrigal Garza

This year, the section of International Law of the American Bar Association is hosting its 2018 International Conference in Mexico City. “The past conferences have been hosted in Miami, Tokyo, Montreal and Buenos Aires, which have had an amazing outcome, with more than 700 attendees from all over 40 different countries.”

From elections going around in different countries of America, the uncertainty of the North American Free Trade Agreement (NAFTA) negotiations, investment and trade changing worldwide faster than ever before, to national anticorruption and criminal enforcement laws, this conference will address important, controversial, hot topics of recent times. Legal experts have a lot to express, a lot to discuss; and attendees have a lot to learn from them.

The specific tracks the programs will be leading throughout the Conference are: Trade, including NAFTA negotiations, elections, investment treaties, harmonization of international trade; Dispute, which include criminal enforcement laws, investment arbitration, Investor-State Dispute Settlement; Business, including labor of mobility, compliance landscape in Latin America, energy market and tax reforms; Investing, containing topics of financial crisis, Real Estate issues, nationalism and heightened strategic scrutiny, the influence of Chinese in Latin America Business Culture; and lastly Corporate and Sectors which comprise cross-border commercial challenges, new global frontier trade laws, and global economy.

Having clear that globalization is a key point nowadays in the performance of the profession, it becomes a necessity for people to be updated and prepared, more than ever before, in these matters the Conference has to offer. This is why it is a great opportunity not only for people who are in performance of the profession, but students who are building up their career, or in general, people who are interested in global environment, legal issues related to cross-border transactions and international dispute resolutions.
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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From Varied State and Federal Civil Procedure Codes to a Single National Civil and Family Procedure Code

An interview of Councilwoman Zoila Gutierrez Avelar

Yurixhi Gallardo

“On September 17, 2017, the abrogation of Mexico’s State and Federal Civil Procedure Codes was announced by decree published on the OFFICIAL GAZETTE OF THE FEDERATION, with the purpose of granting the Federation the faculty to enact a National Civil and Family Procedure Code”, as declared Zapopan city councilwoman Zoila Gutierrez Ávelar in a May 3, 2018 interview.

The abrogation of these codes implies a significant impact in Mexico’s legal system. The councilwoman explained:

“six months were granted to work on the enactment of the new Code, and during that period of time, the federal senator from the state of Durango, Yolanda de la Torre, was prudent to organize a series of discussions to which the Mexican Bar Association (Barra Mexicana), the National Association of Business Lawyers (ANADE, by its Spanish acronym), and myself, were invited, to express our opinions on the content of the new Code, taking into account our concerns and experiences. The discussions, the last of which was particularly fruitful, were held at the Federal Senate and concluded 15 days ago.”

A leading criticism directed against adoption of the new Code is based on federalism. The Code’s detractors assert that it constitutes an illegitimate act of federal interference against which each state’s autonomy must prevail. The councilwoman responded to this criticism, stating:

“Look, I have two opinions on this matter, perhaps one contradicts the other, but experience tells me to never believe in extreme absolutes.”

“On the one hand, for many years, the content of the various Procedure Codes of states followed one of three models: the Jalisco State Civil Procedure Code; the Civil Procedure Code for the Federal District (now Mexico City); and, the Guanajuato State Civil Procedure Code. Nevertheless, from 10 to 15 years ago, varied political ideologies and schools of thought led to major changes in each state’s procedures. For example, the state of Nuevo Leon has a significantly different code from that of Jalisco. While Nuevo Leon’s code is more progressive and contemplates completely oral procedures, civil procedure in Jalisco is still regulated in the written, Roman, traditional style. These growing divergences ultimately led to

**“Which is why I believe in the necessity of a single code to regulate and standardize civil procedures nationwide.”**

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“And let’s not forget a proceeding is ultimately a tool. In other words, the proceeding isn’t going to give you the rights you claim but don’t prove to have, or at least it shouldn’t give them confusion. A lawyer versed in the procedure of one state required to address the procedure of another state, faces the complicated challenge of mastering substantially divergent local procedures. Hence, I believe in the necessity of a single code to regulate and standardize civil procedures nationwide.”

“And, let us not forget the procedure is ultimately a tool. In other words, the procedure should not accord rights claimed but not established as entitlements. The rules that govern civil procedure should be, then, a path that a person must take in order to obtain judicial relief against violation of a legitimate right, a path that should be equally accessible to all the governed regardless of jurisdiction.”

“On the other hand, each state differs from the others in terms of budget and traditions. Not all states possess the same resources or legal sophistication. We know that this is a difficult challenge to handle.”

Lastly, Mexico’s recent and hotly contested presidential election will likely cause further discussion of the new Code to be delayed for some months, as the councilwoman affirmed:

“Sadly, in our country, the different ideologies inside each ratifying legislature, make long negotiations inevitable, and, with the additional political burden of elections, consensus and dialogue become more difficult to achieve. Usually, the members of the legislatures’ openness to negotiation is undermined by their underlying political agendas, which I think may discourage this type of work from advancing.”

San Diego/Tijuana City Chapter
September 25, 2018

Members of the San Diego/Tijuana City Chapter gathered in San Diego on the evening of Tuesday, September 25, 2018 for a celebration of the Mexico Committee book (THE MEXICAN LEGAL SYSTEM: LAWYERS’ ESSAYS ON THE CONTINUING EVOLUTION) and to prepare for the forthcoming November 2018 Section of International Law meeting in Mexico City. Chapter leaders assured good food (Mexican of course), sunset views from an upper floor over San Diego bay, and a lively mix of Mexican and US lawyers in law firm practice, inhouse counsel and law students. Co-editor of the Committee book, Patrick Del Duca, shared vignettes of preparation and publication of the book through the Section, highlighting opportunities for engagement of City Chapter members with the Section of International Law.
Ejidos in the AMLO Era: Legal & FCPA Implications of a New Policy Emphasis

John Walsh, Jeff Habenicht & Russell Spivak

Mexico has a unique form of land ownership known as ejidos. Ejidos are communal agrarian organizations in which community members hold land collectively and generally use it for agriculture or husbandry. As of 2015, Mexico had more than 30,000 ejidos, controlling more than 52% of the nation’s land. Given the sheer expanse of the ejido system, businesses operating in Mexico often deal with ejidos and the legal issues surrounding them. This is particularly true of businesses engaged in agriculture, infrastructure projects, or extracting resources, such as minerals or petroleum, who must often negotiate land-use rights with the ejidos. And because ejido lands are controlled collectively, businesses generally negotiate such rights with the leaders of the ejido.

These relationships between businesses and ejido leaders raise unique issues under the U.S. Foreign Corrupt Practice Act (“FCPA”). Importantly, if ejido leaders qualify as “foreign officials” under the FCPA, businesses must take care not to improperly influence their decisions regarding ejido land. Although U.S. law is unsettled on this point (i.e., whether ejido leaders are “foreign officials”), one important factor that U.S. courts and the Department of Justice (“DOJ”) would consider is how the Mexican government characterizes ejidos and their leaders.

In July 2018, Mexicans elected Andrés Manuel López Obrador, sometimes known by his initials, “AMLO,” as their next president, and he will take office in December 2018. AMLO’s winning platform included promises to increase the focus and attention devoted to rural communities and frequently discussed ejidos. Generally, these proposed policies sought to empower ejidos, acknowledging their autonomy and importance in Mexican society. This article will review how two distinct AMLO proposals (the “Plan de Ayala 2.0” and “AMLOpolis”) relate to ejidos. Although only one part of the full FCPA analysis, AMLO’s characterizations of ejidos – and potential future policies – have implications for future analysis of ejidos as government instrumentality under the FCPA.

AMLO’s Characterizations of Ejidos

Plan de Ayala 2.0

On July 1, 2018, AMLO endorsed the “21st Century Ayala Plan for the rescuing of the countryside and food sovereignty of Mexico” (hereinafter “Ayala Plan 2.0”). The Ayala Plan 2.0 stresses the importance of public and communal land-holding and commits to preventing the privatization of ejidos. To this end, the Plan states “it is necessary to reestablish the role of the ejidos and indigenous communities as public entities and protagonists for the economic, social, political, and cultural development.” Implicitly, the Ayala Plan 2.0 recognizes that the public character of ejidos is not currently clear, and then calls for its reinforcement, committing to granting ejidos “full recognition as economic, social, and political organizations.” Finally, the Ayala Plan 2.0 stresses the role of ejidos in federal programs: “The ejido and communities will be recognized as recipients of government support and as agents for federal policies in the ejidal territories and communes.”

AMLOpolis

During the presidential campaign, AMLO nominated Román Meyer Falcón to head the Secretariat of Agrarian, Land, and Urban Development (“SEDATU”). After his nomination, Falcón published a development plan titled AMLOpolis, which laid out seven core initiatives. One of these initiatives, the “Agrarian Policy,” seeks to address problems of “poverty and marginalization” in rural areas. To this end, the Agrarian Policy stresses the importance of “protecting collective property rights and democratic participation and deliberation in decision-making” and proposes to do so by leveraging current ejido leadership by linking the ejido general assembly with the board of residents in the making of decisions concerning the ejidal land. These structural changes are intended to promote awareness as to the consequences of decisions concerning ejidal territory, in light of the pressures of urbanization.

Implications for Future FCPA Analysis

The FCPA prohibits “giving anything of value to any foreign official for purposes of influencing any act or decision of such foreign official in his official capacity.” Foreign officials include “any officer or employee of a foreign government or any department, agency, or instrumentality thereof,” as well as “any person acting in an official capacity for or on behalf of any such government or department, agency, instrumentality.” Whether an entity is an “instrumentality” of a foreign government is a “factspecific analysis of an entity’s ownership, control, status, and function.” To make this determination, U.S. courts and the

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DOJ consider a non-exclusive list of factors, including “the foreign state’s characterization of the entity and its employees.”22

Given AMLO’s presidential victory, his campaign platforms and future policies may be considered part of Mexico’s characterization of the ejidos’ role in society and their relationship to the Mexican government.23 As detailed above, AMLO’s campaign platform repeatedly discussed ejidos and their role in society, generally describing them, at least aspirationally, as public bodies carrying out important government roles. For example, the Ayala Plan 2.0 specifically promises ejidos “full recognition as economic, social, and political organizations.”24 Moreover, the Ayala Plan 2.0 refers to the ejidos as “agents for federal policies in the ejidal territories.” Likewise, the AMLOpolis Agrarian Policy emphasizes the importance of ejidos in allowing for democratic participation of rural inhabitants. These characterizations, taken together, signal a potential policy shift in the new Mexican administration toward treating ejidos more like instrumentalities of the Mexican government. Only time will tell whether AMLO’s administration implements these policy pronouncements in practice, however.

Conclusion

Many factors enter into the analysis of whether an entity is a government instrumentality and AMLO’s campaign characterizations of ejidos are in no way conclusive. However, businesses engaging in transactions with ejidos should pay close attention to how AMLO’s administration implements his campaign platforms once in office. To the extent ejidos play an increased role in Mexico’s government, that shift has implications for FCPA analysis that businesses will need to take into account in dealing with ejidos, as well as ejido officers and agents. In preparation for possible AMLO reforms, businesses may want to analyze current relationships with ejidos to better understand their implications.

1. Land rights are intricately woven into Mexico’s independence and subsequent constitutional history, leading to this unique form of land ownership. The full history of the development of ejidos is beyond the scope of this paper but for more background, see William D. Signet, Grading a Revolution: 100 Years of Mexican Land Reform, 16 L. & BUS. REV. AM. 481 (2010). See generally Isaías Rivera Rodríguez, Elements of a Next Revolution in Mexico’s Agrarian Law, in MEXICO AND ITS LEGAL SYSTEM: LAWYERS’ ESSAYS ON THE CONTINUING EVOLUTION 173 (Yurixhi Gallardo and Patrick Del Duca, eds., American Bar Association/ Carolina Academic Press, 2018).
7. All translations by author.
9. The Plan’s name pays homage to the 1911 Plan de Ayala, drafted by Emiliano Zapata during the Mexican Revolution. This original document denounced then-president Francisco Madero and set out Zapata’s vision for land reform in Mexico. See ROBERT P. MILLON, ZAPATA: THE IDEOLOGY OF A PEASANT REVOLUTIONARY 60 (1995).
10. See Ayala Plan 2.0, ¶ 24.
11. See id. Resumen ¶ 1.
12. Id. ¶¶ 37-38 (“The ejido and indigenous communities, will have full recognition as economic, social, and political organizations in all manner of public policies and operating regulations of their programs. The ejido as a collective entity, will be considered an entity of public interest and all public policies and operating rules will acknowledge as much, for access to resources of public programs.”)
13. Id. Compromisos Específicos ¶ 3.
15. See generally Falcón, supra n. 6.
16. Id. at 15.
17. Id. at 16.
18. Id.
21. RESOURCE GUIDE at 20.
22. Id.; see also United States v. Carson, 2011 WL 5101701, *3 (May 18, 2011 C.D. Cal.).
23. Depending on whether AMLO implements his various platforms once in office, there may be additional factors that need to be analyzed, including “the level of financial support by the foreign state,” “the entity’s provision of services to the jurisdiction’s residents,” and “the general perception that the entity is performing official or governmental functions.” See RESOURCE GUIDE at 20.
Government around the world are estimated to spend US$9.5 trillion through contracts every year. However, much of the contract information has not been available for public review. This led to the development of the Open Contracting Data Standard (OCDS) to increase contracting transparency and to allow deeper analysis of contracting data for the parties involved and society in general. Open contracting encourages more competitive arrangements for governments, levels the playing field for the private sector, and benefits citizens because it results in higher quality goods and services. According to Open Contracting Partnership,

Open contracting is about publishing and using open, accessible and timely information on government contracting to engage citizens and businesses in identifying and fixing problems.

Mexico has been at the forefront of innovation and collaboration in this arena. It was among the first countries to validate the OCDS standard in 2014 and has pursued open contracts in a variety of venues such as implementation of OCDS for the new airport in Mexico City—the 5th largest infrastructure project in the world.

In that regard, Mexico’s Open Contracting Partnership introduced a revised and translated version of the Open Contracting Global Principles, in hopes that in the near future local governments and business groups will adopt it. The Open Contracting Mexican Data Standard, or “EDCA-MX”, seeks to allow the public to monitor public procurement using online tools that must be harmonized with Mexico’s specific terminology and applicable legislation, particularly in relation to transparency and government enforcement. Also, under EDCA-MX, civil society and business entities may participate in open contracting processes by contributing with suggestions over public expenditure and potential areas of improvement.

The World Bank Group, the executive office of the president of Mexico, NGO Transparencia Mexicana, and constitutionally autonomous institutions such as the Mexican Institute of Access to Information (INAI), are integrally involved in building this more open and transparent process, and are optimistic that a general adoption of the standard may be achieved at a national level if enough States come to realize its relevance as a pathway to comply with modern transparency regulations. Moreover, the standard may not only be accessed by executive governmental entities or by business or civil society organizations, but also by the legislative and judicial branches at any level of government, which provides the opportunity for government to engage with Mexican society by demonstrating its willingness to be under public scrutiny.

Historically, Mexico’s struggle with institutional corruption has daunted civil society’s participation in public affairs for far too long. Nevertheless, over the last few decades Mexico efforts for transparency have led the country into a new era of true democratic participation and accountability. EDCA-MX is an unprecedented achievement from an increasingly critic and self-conscious nation that will hopefully become the standard that sets in motion Mexico’s institutional machinery towards getting rid of paralyzing corruption.

3 The current OCDS version is the 1.1 release, published on 31 May 2017.
6 On February 20, 2015, president Enrique Pena Nieto issued a presidential decree that regulates government use of open data and establishes that open data should be made available to the public through the webpage www.datos.gob.mx. In 2016, the Mexico City New International Airport project became the first mega-project in the world to implement the standard through the website https://datos.gob.mx/nuevoaeropuerto/, which publishes more than 321 relevant contracts and contracting processes.
7 Andrés Manuel López Obrador (AMLO) election as President creates uncertainty regarding continuation of the Mexico City New International Airport. Early in his electoral campaign, AMLO explicitly opposed the project, suggesting alternative locations, but his stance seemed to be more open as time progressed. According to Javier Jiménez Espriú, the president-elect’s proposed Secretary of Communications and Transportation, the project’s fate will be decided by a panel of experts formed by members of current president Enrique Peña Nieto’s government and AMLO’s own consultants, with some possible outcomes including: to cancel the project, to review contracts already awarded through procurement, to grant a concession for the airport’s construction and/or operation.

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What happens after the airplane falls? An international tort law study
Romina Guarneros Galaz

The crash
On the afternoon of July 31, Aeromexico’s flight 2431 prepared to takeoff from the city of Durango for an easy flight to Mexico City. The passengers took their seats, the aisles were clear of luggage, the seat belt signs were on, and the flight attendants demonstrated safety features of the aircraft. Despite the stormy weather, the pilots decided all was in place for successful takeoff. Unfortunately, after the aircraft lifted only a few yards, it abruptly collapsed back to earth.

Fortunately, none of the 103 passengers and crew on board died, although some were severely injured. The cause of the plane crash is being questioned. The official version of the operator, Aeromexico, attributes the crash to bad weather.

The lawsuits
Among the passengers on board the aircraft were at least 65 American citizens, who received medical attention after the crash, and once recovered returned to their hometowns. Some of these, fifteen to be precise, decided to take legal action against the airline, and therefore filed a class action guided by the law firm Corboy & Demetrio, a firm that specializes in class actions against airlines, having a history of obtaining over US$25 million as damages for the death of a passenger in a plane crash.

Despite the action taken by the American passengers, none of the Mexican passengers has taken legal action against the airline. The question is: is Mexican tort law structured, such that those injured must suffer the consequences in silence?

Reparation of the damage
Mexico’s aviation industry is regulated by the Law of Civil Aviation (Ley de Aviación Civil). Its Article 61 establishes that flight operators and airlines are responsible for any damage caused to passengers or their belongings. According to Mexican Federal Civil Code Article 1915, the aggrieved party has the right to request reparation of the damage caused in two ways. It can demand to be placed in the same position it was had the damage not been caused, if possible; or, it can request damages and lost profits.

The Mexican Aviation Act further establishes that any harm caused to a passenger grants it (or its predecessors, as pertinent) the right to receive three times the amount established under Mexican Federal Civil Code Article 1915, without benefit of the limitation of responsibility provided under Mexican civil law, when it can be proven that the damage occurred with bad faith or fraud.

Regarding damages to passenger belongings, checked luggage and carry-on bags are treated differently. In the case of damage or loss of checked luggage, the airline is responsible in the amount of 75 UMAs (Unidad de Medida y Actualización—Measurement and Actualization Units), that correspond to just over US$300. Damage to carry-on bags corresponds to up to 40 UMAs, i.e., around US$150.

Mexico’s legal status
Mexican law does provide a system of remedies in case of damages on an airplane, even if such damages occurred by an act of God or force majeure. Thus, the Mexican citizens aboard flight no. 2431, are well equipped to defend their rights to compensation. Perhaps the phenomenon in course derives from a cultural difference between the USA and Mexico: American citizens are used to a culture of legal proactiveness, whereas Mexican citizens rarely set foot in courts unless they have no other choice but to do so.

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Debates of Presidential candidates play an enormous role in Mexican elections. For the 2018 Presidential elections, the National Electoral Institute organized three. The first took place in Mexico City April 22, the second in Tijuana May 20, and the last in Merida June 12, just a few weeks before the elections. The candidates debating were Ricardo Anaya (ANAYA), Andrés Manuel López Obrador (AMLO), Jose Antonio Meade (MEADE), Jaime Rodríguez; and only in the first, Margarita Zavala.

First debate: Politics and Government
Concerning Violence and Public Security, MEADE suggested creation of a single National Criminal Code, and a specialized investigation agency; AMLO proposed dialogue with experts to analyze implications of amnesty to criminals; and, ANAYA proposed to double the Federal Police, draw on support in the Navy and Army, and establish a security prosecutor who would be autonomous and independent.

Concerning combating corruption and impunity, MEADE proposed to eliminate the President’s privilege of immunity from legal procedure from assumption of office, having an autonomous public prosecutor, and making declaration of inheritance and property obligatory for all. AMLO suggested that the problem will end by governing with example, as well as by ending all the privileges the government has. ANAYA held firm that “civil death” and jail for corrupt public servants are the best option.

When debating Democracy, Pluralism, and Vulnerable Groups, MEADE discussed implementing a mechanism in which Congress would review fulfillment of his campaign proposals. AMLO stated that he would voluntarily subject himself to revocation of his mandate every two years. ANAYA stood firm on building a strong civil society, in coalition with government, where the president will report to Congress. He also would reduce the discrepancy in salary between men and women.

Second debate: Mexico in the world
Concerning Foreign Trade and Investment, MEADE discussed the situation Mexico faces in NAFTA (North American Free Trade Agreement) negotiations, and proposed that Mexico should seek opportunities elsewhere, such as Asia and Australia. AMLO asserted his full agreement with Donald Trump’s position on renegotiation of NAFTA, to add a clause that Mexico increase minimum wages so that the treaty is fair to all. ANAYA spoke about increase in the minimum wage, starting at 100 Mexican pesos and then rising to 200. He also indicated he wanted to eliminate taxes for those who earn less than ten thousand Mexican pesos. And in the specific case of the border, he said he would lower the VAT to 10%.

The discussion of Border Security and Fight against Transnational Organized Crime went like this: MEADE proposed to shield borders with a “weapons protocol” to avoid weapons entering the country. MEADE further advocated a single Criminal Code to address the struggle to limit acquisition of weapons by organized crime. AMLO suggested to attack violence with economic growth and job improvement. ANAYA promoted cultural and exercise programs to make police less corrupt, and demanded that United States do its part.

On migrant rights, MEADE talked about solving the problem from its roots, by working with migrants in their home communities, improving education and employment. AMLO said that Mexican Consulates in the United States must be transformed into a kind of attorney for the defense of Migrant Rights. ANAYA stated that he would double the resources in Consulates to focus on legal protection, as well as ensuring the representation of migrants in Congress.

Third debate: Economy and development
In the matter of “Economic Growth, Poverty and Inequity”, MEADE suggested that to grow financially as a country, the wages for men and women should be equal, and also competitive with the United States and Canada. AMLO, on the other hand, defended the necessity of ending corruption and eliminating privileges of the political class. ANAYA proposed to review government expenses, double wages, and equalizing opportunities in salary for men and women.

In “Education, Science and Technology”, MEADE added to his proposals investing 50 billion pesos in school infrastructure. AMLO talked about cancelling the existing educational reform, asserting that it was a labor reform focused on harming teachers. Lastly, ANAYA talked about wanting to improve or add technology to all schools.

The last topic to be discussed was “Health, Sustainable Growth and Climate Change”. In this subject, MEADE intended to organize the three biggest health institutions of the country (IMSS, ISSSTE and Seguro Popular) so that those enrolled in any of them could choose freely among them. AMLO proposed that an increase from 0.5% of the GDP to 1% would improve science and technology. He also stated that he would rehabilitate the six refineries in Mexico, and further asserted his proposition of building a new refinery in the state of Tabasco. ANAYA undertook the challenge of creating an Electronic Clinical Database, to guarantee that there are medicines, doctors and nurses in all the clinics and to be able to go to any public clinic.

Andrés Manuel Lopez Obrador’s Victory
The elections conducted July 1 elected a new president and a new Federal Congress, as well some local elections. The winner of the Presidency is the candidate for the coalition “Together we will make history” formed by the political parties Work Party (PT), Social Encounter Party (PES), and National Regeneration Movement (MORENA), namely Andrés Manuel Lopez Obrador (AMLO).

In pre-election polling, AMLO was always above the rest of the candidates by at least 20 points and on the official results of the elections provided by the National Electoral Institute (INE) he won 53% of the votes.

AMLO and his Political Coalition did not just win the presidential race, they also won majority in the senate with 54 seats in direct elections and can become up to 70 with plurinominal senators (this out of the 128 seats in the Senate), and they also won majority of the Chamber of Deputies with 218 seats in direct elections and can become 312 with the plurinominal Deputies (out of the 500 seats in the Chamber).

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On May 11, 2018, the OFFICIAL GAZETTE OF THE FEDERATION, published a Congressional decree which amended Mexico’s General Law of Health (Ley General de Salud) to include article 10bis, effectively introducing conscientious objection into Mexican healthcare. The new article reads:

“Article 10 Bis. - Health professionals that are part of the National Healthcare System may exercise conscientious objection and excuse themselves from providing the services hereby regulated.

Conscientious objection may not be invoked in cases of medical emergency or where the life of a patient is in threat, under penalty of law for professional misconduct.

The exercise of conscientious objection shall not be cause for any sort of labor discrimination.”

The Federal Senate’s Decree draft Opinion of March 21, 2018 has defined conscientious objection as:

“holding one’s own conscience to be more imperative than compliance with a certain law, according to which, an objector, as part of a belief system, may not be compelled to perform certain services in favor of society as required by law.”

To achieve recognition of conscientious objection has been arduous and complicated of a period of years, because of the controversial nature of the context in which it would apply, which is the case of healthcare; and because of the thin line between respect of authority and potential abuse of law, to which explicit regulation of such right could certainly lead. Nevertheless, regulating conscientious objection is a necessity of utmost relevance, as it implies the protection of the fundamental right of freedom of thought, conscience and religion.

Although Mexico’s legal system had already regulated conscientious objection implicitly in specific articles of the Federal Constitution and in various forms of legislation, the introduction of an explicit regulation was the result of several factors, most importantly international pressure, as Mexico lagged significantly behind other countries. For example, - as the Federal Senate’s Decree Draft states- forty-seven states and the District of Columbia of the United States of America have already enacted legislation regulating conscientious objection in abortion-related issues. Moreover, in France, conscientious objection as an excuse not to perform abortions is regulated by Law 79-1204, Article L. 162-8, from December 31, 1979; as an absolute and unlimited right. In Germany, Article 2 of the 5th Criminal-Law Reform Act of the Criminal Code of 1974 states:

“no person may be compelled to cooperate in the interruption of any pregnancy, except as such cooperation becomes needed.”

The right to conscientious objection, regulated by article 10bis of Mexico’s General Law of Health, although with clear limitations, represents, for the Senate, a noteworthy advancement towards a country that respects, guarantees, and promotes human rights; since the limits to the right of freedom of conscience and religion are broadened. This amendment generated and will continue to generate vast consequences for Mexico’s internal and external sovereignty: internal sovereignty as these laws permit to go further into other legislations, allowing their expansion into varied areas of society, such as military service, traditional indigenous customs, etc. And lastly, the amendment has implications for external sovereignty, as it constitutes international progress towards a conventional rule of law.

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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 November 1, 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. This is also the season for Year in Review contributions. Interested potential contributors are invited to contact the Committee leadership.

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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Past Section Chair Robert Lutz, Membership Officer Patrick Del Duca, and Julio Soto-Kim of the Southwestern Law School International Law Society, on October 9, 2018 at Southwestern Law School in Los Angeles. Prof. Lutz provided introductory remarks to a conversation on law reform in Mexico, led by Patrick Del Duca and anchored in the Mexico Committee book: MEXICO AND ITS LEGAL SYSTEM: LAWYERS’ ESSAYS ON THE CONTINUING EVOLUTION.