

NAFTA and Human Rights in Mexico

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INTRODUCTION

When Mexico, the United States and Canada decided to undertake negotiations toward a North American Free Trade Agreement (NAFTA), the topic raised much discussion in each of the three countries. Commentary on NAFTA was particularly abundant in the United States and Mexico. Since Canada was already linked to its southern neighbor by such an agreement and its trade with Mexico was comparatively small, Canada generated less discussion about the agreement than the other two countries.¹

With respect to discussion in Mexico, newspapers and magazines have published an impressive number of articles on NAFTA. Another source of commentary is the Permanent Forum of Information, Opinion and Dialogue on the Negotiations of the Free Trade Agreement among Mexico, the United States and Canada, sponsored by the Mexican Senate. That event, which took place between March and September of 1991, generated hundreds of opinions by the numerous participants, including business people, politicians, journalists, government officials, scholars, workers and farmers.² The vast majority favored negotiations toward a free trade agreement.

The topic was also widely discussed in the United States, particularly during the weeks prior to the NAFTA vote in the House of Representatives. Opinions there were clearly divided and the out-

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¹ Between 1988 and 1992 trade between Mexico and Canada tripled. During this period Mexico's exports increased 281% and its imports increased 308%. *Report Before the Mexican Senate* (Nov. 25, 1993) (statement of Fernando Solana, Secretary of Foreign Relations).

² See SENADO DE LA REPÚBLICA, MÉXICO, AUDIENCIAS PÚBLICAS, ACTO DE INSTALACIÓN QUÉ ES Y PUÉ SE ESPERA DE UN TRATADO DE LIBRA COMERCIO (1991) (publishing proceedings in eighteen volumes).

come of the vote was uncertain until the very last moment.³ But, in contrast to the opinions and discussions in Mexico, which were basically from an economic point of view, several non-trade issues dominated NAFTA discussion in the United States. Commentators in this country focused on the supposed conditions prevailing in Mexico concerning human rights, low wages and workers' rights, and the environment.

NAFTA does address certain topics that normally are not included in a trade agreement. These topics include investment (Chapter 11), cross-border trade in services (Chapter 12), telecommunications (Chapter 13), financial services (Chapter 14), competition policy (Chapter 15), and intellectual property (Chapter 17). According to Stephen Zamora, inclusion of these topics demonstrates "a trend . . . to incorporate into international trade negotiations the conclusion of agreements on subjects that lie beyond the treatment of exports and imports of goods."⁴ This trend was evident in the Uruguay Round of trade negotiations that took place within the General Agreement on Tariffs and Trade. However, additional issues were raised in the case of Mexico during the NAFTA negotiations.

First, there has been much discussion of alleged human rights violations in Mexico. It has been said that many human rights abuses go unpunished "owing to the culture of impunity that has traditionally surrounded human rights violators."⁵ One report speaks of torture being endemic in Mexico and that it is often practiced not only by federal and state police but also by federal security forces.⁶ Juan E. Méndez, Executive Director of Americas Watch, stated that torture and abuse by federal and state police and by the

³ The last polls predicted an outcome even closer than the final 234-200 vote. See H.R. 3450, 103d Cong., 1st Sess. 139 CONG. REC. H 10,048 (1993) (enacted) (indicating that final House vote was 234-200 in favor of NAFTA); see also John Balzar & Robert L. Jackson, *NAFTA Volleys Fly Coast to Coast as House Vote Nears*, L.A. TIMES, Nov. 15, 1993, at A13 (stating that White House claimed head count three days before House vote was at least a dozen votes short).

⁴ Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 LAW & POL'Y INT'L BUS. 391, 403 (1993).

⁵ U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1992 441 (1993).

⁶ See AMERICAS WATCH, HUMAN RIGHTS IN MEXICO: A POLICY OF IMPUNITY 9 (1990) (reviewing general history of torture by Mexican police and security forces).

country's security forces are a "chronic problem."⁷ He added that the most notorious human rights violator in recent years has been the Federal Judicial Police.⁸

Sometimes these comments may be founded. Others are open to discussion. Some others, however, are so clearly unfounded and absurd that an uninformed person would be led to believe that Mexico is a lawless country in which human rights are totally absent. A good example of such commentary is the following:

In theory, Mexican laws offer extensive protection of civil rights, but in practice Mexicans lack civil liberties that Americans take for granted: freedom to speak without fear, freedom to select political representatives and labor leaders and freedom to build a business without threat of extortion, intimidation or even murder by police and other government officials.⁹

A second issue raised during the NAFTA negotiations was NAFTA's potential effects on workers. American organized labor opposed NAFTA,¹⁰ fearing that many U.S. factories would close their operations in the United States and open new plants in Mexico, seeking to reduce substantial production costs. It was said that lowering production costs would be possible in part by paying dramatically lower wages in Mexico¹¹ and providing Mexican workers with minimal or no health care or pension benefits. U.S. companies would also realize savings because they could virtually ignore work-site safety and environmental regulations.¹²

Finally, discussion during the NAFTA negotiations also centered on the situation of the environment. It has been said that despite

⁷ JUAN E. MÉNDEZ, HUMAN RIGHTS WATCH, HUMAN RIGHTS IN MEXICO 3 (1993) (testimony before the House Comm. on Small Bus., June 29, 1993) [hereafter HUMAN RIGHTS].

⁸ *Id.*

⁹ Christopher Whalen, *Bordering on Repression: We Shouldn't Trade Freely With Mexico Until It Cleans Up Its Act*, WASH. POST, Dec. 27, 1992, at C3.

¹⁰ See *United States-Mexico Free Trade Agreement: Hearings Before the Comm. on Finance U.S. Senate*, 102d Cong., 1st Sess. 31 (1991) (statement of Thomas R. Donahue, Secretary-Treasurer, AFL-CIO) (voicing AFL-CIO's concerns that NAFTA's substance was "harmful and ill conceived," and that Congress lacked a proper opportunity to debate it).

¹¹ See, e.g., Peter Morici, *Grasping the Benefits of NAFTA*, 92 CURRENT HISTORY 50, 51 (1993) (estimating that Mexican wages are about 14 percent of U.S.-Canadian wages).

¹² See Thomas Gibbons, *Tough Trade-Offs*, 19 A.B.A. SEC. INDIVIDUAL RTS. AND RESPONSIBILITIES 26 (1992) *appears as Free Trade: Will Mexico Honor Human Rights?* (discussing reasons for U.S. businesses to move to Mexico under NAFTA).

all the protests to the contrary, "the environmental agenda is still marginal to the driving forces behind Mexican development and the United States-Mexican relations that frame it."¹³ A further concern is that the text of NAFTA provides "no substantive treatment of the environment."¹⁴

Critics of NAFTA expressed these three concerns before the negotiations of the side accords on labor and the environment by Mexico, the United States and Canada. But, even after the negotiations took place and the agreements were announced on August 12, 1993, some environmental and labor groups were still not satisfied. These groups continued their campaigns against NAFTA and its approval in the U.S. Congress.

I. MEXICO'S CRITICS AND THE PERSISTENCE OF HUMAN RIGHTS PROBLEMS

Critics of Mexico's record on human rights, labor, and the environment base their criticisms on many different sources. Some information proceeds from international organizations that monitor and promote observance of human rights. Other information comes from scholars of different fields; still more from sources originating within Mexico that can be traced to well-known critics of the Mexican Government.

On the one hand, some sources of information about Mexico's human rights record are clearly biased. On the other hand, some critics defend their cause against NAFTA by ignoring the reliable information at their disposal about Mexico's human rights successes. This was demonstrated by Mr. Ross Perot in the debate with Vice President Al Gore on November 9, 1993, whose comments surprised a good percentage of the audience that saw him on television, especially the audience in Mexico.¹⁵ Of course, it is also possible that Mr. Perot deliberately exaggerated his remarks to try to impress the public and to strengthen opposition to the treaty, in what seemed a lack of arguments on his part.

¹³ Steven E. Sanderson, *Mexico's Environmental Future*, 92 CURRENT HISTORY 73, 74 (1993).

¹⁴ *Id.* at 73.

¹⁵ See, e.g., *In Debate With Gore, Analysts Say Perot Lacks Facts, Figures*, THE NEWS (Mexico City), Nov. 10, 1993, at 2 (citing Rafael Rangel, Systems Director of prestigious Monterrey Institute of Technology, who said Mr. Perot's statements were "a complete falsehood which is greatly distorting our image.").

The reports of international organizations illustrate that no country is totally immune from human rights complaints. Human rights violations occur almost everywhere. In some cases practices persist despite new trends in the field of human rights. Thus, even a long history as a democratic nation, or a high standard of living, does not guarantee a completely clean human rights record.

For example, police brutality is a widespread practice. Throughout the world there are frequent cases where police officers do not treat individuals with the dignity or rights due to the human person. The Rodney King case, where police officers brutally beat a Los Angeles motorist on March 3, 1991, had world-wide exposure on television. The impression it left in viewers everywhere surely will not be forgotten easily.

Furthermore, the furious public reaction generated by the jury decision, which declared the Los Angeles police officers not guilty, was an impressive sight. The details in the King case were known by a mere coincidence, a video taken by an amateur cameraman who lived near the site of the beating.¹⁶ It is thus logical to presume that many similar incidents have taken place in Los Angeles and other cities of the United States without the public's knowledge.

The Border Patrol has committed criminal acts against Mexican migratory workers for years with little public reaction. A report by Mexico's National Commission for Human Rights describes these crimes.¹⁷ They range from abuses, sexual offenses and illegal imprisonment, to robberies, beatings and even homicides.¹⁸

A report by Americas Watch also details human rights abuses committed by the Immigration and Naturalization Service and its agents along the border. The document states that even if the abuses referred to are similar in kind and severity to those reported in many other countries, "the response of the U.S. government is as defensive and unyielding as the responses of many of the most abusive governments."¹⁹ Among the many cases documented, the

¹⁶ See, e.g., Linda Deutsch, *Cameraman Describes King Beating*, L.A. TIMES, March 2, 1993, at B1 (explaining how George Holliday came to record beating).

¹⁷ COMISIÓN NACIONAL DE DERECHOS HUMANOS, INFORME SOBRE LAS VIOLACIONES A LOS DERECHOS HUMANOS DE LOS TRABAJADORES MIGRATORIOS MEXICANOS EN SU TRÁNSITO HACIA LA FRONTERA NORTE, AL CRUZARLA Y AL INTERNARSE EN LA FRANJA FRONTERIZA SUR NORTEAMERICA (1991).

¹⁸ See *id.* at 54-57 (discussing documented abuses of Mexican migratory workers by U.S. authorities).

¹⁹ AMERICAS WATCH, HUMAN RIGHTS WATCH, BRUTALITY UNCHECKED: HUMAN RIGHTS ABUSES ALONG THE U.S. BORDER WITH MEXICO 1 (1991). The

report refers to a Border Patrol agent who, during a six or seven year period, was involved in a series of abuses. These included a theft; two vehicular incidents, one resulting in the death of a migrant; two serious assaults on farm workers who were lawfully in the United States; and the violent homicide of an undocumented Mexican minor. Despite these serious crimes, the report indicates that, "except for a 30-day suspension for the theft incident, the agent was not punished; he continues to serve in the Border Patrol."²⁰

Racial discrimination in the application of death penalties in the United States is a matter of serious concern for Amnesty International. Studies indicate that black defendants convicted of killing whites are substantially more likely to receive death sentences than those in black victim cases.²¹

Similarly, the execution of persons that were under age 18 at the time of the crime contravenes international instruments of human rights.²² But a different point of view is sustained in more than 20 states of the United States. In fact, recent decisions of the U.S. Supreme Court, *Stanford v. Kentucky*²³ and *Wilkins v. Missouri*,²⁴ establish that execution of individuals who committed crimes at 16 or 17 years of age is not a cruel and unusual punishment under the Eighth Amendment.

The abduction of Mexican doctor Humberto Alvarez Machain in April of 1990 also merits special attention. Dr. Alvarez Machain was kidnapped from his office in Guadalajara and taken to the United States to be judged by an American court. This act, organized and financed by the U.S. Drug Enforcement Agency, not only involved a

report states, "[m]ost outrageous is the INS's willingness to cover up or defend almost any form of egregious conduct by its agents." *Id.* at 2.

²⁰ *Id.* at 2; *see also id.* at 21-25 (detailing incidents where INS Border Patrol agents used lethal force).

²¹ AMNESTY INTERNATIONAL, *WHEN THE STATE KILLS . . . THE DEATH PENALTY: A HUMAN RIGHTS ISSUE* 28 (1989).

²² *See, e.g.*, International Covenant on Civil and Political Rights, *adopted by U.N. General Assembly* Dec. 16, 1966, art. 6(5), 999 U.N.T.S. 171 ("Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."); *see also* The American Convention on Human Rights, Nov. 22, 1969, art 4(5), 9 I.L.M. 676 (1970) ("Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.").

²³ 492 U.S. 361 (1989).

²⁴ 112 S. Ct. 131 (1991).

gross violation of the Law of Nations, but also of the human rights of the individual. The kidnapping deprived Alvarez Machain of his liberty without due process of law and subjected him to cruel, inhuman and degrading treatment. Furthermore, the surprising decision of the U.S. Supreme Court in this case met with vigorous opposition not only from Mexico, but also from several other governments, particularly those from Latin America. This reaction is understandable. Silence on the kidnapping could have been interpreted as implicitly justifying future international abductions in other countries, in clear violation of their sovereignty and of international law.²⁵

Similar examples of human rights violations take place throughout the world and are not limited to developing countries. Of course the violation of human rights or the lack of protection of the environment in one country does not justify similar acts in others. But, if serious violations of human rights are observed in highly developed countries, with long democratic traditions, it is not surprising to find such violations in the developing world, even if they are more frequent.

A close relationship clearly exists between development on the one side and respect for human rights and the environment on the other. So in judging a developing country's record in these areas, several factors should be considered: what is being done in both fields; what has been achieved in recent years; and how much is being spent on those goals, taking into consideration the country's economic resources.

When discussing human rights in Mexico, sometimes there is a tendency not only to fall into misconceptions, but also to minimize accomplishments. It is necessary to emphasize this, because an objective appraisal reveals that during the last few years Mexico has made great advances, advances without precedent, toward protecting human rights and the environment.

II. MEXICO'S PROGRESS ON HUMAN RIGHTS

The Mexican government took an extraordinary step toward defending and protecting the basic rights of the individual when it created the National Commission for Human Rights (CNDH) in 1990. In 1992 a Constitutional reform gave the CNDH constitu-

²⁵ For the documents and judicial decisions concerning this case, see 2 SECRETARÍA DE RELACIONES EXTERIORES, *LÍMITES DE LA JURISDICCIÓN NACIONAL* (1993).

tional status and required every state of the Republic to create similar bodies.²⁶ As Lic. Jorge Madrazo, Chairman of the Commission said in his report:

The restructuring of the legal order of the National Commission produced a significant number of effects and consequences; its Ombudsman nature was reaffirmed; its principles of autonomy and independence were reinforced; rules were established to carry into practice the entire nonjurisdictional national protection system of Human Rights; . . . and the procedures for handling and resolving upon complaints were polished, enriched and perfected.²⁷

As a consequence of these reforms, a national system exists to protect the rights of individuals. By the end of 1993, all 31 states of the Republic, as well as the Federal District, had set up their commissions or similarly functioning organizations.

The CNDH includes a President and an Executive Secretariat, five General Visitors and the professional, technical and administrative personnel necessary to perform its functions.²⁸ The CNDH also includes a Council composed of ten individuals with prestige in the community.²⁹ The Council establishes the general guidelines for the performance of the CNDH's duties.³⁰ Furthermore, the Council gives its opinion on the draft of the annual report that the CNDH President must render to Congress and to the President of the Republic.³¹

The state commissions are organized on a similar basis. As a result, the world's biggest system for the protection of human rights has been created in Mexico.³² As provided in the Law and the

²⁶ See Decreto por el que se Reforma el Artículo 102 de la Constitución Política de los Estados Unidos Mexicanos, Secretaría de Gobernación, D.O., Jan. 28, 1992, 6 (amending art. 102(B) of Mexican Constitution to require Federal Congress and State Legislatures to establish human rights organizations); see also Ley de la Comisión Nacional de Derechos Humanos, D.O., June 29, 1992, 57 [hereafter CNDH] (documenting decree that established Law Governing National Commission for Human Rights).

²⁷ Jorge Madrazo, Address Before the National Commission for Human Rights (June 3, 1993), in NEWSLETTER, National Commission for Human Rights, Mexico, May 1993, at 1.

²⁸ See CNDH, *supra* note 26, art. 5, at 60 (describing the Commission's personnel).

²⁹ *Id.* art. 17, at 62.

³⁰ *Id.* art. 19, at 62.

³¹ *Id.*

³² See Jorge Madrazo Cuéllar, *En México, el Sistema Más Grande del Mundo para la Protección de los Derechos Humanos*, EL NACIONAL, Sept. 27, 1993, at 9.

CNDH Internal Regulations, the first step in dealing with a human rights complainant involves seeking an amicable solution with the authorities in question, provided the violation does not relate to violations of the right to life or physical and psychic integrity, torture, or any other right of a particularly serious nature.³³

In a little more than three years of activity, 2,957 proposals of conciliation were presented to the authorities with the complainants' consent. Of those, 2,028 were concluded and 827 are pending. In 102 cases the authorities rejected the proposals. A follow-up mechanism exists for cases resolved under this system in order not to leave the complainant defenseless and to guarantee the satisfactory conclusion of the agreement under the accepted conditions. When an amicable solution is not possible, the commission investigates and issues either recommendations to the authorities involved or, if such is the case, resolutions of no responsibility.

Although the commissions do not have prosecutorial powers, their recommendations have moral strength. Nonfulfillment of the recommendations holds a high political cost to the authorities involved since that fact is pointed out in the commissions' reports. As of October 29, 1993, after forty months of activity, 633 of the 659 recommendations issued by the CNDH have been partially or totally implemented.³⁴

It is true that about 50% of the recommendations have only been partially implemented. But in many of those cases the explanation for partial compliance is valid. The majority of cases pending total compliance are of a penitentiary nature, which require channeling of financial resources to build, expand, or reform installations in detention centers, as well as the supply of goods and services, and these tasks, of course, take time.³⁵ Some cases are of an ecological nature and their complexity requires considerable time to implement as well. Still other cases require the location of missing per-

³³ See CNDH, *supra* note 26, art. 6(VI), at 61 (stating that Commission will try to procure conciliation between complainants and responsible authorities); *id.* art. 36, at 34 (emphasizing that Commission will contact responsible authorities immediately after it receives complaint); see also Reglamento Interno de la Comisión Nacional de Derechos Humanos, art. 117-122, D.O., Nov. 12, 1992, 29, 45-46 (stating that human rights complaints that are not especially serious should, if possible, be resolved through immediate conciliation).

³⁴ See COMISIÓN NACIONAL DE DERECHOS HUMANOS, CUARENTA MESES EN CIFRAS, 24 (1993) [hereafter CUARENTA].

³⁵ NATIONAL COMMISSION FOR HUMAN RIGHTS, 1992-1993 ANNUAL REPORT 359 (1993) [hereafter ANNUAL REPORT].

sons, which may involve long investigations, and there are still others involving recommendations issued shortly before the report.³⁶

Nevertheless, the President of the CNDH considers partial compliance to be the most serious problem the institution continues to face. A National Campaign for Full Compliance of the recommendations was undertaken, mainly by sending reminders to the authorities detailing the actions still pending. In addition, the CNDH directly contacted the respective authorities to analyze and discuss both the difficulties involved in each case and the adoption of measures necessary for full compliance.³⁷

Mexico's fight against impunity for human rights abuses has shown remarkable results. In a little more than three years of activity, as a result of the CNDH's recommendations, 1,009 civil service employees were sanctioned in different forms. Penal action was taken against 364 and a preliminary investigation was conducted against 197. The others were dismissed, suspended, received a warning, or were fined.³⁸

One of the CNDH's goals is to set up and execute preventive programs in matters of human rights.³⁹ In accordance with this goal, the CNDH has several programs of outstanding importance in progress. The programs include Precedents and Computer Program; Indigenous Affairs; Crimes against Journalists; the Penitentiary System in the Country; the Support of Inmates for Obtaining Benefits of Advanced Freedom; the Program against the Death Penalty; the Defense of Children; the Human Rights Program for Migrant Workers; Ecology and Health; Legislative Studies; Free Textbooks; Training Program; International Relations; Relations with National Organizations; Academic Events; Documentation and Library; Dissemination; and Publication.⁴⁰

An important part of the CNDH's activities involves its efforts to inform the public and to promote a genuine understanding and a true consciousness of the meaning of human rights among all sectors of society. To that effect, CNDH offers courses, seminars, and conferences of different types to public servants, police forces, personnel and inmates of detention and readaptation centers, mem-

³⁶ *Id.*

³⁷ *Id.* at 364-65.

³⁸ CUARENTA, *supra* note 34, at 30.

³⁹ See CNDH, *supra* note 26, art. 6(XI), at 61 (requiring National Commission on Human Rights to develop and execute programs to prevent human rights abuses).

⁴⁰ See ANNUAL REPORT, *supra* note 35.

bers of the armed forces, professors and students, several ethnic groups, and the general public.

As mentioned in the most recent report of the CNDH President, the training program has covered 28 states of the Republic and 16 political delegations of the federal district and has reached more than 55,000 persons. Some of those activities comprise a total of 130 courses on sensibilization and conscientiousness of human rights that were given to 13,799 federal, state, and municipal public employees, totalling 734 hours. With respect to programs directed to civil society and educational institutions, courses, workshops, conferences and seminars were held in which 401 events were organized with the participation of 37,914 individuals, covering a total of 662 hours.

The existence of the CNDH has been brief and its accomplishments have been many. Yet one accomplishment should be pointed out in particular. A social conscience has been developing rapidly among the Mexican people as to their rights and the feasibility of redressing human rights violations through simple proceedings. According to Americas Watch, even if the work of the CNDH could be more effective, it is "pleased to see the success of the agency in breaking the official silence that pervaded human rights violations before 1990."⁴¹

Recently Australian Federal Commissioner for Human Rights, Brian Burdekin, stated that he was impressed with what the Mexican National Commission on Human Rights had accomplished in just three years. Burdekin added that it had taken Australia six years to accomplish similar goals.⁴²

Many other aspects could be mentioned concerning Mexico's progress on human rights over the last several years. For example, important reforms have occurred in the area of criminal law. The government adopted a Federal Law to Prevent and Sanction Torture.⁴³ According to its provisions, the admission of guilt must satisfy certain conditions to bring charges against a suspect. To eradicate the use of torture or any other form of coercion to force suspects to confess, confessions are legally valid only if expressed before the public prosecutor or the judicial authority, and in the presence of a lawyer or other trusted person, and an interpreter, in

⁴¹ HUMAN RIGHTS *supra*, note 7, at 6.

⁴² *México es un ejemplo de Protección de la Comisión de Derechos Humanos: Burdekin*, EXCELSIOR, Aug. 20, 1993, at 3A.

⁴³ See Ley Federal para Prevenir y Sancionar la Tortura, D.O., Dec. 27, 1991, at 3-4.

case the suspect does not speak Spanish.⁴⁴ The use of isolation, intimidation or abuse to obtain a suspect's confession is now strictly forbidden at any point, whether before charges are brought, during preliminary investigations, or in the course of any legal proceeding.

Another area where Mexico has made progress on human rights is in the 1993 creation of an institute designed for training public prosecutors and agents of the federal judicial police. The "Instituto de Capacitación de la Procuraduría General de la República" is a decentralized agency of the Office of the Attorney General. Its basic goal is to give thorough training to future prosecutors and agents and to instill their sense of duty, their responsibility within the community, and their strict observance of human rights and respect for the dignity of all persons. The careful selection of applicants and the academic program for each field justify expectations of better qualified personnel year after year.⁴⁵ Finally, the new Code of Ethics for federal agents also demonstrates the present government's concern for human rights.⁴⁶

III. IMPROVING WORKING CONDITIONS IN MEXICO

In addition to the human rights issue, certain groups continuously mentioned working conditions in Mexico as an argument against NAFTA within and outside of the U.S. Congress. As Stephen Zamora accurately states:

One might be expected to welcome this sudden congressional interest in the well-being of the Mexican people, after decades of neglect (at best) or malicious interference (at worst). Unfortunately, there is a more complicated and self-serving economic agenda underlying congressional concerns: the fear that U.S. companies will transfer manufacturing jobs from the United States to Mexico to take advantage of the presumably lower costs of production that lower environmental standards and unsafe working conditions would seem to provide. While some legitimate concern for the welfare of Mexicans does exist in Congress — and even more so in some special interest groups — it is this fear of losing jobs to our NAFTA partner that has brought these issues into the forefront of the trade discussions.⁴⁷

⁴⁴ See *id.* art. 9, at 4.

⁴⁵ For complete information concerning the Institute, see INSTITUTO DE CAPACITACIÓN DE LA PROCURADURÍA GENERAL DE LA REPÚBLICA, MEMORIA (Jan.-June 1993).

⁴⁶ See Código de Ética Profesional para los Agentes Federales del Ministerio Público y de la Policía Judicial, D.O., March 26, 1993, at 27-28 (setting forth explicit code of conduct for federal agents and judicial police).

⁴⁷ Zamora, *supra* note 4, at 401-02 (citations omitted).

Even though the main incentive for American companies to move south is lower wages, the U.S. Congress can hardly raise the fact that most Mexican workers have lower salaries than their American counterparts as a legitimate negotiation issue.⁴⁸ Rather “the issues of environmental standards and workers’ rights,” may serve to focus attention on the economic imbalance between the two countries in a more constructive manner.⁴⁹

It is disingenuous to speak of human rights violations occurring simply due to lower wages or different working standards in a neighboring country with a different economic situation. One cannot expect a developing country to follow the same standards as a highly developed one. Of course there is a contrast in wages between the United States and Mexico. According to the AFL-CIO, whereas the ratio of compensation (wages and benefits) between Mexico and the United States was about three to one in 1980, it reached nearly ten to one in 1993.⁵⁰ According to another source, “in the 1970s, the ratio between U.S. and Mexican wages was three to one. Today, it is seven to one, and higher in many industries.”⁵¹

Nevertheless, a Mexican worker has certain benefits by law that are not mandatory in many other countries, such as the payment of the seventh day of the week, paid vacations, mandatory social security, and profit sharing. These benefits by no means compensate for the difference in income. However, they merit mention since some commentaries portray Mexico as absolutely lacking worker protection.

Other considerations about Mexico’s working conditions should be kept in mind. The Mexican Government and Mexico’s principal economic sectors agreed to link minimum wages to the increase in productivity in the Mexican economy due to increased labor efficiency. This project, first announced by President Salinas in May, 1993, was approved by the parties of the Pact for Stability, Competitiveness, and Employment on October 3, 1993.⁵² The Pact also

⁴⁸ *Id.* at 402.

⁴⁹ *Id.*

⁵⁰ Luis González Souza, *Problems and Challenges Facing NAFTA*, VOICES OF MEXICO, Oct.-Dec. 1993, at 41, 42 (citing TASK FORCE ON TRADE, DISCUSSION PAPER: LABOR RIGHTS AND STANDARDS AND NAFTA 2 (1993)).

⁵¹ JEFF FAUX, ECONOMIC POLICY INSTITUTE, BRIEFING PAPER: THE FAILED CASE OF NAFTA: THE TEN MOST COMMON CLAIMS FOR THE NORTH AMERICAN FREE TRADE AGREEMENT AND WHY THEY DON’T MAKE SENSE 5 (1993).

⁵² SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL, PACTO PARA LA ESTABILIDAD, LA COMPETITIVIDAD Y EL EMPLEO 41 (Oct. 1993).

foresees that each working center has the flexibility to reach special agreements on the same basis.⁵³

NAFTA, "by widening the scope of the market and enlarging the range of available labor skills. . . enables. . . firms and workers," of all three countries "to compete more effectively against foreign producers," in domestic markets and throughout the world.⁵⁴ This will have a very important impact in economic growth and, as a consequence, will narrow the wage gap between the United States and its southern neighbor.⁵⁵ Furthermore, enforcement of all labor laws and regulations will be more effective when the three countries implement the North American Agreement on Labor Cooperation, since one of its objectives is to promote compliance and enforcement by each country with its labor laws.⁵⁶

IV. MEXICO'S PROGRESS ON ENVIRONMENTAL PROTECTION

Some environmentalists are not satisfied with the text of NAFTA. However, the agreement contains significant environmental safeguards⁵⁷ and it is the "greenest" trade pact ever negotiated.⁵⁸ Concern with environmental protection is evident in different chapters of the agreement. Some of the basic goals mentioned in the Preamble include developing and expanding world trade in a manner consistent with environmental protection and conservation.⁵⁹ The Preamble also states that the parties seek to promote sustainable development, and strengthen development and enforcement of environmental laws.⁶⁰

NAFTA not only protects, but also gives priority to, important multilateral agreements such as the 1973 Convention on International Trade in Endangered Species, the 1987 Montreal Protocol on Ozone Depleting Substances, and the 1989 Basel Convention on

⁵³ *Id.*

⁵⁴ GARY C. HUFBAUER & JEFFREY J. SCHOTT, INSTITUTE FOR INTERNATIONAL ECONOMICS, *NAFTA: AN ASSESSMENT* 3 (1993).

⁵⁵ See Morici, *supra* note 11, at 51 (stating that although free trade will narrow wage gap, it will not do so quickly).

⁵⁶ North American Agreement on Labor Cooperation, Sept. 14, 1993, U.S.-Can.-Mex., art. 1(f), 32 I.L.M. 1480, 1503.

⁵⁷ Peter M. Emerson, *NAFTA Passage Can Help Protect the Environment*, AUSTIN AMERICAN-STATESMAN, Jan. 8, 1993 at A9.

⁵⁸ William K. Reilly, *NAFTA: The Greenest-Ever Treaty*, N.Y. TIMES, Apr. 20, 1993, at D18.

⁵⁹ North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., Preamble, 32 I.L.M. 289, 297 [hereafter NAFTA].

⁶⁰ *Id.*

the Control of Transboundary Movements of Hazardous Wastes.⁶¹ NAFTA also gives priority to a bilateral agreement in force between Mexico and the United States designed to protect the environment along the border.⁶²

Different chapters of NAFTA contain environmental provisions, including the chapters on Standards, Dispute Settlement, Intellectual Property, and Sanitary and Phytosanitary Measures. A provision in the chapter on Investment discourages countries from lowering their environmental standards to attract, expand, or maintain investment in their territories.⁶³ NAFTA also protects the parties' right to "adopt, maintain or apply," any measure designed to protect the environment or any measure that assures its enforcement.⁶⁴

In NAFTA, then, environmental issues will have an important impact on trade policy. As Thomas Wathen stated, "For the first time, the environmental impacts of trade policy are being recognized and treated differently than other trade-policy concerns. . . . The environmental impact will be felt as the free-trade agreement affects all kinds of regulation on product standards and violations."⁶⁵ In addition, the North American Agreement on Labor Cooperation signed by the three NAFTA parties will not only enhance international cooperation on environmental protection but also the enforcement of national environmental legislation.

Critics of Mexico for its lack of environmental protection disregard fundamental achievements that said country has made in this field during the last few years.⁶⁶ It is a fact, recognized within Mex-

⁶¹ See NAFTA, art. 104(1), 32 I.L.M. at 297-98 (providing that such multi-lateral agreements "shall prevail to the extent of inconsistency . . .").

⁶² See *id.* art. 104(1)(d), 32 I.L.M. at 298 (including agreements set out in annex 104.1 among agreements to receive priority); see also *id.* annex 104.1(2), 32 I.L.M. at 298 (referring to Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area).

⁶³ See *id.* art. 1114(2), 32 I.L.M. at 642 ("The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures.").

⁶⁴ *Id.* art. 904(1), 32 I.L.M. at 387.

⁶⁵ Casey Bukro, *Trade Pact Has Environmental Safeguards, Too*, CHI. TRIB., Aug. 13, 1992, at C18 (quoting Thomas Wathen, author of THOMAS WATHEN, ENVIRONMENTAL GRANTMAKERS ASSOCIATION AND THE CONSULTATIVE GROUP ON BIOLOGICAL DIVERSITY, A GUIDE TO TRADE AND THE ENVIRONMENT (1992)).

⁶⁶ See J. Martin Goebel, *Clearing the Air on Mexico's Environmental Track Record*, WALL ST. J., June 12, 1992, at A15 ("Among these [improvements] were the passage of the General Environmental Law, the establishment of three

ico and abroad, that a "new popular consensus for promoting environmentally conscious development, combined with President Salinas's personal concerns, has triggered an explosion of environmental policy decisions. . . ."67

For example, in 1988 the government enacted the General Law for Ecological Balance and Environmental Protection.⁶⁸ It establishes Mexico's environmental protection policies, with standards comparable to those of industrialized nations. This law, also known as the General Law of Ecology, seeks to prevent water, air, and soil pollution, protect non-renewable resources, and promote responsible management of natural resources. Its regulatory statutes are continuously strengthened as regulations and environmental standards are developed and updated.

In 1990 the government launched the National Program for Ecological Protection 1990-1994.⁶⁹ It seeks to link society's demand for environmental improvement with the action of public institutions and the economic trends that determine ecological problems. This program involves establishing national parks and land reserves, strengthening water conservation policies, eliminating highly polluting activities, and rehabilitating areas affected by ecological deterioration. Additionally, in 1992 the government created the Office of the Attorney General for Environmental Protection.⁷⁰ This agency is responsible for investigating, enforcing, and penalizing noncompliance with environmental laws.

In addition to creating a structure for environmental regulations, the Mexican government has been strictly enforcing its environmental laws. For example, from August 1992 to December 1993, 18,930 inspections were conducted throughout the country. These inspections resulted in the temporary or partial shutdown of 1,257 facilities and the permanent closure of 234. There were also fines or other enforcement measures levied against several thousand factories.⁷¹ Of those figures, 9,695 inspections took place in Mexico

large new protected areas, a total ban on turtle harvesting and closure of a major government oil refinery in Mexico City, just to name a few.").

⁶⁷ *Id.*

⁶⁸ D.O., Jan. 28, 1988.

⁶⁹ SECRETARÍA DE DESARROLLO URBANO Y ECOLOGÍA, PROGRAMA NACIONAL PARA LA PROTECCIÓN DEL MEDIO AMBIENTE 1990-1994.

⁷⁰ See Secretaría de Desarrollo Social, Reglamento Interior, Arts. 38-39, D.O., June 4, 1992, 71 (listing 20 distinct duties of Attorney General for Environmental Protection).

⁷¹ Figures cited in the report of the Attorney General for Environmental Protection for the period of August 1992 to December 1993.

City's Metropolitan Area, where 545 facilities were temporarily or partially closed and thirty-two were shut down permanently.

Several other bold measures have been adopted in Mexico City. In March of 1991, a large oil refinery was closed for emitting unacceptably high levels of pollutants into the air, despite the fact that the measure resulted in the loss of 6,000 jobs. Furthermore, auto emissions have been reduced by the mandatory use of catalytic converters on all 1991 and newer model automobiles and a program where car owners abstain from driving their cars once a week.

On the Mexico-U.S. border, both countries have built water treatment plants and sewage facilities and have installed air quality monitoring and emergency response systems. Under the Integrated Environmental Border Plan, both countries have joined their efforts to address environmental needs along the zone. The main objective of the three year plan is to clean up the most pressing environmental problems and to strengthen the infrastructure along the border. This plan includes dredging sewer systems, disposing of hazardous waste, and constructing sanitary landfills.⁷² The United States will spend 380 million dollars on the Plan, and Mexico will spend 460 million dollars.

Mexico's public investment for environmental concerns in 1993 was about 2.5 billion dollars, more than a 2,000 percent increase over the 95 million dollars invested in 1988. This investment increase is impressive, since those resources could have been used to build schools, hospitals and roads. However, Mexico has become fully aware that development and environmental protection must go hand in hand if they are to have any meaning at all.

Recently it was said that, "In truth, Mexico has done more, committed more resources and demonstrated more seriousness about the environment than any other developing nation."⁷³ Mexico has taken long strides to protect the environment in a very short time, yet there is much to be done in this field. However, it is also undeniable that economic development is an important factor for enhancing environmental quality. It has accurately been said in a

⁷² PRESIDENT CARLOS SALINAS DE GORTARI, GOVERNMENT OF MEXICO, *A BETTER MEXICO - A BETTER ENVIRONMENT*, at 2; *see also* Ricardo Ampudia, *Mexico Serious Over Clean Border Environment*, HOUSTON CHRON., March 16, 1992, at A13 (discussing Mexico's commitment to Integrated Environmental Border Plan and other environmental legislation).

⁷³ Reilly, *supra* note 58.

few words that, “. . . simply put, poverty is one of the environment’s worst enemies.”⁷⁴

Mexico’s economy is bound to expand with the North American Free Trade Agreement. This fact will help Mexico not only to maintain the environmental measures it has taken, but to increase resources designed to protect land, air, and water. This idea was accurately expressed by an official of a Washington-based conservation group who stated that, “[w]e must not derail the process by which free trade—and the economic development it can bring—will help create an environmental partnership that could become a model for other regions.”⁷⁵ Favoring NAFTA is therefore consistent with an environmental position.

CONCLUSION

A radical change has been taking place within Mexico on human rights and environmental protection. This change has both the recognition and ample support of the population. The process, of course, will continue and intensify as the Mexican economy grows stronger. With respect to labor, Mexico is also making progress. Certain domestic measures already adopted, Mexico’s recent agreements with the United States and Canada, and sustained economic growth will clearly reduce Mexico’s wage differential with its North American trading partners. Thus, to be objective, critics should not be constrained to pointing out what Mexico has yet to achieve in these fields,—and we recognize it is much—but also by recognizing Mexico’s present efforts and recent achievements.

⁷⁴ Salinas de Gortari, *supra* note 72, at 4.

⁷⁵ Goebel, *supra* note 66.