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## Panel Discussion: Comments on the United States-Mexico Relationship

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SMALL SCHOOL.  
BIG VALUE.

# COMMENTS ON THE UNITED STATES-MEXICO RELATIONSHIP\*

MODERATOR: JIMMIE REYNA\*\*

PANELISTS: DR. RAYMUNDO GIL RENDÓN,  
LIC. MIGUEL ESTRADA SÁMANO

**JIMMIE REYNA:** It is interesting to contrast Miguel Estrada Sámano's presentation about the need for a better understanding between the two countries with Raymundo Gil Rendón's presentation. As an American, sometimes I do not like to hear some of the things Raymundo Gil Rendón had to say about the grave differences and challenges that Mexico faces. I would like to think that things are better than his portrayal, but he reminds me that they are not. Perhaps, as an American, these issues are precisely what I need to understand better and know a bit more about. Convergence, after all, may be evident in the problems we share. I am going to turn the discussion over to the members of the U.S.-Mexico Law Institute for their comments.

**LIC. MIGUEL JÁUREGUI ROJAS:**<sup>1</sup> When we deal with U.S.-Mexico relations, we have to think of convergence, a pragmatic issue that we have been discussing in the U.S.-Mexico Law Institute now for several years. It is important to be convergent because regardless of what the politicians of the United States and Mexico do or say, the economy, business and people will prevail. For example, the improvement of the economic and legal systems under NAFTA, as well as the unification of a better legal system that works in the two different countries, is underway.

As Miguel Estrada Sámano correctly stated, Mexico is Mexico. In my paper, "Legal Foundations for Financing Infrastructure Development in Mexico,"<sup>2</sup> I tried to give that precise idea. For instance, creating a lien in the United States under the Uniform Commercial Code<sup>3</sup> is not the same as creating a lien in Mexico through a mortgage or a trust.

I also agree with Miguel Estrada Sámano's statement that the *Partido Acción Nacional* (PAN), or National Action Party,<sup>4</sup> cannot be considered a political party because it has not done what it should have done for its president. It has not worked with Vicente Fox and, as a result, it is not a ruling party. PAN is still an opposition party, and being an opposition party has taken its toll.

Finally, the political arena becomes further confused when we discuss the *Partido de la Revolución Democrática* (PRD), or Democratic Revolutionary Party.<sup>5</sup> For example, the mayor of Mexico City, Andrés Manuel López Obrador of the PRD, is a daunting personality with whom I had the opportunity to work for one of my

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\* The views expressed here are the individuals' own, and should not be taken to represent those of their employers or other organizations with whom they may be affiliated.

\*\* A summary of the panelists' background follows on the last page of the panel discussion.

1. Lic. Miguel Jáuregui Rojas is a founder and member of the firm of Jáuregui, Navarrete, Nader y Rojas, in Mexico City.

2. See Lic. Jáuregui's article in this edition of the Journal.

3. For more information on the U.C.C., see Legal Information Institute, *Uniform Commercial Code*, at <http://www.law.cornell.edu/ucc/ucc.table.html> (last visited March 10, 2004).

4. See the PAN official website at <http://www.pan.org.mx/> for more information.

5. See the PRD official website at <http://www.prd.org.mx/> for more information.

firm's clients.<sup>6</sup> Sometimes he seems to be like Spain's former Prime Minister Felipe González Márquez,<sup>7</sup> sometimes he seems to be like Cuba's leader Fidel Castro,<sup>8</sup> sometimes he seems to be like Venezuela's leader Hugo Chávez,<sup>9</sup> and sometimes he seems to be like Mr. Carlos Slim, the Mexican financier.<sup>10</sup> Possibly he is daunting because of his origins in the far left. He could almost be quasi-communist, but he lacks the ideology and the intellectual capacity to be accepted as such. He was burning oil wells twenty years ago, threatening the monolith of then PRI President Miguel de la Madrid Hurtado,<sup>11</sup> saying, "I belong to the Pemex union and if you do not give me, give me, give me, I will burn your oil wells." He did in fact burn oil wells in some cases and now strangely seems to be the hope for the future.

**REYNA:** While Miguel Jáuregui uses the word convergence, I use the sociological/anthropological term "determinism." I recently took a trip to the wine country in California where, in the early 1800's, a group of settlers arrived in Sonoma, an area well settled and governed by the Spanish. It was beautiful country, and the settlers began establishing homesteads, and one day they got together and declared, "This is now the United States." This action led to the United States-Mexico War, which then led to the Treaty of Guadalupe-Hidalgo,<sup>12</sup> which then enabled the dislocation and dispossession of all the established Mexicans that were in California at the time. While in Sonoma, I saw a sign in Spanish that read, "*Ya regresamos*,"<sup>13</sup> indicating that Mexican influence is back, and California is changing. *That is convergence.*

**MICHAEL OWEN:** I would like to start by offering some criticism of the United States, followed by some equal criticism of both countries, and finish with what I feel is one of the most important areas of criticism of Mexico.

First, I do not think that any U.S. President has ever given a high enough priority to the United States' relationship with Mexico. Immediately after President George

6. López Obrador is the leftist mayor of Mexico City elected in March 2000. See Melissa Block, *Profile: Mexico City's mayor emerges as a favorite candidate for high office*, All Things Considered (November 14, 2003), available at <http://www.npr.com>.

7. González Márquez was Spain's Prime Minister from 1982-1996. He led a social-democratic government, which led to impressive economic growth in Spain, but his government lost public confidence due to various scandals. He resigned as Socialist Party leader in 1997. See Michael S. Serrill, *Spain Star Appeal: Quiet Victory for the Socialists*, TIME, July 7, 1986, available at <http://www.lexis.com>.

8. Fidel Castro has been leader of Cuba since 1959, when he led a revolution that overthrew the dictatorship of Fulgencio Batista. He is a committed Marxist-Leninist who nationalized industry and enacted policies to benefit laborers and peasants. See Arthur Miller, *A Visit With Castro*, THE NATION, Jan. 12, 2004.

9. Hugo Chavez, an avowed anti-globalist and the leftist leader of Venezuela, was elected in a landslide victory in 1998. He first came to prominence when he led a coup in 1992 to overthrow then Venezuelan President, Carlos Andres Pérez. See Fabiola Sánchez, *Venezuela Panel Rejects Chávez Recall Petition*, WASH. POST, Mar. 3, 2004, at A19.

10. Carlos Slim is Latin America's richest man whose net worth is U.S. \$7.4 billion. He gained his fortune through an inheritance and investment in the telecom industry. See *Carlos Slim: "The Key is the Internet"*, BUSINESSWEEK ONLINE, Feb. 21, 2000, available at [http://www.businessweek.com/2000/00\\_08/b3669023.htm](http://www.businessweek.com/2000/00_08/b3669023.htm).

11. Miguel de la Madrid Hurtado was Mexican president from 1982-1988, known as a conservative technocrat. He was influential in planning the utilization of Mexico's oil wealth to promote economic growth. See Jill Smolowe, *Let us now await the hidden one; the ruling party prepares to pick a presidential candidate*, TIME, Mar. 23, 1987, available at <http://www.lexis.com>.

12. See Treaty of Peace, Friendship, Limits and Settlement with the Republic of Mexico, Feb. 2, 1848, U.S.-Mex., 9 STAT. 922.

13. We have returned.

W. Bush was elected to office, it appeared that this relationship was finally going to be given the priority that it deserved, as evidenced by President Bush's invitation of Mexico's President Vicente Fox as the first dignitary to come to the United States and meet with him as President.<sup>14</sup> However, after September 11, 2001,<sup>15</sup> a tremendous deception was created as Mexico fell off the map with regard to U.S. interests.<sup>16</sup> I think the United States simply has to recognize the tremendous importance of our neighbor to the south.

My second criticism is of the legislators in both countries. While accurate commentary has been made with respect to Mexican legislators, equal criticism is due to U.S. legislators. In recent years, U.S. legislators have been looking at their personal interests in being re-elected, and their political party's interests in numerous areas, not just with respect to U.S. relations with Mexico. Indeed, I think Mexican legislators are almost more justified in their actions because they previously did not have to act as legislators. During the reign of the PRI, they were always told what was expected of them and how to vote. Now, for the first time, they are being asked to be true legislators. However, the United States has a 200-year-old political system, and our legislators should know better.

The United States and Mexico both have three branches of government: the executive, the legislative, and the judiciary branches. In recent years, I have come to believe that one of the gravest problems in Mexico is its judiciary system. Effectively, there is no rule of law in Mexico. The lack of the rule of law in Mexico has to do not only with the judiciary, but also with the way prosecutorial actions work in Mexico. The classic example is the recognition in Mexico that because the judiciary cannot effectively resolve civil or commercial matters, Mexicans turn to the criminal system to try to bring pressure to achieve resolution of civil and commercial matters. This causes serious problems for all Mexicans and for investors in Mexico; foreign investors find this patently obvious.

Frankly, I believe that the Mexican bar should do a lot more than what it is doing. While there are marvelous lawyers in Mexico, the Mexican bar is very ineffective. The Mexican bar, rather than washing its hands of the situation, could step up to the line and start trying to bring pressure and bring results to achieve what Mexico deserves: an effective judiciary.

**MIGUEL ESTRADA SÁMANO:** I would like to address several things. First, I do not agree with Raymundo Gil Rendón's statement that the PRI is liable to re-emerge. I am convinced that the old PRI will not come back. If the presidency goes back to the PRI in 2006, the PRI will be a different party than it used to be. It would be a completely different animal, despite the fact that they are still what is left over of Mexico's mafia organization and that they are *muy mañosos*.<sup>17</sup>

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14. See Ginger Thompson, *Mexico President Urges U.S. to Act Soon on Migrants*, N.Y. TIMES, Sept. 6, 2001, available at <http://www.lexis.com>.

15. See Ginger Thompson, *Threats and Responses: After 9/11, Fox Still Waits for U.S. Moves on Mexico*, N.Y. TIMES, Sept. 13, 2002, available at <http://www.lexis.com>.

16. See Latin American Database, *Terrorist Attacks in U.S. Have Repercussions for Mexico* (Sept. 26, 2001), at [http://ladb.unm.edu/prot/search/retrieve.php3?ID\[0\]=24719](http://ladb.unm.edu/prot/search/retrieve.php3?ID[0]=24719).

17. Very mischievous.

The old establishment cannot be restored, in my view, for several reasons. First, there are no well-organized, respectable political parties, although there are very strong, well-financed interest groups today. They are already sharing power, and it would not be easy to re-establish the monolithical hierarchy. We should not fear the old establishment coming back. We have other questions to deal with.

Secondly, I agree with what my dear *tocayo*<sup>18</sup> Miguel Jáuregui said. Convergence is a fact, but should be considered in light of a more complex type of phenomenon. The United States and Mexico are increasingly interdependent on one another. Currently we think in terms of converging the two countries. Yet, we cannot converge without considering that we are part of a world that is converging on itself. I have had the opportunity of visiting and witnessing to some extent the change in Europe. In the near future, the European Union will be far more significant to both the United States and Mexico, and both countries will have to take that particular phenomenon into account.

Lastly, the idea of a uniform world-wide legal system is currently a global discussion. For example, due to China's bilateral exchange with Mexico, Chinese lawyers' associations are pressing to have a legal system closer to Mexico's so-called "civil" law system than to the common law system of the United States. It is advantageous to approach these bilateral exchanges acknowledging that we are a part of a whole that is increasingly interdependent. This idea is basic when approaching any of our mutual problems and interests.

**CARLOS RAMOS-MIRANDA:** While I have a more romantic view of things, I appreciate all of these very interesting commentaries. First, I agree that the old establishment will not come back exactly the way it was. However, it is possible that it will be worse. This may just be fear, but we will have to wait and see. We also have to see what is going to happen in *Iberoamérica*. We have to be afraid of what can happen in the future. We also have to be prepared to prevent our fears from materializing.

Since our elections in 2002, Mexico is getting to know itself again.<sup>19</sup> Mexico is a young child trying to understand where it is, what it is doing, and what the next step is. Mexico must learn along the way, and that is good. Mexico is going to make mistakes, but it will learn from its mistakes.

The United States is also a new country. After September 11, 2001, the United States was reborn. It has revisited several issues, and it understands that there are internal contradictions, just as Mexico has several contradictions. Both the United States and Mexico are troubled countries. But they are neighbors, and this is an opportunity to retake, rethink, and rebuild a relationship with much stronger bonds. This is precisely the time to build the relationship and get it right.

**JOHN ROGERS:** The United States and Mexico share many common problems. One is the pernicious role of money in politics. I believe the role of money is one of the explanations for the lack of real consideration of certain issues by the U.S.

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18. Namesake.

19. See Kevin Sullivan, *Midterm Vote Deals Blow to Mexican Leader's Party*, WASH. POST, July 8, 2003, available at <http://www.lexis.com>.

Congress. Every congressman has to worry about getting re-elected and has to troll for money to do so. It is a problem that is becoming more and more difficult. There has been campaign finance reform in the United States, which may eventually be gutted through constitutional challenges.<sup>20</sup> The same problem exists in Mexico. Pemexgate is a good illustration of the difficult role that politicians have in being politicians without having substantial funds at their disposal.<sup>21</sup>

Another issue that the United States and Mexico share is transparency in government. Mexico is taking steps toward greater transparency, but while new legislation is addressing this issue, we will have to wait and see how effective it is.<sup>22</sup> The United States has also enacted legislation attempting to attain increased transparency in its government.<sup>23</sup> We should see how the countries respectively address these issues and try to learn from each other's experience.

**ABDÓN HERNÁNDEZ:** Miguel Estrada Samano said that our friends and neighbors to the north should get to know Mexicans better. This should be a mutual goal for both countries, and Mexicans should also get to know their friends and neighbors to the south. It really ought to go both ways. Organizations such as the U.S.-Mexico Law Institute are taking steps in this direction. People say that this is the age of information, and information is knowledge. People have to know each other, and they get to know each other by being informed, and being informed leads to convergence. Convergence does not happen by having Americans drink more Corona and tequila, nor does it happen by having Mexico's peasants wearing Gap T-shirts and Steelers' jackets; convergence occurs through communication.

**MIGUEL ESTRADA SÁMANO:** I cannot be silent with respect to two statements concerning Mexico's judiciary. In fact, I maintain that currently Mexico does not have a president that deserves the name "President of the Republic." Mexico's political parties and congress do not deserve the name either. But Mexico does have an independent and brave supreme court, and that is the starting point for us to have a decent judiciary in the not too distant future.

I would also like to address the comments made about the Mexican Bar Association. Unfortunately, the Mexican Bar Association is an association of voluntary members. This, in my view, is the key problem. When I was the president of the *Union Internationale des Avocats* (International Union of Lawyers),<sup>24</sup> the eldest and most truly universal world association of the profession, we organized a seminar in

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20. Known as the McCain-Feingold bill or the Bipartisan Campaign Reform Act of 2002, enacted Mar. 27, 2002, P.L. 107-155, 116 Stat. 81, 2 U.S.C.S. § 431 (2002), this finance reform bill was first introduced in 1997.

21. The politically complex story of "Pemexgate" involves the scandal of the alleged money-laundering of Pemex funds to support candidates of the PRI in the 2000 election.

22. "Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental," D.O., 11 de junio de 2002, available at <http://www.cddhcu.gob.mx/leyinfo/pdf/244.pdf>. See Rodrigo Labardini, *The Fight Against Corruption in Mexico*, 11 U.S.-MEX. L. J. 195 (2003). See also Reuters, *Mexico judge orders union head tried in "Pemexgate"* at <http://www.forbes.com/newswire/2003/10/25/rtr1123029.html> (last visited Oct. 25, 2003).

23. The Freedom of Information Act, 5 U.S.C. §552 (1996).

24. The Union Internationale des Avocats (UIA) was created in 1927 and is open to all lawyers of the world. It is made up of both general and specialist practitioners, counting more than 200 bar associations, organizations or federations (representing nearly two million lawyers) as well as several thousand individual members from over 110 countries. For more information, see its official website at <http://www.uanet.org/index.jsp>. Estrada Sámano was president of the UIA from 2000-2001.

Morelia, Mexico, that dealt with the problem of membership. We must have legal, compulsory bar membership in Mexico. Otherwise, the legal profession as an organization will not be able to be as influential as desired. This, of course, does not mean that the Mexican Bar Association as it currently exists would not be able to pay more attention to many other matters. Sometimes some of us exert a lot of pressure with no success, because the old atmosphere prevails, and fear of that atmosphere continues to be present. The answer shall not come in the form of voluntary, very minor associations, even if they are respectable. We must organize the profession in a different fashion. Mexico is really an exception in the world; it is the only country of some importance that does not demand compulsory bar membership.

**RAYMUNDO GIL RENDÓN:** En mi posición yo veo que hay avances en México pero son necesarios otros más. Entre ellos incluyo una reforma al poder judicial porque en México el estado de derecho es muy limitado. Necesitamos transformar la función del poder judicial, mejorar la impartición de justicia, y dar seguridad jurídica a los inversionistas. También en el poder legislativo, la posibilidad de reelección va a permitir que de alguna manera la gente más experimentada pueda ocupar los cargos legislativos que son necesarios para las nuevas leyes.

Yo apunto más a un consenso entre los partidos para poder hacer una gran reforma constitucional y una gran reforma legal que nos permita transitar hacia la democracia. Yo pienso que si dejamos que aflore la "partidocracia" no vamos a avanzar. Tenemos el riesgo de la regresión hacia un Partido Revolucionario Institucional (PRI) renovado, pero con toda la experiencia y las mañas del mundo, o bien una alternancia hacia el Partido de la Revolución Democrática (PRD) sin experiencia. El Partido de Acción Nacional (PAN), pudiera ser que no llegara a la presidencia en el 2006.

Pero tenemos que asegurar más que la alternancia. Es decir que nuestra tarea fundamental en la actualidad es asegurar el desarrollo de la verdadera democracia, en que la sociedad civil tiene un papel preponderante para empujar que los partidos tengan ideología realmente, y sean verdaderos partidos políticos. La sociedad civil también tiene que apuntalar todas las mejoras que ha habido en la reforma electoral con una nueva reforma electoral, y hacer efectiva la transparencia y la rendición de cuentas.

Tenemos muchas cosas por hacer. México necesita de la inversión. México necesita de empleos. Si no cambiamos las instituciones va a ser muy difícil que podamos seguir avanzando. Yo pienso que tenemos dos retos: por un lado mejorar en lo interno y por otro lado mejorar en lo externo con las relaciones con la Unión Europea y con los Estados Unidos. Yo creo que un instituto como éste es un foro fundamental para conocer realmente, y llegar a aportar, ideas de cambio en nuestros dos países.

## BIOGRAPHICAL SUMMARIES

**Jimmie V. Reyna, Esq.** is an international trade attorney and partner in the Washington office of Williams Mullen, 1666 K St. NW, Suite 1200, Washington, DC, 20006. Telephone: 202-293-8128; Fax: 202-293-5939; E-mail: jreyna@williamsmullen.com. Mr. Reyna has a wide range of experience in international trade related matters, including: trade policy and trade regulation (antidumping and countervailing duty cases); trade agreements (GATT, GATS, WTO, NAFTA, FTA); investment and commercial law; technical barriers to trade (standards), and customs. Mr. Reyna has authored two books (Passport to North American Trade, Rules of Origin and Customs Procedures Under the NAFTA; The GATT Uruguay Round: A Negotiating History 1986-1992: SERVICES. Mr. Reyna is a member of the Washington, D.C., and New Mexico State Bar Associations, the National Hispanic Bar Association (Chairman of the International Law Committee), the American Bar Association (International Law and Practice Section: former Chair of the Mexican Law Committee; Chair of the Subcommittee on U.S.-Mexico Foreign Trade) (Section on Dispute Resolution: Co-Chair of the Subcommittee on MERCOSUR of the International Committee). Mr. Reyna is licensed to practice before the U.S. Court of Appeals, Tenth Circuit; the U.S. Court of Appeals for the Federal District; the U.S. Court of International Trade; the Court of Appeals for the District of Columbia; the U.S. District Court, District of New Mexico; and the Supreme Court, State of New Mexico. He received a B.A. from the University of Rochester in 1975 and a J.D. from the University of New Mexico School of Law in 1978. He is admitted to the bars of New Mexico and the District of Columbia.

**Lic. Miguel Estrada Sámano** is a partner of the Mexico City office of Curtis, Mallet-Prevost, Colt & Mosle, S.C. Ruben Dario 281, Pisos 8 y 9, Col. Bosque de Chapultepec, Mexico, D.F. 11580, Telephone: 52-55-5282-0444, Fax: 52-55-5282-0637. E-mail: mestrada@cm-p.com Lic. Estrada Sámano's practice deals primarily with international matters, including commercial arbitration. His professional activities include: Vice Chairman, International Court of Arbitration, International Chamber of Commerce (1986-1993) and President of *Barra Mexicana, Colegio de Abogados*, (Mexican Bar Association) (1989-1991). He is a member of the Arbitration Body under NAFTA. He has lectured at the National Autonomous University of Mexico as well as *Iberoamericana* and *Panamericana* Universities. Prior to joining Curtis, Mallet-Prevost, Colt & Mosle, he was a partner at Santamarina y Steta and Creel Abogados, Mexico City, and a founding partner of the law firm Estrada Sámano, González y de Ovando, Mexico City. He received his *Licenciatura en Derecho* from National Autonomous University of Mexico and LL.M. from Tulane University, New Orleans, Louisiana.

**Dr. Raymundo Gil Rendón** es Doctor en Derecho con mención honorífica por la UNAM. En esta misma institución realizó sus estudios de Especialidad y Maestría en Derecho Constitucional, Administrativo y Amparo y la Licenciatura en Derecho. Su actividad docente data desde 1979. Ha dado clases dentro del sistema ITESM y en la UNAM desde el año 2000. Actualmente funge como Director de las Maestrías de Derecho y Derecho Internacional (MDP y MDI) de la EGAP Campus



Ciudad de México (CCM). Es Investigador Nacional Nivel I, desde Julio del 2002 Conacyt. En el área no académica litigó en el D.F. y Aguascalientes. En este mismo estado ha sido Visitador General de la Procuraduría General de Justicia del Estado en el año de 1992; Presidente del Consejo Estatal de Participación Ciudadana (Coordinador de los Organismos Empresariales); y Asesor Jurídico del Gobierno del Estado y del Senado de la República. Trabajó en el área jurídica para los Bufetes Corporativos; Baker & McKenzie, Chicago, Ill. U.S.A., (1978) Consultor de Derecho Mexicano y Latinoamericano; Industrial Minera México (1979). Fue Asociado de los Bufetes Jurídicos: Rocha & Hegewisch (1972-1975); Bracho, Ruiz y Cepeda (1976-1977); Goodrich y Riquelme (1979); Barrera, Siqueiros y Torres Landa (1980); Socio titular de la firma: Gil, Bernal, Sutti & Abogados (1981-2003). Dentro del Derecho Administrativo, Penal, Constitucional y de Derechos Humanos: Trabajó como asesor del C. Presidente de la Comisión Nacional de Derechos Humanos en 1996. En el año de 1993 fue Director General de la Segunda Visitaduría de esta misma institución. Un año después trabajó como contralor interno y durante el periodo 1995-1996 fue Director General de Administración. Fue Coordinador del Programa de Unidad Contra la Violencia, con el Instituto Tecnológico de Estudios Superiores de Monterrey. Actualmente es Coordinador de la Comisión de Derechos Humanos de la Barra Mexicana, Colegio de Abogados.