

US-MEXICO BAR ASSOCIATION

Questions raised about energy law at annual meeting

THE US-Mexico Bar Association held its annual meeting in Houston during November 4-6 at the upscale St. Regis Hotel in Houston.

The keynote speaker was Carlos Morales Gil, the former 10-year director of Pemex’s

upstream business unit and, currently, the CEO of **Petrobal**, the winner of one of two blocks in the auction held by Mexico’s Hydrocarbon Commission (CNH) on September 30, 2015. The speaker shared his childhood aspiration to become a lawyer, given that his father had been a judge.

Mr. Morales was the first of several speakers to emphasize legal security as a requirement for private investment. Several panelists observed that “all other things being equal, the investor will always choose the jurisdiction that offers the greater legal security.”

To judge from rankings in the Rule of Law Index for 2015, Mexico is at a disadvantage relative to other Latin American countries (see insert). One way of summarizing the discussions of the speakers, panelists and delegates is to observe that the extent to which Mexico is seen as an investment-grade rule of law remains an open question.

Energizing the U.S.-Mexico Region USMBA Annual Conference

<http://usmexicobar.org>

LATIN AMERICAN & CARIBBEAN
Countries with IBC oil production correlates with rule of law

COUNTRY	SCORE	GLOBAL RANKING
Uruguay	0.71	22
Costa Rica	0.68	25
Chile	0.68	26
Jamaica	0.56	42
Brazil	0.54	46
Panama	0.53	49
Argentina	0.52	54
El Salvador	0.51	57
Colombia	0.50	62
Peru	0.50	63
Belize	0.49	66
Dominican Republic	0.48	67
Ecuador	0.47	77
Mexico	0.47	79
Guatemala	0.44	85
Nicaragua	0.43	89
Honduras	0.42	90
Bolivia	0.41	94
Venezuela	0.32	102

Note: <http://www.eurobarometer.com/press-room/2015/09/01/rule-of-law-index-2015>
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Except for Marco Antonio Nieto, an economist with **Baker & McKenzie**, the other panelists were attorneys, most of whom were specialists with decades-long trajectories in the US-Mexican legal space.

In this report, we comment selectively on panels and topics. From the discussions, we extract a list of a dozen questions that were raised but not answered. We offer suggestions for topics for future USMBA conferences.

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INTRODUCTION

A PERCEPTIVE INTRODUCTION to the character of the Mexico's Energy Reform of 2014 was the off-line observation by one of the attendees that, in Spanish, "the verb *reformar* does not mean 'to reform'; it means 'to edit' or 'to amend.' The Energy Reform of 2014 is about making technical adjustments to the status quo, not about embracing a market-driven model for the oil sector." One of the panelists in that conversation observed that the commitment to centralized state planning and a rigid national narrative that is seen in Mexico is also found in other countries, China, for example. "The character of the contracts and legal framework have the look and feel of a service contract."¹

The basic history of energy reform needs to be understood as the progressive attempt to open space in the legal system for the deployment of private capital while maintaining as much of the apparatus of centralized planning as possible. Thus, from the nationalization of the electric sector in the 1960s to the present there is state-administered pricing for the entire oil and power value chains; said differently, the prices of all energy products are set by the state, either in absolute terms or by reference to indexes.

The reform of the electric sector in 1992 created the figure of Independent Power Producer (IPP), but as a captured generator of the **Federal Power Utility** (CFE). In 2008, renewable power generation was introduced into the legal framework, but with strict controls regarding the sale of surplus power.

On the oil side, the authorities have kept a firm hand on all pricing; so it is a major departure from more than a half-century of energy policy to allow market pricing of gasoline beginning in 2018. Upstream, the national oil narrative has not been updated. Opening space for private capital in the oil value chain is allowed for the convenience of the State, not on account of any commitment to free-market capitalism.

DISCUSSION

THIS DISCUSSION IS BY TOPIC, NOT BY PANEL. This report principally concerns those topics related to the concerns of stakeholders in the energy sector (for which reason not every panel or topic is mentioned). A list of panels with their respective speakers is attached

¹ This impression was also noticed in our report #056: "CNH's Round One Bidding Guidelines: LOPSRM Reborn (Dec. 12, 2014).

Energizing the U.S.-Mexico Region USMBA Annual Conference

THURSDAY, NOVEMBER 5th

- | | |
|------------------|---|
| 8:45 - 8:55 am | <p>WELCOMING REMARKS
USMBA Co-Chairs</p> <p>Carlos Sugich Partner at Snell & Wilmer, LLP
Luis Emilio Luján Sauri Partner at Basham, Ringe y Correa, S.C.</p> |
| 9:00 - 9:25 am | <p>KEYNOTE ADDRESS
Energizing the Border</p> <p>Carlos Morales Gil CEO of Petrobal</p> |
| 9:30 - 10:25 am | <p>KEYNOTE PANEL: ENERGY
RoundTwo!: Mexico Energy Reform's Early Rounds</p> <p>Xavier Antonio de la Garza Assistant General Counsel at Pemex Patrick Appel Legal Counsel at Chevron
Daniel Aranda Rabago Partner at Gardere Moderator: Alfredo Ramos Partner at Gardere</p> <p>An update from U.S. and Mexican participants in the bidding rounds under Mexico's Energy Reform.</p> |
| 10:30 - 11:15 am | <p>ADR [Alternative Dispute Resolution]
Cross-Border ADR: An Update</p> <p>Francisco González de Cossío Gonzalez de Cossío Abogados, S.C.
John P. Bowman Partner at King & Spalding
Hugo Perezcano Diaz Independent Legal Consultant
Moderator: Philip Robbins Philip A. Robbins, P.C.</p> <p>Current developments impacting the use of ADR to resolve cross-border disputes, with a special look at the energy sector, including tips on practice and procedure.</p> |
| 11:30 - 12:15 pm | <p>ANTI-CORRUPTION
Cross-Border Anticorruption Efforts: Increase Trends and Enforcement</p> <p>Brett W. Johnson Partner at Snell & Wilmer, LLP Gilberto Valle Partner at Basham, Ringe y Correa, S.C., Charles E. Meacham Partner at Gardere
Moderator: Luis Emilio Luján Sauri Partner at Basham, Ringe y Correa, S.C.</p> <p>This panel will provide the background of anticorruption in the United States and Mexico, as well as, best practices and important cases to note.</p> |
| 1:30 - 2:30 pm | <p>REAL ESTATE
Real Estate, Infrastructure & Energy Opportunities in Mexico: Trends</p> <p>Lars O. Lagerman Partner at Bryan Cave
Jorge Correa Partner at Creel, García-Cuéllar, Aíza y Enríquez Rodrigo Castelzao Partner at Creel, García-Cuéllar, Aíza y Enríquez Diego Covarrubias Patiño Plani Grupo
Moderator: Manuel Pasero Pasero Abogados, S.C.</p> <p>The panel will address testimony of U.S. attorneys going to Mexico to structure renewable energy projects, the opportunities this sector can promise and the investment vehicles that should be considered in Mexico.</p> |

2:45 - 3:25 pm

BANKRUPTCY

**Financial Reckoning in the Oil Patch:
Restructuring Opportunities Under U.S. and Mexican Law**

Charles A. Beckham, Jr. | Partner at Haynes & Boone, LLP
Lawrence Young | Managing Director at AlixPartners
Salvador Fonseca-Gonzalez | Partner at Baker & McKenzie Abogados, S.C. Moderator:
Jerrold L. Bregman | Partner at Ezra Brutzkus Gubner, LLP

Industry Distress Flowing from Sub-US \$50/Barrel Oil; Restructuring Opportunities under the U.S. Bankruptcy Code and Restructuring Opportunities under Mexico's *Concurso* Law and Financial Reforms

3:30 - 4:15 pm

CUSTOMS/TRADE

Protectionism vs Protection: NAFTA and Mexico's Energy Reform

Beatriz Leycegui Gardoqui | Partner at SAI Law & Economics Luis
Martinez | Abogados Martinez Serna, S.C.
Alejandro Posados Law Professor/Director of Postgraduate Studies at Tecnológico de Monterrey
School of Government
Moderator: Lawrence Hanson | The Law Office of Lawrence W. Hanson, P.C.

What happens when Mexican Post-NAFTA reforms go beyond what was negotiated in the treaty?
Are investments in the Mexican Energy Sector protected under NAFTA? Can rules and principles negotiated in other Industry Sectors and included in NAFTA apply to the Energy Sector even though it was expressly excluded from the negotiations?

4:25 - 5:15 pm

GENERAL COUNSEL ROUNDTABLE

Automotive General Counsel

Rasmani Bhattacharya | General Counsel Gates Corporation Victor
Gutierrez | Regulatory Manager at Daimler Mexico
Coordinator: Hugo Hernandez-Ojeda | Partner at Hogan Lovells, BSTL Moderator:
Federico de Noriega Olea

5:20 - 6:00 pm

ENERGY REFORM

The Importance of the Administrative Rescission under the Energy Reform

Marco Tuilo Venegas | Partner at Von Wobeser y Sierra, S.C. Timothy
James Tyler | The Law Firm of Vinson & Elkins
Moderator: Luis Miguel Jimenez | Partner at Von Wobeser y Sierra, S.C.

The legal implications of the administrative rescission stated in the contracts that the National Hydrocarbon Commission [CNH] may rule with the contractors that have been assigned with exploration and extraction areas. This analysis will include both the Mexican Law perspective and the possible remedies granted by the NAFTA to the investors arisen from such kind of acts of government, which may be considered as expropriation.

FRIDAY, NOVEMBER 6th

8:30 - 8:40 am

WELCOMING REMARKS

USMBA Co-Chairs

Carlos Sugich | Partner at Snell & Wilmer, LLP
Luis Emilio Luján Sauri | Partner at Basham, Ringe y Correa, S.C.

8:40 - 9:40 am

ALTERNATIVE AND RENEWABLE ENERGY

Power and Alternative Energy Changes under Mexico's Energy Reform

Jorge Guadarrama- Yáñez | Partner at Baker & McKenzie Mario
Emilio Saenz Arroniz | Cemex
Patrick Grooms | Head of Power and Energy at Norton Rose Fulbright U.S., LLP
Moderator: Arcie I. Jordan | Partner at Gardere

Energy reform opened up development of traditional and alternative electricity markets in Mexico in ways that had not been possible. Industry leader and outside counsel will discuss these exciting new developments.

9:45 - 10:15 am

ELECTRONIC FILINGS / COURTS**“There’s an App for That” - Nuevo León Courts Go Electronic**

Juan Pablo Raigosa Trevino | Judiciary Commissioner of the State of Nuevo León

The judicial system of the State of Nuevo León has implemented technological tools for interaction with litigators, other government offices and agencies, as well as parties to a lawsuit. The session will discuss the use of technology and briefly introduce the “Virtual Court” available for all judicial processes carried out in Nuevo León, the only state to have such a system.

10:30 - 11:15 am

IMMIGRATION**Unlocking Immigration is Key to Energizing Cross-Border Investment and Business Development**Richard Sindelar | Assitant Professor, University of St. Thomas Center for International Studies
Moderator: Terry Weir | Sr. Attorney at Dunbar Harder

Is US immigration in lock-down? Is Mexican immigration an open door? What do US individuals and companies need to know when investing or opening businesses in Mexico? What do Mexican individuals and companies need to know when investing or opening businesses in the US?

11:20 - 12:05 pm

LABOR**The Human Rights Recognition in the Mexican Constitution and its Impact on Labor Matters: Comparison between Mexican and U.S. Regulations on Discrimination and Right of Association**Francisco J. Peniche Beguerisse | Partner at Creel, García-Cuéllar, Aíza y Enríquez
Mary Ellen Simonson | Partner at Lewis Roca Rothgerber, LLC
Nadia Maritza González Elizondo | Santamarina y Steta, S.C. Sarah
Hamilton | Partner at Hirschfel Kraemer
Moderator: Juan Carlos de la Vega Gómez | Partner at Santamarina y Steta, S.C.

This panel will analyze recent developments in Mexican employment law pertaining to the application of human rights, mainly in matters related to avoiding discrimination at the work place and respect to employees right of association and will compare how such matters are handled under U.S. employment and labor law.

12:10 - 12:25 pm

CONSTITUTIONAL LAW**Mexican Supreme Court of Justice Relevant Criteria Granting Human Rights to Entities**Jorge Carlos Toledo Sauri, MDC, PhD | Researcher at Universidad Marista de Mérida, A.C.
Moderator: Manuel Pasero | Pasero Abogados, S.C.

The Corporate Social Responsibility has gained a new dimension. The Mexican Supreme Court of Justice recently issued important criteria granting Human Rights to corporate entities, raising the possibility that a company may be subject to liability for violations of human rights. The new criteria show the potential implications for law firms may be, as business enterprises with a responsibility to respect human rights themselves.



MEI report titles related to selected topics discussed in the 2015 meeting of the US-Mexico Bar Association

Year	Topic	File #	Pages	Chart
2015				
Oct 29, 15	Safe Seas Conference in Havana: Presenting Post-Macondo solutions to Cuba This report gives a sense of the presentations and discussions that took place in Havana during October 19-22 at the first international oil conference held in Cuba following the renewal of diplomatic relations with the United States at the end of 2014. The event was attended by 133 delegates from more than 10 countries. Cuba needs technology that would add to the environmental protection of the Gulf of Mexico. Cuban regulators have developed an advanced permitting system based on the UK Safety Case model. The report includes notes received from Cuban regulators subsequent to the conference.	792	8	1
Sep 24, 15	Glossary of CNH Model Contract for Round 1.2: New and old terms and definitions Table 1 of this report provides a preliminary, bilingual glossary of some 160 terms and definitions that are used in the model contract for CNH's second auction (known as Round 1.2). Most these terms are from Round 1.1 (held July 15, 2015). The terms (as lexical items) are sorted by their respective auction, then listed alphabetically. In relation to substance, we find some matters still problematic: one of these is administrative rescission. Noting that BP did not lose its license on account of the Macondo accident, Mexican regulations should state that rescission will not be applied in response to any single event.	100210	8	1
Feb 21, 15	Ronda Uno vs. LOPSRM (article by George Baker in Reforma) Published in the opinion page of the Business Section of REFORMA on February 20, 2015, this article by George Baker finds fault with the award criteria in the Draft Model Contract of the Hydrocarbon Commission (CNH) on December 11, 2014. He argues that a bidding variable of the highest government percentage is merely the mathematical inverse of the variable of lowest price found in the Public Works Law (LOPSRM). Both variants, he argues, are designed to protect public servants against possible sanctions by future auditors than to serve the public interest.	022015	1	0

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meeting of the US-Mexico Bar Association**

Year	Topic	File #	Pages	Chart
2014				
Oct 26, 14	The Tale of Vronche, Part Two	1000045	13	3
	<p>This report anticipates that the Energy Reform of 2014 will be followed by a future one in 2024 that will be much more aggressive than that embodied in the legislation promulgated in August and in the regulations that are pending. The attributes of the future reform are listed in Table 1. The narrative to which the title of this report refers is set in medieval times. In a dialog about the state of agriculture in a hermit kingdom, the history, logic and ideology of energy reform in Mexico may be discerned.</p>			
2012				
Jun 27, 12	Vronche and the Seven Dwarfs: An Upstream Fairy Tale	100131	13	0
	<p>A saying in Mexico is that "Truth is told in fiction, while fiction is told in truth." A critique of Pemex's second bid round, which culminated in awards on June 19, 2012, for four of the six blocks, is told in the language of a fairy tale of the Middle Ages.</p>			
Apr 24, 12	US-Mexico Transboundary Hydrocarbon Agreement (Part II)	100124	8	5
	<p>This report examines problematic aspects of the Transboundary Agreement, paying particular attention to the objections and concerns of the minority of senators who voted against immediate approval (69 in favor, 21 against). Sen. Pablo Gómez (PRD), who was the principal voice of the opposition, asked about why the CNH had not been designated at the executive agency that would represent the Mexican government in the administration of the Agreement. Another question concerned the omission from the agreement of the first 9 miles that the US said were under Texas jurisdiction. An outline of the debate is Exhibit C.</p>			
Mar 19, 12	US-Mexico Transboundary Hydrocarbon Agreement: A New Face for Pemex's Incentive Contract?	100121	9	0
	<p>Until 2012, neither Mexico or the U.S. had signed a cross-border agreement related to petroleum. Lease auctions of blocks continuous with Mexico on the U.S. side received no bids. The agreement provides a scaffolding of public oversight for the unitization of cross-border fields and for the eventual formation of a joint operating agreement between "licensees" on both sides. At this stage, the agreement is limited to sharing information, not risk.</p>			



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