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EFFECTS THAT NEOLIBERALISM AND GLOBALIZATION HAVE BROUGHT TO MEXICO'S SUSTAINABLE DEVELOPMENT

by
Maria Eugenia Uribe

Faculty of Law
Institute of Comparative Law
McGill University, Montreal
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ABSTRACT

After the Great Depression of 1929-1933, the relative isolation of Mexico's economy led to the adoption of Import Substitution Industrialization. The use of this model as a development strategy meant specializing in manufactured goods under a regime of state interventionism and a closed economy. However, after many years of inward-looking policies, ISI collapsed. Moreover, with excessive public expenditures and fiscal mismanagements, Mexico's economic stability started to erode. The result was Mexico's first economic crisis, the effects of which could only be alleviated through loans from International Financial Institutions that were contingent on the implementation of defined policies. Thus, Mexico adopted the neoliberal development model as its strategy for economic growth and recovery. Under this model, trade liberalization, outward-looking policies, and state non-interventionism promised economic growth as a necessary precondition for social justice and development. Mexico's implementation of neoliberal policies, on one hand, has aided its integration into a market-oriented economy in which competitiveness, foreign investment, and technology transfers are considered as paths to economic growth and, on the other hand, has widened the gap between the rich and the poor, and has impeded sustainable development.

RÉSUMÉ

Après la grande dépression de 1929-1933, l'isolation relative de l'économie mexicaine a mené à l'adoption d'une politique d'Industrialisation comme Substitution à l'Importation (ISI). L'application de ce modèle comme stratégie de développement se traduisit en une spécialisation en biens manufacturés sous un régime d'interventionnisme d'état et d'économie fermée. Néanmoins, après de longues années de mesures visant à renforcer les aspects internes de l'économie, l'ISI s'effondra. De plus, à cause de l'excès des dépenses publiques et des erreurs de l'administration fiscale, la stabilité économique du Mexique a été ébranlée. Le Mexique connut alors sa première crise économique dont les effets ne pouvaient être soulagés que grâce à des prêts provenant d'Institutions Financières Internationales sujettes à l'application d'une série de mesures bien définies. C'est ainsi que le Mexique adopta le modèle de développement néolibéral comme stratégie de récupération et de croissance économique. Sous ce modèle, la libération du commerce, les politiques d'ouverture vers l'extérieur et l'abolition de l'interventionnisme de l'État constituaient les conditions favorables à la justice et au développement social, qui pourraient donner un essor à la croissance économique. La mise en marche des politiques néolibérales a contribué, d'une part, à intégrer le Mexique dans une économie orientée vers le marché - où la compétitivité, l'investissement étranger et les transferts de technologie sont considérés comme la voie menant à la croissance économique - et, d'autre part, à élargir le fossé entre riches et pauvres et entraver le développement soutenu de l'économie.

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IN DOMINO CONFIDO

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“Mexico’s character, like that of any other people, is an illusion, a mask; at the same time it is a real face. It is never the same and it is always the same. It is a perpetual contradiction; each time we affirm part of us we deny another.”

Octavio Paz, *The Labyrinth of Solitude*

INTRODUCTION

Since adopting the neoliberal development model in the 1980s, Mexico's political, economic, and social scenarios have changed dramatically. The model's two predominant features, namely trade liberalization and state non-interventionism, have enhanced Mexico's relations with other states, while at the same time ending the unhealthy, paternalistic policies applied under the Import Substitution Industrialization (ISI) model and consequently the severe fiscal mismanagements caused by extreme reliance on inefficient, subsidized, state-owned enterprises and on oil revenues.

The financial aid supplied by the Bretton Woods institutions following Mexico's economic collapse in 1982, was contingent upon Mexico's adoption and implementation of neoliberalism. This model's strategies pursued a market-oriented economy, based on the principles established long before in the General Agreement on Tariffs and Trade (GATT), which at the end of the Cold War were integrated into an international economic regime. Both the neoliberal model and the international economic regime promote market-oriented policies as the path to economic growth. Unfortunately, since the consolidation of the global economy, not enough consideration has been given to environmental protection and social needs, which affect those who directly or indirectly participate in the production process.

Mexico has continuously struggled against recurrent economic and political crises, financial and foreign exchange uncertainties, bureaucratic and corrupt governmental systems, poverty, and social disarray. However, the international economic system has, for the most part, ignored the social problems that developing countries such as Mexico encounter. Although some efforts have been made through the United Nations Conference on Environment and Development (UNCED), free trade agreements, and the World Trade Organization (WTO), in addition to the developing countries, to address the social issues ensuing from the global economy, much remains to be done within the international and national arenas.

The purpose of this work is to analyze whether or not the newly globalized economic system and the neoliberal development model have contributed to Mexico's sustainable development. To this end, this work is divided into three chapters.

Chapter I outlines and analyzes the state's role, structure, and the constitutional provisions that support Mexico's current political and economic framework. Next, it describes the development models utilized by the Mexican state, namely the neoliberal model and the Import Substitution Industrialization model, and the general political and economic policies of the governmental administrations that adopted them.

Chapter II, in its first part, focuses on describing and analyzing Mexico's transition from protectionist, inward-looking policies to open, outward-looking policies. The second part of the chapter outlines and examines market-oriented economic policies stressed by

neoliberalism, including their consolidation into the global economic system, their origins, and the free trade agreements in which Mexico has actively participated.

Chapter III outlines the constitutional framework for the social issues of the Mexican state. It also describes and analyzes the different social policies applied by Mexico since the ISI period, and the current neoliberal and global economic system. Then, it analyzes and studies the real issues addressed within an integrated market-oriented economy. Throughout this second part, an analysis of sustainable development, poverty, and international and domestic policies is undertaken.

The Conclusion provides a critical perspective of the transition from a closed to an open economic system. A concise analysis of the economic, political, and social effects of the neoliberal model and globalization is also given. Regarding the social scenario, sustainable development is discussed, taking into consideration not only the neoliberal model and international economic system but the internal governmental structure as well.

CHAPTER I

MEXICO'S ECONOMIC AND POLITICAL FRAMEWORK

This Chapter explores the evolution of economic policy within Mexico's constitutional framework. The first part of the Chapter outlines the legal basis for economic policy implementation. The second part provides an overview of the historical development of economic policy in Mexico. It thus prepares the thematic discussion of the law and politics of contemporary neoliberal economic policy, which discussion follows in Chapter II.

I. THE ROLE OF THE STATE

Since the beginning of time, human beings have demonstrated that to satisfy their basic needs, they tend to associate with each other. For such association to take place, organization and planning is required. This association, which is composed of members of the population, needs the help of an organized group in order to plan, rule, and satisfactorily fulfill the needs of its society. A population's means of self-government, which is known as the state, helps the society to achieve healthy and efficient development.

A. What is the State?

The state is a juristic person, fictionally created by its population through legal instruments, subject to liabilities and rights.¹ Yet, it is a reality in which human beings constantly participate through different institutions and organizations. Structured like a legal corporation, it has the critical task of granting benefits to all its population, as “the state has been created to serve society. It exists to develop and fulfill its population’s needs and its efforts will not cease until these aims have been achieved.”²

The functions of the state are composed of general goals, purposes, and tendencies that are acknowledged by it and that are justified through its legislation and legal institutions. The power of the state is unique and it is assisted in its functions by governmental entities.³

B. The Branches of the State

According to the Mexican Constitution,⁴ Mexico is a federal democratic republic that is aided in its governance by three branches of government.⁵ These branches have their

¹ See B.A. Garner, ed., *Black's Dictionary*, 7th ed. (Minneapolis: West Group, 1999), s.v. “juristic person”. “artificial person: An entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being.- Also termed *fictitious person*; *juristic person*; *legal person*; *moral person*.”

² A. Serra Rojas, *Derecho Económico* (Mexico City: Porrúa, 1996) at 191 [translated by author].

³ See *ibid.* at 189.

⁴ See *Constitución Política de los Estados Unidos Mexicanos/ Mexico's Political Constitution* [hereinafter *Constitution*] [articles translated by author]. Mexico's Constitution was promulgated on 5 February 1917 and entered into force on 5 May of that same year. Formulated by a Constitutional Congress convoked by President Carranza in the city of Querétaro, the new Constitution legally amended Mexico's Federal Constitution of 1857, and was based on a constitutional draft (*Proyecto de Constitución*) prepared by

origins in the dogmatic, systematic doctrine of the separation of the power of the state elaborated by Montesquieu in *L'Esprit des Lois*. Montesquieu's basic idea was that by avoiding the concentration of power in one individual or group and by assuring liberty to the society through diverse entities that exercise the state's power, the abuse of power could be stopped by other powers of the state.⁶

Influenced by Montesquieu's theory, the 1857 and 1917 Mexican Constituent Power established the divisions of the power of the state, which have been incorporated in Mexico's federal democratic regime. As stipulated under Article 49 of the Mexican Constitution, the Federation's Supreme Power is divided into the Executive, Legislative and Judicial branches of government.⁷

1. The Executive Branch

The Executive through the Federal Public Administration supplies the legal basis for the economic administrative organization of the Mexican state.⁸ The Public Administration is

President Carranza in 1916. Having the same structure, length, and other characteristics as the European model, it is composed of 136 articles.

⁵ *Ibid.*, art. 40: "It is the will of the Mexican people to constitute themselves in a representative, democratic, and federal republic composed of free and sovereign states in all the matters regarding their internal regime and united in a Federation according to the principles of this fundamental law." [translated by author]

⁶ See A. Serra Rojas, *Ciencia Política* (Mexico: Editorial Porrúa, S.A. de C.V., 1995) at 559 [hereinafter *Ciencia Política*] [translated by author].

⁷ See *Constitution*, *supra* note 4 art. 49:

The Federation's Supreme Power is divided into the Executive, Legislative, and Judicial branches. Two or more of these branches cannot be gathered in one person or corporation. The Legislative branch cannot be represented by only one individual except in the case of extraordinary faculties granted to the Executive branch under article 29. In any event, except as stated in the second paragraph of article 131 extraordinary faculties will be given to legislate. [translated by author]

⁸ *Ibid.*, art. 90:

a legal-political structure as stipulated in Article 90 of the Constitution.⁹ This entity, composed of diverse entities of the Federal Executive, combines the activities of the state, except those of a legislative and judicial nature.

Under Mexico's Administrative Law, the Public Administration is a juristic person composed of administrative entities that may or may not have juristic personalities and have their own patrimony.¹⁰ According to Article 90 of the Mexican Constitution, the Public Administration is separated into Centralized and Parastatal regimes. These administrative regimes are created by the state either by law or decree issued by the Executive and do more than execute the laws; they define the basis and principles for national economic development.¹¹

Among the goals addressed by the Constitution and administrative laws, the Executive through its Public Administration develops governmental policies that combine governmental, economic, and social aspects that pursue the well-being of its population. Through its National Development Plan, the Public Administration seeks sovereignty, democracy, economic growth, equal income distribution, and social and cultural integration.

The Federal Public Administration is either Centralized or Parastatal, according to the Administrative Law issued by the Congress. The Congress will distribute the administrative tasks of the Federation to the Ministries of State and the Administrative Departments. The Federal Public Administration will define the general basis for the creation of parastatal entities and the intervention in its operation of the Federal Executive. The laws will determine the relations between the parastatals and the Federal Executive/Ministries of State/Administrative Departments. [translated by author]

⁹ See *ibid.*

¹⁰ See A. Serra Rojas, *Derecho Administrativo*, vol. I (Mexico: Editorial Porrúa, 1996) at 69 [hereinafter *Derecho Administrativo*] [translated by author].

¹¹ See *ibid.*

a. Centralized Public Administration

According to Article 1 of the Federal Public Administrative Law, the President, the Ministries of Government, and the Administrative Departments are part of the Centralized Public Administration. The Centralized Public Administration is an organized administrative regime of the Public Administration that coordinates and links the public entities to the decisions of the President, who is the titular central power of the state.¹²

The president proclaims and executes the laws that the Congress issues and oversees their compliance within the administrative entities. He is responsible for naming the different ministries of government that form the Centralized Public Administration, and he directs Mexico's policies regarding relations with other states and the signing of international treaties having the prior approval of the Senate.¹³

The President is in charge of convening the ministries of government and the administrative departments to define and evaluate the Federal Government's policies concerning each ministry, such as health, education, commerce, economics, employment, environment, and development, among others.¹⁴ The ministries of government and the administrative departments base their activities on the objectives of the national

¹² See *Constitution*, *supra* note 4, art. 80. According to this article, the exercise of the Executive Power rests on one individual, the President of Mexico.

¹³ See *ibid.*, art. 89 (I), (II) & (X).

¹⁴ See *Ley Orgánica de la Administración Pública Federal (Federal Public Administrative Law)*, published on the Federal Official Gazette on 29 December 1976, art. 7. [translated by author]

development planning established by the Executive through laws, regulations, decrees, and statutes.¹⁵

b. Parastatal Public Administration

The Parastatal Public Administration is an administrative regime that has a legal organization. It is formed by decentralized entities, state-owned enterprises, national credit institutions, auxiliary national credit organizations, national insurance and surety institutions, and trusts.¹⁶ All these entities participate with the state in the fulfillment of the population's needs and development. The Parastatal sector has its own patrimony and juristic personality, whereas the Centralized does not.¹⁷

This body, while autonomous, complies with all the planning and regulations related to public expenditure, financing, and control mechanisms established by the Executive through its different ministries of government.¹⁸ Within the Parastatal organization, matters such as health, housing, and education are directly addressed.

2. The Legislative Branch

The Legislative branch, in principle, works harmoniously with the Executive by revising and passing economic, fiscal, health, environmental, and social laws that will allow

¹⁵ See *ibid.*, art. 9.

¹⁶ See *ibid.*, art. 3.

¹⁷ See *ibid.*, art. 45. For more information, see *Derecho Administrativo I*, *supra* note 10.

¹⁸ See *ibid.*, art. 50.

sustainable development for the population. Article 50 of the Constitution establishes that the Legislative Power rests with the Congress, which is divided into two chambers, Deputies and Senators. Article 73 of the Constitution establishes the various faculties of the Congress. "The legislative task given to the Congress consists of creating laws that regulate the state's organization, its role, its functions, and relationship with society."¹⁹ The Chambers of Deputies and Senators can propose laws for the state's proper functioning.²⁰ Once these laws are proposed, the Chamber of Senators revises them and decides whether to approve them. When a law is approved, it is forwarded to the Executive for publication.

3. The Judicial Branch

The Judicial branch has its foundations in Article 94 of the Constitution. Its objective is to ensure that the state and its society comply with legislation. Its function is to help the state and its society to solve the various disputes that may arise. Its exercise rests with the Supreme Court of Justice, the Electoral Tribunal, Circuit Collegiate Tribunals, and District Courts, as well as a series of minor federal and local courts.

C. Constitutional Provisions

The role of the state in political and economic matters has its genesis in the Constitution, which has granted it the oversight of national development, which comprises economic

¹⁹ F. Porrúa Pérez, *Teoría del Estado* (Mexico: Editorial Porrúa, S.A., 1997) at 398 [translated by the author].

growth, equal income distribution, and social equality. Mexico's economic and political framework has been set out in the Constitution, which is the Union's Supreme Law.²¹

Mexico has a mixed economy in which some means of production are public and some are private. "From a legal point of view, the Mexican mixed economy has its basis and expression in the national legal order, as established in the Constitution and its administrative legislation."²² The allotment of resources and the level of activity is decided by individuals in conjunction with the public power through specific paths of organization and coordination.

Mexico's Federal Constitution has undergone a series of reforms to these provisions that address economic and social development. In the early 1980s, shortly after the abandonment of a closed economic policy, Mexico's Constitution underwent amendments that enabled it to address new public policies and macroeconomic changes.

The constitutional basis for Mexico's economic and public policies is contained in Articles 3, 5, 11, 25, 26, 27, 28, 31 (IV), 73 (VII, VIII, XVIII, XXIX(A), XXIX(D),

²⁰ See *Constitution*, *supra* note 4, art. 71.

²¹ *Ibid.*, art. 133:

This Constitution, the laws of the Congress originating from it, and all the treaties, having been approved by the Senate and then signed by the President, that agree with it will be the Union's Supreme Law. Even when the provisions of the local constitutions and laws of the different entities are contrary to the provisions established in the Federal Constitution, the judges of each entity must comply with it, its laws and treaties.

²² A. Serra Rojas, *Derecho Administrativo*, vol. II (Mexico: Editorial Porrúa, S.A., 1996) at 407 [hereinafter *Derecho Administrativo II*] [translated by author].

XXIX(E), XXIX(F), XXIX(G), 74(IV), 131, and 134. "These provisions make up what is known as the Mexican Economic Constitution."²³

1. General Overview

The following discussion of the main features of the Mexican Constitution focuses on its economic dimensions. A subsequent discussion in Chapter III will focus on its social and environmental dimensions.

Article 27 establishes a property regime for the state and for individuals that is limited to certain matters of public interest and of state economic development.²⁴ "The nation will always have the right to impose on private property certain modalities that the public interest considers determinant."²⁵ Within the property regime, some kinds of goods are considered to be public property and others are considered to be private property. This article also establishes the parameters and requirements of the state that must be fulfilled for individuals to purchase and obtain a piece of land or water within the national territory. The social function of private property is exhibited in the state's capacity to expropriate some goods by exercising the power of eminent domain subject to reasonable

²³ Serra Rojas, *supra* note 2 at 260.

²⁴ See *Constitution*, *supra* note 4, art. 27.

²⁵ *Ibid.*, art. 27, 3rd para.

compensation for the taking.²⁶ “The eminent domain concept is eminently economic” because it pursues the satisfaction of a public necessity.²⁷

In order to develop the federal budget,²⁸ the Congress has diverse functions such as determining the necessary amounts of fiscal contributions, which have to be set in a “proportional and equal manner”²⁹ to the amount of income that the individuals and corporations receive either through real wages or profits. Whenever there are deficits in the internal budget, the Congress can set the basis on which either national or international credits have to be asked for by the Executive branch.³⁰ Fiscal contributions such as the ones asked for in the fields of external commerce, exploitation of natural resources, credit institutions, insurance companies, and public services are stated in the laws that the Congress approves.³¹

By committing to national development, the state through its legislative body is in charge of issuing laws that will promote Mexican investment, and regulate foreign investment, technology transfers, and the scientific knowledge needed for its own development.³²

Article 74(IV) of the Constitution establishes that the Income Law and the Expenditures

²⁶ Garner, *supra* note 1, s.v. “expropriation”: “n. 1. A governmental taking or modification of an individual’s property rights esp. by eminent domain.”

s.v. “eminent domain”: “The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.”

²⁷ See I. Burgoa, *Las Garantías Individuales* (Mexico City: Editorial Porrúa, S.A., 1994) at 470 [translated by author].

²⁸ See *Constitution*, *supra* note 4, art. 73(VII).

²⁹ See *ibid.*, art. 31(IV).

³⁰ See *ibid.*, art. 73(VIII).

³¹ See *ibid.*, art. 73(XXIX)(A).

³² See *ibid.*, art. 73 (XXIX)(F).

Budget, must be prepared by the Executive and presented to the Chamber of Deputies for their annual revision and approval.

2. Articles 25, 26, and 28

The market regimes developed during the 18th and 19th centuries brought many economic and social injustices, and led to the creation of the political and economic policy of state interventionism in which the state protected the internal economy by avoiding relations with economies abroad.³³ The protectionist and state intervention model was still being applied during the early decades of the 20th century. This affected many countries, including Mexico, whose economic and political policies were forced to change at the beginning of the 1980s to allow openness to trade and economic growth. Consequently, Mexico amended some constitutional provisions, such as Articles 25, 26, and 28, which are the foundation for the economic and political framework.

a. Article 25

Article 25 of the Constitution stipulates that the state must pursue and achieve national development through the proper planning, coordination, and orientation of economic activities. Under this provision, the state must provide the best conditions for national

³³ During the liberal regimes, the state was merely considered a kind of political entity due to the *laissez faire, laissez passer, tout va de lui meme* character of economic liberalism. The state's authorities could only participate in the economy when there were conflicts or threats to the public peace. Burgoa, *supra* note 32 at 726.

economic development by cultivating the public, private, and social sectors' participation in the economy.

b. Article 26

Article 26 of the Constitution defines the task of the state as being to organize a democratic planning system that seeks a national economic development. This planning system foresees the creation of a National Development Plan in which the Public Administration and diverse entities of the society participate together by expressing their needs and suggestions for its elaboration.³⁴ Every six years, whenever there is a newly elected representative of the Executive branch, the National Development Plan is prepared, focusing specially on granting economic and social benefits to the whole population.³⁵

c. Article 28

Article 28 of the Constitution prohibits monopolies and tax exemptions that do not comply with the law. Nevertheless, the Mexican state directly controls the exercise of the public power over certain strategic and priority sectors that are not considered to be monopolies.³⁶ Under this constitutional provision, autonomy is given to the activities of

³⁴ See *Constitution*, *supra* note 4, art. 26, 2nd para.

³⁵ See *Garantías*, *supra* note 27 at 731.

³⁶ According to the fourth paragraph of article 28, the strategic areas are: mail services, telegraph services, oil, basic petrochemical goods, radioactive minerals, nuclear energy, electricity, among others established in other laws issued by the Congress. Moreover, the prioritarian areas are: satellite communications and train services. See *Constitution*, *supra* note 4, art. 28, 4th para.

the Central Bank, whose role is to maintain the stability of the national currency, and to strengthen the state's national development.³⁷

II. MODELS UTILIZED BY THE STATE

During different periods of time, Mexico has adopted economic and political policies expounded by theorists, economists, and academics. These policies have been viewed as icons of economic growth, national sovereignty, and political social development. Circumstances have dictated which rules to adopt and which models of development the state must implement. At times, these models have been applied successfully, but at other times they have been applied excessively or inappropriately by the state and external actors, to the point of economic, political, and social crisis in Mexico.

In the brief historical overview of Mexican policy that follows, emphasis will be placed upon explicit transitions in economic policy. A subsequent parallel discussion in Chapter III will emphasize social policies.

A. A Closed Economy: The Import Substitution Industrialization Model

After the international crisis of 1929-1933, most Latin American countries were immersed in a period of political and social turmoil and transition, that led them to adopt new public policies.³⁸ Besides the effects of the depression on Latin America, after

³⁷ Banco de México is Mexico's central bank, and the "peso" is Mexico's national currency.

³⁸ See E. Dussel Peters, *Polarizing Mexico, the Impact of Liberalization Strategy* (London: Lynne Rienner Publishers, 2000) at 8.

World War II some developing countries claimed that the prevailing global order perpetuated economic inequality among nations. Consequently, they adopted a state-guided strategy to remedy perceived inequalities and underdevelopment. This strategy was known as Import-Substitution Industrialization (ISI).

Mexico embraced this so-called inward-looking policy, by drastically promoting domestic industrial production as a way to achieve economic growth.³⁹ This policy evolved from the *dependency theory*, which emphasized the state as a defender of economic sovereignty and as a promoter of growth and development.⁴⁰ The notion that poor countries did not need to have relations with developed countries for growth to occur was part of this ideology.

It was under President Lázaro Cárdenas, who governed from 1934 to 1940, that the ISI policy, which was believed to be a perfect model for development, became the pillar of Mexico's modernization process. During this period, production and internal trade became important mechanisms for Mexico's industrialization and a source of income. Tariffs, official import prices, and import licenses generated a large proportion of the federal government's total fiscal income.⁴¹ Foreign investment was restricted, and the state controlled its markets, which were closed to foreign competition. Mexico, like other Latin American countries, took the position that growth could be achieved through

³⁹ See L. Randall, *Changing Structure of Mexico: Political, Social and Economic Prospects* (New York: M.E. Sharp, 1996) at 16.

⁴⁰ See *ibid.*

⁴¹ See B. Fischer, E. Gerken & U. Hiemenz, *Growth, Employment and Trade in an Industrializing Economy: A Quantitative Analysis of Mexican Development Policies* (Germany: J.C.B. Mohr (Paul Siebeck) Tübingen, 1982) at 14.

“industrialization in the economy, starting with light industry and concluding with capital goods production”.⁴²

After the 1940s, the Mexican state developed a political and economic policy that consisted of promoting public investment in order to establish and develop public industries that produced electricity, hydrocarbons, and water.

The import substitution policy in its advanced stage was designed to promote the formation and the expansion of modern chemical and investment goods industries while the traditional industries originated from the first industrialization effort in the 1940s were relatively under-promoted.⁴³

From the mid-1950s to the 1970s, the policy of production and export subsidies played an important role in industrialization. After a long period of time, these subsidies resulted in a myriad of inefficiencies and problems for the Mexican economy. Besides this, the state's protection and paternalism did not bring to domestic industries either growth or production quality. Even some private industries could no longer generate profits. Some state-owned industries were maintained in existence only as a result of state subsidies.

During the 1960s, the state through its Ministry of Industry and Commerce implemented *Programas de Integración Industrial* (Industrial Integration Programs), which were directed to promote the use of domestic inputs “and the availability of credits, which

⁴² E. Carrasco & A. Kose, “Social Justice and Development: Critical Issues Facing the Bretton Woods System: Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development” (1996) 6 *Transnat'l & Contemp Prob.* 1, online: Lexis-Nexis (date accessed: 31 March 2001).

⁴³ See Fischer, Gerken & Hiemenz, *supra* note 41 at 13.

encouraged the use of capital intensive techniques of production, the growth of relatively capital-intensive modern industries and the regional concentration of industrial production".⁴⁴ After some time, industrialization turned into a policy through which resources that could have been directed "to education and other productive investment projects, were spent on subsidizing a growing number of the state-owned enterprises".⁴⁵

It is important to emphasize that during the period of the ISI model, attention was focused strongly on the industrial sector, and the agricultural sector lost its strength, reduced its trade surplus and began generating deficits. Consequently, people from rural areas moved to urban centers in order to find better opportunities in the industrial sector.

The implementation of ISI brought economic stability to Mexico until the beginning of the 1960s. Its long period of implementation and influence over Mexico's economic performance brought excessive state intervention, fiscal mismanagement, weak government revenues, uncontrolled public spending, paternalist inward-looking policies, as well as inefficient state-owned enterprises, all of which contributed to Mexico's 1976 economic crisis. In the aftermath of ISI's failure, Mexico went through two transitional periods still characterized by state-led economic policies.

⁴⁴ *Ibid.* at 19.

⁴⁵ See Randall, *supra* note 39 at 17.

1. An overview of the 1970-1976 governmental period: Echeverría

The government that took office in 1970 believed that a country that was totally controlled by the state would be more prosperous. The government run by President Luis Echeverría during the late 1960s and early 1970s had high public expenditures that were not balanced by high revenues.⁴⁶ Moreover, during this period, the government adopted an ideologically left-wing approach to the state, its economy, and its society. It viewed greater state intervention as the best way to relieve social tensions that erupted during bloody 1968 riots and subsequent student unrest.⁴⁷ “In response to these political and social pressures, the government stepped up public spending, including its social spending, and attempted to strengthen the government’s control of the economy by increasing the number of state enterprises and regulations”.⁴⁸

Besides uncontrolled expenditures and leftist policies, Mexico as a net oil importer, was severely affected due to the oil price increases during the 1973’s world recession. The revenues that the state was receiving at this time were not sufficient to cover its public

⁴⁶ Luis Echeverría Álvarez, a representative of the *Partido Revolucionario Institucional* (Institutional Revolutionary Party) (PRI), was Mexico’s president from 1970 to 1976.

⁴⁷ In the late 1960s, when Gustavo Díaz Ordaz was president of Mexico and José Luis Echeverría Álvarez was Minister of Government, protests were held against Mexico’s economic model and its authoritarian government. Guerrillas took control of the countryside in the states of Sonora and Guerrero, and protests were organized by university and high school students in Mexico City. Most of the student protests took place at important public universities such as the UNAM (*Universidad Nacional Autónoma de México*) and IPN (*Instituto Politécnico Nacional*). On 2 October 1968, student protesters and their supporters met at the Plaza de las Tres Culturas in Tlatelolco, Mexico City, where many of them were massacred by the military groups that surrounded the area. Thereafter, no more protests took place. See “El movimiento estudiantil, culmina en la Plaza de las Tres Culturas, Tlatelolco, en tragedia”, online: <http://redescolar.ilce.edu.mx/redescolar/efemerides/octubre/conme.2htm> (date accessed: 20 May 2001) [translated by autor].

⁴⁸ N. Lustig, *Mexico, the remaking of an economy*, 2nd ed. (Washington, D.C.: Brookings Institution Press, 1998) at 18.

expenditures, so that inflation and a budgetary deficit led to a balance of payment crisis in 1976 and to a 60 percent devaluation of the peso.⁴⁹ Given the need to finance the budgetary deficit through external borrowing, and given the maintenance of a fixed exchange rate, it became difficult to control Mexico's borrowing demands on the International Financial Institutions (IFI) such as the International Monetary Fund (IMF).⁵⁰

2. An overview of the 1976-1982 governmental period: López Portillo

In 1976, when President José López Portillo took office, Mexico was involved in economic turmoil that caused a strong currency devaluation, budgetary deficits, and public debt stemming from loans that IFI had granted. However, the 1976 crisis was soon forgotten when massive oil discoveries gave hope for an economic recovery.⁵¹ With its new-found oil reserves, Mexico became more trusted by international lending institutions.

The López Portillo administration took the view that with the oil discoveries, Mexico's economy would recover by exporting the oil at high prices. However, the price of oil

⁴⁹ See Randall, *supra* note 39 at 19.

⁵⁰ The Bretton Woods Conference, held in 1944, established the basic framework for the post World War II international monetary system. The Bretton Woods system called for exchange rates to be pegged against the U.S. dollar. The Bretton Woods Conference also created two major international institutions: the International Monetary Fund, known as the IMF, and the World Bank. The IMF's task was to maintain order in the international monetary system; the World Bank's was to promote development. The Bretton Woods' system of fixed exchange rates collapsed in 1973. Since then the world has used a variety of systems, including managed floats, free floats, fixed rates, and target zone arrangements. See C.W.L. Hill, *International Business, Competing in the Global Marketplace, Postscript 1998*, 2nd ed. (New York: McGraw Hill, 1998) at 294-295.

⁵¹ See Lustig, *supra* note 48 at 20.

declined in the early 1980s. Fiscal mismanagement increased and Mexico had renewed borrowing needs. During this administration, no limits were put on budgetary expenditures and a large proportion of tax revenues were spent on purchasing private-sector enterprises that were collapsing as a consequence of ISI policies. "From 1950 to 1970, the number of parastatal firms in Mexico remained below 300; twelve years later, state-owned firms numbered 1,155".⁵²

As Mexico continued to increase its borrowing needs, real interest rates rose in mid-1981, putting high pressure on Mexico's foreign debt payments.⁵³ The government through its economic policies tried to sustain a fixed exchange rate, which could not do for long because foreign reserves were decreasing rapidly. "In August 1982, continuous capital flight and the interruption of the flow of commercial lending led to new and dramatic devaluation, as well as a ninety-day suspension on foreign debt payments of the principal."⁵⁴ No longer able to control the exchange rate, the government had no choice but to devalue the peso by more than 260 percent, declare a temporary moratorium on debt payments, and force the conversion of dollar-denominated bank deposits into pesos at an unfavorable, below-market, exchange rate.⁵⁵ With Mexico confronted by such a devastating crisis, international financial institutions pressured it to "adopt neo-liberal policies, to restructure its economy away from ISI, and to continue to service its debts".⁵⁶ By the end of 1982, Mexico's banking system was nationalized, trade became regulated, and exchange controls on capital were adopted.

⁵² Randall, *supra* note 39 at 19.

⁵³ Lustig, *supra* note 48 at 24.

⁵⁴ *Ibid.* at 25.

⁵⁵ See Randall, *supra* note 39 at 22-23.

B. An Open Economy: The Neoliberal Model

Having felt the negative economic effects of an inward-looking policy with the development of ISI, Mexico realized that it had to change to an outward-looking system in which trade liberalization could take place. The country began to work out new policies such as the Export Oriented Industrialization (EOI) and the pursuit of a regional free trade bloc with Canada and the United States.⁵⁷ The trade liberalization strategy oriented the government toward economic stability and non-intervention, which in the long run led to economic growth and development.

In the early 1980s, the neoliberal development model was considered to be the most appropriate way to achieve a free market and open trade. It focused strictly on growth as a necessary precondition to economic recovery, improvement, and social justice.⁵⁸ This policy was developed during the late 1970s and 1980s in the United States as a response to the failure of the traditional liberal paradigm to meet the problems of the day such as stagflation and zero economic growth, and was imposed by the IFIs on its debtors as a strategy to service their debt payments.⁵⁹

⁵⁶ J. Feldman, *The Impact of Neoliberalism in Mexico: The Destructive Power of Ideas* (Montreal: Political Science Department, McGill University, 1996) [unpublished] at 17.

⁵⁷ See Dussel Peters, *supra* note 38 at 11. EOI is an acronym for Export Oriented Industrialization. EOI is a market-oriented economic regime used in international trade.

⁵⁸ See R. Rothenberg, *The Neoliberals* (New York, Simon & Schuster, 1984) at 20.

⁵⁹ See Feldman, *supra* note 56 at 16.

1. An overview of the 1982-1988 governmental period: de la Madrid

When President de la Madrid took office in December 1982, he initiated the first stage of macroeconomic adjustment and structural reform. The 1982 crisis was the worst economic collapse that Mexico had ever known, “and the usefulness of extensive state intervention in the economy was finally questioned”.⁶⁰ Thus, new public policies mainly pursued a well-organized, market-based economy, a fiscal restructuring that would prohibit public expenditures not foreseen in the budget, and a tight, disciplined monetary policy. Public economic policy emphasized price stability through the reduction of the government deficit. As an immediate response to the crisis, the de la Madrid administration set in motion an IMF-supported stabilization package known as the *Programa Inmediato de Reordenación Económica* (Program of Immediate Economic Reorganization) (PIRE).⁶¹ Furthermore, this administration demonstrated its commitment in the international community by attempting to find a governmental strategy that would allow it to meet its debt service payments by rescheduling them.

There were two loan negotiation phases. The first consisted of rescheduling the debt throughout the 1980s. The second phase sought the gradual deceleration of inflation and new measures regarding fiscal policy and exchange rates. “The government expected that if inflation subsided and fiscal and relative price corrections were sustained, growth

⁶⁰ J.D. Humphrey, “Foreign Affairs Powers and the First Crisis of the 21st Century: Congressional vs. Executive Authority and the Stabilization Plan for Mexico” (1995) 17 Mich. J. Int’l L. 181, online: Lexis-Nexis (date accessed: 31 March 2001).

⁶¹ See Lustig, *supra* note 48 at 29.

would follow.”⁶² However, the state no longer aimed to reduce the budgetary deficit and revalue its currency, and growth in imports and a decline in exports caused the trade balance to deteriorate. Additionally, since world oil prices had fallen in mid-1981, oil exports did not bring any profit or benefit to the economy. Both of these facts resulted in unfavorable terms of trade for goods exported by Mexico.

Mexico's governmental policies only brought a relaxed budgetary deficit, a weak trade balance, and non-compliance of its external contractual debt obligations, leading the now distrustful international financial community to suspend its aid to Mexico during 1985. Thereafter, the balance-of-payments deficit led to yet another currency devaluation and to the end of the PIRE.

In the wake of Mexico's 1985 balance-of-payments crisis, de la Madrid sought other public policies that would encourage economic stability. He initiated stabilization policies that pursued, among other objectives, accelerated trade liberalization and an enormous fiscal adjustment, signaling “the beginning of a structural reform process”.⁶³ Import licensing restrictions formulated during the ISI period were loosened and the proportion of imports not subject to licensing requirements augmented. Economic restructuring and the departure of protectionist economic policies symbolized a commitment to a continued trade liberalization.⁶⁴ In August 1986, Mexico formally

⁶² *Ibid.* at 34.

⁶³ *Ibid.* at 39.

⁶⁴ See I. Morales, “Nafta Revisited: Expectations and Realities. The Mexican Crisis and the Weakness of the NAFTA Consensus” (March 1997) 550 *Annals* 130, online: Lexis-Nexis (15 May 2001).

embraced to trade liberalization by joining the General Agreement on Tariffs and Trade (GATT).⁶⁵

During 1986, world oil prices fell further, and Mexico was forced to sell its oil at half the price of the previous year. Since no IMF funding was available during mid-1985, the 1986 oil shock had to be absorbed internally. Mexico reduced its dependence on world oil prices and diminished its dependency on oil revenues as a share of export and fiscal revenues. Even though Mexico was feeling the effects of the oil crisis and the lack of financial aid, the de la Madrid administration was able to handle these problems by implementing policies that attempted to protect its balance of payments and foreign currency reserves.⁶⁶ The 1986 oil shock provided an opportunity to consider a different approach to the management of the external debt, including unilateral suspension of payments.

The rumor of an impending Mexican moratorium on its debt payments led commercial banks to cooperate with the United States in implementing the Baker Plan. This plan permitted the lending of money and the rescheduling of payments of past debt. These loans were rescheduled to be paid within a twenty-year period, with a grace period of seven years. If it was to transpire that during 1987 economic growth in fact declined, a contingency period would be triggered to allow Mexico time to recover. IFIs were open

⁶⁵ The General Agreement on Tariffs and Trade (GATT) was established by the United States and seven other major trading partners in 1947 and made effective January 1948. The GATT was the framework that established the parameters for the trading policies and trading activities of its contracting parties. See J.M. Vernon, "Mexico's Accession to the GATT: A Catalyst at Odds with the Outcome?" (1993) 24 St. Mary's L.J. 717, online: Lexis-Nexis (date accessed: 2 April 2001).

⁶⁶ Lustig, *supra* note 48 at 43.

to the idea of once again aiding Mexico.⁶⁷ The IMF helped Mexico by agreeing to a contingency finance facility in case of further oil crises. The World Bank agreed to help Mexico because of the state's planned structural reform and new public policies to be implemented in 1987.

In 1987, Mexico's economy was hit hard by the crash of the New York Stock Exchange. This shock, the 1986 oil crisis, and the "pursuit of an accelerated restructuring of exports"⁶⁸ brought about high inflation and an "intense capital flight that culminated in the November 1987 devaluation, setting the country off toward hyperinflation".⁶⁹ Afraid that the country would be seriously affected by high inflation, the de la Madrid administration implemented the *Pacto de Solidaridad Económica* (Economic Solidarity Pact) (PASE).⁷⁰ The PASE sought a labor sector that would not continuously demand salary increases, a business and entrepreneurial sector that would encourage static prices, a governmental sector that would help to reduce the budgetary deficit, and a fixed exchange rate that would help to lower inflation and to spur economic growth. The PASE pursued the structural changes to the economy by enacting measures such reduction in the size of the public administration, the privatization of state-owned enterprises, the control of prices and inflation, and for the first time since the crisis erupted in 1982, the establishment of a comprehensive income policy.⁷¹ The state considered it important to

⁶⁷ See "Mexico in Crisis", *infra* note 95.

⁶⁸ *Ibid.* at 50.

⁶⁹ P. Aspe, *Economic Transformation the Mexican Way* (Massachusetts: Massachusetts Institute of Technology, 1993) at 19.

⁷⁰ The *Pacto de Solidaridad Económica* (Pact for Economic Solidarity) (PASE) was signed on 15 December 1987 by the president, and the labor, business and farming representatives of Miguel de la Madrid's administration. It was followed by the *Pacto de Estabilidad y Crecimiento Económico* (*Pact for Stability and Economic Growth*) (PECE) under Salinas' administration.

⁷¹ See Lustig, *supra* note 48 at 51.

privatize subsidized and inefficient state-owned enterprises. "As a result, more than 80 percent of the 1,115 state-run companies that existed in 1982 were no longer in the hands of the government by the end of 1991".⁷² The profits obtained from privatizing the parastatals - \$14.5 billion in all - were used to reduce Mexico's internal debt.⁷³ The PASE was proposed and implemented without any help from the IMF, commercial banks, and multilateral creditors. Its implementation brought down inflation, but still the economy did not recover.

Yet, trade liberalization leading Mexico to an open economy remained the long-term goal. "December 1987 marked the culmination of the crisis of ISI and the beginning of a new socioeconomic development strategy: liberalization strategy".⁷⁴

2. An overview of the 1988-1994 governmental period: Carlos Salinas

At the end of 1988, the PASE was replaced by the Pact for Economic Stability and Growth (PECE).⁷⁵ By 1990-1991, the state, while relaxing its overall regulation of prices, raised prices for many products so as to prepare the population for the increases that were soon to come as a result of market forces. During this period, the state was concerned about the significant net transfer of resources abroad which was hindering Mexico's economic growth. "To reverse the trend in resource transfers, it was essential to concentrate on three fronts: reduction of the burden of debt servicing, encouragement of

⁷² Aspe, *supra* note 69 at 31.

⁷³ See *ibid.* at 33.

⁷⁴ See Dussel Peters, *supra* note 38 at 49.

⁷⁵ Regarding PASE & PECE, see *supra* note 70.

capital repatriation, and attraction of new foreign investment.”⁷⁶ The external debt was still a problem, and investors were afraid of supplying money to an economy that had already suffered many collapses and mismanagements. The best way to approach and propitiate an effective and trustful environment was to persuade commercial banks to reduce its debt and payments. Consequently, in March 1989, the Brady Plan was launched by the U.S. government. In 1990, Carlos Salinas decided to privatize the banks, hoping to stimulate private and foreign investment.⁷⁷

In December 1988, the government as part of its fiscal policy amended some taxation laws so that taxes would be equitable and collected according to each individual's earnings. These adjustments were made either by increasing the percentage demanded or by implementing standards for tax compliance.⁷⁸ The fight against tax evasion “resulted in higher non-oil tax revenues sufficient to compensate for the loss of taxes paid by PEMEX as a result of the decline in world oil prices” in 1986.⁷⁹

State reform was Salinas' key goal. He hoped to consolidate the modernization project that had been initiated by his predecessor Miguel de la Madrid.⁸⁰ In this regard, the policy of an open economy with a free-market mechanism was considered essential for economic recovery. The shift to a new, active role for the state in the economic arena led

⁷⁶ Lustig, *supra* note 48.

⁷⁷ Carlos Salinas de Gortari, a representative of the PRI, was Mexico's president from 1988 to 1994. He took office on 1 December 1988. His accession to the presidency was quite controversial due to the fact that the *Instituto Federal Electoral* (Federal Electoral Institute) could not validate the final results of the election.

⁷⁸ See Lustig, *supra* note 48 at 99.

⁷⁹ *Ibid.*

⁸⁰ See Randall, *supra* note 39 at 59.

to social programs like the *Programa Nacional de Solidaridad* (National Solidarity Program) in 1989.

Most of the “large scale privatization” process undertaken by the Salinas administration, took place during 1989 and 1990.⁸¹ This privatization of state-owned enterprises changed the foreign financial community’s perception of Mexico, restoring their confidence and opening the flow of foreign investment. Its foreign investment strategy consisted of guaranteeing cheap labor costs for corporations and entities within an outward-oriented development policy.⁸² In this regard, Mexico had to undergo “an extremely painful adjustment period of net job destruction”.⁸³

In the spring of 1990, Salinas, seeking to complement market-oriented reforms and trade liberalization policies, officially proposed that negotiations for a free trade agreement with the United States take place. In June of that year, Canada asked to be included in what became the North American Free Trade Agreement negotiations. The difference in wealth and in social and economic development among the partners made the social agenda of trade immensely interesting and challenging. The formal acceptance of Mexico as a NAFTA Party elicited negative comments, especially due to Mexico’s lax environmental laws, standards, and enforcement.⁸⁴

⁸¹ See A. Nadal, “Proceedings of the Canada-United States Law Institute Conference: NAFTA Revisited: The Mexican Economic Recovery” (1997) 23 Can.-U.S. L.J. 59, online: Lexis-Nexis (date accessed: 2 April 2001).

⁸² See Randall, *supra* note 39 at 16.

⁸³ J. Heath, *Mexico and the Sexenio Curse. Presidential Successions and Economic Crises in Modern Mexico* (Washington, D.C.: CSIS Press, 1999) at 34.

During President Salinas' term in office, interest rates fell in the United States, and Mexico took advantage of that fact by promoting large capital inflows, which rose to 60 percent of total capital inflows from 1989 to 1993.⁸⁵ "By the beginning of 1994, the current account deficit remained not only high, but also strongly dependent on short-term portfolio capital."⁸⁶ Large quantities of portfolio investment entered the country constantly, leading to high federal reserves. However, later that same year, many political factors caused portfolio investment to leave Mexico. These included, the armed conflict in Chiapas brought by the Zapatistas; the assassination of Luis Donaldo Colosio, the Institutional Revolutionary Party candidate running for president in the 1994 elections; the drop in interest rates; the resignation of Jorge Carpizo, the Minister of Government; the assassination of José Francisco Ruiz Massieu, the leader of the Institutional Revolutionary Party. These and other events of less importance caused instability, distrust, and insecurity that decreased foreign investment.⁸⁷ Consequently, reserves, which had stood at U.S.\$28,321 billion on 23 March, fell to U.S.\$17.536 billion by 21 April, "a net loss of U.S.\$10.785 billion in one month."⁸⁸ At this point, the Mexican government had to develop strategies for a speedy economic recovery and took decisions such as to issue more dollar-denominated short-term government debt instruments known as Tesobonos that were due either by December 1994 or the first six months of 1995. By this time, the government had to repay investors, who still had confidence in the

⁸⁴ See P.M. Johnson & A. Beaulieu, "The Environment and NAFTA: Understanding and Implementing the New Continental Law" (1996) Island Press 40.

⁸⁵ See Lustig, *supra* note 48 at 156.

⁸⁶ Heath, *supra* note 83 at 38.

⁸⁷ The armed conflict in Chiapas organized by the Zapatistas started on 1 January 1994 as a protest of Mexico's entrance to NAFTA as a world market-oriented economic model. Luis Donaldo Colosio's assassination occurred on 23 March 1994. -Jorge's Carpizo resignation as minister of government took place in June 1994.

⁸⁸ Heath, *supra* note 83 at 42.

“government’s commitment to the exchange rate regime”.⁸⁹ By March 1994, the short-term debt rose to U.S.\$3.1 billion and by December it reached U.S.\$29.2 billion.⁹⁰ Federal reserves fell steadily as the government showed its commitment to respect its payment obligations as they had been stated. Thus, the Banco de Mexico’s “reserves fell from \$12.889 billion at the end of November to \$6.278 billion by the end of December and to \$4.440 billion by the end of January”.⁹¹ All these events resulted in the biggest devaluation and economic crisis ever experienced by Mexico. With Mexico’s federal reserves virtually depleted, Ernesto Zedillo announced on 20 December 1994 that Mexico would devalue the peso by thirteen percent.⁹² Before the devaluation, Mexico was unable to obtain assistance from foreign countries or IFIs, which would have helped it to stave off economic collapse. “The IMF - whose purpose was to assist countries experiencing a currency crisis - initially was unable to act because of its limited resources, and its extensive procedural requirements”.⁹³

3. An overview of the 1994-2000 governmental period: Zedillo

After taking office in December 1994, Ernesto Zedillo and his administration encountered difficult economic problems such as speculative pressures and capital outflows. Federal reserves at the time of the devaluation were extremely low and the government’s obligation to pay the Tesobonos was expiring by December 1994 and the beginning of 1995. External aid was urgently needed. The United States was the first to

⁸⁹ Lustig, *supra* note 48 at 160.

⁹⁰ See *ibid.*

⁹¹ Randall, *supra* note 39 at 71.

⁹² See Humphrey, *supra* note 60 at 181.

offer financial help to Mexico through a rescue package of U.S.\$18 billion.⁹⁴ Since this amount was not enough to cover the government's short-term debt obligations and to help support the federal reserve, which was by then extremely reduced, investors feared they would not receive their Tesobonos payments on time and that the "Mexican government would have no choice but to impose exchange controls".⁹⁵ Consequently, more external aid was needed and the US government by February 1995 finally arranged a total financial rescue package of U.S.\$50 billion, with U.S.\$17.8 billion of that amount coming from the IMF.⁹⁶ The IMF's contribution was the largest ever extended. Canada's government and a group of Latin American countries supplied U.S.\$1 billion, and U.S. commercial banks lent an additional U.S.\$3 billion.⁹⁷

As part of this rescue package, Mexico was forced to comply with certain conditions imposed by the United States and the IMF. It had to formulate an economic stabilization plan in which it needed to strictly control its fiscal policy by reducing government expenditures, tightening credit, and increasing taxes, such as the Impuesto al Valor Agregado (IVA) (value-added tax). Privatization as a purely neoliberal policy was once again considered for key sectors such as banking, telecommunications, and transportation. Mexico complied with the restructured amortization payments of its short-term debt, and started to rebuild its federal reserves.⁹⁸ During 1995, the absence of capital flows and increased debt led to one of the most terrible economic recessions in Mexico's

⁹³ *Ibid.*

⁹⁴ See Lustig, *supra* note 48 at 169.

⁹⁵ N. Lustig, "Mexico in Crises, the U.S. to the Rescue: The Financial Assistance Packages of 1982 and 1995" (1997) 2 UCLA J. Int'l. L. & For. Aff. 25, online: Lexis-Nexis (date accessed: 31 March 2001) [hereinafter "Mexico in Crisis"].

⁹⁶ See *ibid.*

⁹⁷ See "Mexico in Crises", *supra* note 95.

history. The country's gradual recovery was initiated through trade liberalization policies, its entrance to NAFTA, and its booming capital markets.⁹⁹

Soon after the 1994 devaluation, imports fell due to the high, unpredictable exchange rate, and exports surged to the extent that the country registered a surplus in its trade account, which grew to U.S.\$11.4 billion in only one year. By this time, prices had increased so much that salaries were at a very low level relative to inflation. Banks set very high interest rates, and clients could not repay their debts on time due to their low salaries and to high interest rates. As a result, banks became heavily undercapitalized. The government acted immediately, taking control of those banks that were insolvent by injecting capital, selling them to other banks, and establishing debt-relief programs to help families service their credit debts.¹⁰⁰ After the government took these measures, debtors noticed that they could avoid their credit payments because of the weak regulations and poor enforcement.

The 1995 recession brought serious consequences for Mexico's economy and society. Salaries dropped, income and wealth became skewed, large firms were able to expand through exports while small and medium firms had problems growing and exporting goods. "Extreme poverty increased, as did the informal sector of the economy (that part of the economy that does not pay taxes or receive government benefits)".¹⁰¹ The Zedillo administration went through a period of recovery and crisis management that lasted

⁹⁸ See Heath, *supra* note 83 at 59.

⁹⁹ See *ibid.* at 53.

¹⁰⁰ See *ibid.* at 52.

¹⁰¹ *Ibid.* at 54.

almost three years. In 1997, the onset of economic recovery brought increased exports and foreign investment, and the implementation of a National Program for Financing Development (Pronafide), which was planned for 1997-2000. This program pursued diverse goals that mostly sought Mexico's economic improvement, including:

- an increase in real GDP averaging about 5 percent per year;¹⁰²
- the creation and strengthening of domestic sources of financing on a permanent and sustained basis;¹⁰³
- maintenance of a low budgetary deficit during 1998-1999;
- a reduction in inflation of 7.5 percent;¹⁰⁴
- prevention of external capital flows;¹⁰⁵
- improvement of social welfare, such as social security, and the proper assigning of expenditures for social development and the struggle against poverty;¹⁰⁶
- the promotion of FDI and exports, and the maintenance of a flexible exchange rate as a complement to domestic savings;¹⁰⁷
- a solid banking system with proper supervision in order to avoid further problems such as the ones encountered during the beginning of bank's privatization.¹⁰⁸

¹⁰² See "IMF Staff Views Favorably Mexican Medium-Term Program", News Brief No. 97/10 (3 June 1997), online: News Brief <http://www.imf.org/external/np/sec/nb/1997/nb9710.htm> (date accessed: 1 May 2001) [hereinafter "IMF Staff Views"].

¹⁰³ See *National Program to Finance Development*, online: PRONAFIDE <http://www.presidencia.gob.mx> (date accessed: 1 May 2001) [hereinafter *National Program*] [translated by author].

¹⁰⁴ See "IMF Staff Views", *supra* note 102.

¹⁰⁵ See *National Program*, *supra* note 103.

¹⁰⁶ See *Planificación y Política Económica, Ernesto Zedillo Ponce de León (1994-2000)*, online: <http://www.miexamen.com.mx/Politica%20economica.htm> (date accessed: 4 May 2001) (translated by author).

¹⁰⁷ See Heath, *supra* note 83 at 56.

¹⁰⁸ See *Planificación y Política Económica*, *supra* note 106.

The break-down of the ISI led Mexico to adopt the neoliberal model and trade liberalization policies. It was hoped that this change would lead Mexico into an era of economic recovery and social development.

CHAPTER II

MEXICO'S TRANSITIONAL PERIOD

This Chapter situates contemporary Mexican economic policy in its domestic and international legal settings. The first part elucidates the features of neoliberal economic policy as it has been applied in Mexico: non-intervention, open-trade, privatization, price stability, fiscal controls, and capital influx. The second part explores the evolution and implications of Mexico's legal and regional trade commitments.

I. NEOLIBERALISM: AN OVERVIEW AND MEXICO'S IMPLEMENTED POLICIES

AN OVERVIEW

The ISI "development model" applied by Mexico from the late 1930s to the late 1970s collapsed because it could no longer sustain industrialization and the inward-looking public policies that brought inefficiencies, corruption, budgetary deficits, indebtedness, currency devaluations, inflation, unemployment, and increased poverty.¹⁰⁹ These consequences spurred Mexico to develop strategic policies to address structural problems and to generate efficient responses.

Mexico required a new development model in which outward-looking policies for a free market economy could stimulate its collapsed economy while addressing its social needs. The IMF and the World Bank provided big loans to Mexico in the aftermath of its economic collapse. They played a part in running the economies of the countries that borrowed from them.¹¹⁰ Specifically they encouraged developing countries to adopt neoliberal economic reforms as a path to economic growth.¹¹¹ With these reforms, called policy conditionality, developing countries such as Mexico applied the economic, political, and social policies recommended by these institutions as a way to ameliorate their debts position and accelerate their payments.¹¹²

Neoliberal policies were first introduced by the IFIs' Washington consensus as part of a development model that could help developing countries to open their economies and integrate them into the global market.¹¹³ Such policies, introduced in the United States during the Reagan-Bush administration, proclaimed on capitalism's victory as a "triumph

¹⁰⁹ See P.D. Oxhorn & G. Ducatenzeiler, *What kind of Democracy? What kind of Market?, Latin America in the Age of Neoliberalism* (Pennsylvania: Pennsylvania State University Press, 1998) at 199.

¹¹⁰ R.L. Harris & M.J. Seid, *Critical Perspectives on Globalization and Neoliberalism in the Developing Countries* (Leiden, The Netherlands: Koninklijke Brill NV, 2000) at 9.

¹¹¹ See Oxhorn & Ducatenzeiler, *supra* note 109 at 202.

¹¹² See Harris & Seid, *supra* note 110 at 9.

¹¹³ See N. Chomsky, "Neoliberalism and the Global Order" in *Profit over People* (Washington, D.C.: Seven Stories Press, 1999) online: Third World Traveler, http://www.thirdworldtraveler.com/Chomsky/NeoliberalismPOP_Chom.html:

The Washington Neoliberal Consensus is an array of market oriented principles designed by the government of the United States and the international financial institutions that it largely dominates, and implemented by them in various ways-for the more vulnerable societies, often as stringent structural adjustment programs. The basic rules, in brief, are liberalize trade and finance, let markets set price, end inflation, macroeconomic stability and privatization. The principal architects of the neoliberal "Washington consensus" are the masters of the private economy, mainly huge corporations that control much of the international economy and have the means to dominate policy formation as well as the structuring of thought and opinion.

of the market".¹¹⁴ State freedom was seen as a way for multinational corporations to generate prosperity, democracy, respect for human rights, and environmentally beneficial technologies.¹¹⁵

These neoliberal economic reforms were conceived by epistemic communities¹¹⁶ of experts trained in the science of neoliberal economics coming from or influenced by the Ivy League and elite universities like the University of Chicago and Stanford.¹¹⁷ These economists, politicians, and scientists felt "blissfully free to propound grandiose schemes for industrial policy".¹¹⁸ The Mexican epistemic communities initiated the neoliberal policies in the early 1980s during the de la Madrid administration and implemented them more fully during the Salinas administration in the 1990s.

Opposed to state authoritarian policies, the neoliberal development model fought for its insertion in the international economy by opposing state intervention and protection as fundamentally unhealthy.

The neo-liberals define their new world in four ways: a world in which growth is a necessary precondition to social justice; a world in which small economic units constitute the locus of growth; a world in which information and new technologies

¹¹⁴ T. Friedman, *The Lexus and the Olive Tree: Understanding Globalization* (New York: Farrar Straus-Diroux, 1999) at 271.

¹¹⁵ See D. Korten, *The Post-Corporate World: Life after Capitalism* (San Francisco: Berret-Koehler Publishers, 1999) at 79.

¹¹⁶ Peter Haas defines epistemic communities as "a network of professionals with recognized expertise and competence in a particular domain and a authoritative claim to policy relevant knowledge within that domain or issue area". P.M. Haas, "Epistemic Communities and International Policy Coordination" (Winter 1992) 46 *Int'l Org* 1.

¹¹⁷ See Feldman, *supra* note 56 at 16.

¹¹⁸ See Rothenberg, *supra* note 58 at 20.

drive economic growth; and a world become interconnected economic unit through the influence of new technologies.¹¹⁹

For the last two decades, developing countries have been politically, socially, economically, and culturally influenced by the “accelerating integration of their economies into the expanding global capitalist system”.¹²⁰ This influence and the consequences of ISI for Mexico originated the neoliberal scheme imposed by IFIs, developed countries, and transnational corporations.¹²¹ In summary, they provided the argument that Mexico and other developing countries needed to remove their restrictions in foreign investment, to lower and eliminate trade tariffs and subsidies, and to open “their economies to the transnational corporations”.¹²²

MEXICO'S IMPLEMENTED POLICIES

Economic growth, recovery, development, and income and wealth distribution were some of the principal aims to be achieved within the structural reforms that the neoliberal state adopted and implemented. In Mexico, neoliberal policies were first adopted by de la Madrid's administration and were later developed and implemented by technocrats administrations such as the ones of Salinas de Gortari and Ernesto Zedillo. These administrations pursued as their main goals the following interconnected policies:

- Non-interventionism of the state in private enterprises
- Openness of private companies to international trade

¹¹⁹ *Ibid.*

¹²⁰ See Harris & Seid, *supra* note 110 at 5.

¹²¹ See J. Karliner, *The Corporate Planet: Ecology and Politics in the Age of Globalization* (San Francisco: Sierra Club Books, 1997) at 4-5.

- Privatization of the public sector
- Price stability
- Budgetary cutbacks
- Foreign Direct Investment as a precondition of economic growth

A. Non-interventionism of the State in Private Enterprises

In the private sector, the state's non-interventionist policy can be seen through its approach to the economic process and related activities.¹²³ This policy consists of the state's policing function, which is that of an outside observer seeking the full compliance of the laws governing the private sector.¹²⁴ Current regulatory policy favors the use of periodical inspections, disclosure requirements and audits rather than direct control over managerial decisions.

B. Openness of Private Companies to International Trade

The neoliberal policy of openness of private companies to international trade was seen through Mexico's adoption of the EOI model. With Mexico's neoliberal openness to trade, a new notion of efficient production was pursued through the abolition of market constraints and state intervention.¹²⁵ Private companies were no longer viewed as state-controlled entities seeking a quota of internal production. Rather, they were seen as

¹²² Harris & Seid, *supra* note 110 at 7.

¹²³ See Randall, *supra* 39 at 58.

¹²⁴ See Serra Rojas, *supra* note 2 at 202.

motors of growth and development. As the neoliberal development model incorporated competition and free market development, it also brought employment opportunities to Mexico through its exports and to industrialized countries, capital-intensive success.¹²⁶

Some laws were implemented and others were amended to enforce trade liberalization and export-oriented policies. These laws include: *Ley de Comercio Exterior* (External Commerce Law), *Ley de Competencia Económica* (Economic Competence Law), *Ley del Impuesto General de Importación* (General Imports Tax Law), *Ley del Impuesto General de Exportación* (General Exports Tax Law), *Reglamento de la ley para promover la inversión mexicana y regular la inversión extranjera* (Regulation of the law to promote Mexican investment and to regulate foreign investment), and *Ley de inversión extranjera* (Foreign Investment Law).¹²⁷

¹²⁵ See Dussel Peters, *supra* note 38 at 12.

¹²⁶ See *ibid.* at 15.

¹²⁷ Implemented and amended laws since Mexico's openness to international trade:

- *Ley de Comercio Exterior* (External Commerce Law) was published in the Federal Official Gazette on 27 July 1993 [translated by author]. Its main objective is to regulate and promote external commerce, to increase Mexico's economic competitiveness, to propitiate an efficient use of national resources, and to adequately integrate the Mexican economy into the international economy through the population's well-being.
- *Ley de Competencia Económica* (Economic Competence Law) was published in the Federal Official Gazette on 24 December 1992 [translated by author]. Its primary objective is to protect the processes of economic competence and free concurrence through the prohibition of monopolies and their practices, which may affect the proper functioning of goods and services markets.
- *Ley del Impuesto General de Importación* (General Import Tax Law) was issued by decree on 13 December 1995 [translated by author]. Its main goal is to control the different tax rates for imports.
- *Ley del Impuesto General de Exportación* (General Export Tax Law) was issued by decree on 19 December 1995 [translated by author]. Its main objective is to control the different tax rates applicable to exports.
- *Reglamento de la ley para promover la inversión mexicana y regular la inversión extranjera* (Regulation of the Law to Promote Mexican Investment and to Regulate Foreign Investment) was published in the Federal Official Gazette on 16 May 1989 [translated by author]. The objective of this regulation was to abrogate the prior regulations that governed foreign investment as they were stated in the 1973 *Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera* (Law to Promote Mexican Investment and to Regulate Foreign Investment). The new regulation

C. Privatization of the Public Sector

During the ISI period, numerous enterprises controlled directly by the state through its protectionist policies soon became so inefficient that the federal government was forced to sell most of them to the private sector. With the privatization of state-owned enterprises, "foreign and local capitalists were given access to investment" and the purchased enterprises were introduced to the trade liberalization process, which had the free market as one of its main characteristics.¹²⁸ Although there were some constitutional prohibitions against privatizing enterprises with a strategic role,¹²⁹ the Constitution also established freedom for the state to participate in social and private sectors to organize and impel the development of priority areas such as satellite communications and railways.¹³⁰ The privatization of the public enterprises mostly took place during Salinas' administration. From 1988 to 1990, the number of privatizations increased to the point that revenues from them reached more than U.S.\$3 billion.¹³¹ By privatizing state enterprises, Mexico opened access of foreign and domestic investors so as to achieve

established that as a general rule foreigners may hold more than the 49% of the voting shares of Mexican companies.

- *Ley de Inversión Extranjera* (Foreign Investment Law) was published in the Federal Official Gazette on 27 December 1993 [translated by author]. This new law incorporated some provisions that were established in the 1989 regulation to promote Mexican investment and to regulate foreign investment and adopted a new vision of the current legal framework for foreign direct investment.

¹²⁸ See Harris & Seid, *supra* note 110 at 9.

¹²⁹ *Constitution*, *supra* note 4, art. 25, 4th para.: "The public sector will be exclusively in charge of the strategic areas that are established in article 28th fourth paragraph. These strategic areas are: petroleum and hydrocarbons, postal services, telegraph and radiotelegraphy services, basic petrochemicals, radioactive minerals, and the generation of nuclear energy and electricity."

¹³⁰ *Ibid.*, art. 25, 5th para.: "The state is able to participate by itself or with the public and private sectors to improve and organize development areas. These development priority areas are: railways and satellite communications as it is stated in article 28, fourth paragraph of the Constitution."

¹³¹ See Lustig, *supra* note 48 at 107.

economic growth through better production processes, improved quality control of products, a free market, and competitiveness.

D. Price Stability

As seen throughout this work, price stability was developed through the implementation of diverse programs such as the PIRE.¹³² This program could not work efficiently and was replaced by the PASE and years later, by the PECE. These programs primarily pursued cuts in budgetary expenditures, a tight monetary policy, and an export-oriented industrialization development model.

E. Budgetary Cutbacks

The Mexican neoliberal reorganization of the state included the implementation of budgetary cuts, which were first achieved by cutting the size of the civil service, relieving the federal government of some budgetary obligations that were transferred to the local governments, and by attacking tax evasion, which had been a normal and ordinary activity during the 1970s.

Austerity programs were developed as a consequence of the fiscal mismanagement, debts, and economic crises in which Mexico had been involved. The public deficit declined as public revenues increased and governmental expenditures were reduced.

¹³² See *ibid.* at 29.

Such programs meant higher prices for publicly produced goods and services, higher tax rates, and cuts in public investment, subsidies, and in other public expenditures. Some of these cuts were seen in health, education, and other social services, which involved the “basic operation of deactivating the constitutional commitment to social justice in the economic process”.¹³³

F. Foreign Direct Investment as a Precondition of Economic Growth

Adopted in 1973, Mexico's *Ley para promover la inversión mexicana y regular la inversión extranjera* (Law to promote Mexican investment and to regulate foreign investment) did not permit majority of foreign ownership more than 49% of the voting shares of a company, prohibited investment in certain activities of industry, and excluded foreign participation in certain industries.¹³⁴ In 1989, after Salinas took office, the *Reglamento de la ley para promover la inversión mexicana y regular la inversión extranjera* (Regulation of the law to promote Mexican investment and to regulate foreign investment) was issued with a view to permitting economic growth through a different foreign investment regime.¹³⁵ The purpose of this regulation was to abrogate the

¹³³ Randall, *supra* note 39 at 60.

¹³⁴ See *Ley para promover la inversión mexicana y regular la inversión extranjera* (Law to promote Mexican investment and to regulate foreign investment) was published in the Federal Official Gazette on 9 March 1973 [translated by author]. Its main purpose was to promote Mexican investment and to consider foreign investment as an investment supplement. According to this law, foreign direct investment could only complement national investment, as a way to initiate new activities in the industrial sector. Thus, outside investors could only contribute less capital than that which was obtained from Mexican sources. According to article 4(2), some activities were reserved exclusively for Mexicans and for companies that in their governing statutes included a clause of exclusion of foreigners. This same law established that for certain kind of companies, foreign investment could not exceed 49% of the total assets of the company.

¹³⁵ See *Reglamento de la ley para promover la inversión mexicana y regular la inversión extranjera* (Regulation of the Law to Promote Mexican Investment and to Regulate Foreign Investment) *supra* note 127.

provisions regarding foreign investment of the 1973 Law.¹³⁶ With this new regulation, foreigners were allowed to own a majority of the voting shares of a company. Furthermore, Mexico's participation in NAFTA forced it to implement new foreign investment regulations consistent with the provisions of NAFTA, Chapter XI. The new *Ley de inversión extranjera* (Foreign Investment Law), of 1993, which replaced the 1973 Law, was created with the purpose of complying with the provisions established in the Mexican Constitution, in the 1989 Regulations, and in NAFTA's Chapter XI. This new law pursues the goals of job creation, the attraction of new capital to the economy, and the implementation and development of a competitive industrial sector. Under the Foreign Investment Law, certain strategic areas are still reserved for the state. Other economic activities such as "ground transportation services, gasoline sales, television, radio and development banking among others are reserved exclusively for Mexicans individuals or corporations through an exclusion of foreigners clause".¹³⁷ From 1996 to 1999, Mexico amended its Foreign Investment Law by allowing 100% participation of FDI in the fields of financial services, railways, telecommunications, and natural gas.

II. A MARKET-ORIENTED ECONOMY

The international crisis of 1929 to 1933 manifested itself in Latin America as a series of political and social disruptions. Regionally, populist, left-leaning governments were

¹³⁶ A regulation is a norm designed to comply with the guidelines of the law it regulates in order to make it clearer and more effective. According to Mexican law, a regulation cannot supersede a law, but in this case, the Regulation for the Law to Promote Mexican Investment and to Regulate Foreign was in fact doing it to the 1973's Law to Promote Mexican Investment and to Regulate Foreign Investment. This irregularity caused an anomalous situation which was constitutionally debated.

¹³⁷ See *Ley de Inversión Extranjera* (Foreign Investment Law), *supra* note 127 at art. 6.

formed in reaction to the general influence of socialism. These governments pursued state intervention and protection of all aspects of the economy, government, and society.

In the years preceding World War II, the ISI development model adopted throughout Latin America was held out as an icon of development. Dependence on imported intermediate and capital goods resulted in trade deficits for the Latin American countries, including Mexico, which, as insisted above, experienced a deep crisis in 1982. These events set the political and economic stage for the adoption and implementation of policies and models, that sought Mexico's recovery.

The IMF, in its role as a crisis manager, became the most important international organization for developing countries.¹³⁸ The financial aid granted by IFIs to Mexico, as well as to other developing countries, was conditioned on compliance with political and economic policies set and approved by the IMF, other IFIs, and transnational corporations. These policies promoted so-called "structural changes", which were meant to ease the transition of developing countries into a market-oriented economy.¹³⁹

For the last two decades, the Bretton Woods financial institutions have outlined programs and policies for developing countries according to the views of the Washington consensus.¹⁴⁰ The neoliberal development model and a global market-oriented economy form an integrated economic system in which regional blocs develop their own

¹³⁸ See P. Körner, G. Maass, T. Siebold & R. Tetzlaff, *The IMF and the Debt Crisis. A guide to the Third World's Dilemma* (New Jersey: Zed Books, Ltd, 1986) at 2.

¹³⁹ Structural changes are known as structural adjustment programs, or SAPs as they are called by the IMF and the World Bank. These programs must agree with the policies of the neoliberal development model.

objectives that in principle must adhere to the rules established by the GATT and more recently by the World Trade Organization (WTO).¹⁴¹

A. World Integration: Globalization

For some decades the ISI model seemed to be the most appropriate growth strategy for Mexico and more generally for developing countries. Unfortunately, in the late 1970s it brought negative effects, which forced state-controlled countries to adopt outward-looking strategies.

As neoliberal policies were developed through the Washington consensus and were imposed by the IFIs on the developing countries, trade liberalization became part of the political and economic agenda. Trade liberalization led to an export-oriented industrialization development model in which free trade of goods and services, and state non-interventionism production were seen as paths for economic and financial growth, competitiveness, and sustainable development.

Various trade theories have been developed by scholars through the years. In 1776, Adam Smith proposed the *absolute advantage theory*, which posits that unrestricted free

¹⁴⁰ See Chomsky, *supra* note 113.

¹⁴¹ The Uruguay Round of multilateral trade negotiations was the eighth and final negotiating round to take place under the auspices of the General Agreement on Tariffs and Trade (GATT), which was superseded by the World Trade Organization (WTO) in 1995. The WTO is in charge providing more effective policing and enforcement of GATT rules. The WTO will also be responsible for arbitrating trade disputes and monitoring the trade policies of Member countries. See H. Thomas (UNCTAD) & J. Whalley (University of Western Ontario), *Uruguay Round Results and the Emerging Trade Agenda, Quantitative-based Analyses from the Development Perspective* (New York: United Nations, 1998) at v. See also GATT, *supra* note 65; Hill, *supra* note 50 at 165 & 167.

trade is beneficial to any country.¹⁴² Smith affirmed that for economic growth to take place, there must be a *laissez-faire attitude* toward trade, allowing citizens to buy and to produce and sell to other countries. Later, in the 19th century, David Ricardo developed the *theory of comparative advantage*, which was later refined by Eli Heckscher and Bertil Ohlin, whose theory is named after them.¹⁴³ According to these theories, each nation should specialize in the production and export of those goods that it can produce with highest relative efficiency and import those goods that other nations can produce relatively more efficiently.

Whether on the basis of *Laissez-Faire* or comparative advantage, the world has indeed been integrating its economy. An integrated market-oriented economy is one of the central features of what has come to be known as globalization. Globalization is a multifaceted concept that captures a set of trends and socio-economic outcomes.¹⁴⁴ "Globalization is not a single, unified phenomenon, but a syndrome of processes and activities."¹⁴⁵ Within these processes, the free movement of goods and services, capital flows, technology transfers, intellectual property and investment, among others, occur on a global scale.¹⁴⁶ Globalization is "simultaneously seen as cause and a consequence of the convergence of basic economic and political systems among nations".¹⁴⁷

¹⁴² See Hill, *ibid.* at 122.

¹⁴³ See *ibid.* at 123.

¹⁴⁴ See A.Y. Seita, "Globalisation and the Convergence of Values" (1997) 30 Cornell Intl' L.J. 429, online: Lexis-Nexis (date accessed: 6 May 2001).

¹⁴⁵ See J.H. Mittelman, *Globalization Syndrome* (California: Princeton, 2000) at 4.

¹⁴⁶ See Seita, *supra* note 144.

¹⁴⁷ *Ibid.*

With the neoliberal development model, applied in developing countries such as Mexico, globalization has gained more importance, to the extent that the state specifically focuses on economic goals such as growth, competitiveness, and recovery while downplaying social needs.

With the new international economic order and globalization, national markets can merge into a global market in which isolated trade barriers are removed allowing integrated participation of individual firms. Firms can therefore disperse their productive processes to different locations around the globe so as to take advantage of differences in cost and quality of factors of production.

B. Origins and Current Framework

The market-oriented economy had its origins just after World War II ended. The consequences of the war motivated the Allies to avoid their future recurrence and to create institutions to the end, notably the United Nations and its affiliated agencies.

The Allies were also interested in aiding devastated countries, so they created “international institutions to promote international monetary cooperation (the IMF), to foster economic development in less developed countries (the World Bank), and to increase international trade (the GATT)”.¹⁴⁸ The GATT has since been replaced by the WTO as a mechanism for effective policing and enforcement of GATT’s rules.

¹⁴⁸ *Ibid.*

1. The General Agreement on Tariffs and Trade

In the aftermath of World War II, some economies were devastated, and it was thought that cooperation leading to free trade among nations would improve their performance. Consequently, the GATT was created in 1947 for that purpose and entered into force on 1 January 1948.¹⁴⁹ A provisional agreement was formulated to cover the period prior to the entry into force what was to be the Havana Charter, an agreement whose complex dispute settlement procedures were to constitute an International Trade Organization (ITO).¹⁵⁰ The Havana Charter's provisions included chapters relating to employment and economic activity, economic development and reconstruction, and restrictive trade practices.¹⁵¹ The ITO never materialized due to opposition in the US Congress, which was concerned that the Havana Charter "would excessively constrain domestic sovereignty".¹⁵² When the United States failed to ratify the Havana Charter, it fell into degnetude, and the GATT provisional agreement remained in force. The GATT's mandate was to supervise the "negotiation and administration of a new multilateral, liberal world trading regime".¹⁵³ This agreement became the basis for successive points of negotiation producing a progressive liberalized framework that sets the parameters of the trading process among contracting parties. Its main objective is to liberalize trade by

¹⁴⁹ See Vernon, *supra* note 65.

¹⁵⁰ See P. Demaret, "The Metamorphoses of the GATT: From the Havana Charter to the World Trade Organization" (1995) 34 Colum. J. Transnat'l L. 123, online: Lexis-Nexis (date accessed: 10 May 2001).

¹⁵¹ See *ibid.*

¹⁵² M.J. Trebilcock & R. Howse, *The Regulation of International Trade* (New York: Routledge, 1999) at 21.

¹⁵³ *Ibid.*

eliminating tariffs, subsidies, and import quotas through the establishment of international trading rules and principles.

As is made clear in its Preamble, the GATT pursues non-discriminatory treatment for all its Members. The non-discrimination principle is often viewed as the cornerstone of the GATT's legal order.¹⁵⁴ This principle is amplified in the Article I commitment to the *Most Favored Nation Principle*, and in Article III, which sets out the *National Treatment Principle*. All free trade agreements include as a general rule these two principles as a head rock disciplines for an integrated market economy. The Most Favored Nation Principle "requires each contracting party to afford every other country the lowest rates available to the products of any country".¹⁵⁵ The most favored nation principle is designed to constrain discrimination by Members as among foreign exporters.¹⁵⁶ The *national treatment principle* established in Article III of the GATT proscribes a different kind of discrimination, "namely where a Member adopts internal or domestic policies designed to favor its domestic producers *vis-a vis* foreign producers of a given product, even though the latter may all be treated in a uniform way".¹⁵⁷ Article III(4) stipulates that products from the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin with respect to all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use.

¹⁵⁴ See B.S. Brown, "Developing Countries in the International Trade Order" (Spring 1994) 14 N. Ill. U.L. Rev. 347, online: Lexis-Nexis (date accessed: 10 June 2001).

¹⁵⁵ Vernon, *supra* note 65.

¹⁵⁶ See Trebilcock & Howse, *supra* note 152 at 29.

After World War II, given that Latin American countries were beginning to govern and conduct themselves under the ISI development model, they perceived free trade proposals and the GATT as threats to industrialization, as well as to their sovereignty and independence. When countries assembled to draft the Havana Charter, some representatives of developing countries expressed their fears about losing their industrialization, sovereignty, and independence once a free trade regime was established. They sought special recognition of their economies and needs within the market-oriented framework.

Countries such as Mexico, which were principally importers of manufactured goods and exporters of primary goods during the ISI period, expected modest benefits from the GATT. Developing countries feared that they would not receive the promised benefits of an open market economy.

In 1950, Raul Prebisch, a Venezuelan economist, expressed his concern about the advantageous position that developed countries held regarding exports of primary goods from developing to developed countries and imports of industrialized, expensive goods from developed to developing countries.¹⁵⁷ This concern and the dissatisfaction of the developing countries toward the GATT and the Bretton Woods institutions led to the 1964 creation of the United Nations Conference on Trade and Development (UNCTAD). "Within UNCTAD, the developing countries began to push for changes in the

¹⁵⁷ *Ibid.*

¹⁵⁸ See Brown, *supra* note 154.

international trade and development regimes".¹⁵⁹ In 1974, developing countries called upon developed countries and the United Nations for a New International Economic Order (NEIC), which was accepted by the General Assembly.¹⁶⁰ The NEIC sought changes and recognition for the limited potential of developing countries in the international trade arena. However, as the NEIC proposals were never implemented, IFIs such as the IMF, World Bank, and the GATT decided to make a concession to developing countries by implementing the Generalized System of Preferences (GSP).¹⁶¹ The GSP granted duty-free treatment and other non-reciprocal tariff preferences to products from developing countries.¹⁶² However, it is difficult to show that these attempts to treat developing countries more fairly have been successful.

Before the creation of UNCTAD, GATT Article XVIII was the only part of the agreement that dealt with trade involving countries with low standards of living. This Article provided a basis "for the granting of sweeping exemptions from GATT strictures to many developing countries, usually with a view to import substitution and protection of infant industries".¹⁶³ After the creation of UNCTAD, developing countries continued to seek trade preferences to position their economic disadvantages relative to developed countries. Thus, in 1965 Part IV, entitled "Trade and Development", was added to the

¹⁵⁹ *Ibid.*

¹⁶⁰ The NEIC has its basis in the United Nation's Declaration on the Establishment of a New International Economic Order. This declaration proclaimed: "The present international economic order is in direct conflict with current developments in international political and economic relations. The developing world has become a powerful factor that makes its influence felt in all fields of international activity. These irreversible changes in the relationship of forces in the world necessitate the active, full, and equal participation of the developing countries in the formulation and application of all decisions that concern the international community." "Developing Countries and Multilateral Trade Agreements: Law and the Promise of Development" (May 1995) 108 Harv. L. Rev. 1715, online: Lexis-Nexis (date accessed: 16 May 2001) [hereinafter: "Promise of Development"].

¹⁶¹ See *ibid.* at 26.

¹⁶² See Brown, *supra* note 154.

GATT.¹⁶⁴ This part, while supporting the theory of export-led growth, does not incorporate the obligatory characteristics of the other GATT provisions. Part IV seeks to address the problems of developing countries and to recognize their needs. The 1986 Ministerial Declaration, which announced the beginning of the Uruguay Round of negotiations, incorporated a series of developing countries' concerns.¹⁶⁵ This declaration established that the negotiations "would achieve further liberalization and expansion of world trade to the benefit of all countries, especially less-developed contracting parties".¹⁶⁶

2. The World Trade Organization

In 1986, GATT Members began the eighth round of negotiations to reduce tariffs. This round of multilateral trade negotiations began at Punta del Este, Uruguay and concluded nine years later in Marrakesh, Morocco in April 1994 with the signing of *The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*.¹⁶⁷ This round was the most complex of all rounds to date because of its ambition not only to apply trade rules to manufactured goods and commodities, but also to services. At the same time, it sought to create rules governing intellectual property, for reducing agricultural subsidies, and for the strengthening the GATT's monitoring and enforcement mechanisms.¹⁶⁸ One interested observer has summarized its many successes as follows,

¹⁶³ Trebilcock & Howse, *supra* note 152 at 370.

¹⁶⁴ See *ibid.* at 371.

¹⁶⁵ "Promise of Development", *supra* note 160.

¹⁶⁶ *Ibid.*

the key achievements of the Uruguay Round was the establishment of the WTO as the permanent institution to oversee the multilateral trade agreements and the forum for further multilateral trade negotiations, thereby bringing the multilateral trading system officially into the universe of legally constituted intergovernmental organizations.¹⁶⁹

The WTO was formed in order to provide an integrated dispute settlement regime and to undertake pro-active trade policy surveillance.¹⁷⁰ Its creation coincided with the tremendous blossoming of the integrated global economy and an intense concern about the impact of a globalized economy on the economies of developed and developing countries. Obviously, this concern has not been focused solely on strong economies; weak and growing economies have also gained attention. International trade lawyers and experts have observed and analyzed the basis, principles, and functioning of the GATT and the benefits that each round of negotiations have brought to its Members, especially to developing countries.¹⁷¹ The WTO oversees the continuous maintenance of stability and predictability of the conditions that an integrated trade economy brings to its Members.¹⁷² Therefore, it places emphasis upon the rule of law and its relation to the healthy functioning of the economies of the Member states. Within the WTO, the rule of law finds its basis in the binding enforcement of its rules and the active contributions made by states regarding upcoming negotiations.

¹⁶⁷ See Thomas & Whalley, *supra* note 141 at 1.

¹⁶⁸ See Hill, *supra* note 50 at 165.

¹⁶⁹ M. Moore, "The World Trade Organization, Globalization, and the Future of International Trade Essay: The WTO, Looking Ahead" (November/December 2000) 24 Fordham Int'l L.J. 1, online: Lexis-Nexis (date accessed: 16 May 2001).

¹⁷⁰ See Trebilcock & Howse, *supra* note 152 at 38.

¹⁷¹ See Moore, *supra* note 177.

¹⁷² See *ibid.*

Currently, the WTO comprises approximately 140 Members, two-thirds of them developing countries. The last WTO meeting, held in Seattle from 29 November to 3 December 1999, did not adequately address complex issues such as agriculture, environment, anti-dumping, the labor-trade tie in, investment, competition, and the domestic political problems of the Member countries.¹⁷³ In fact, the Seattle round failed to be launched because developing countries, lacked confidence in a globally integrated economy, and most importantly, in the benefits to be derived by developing countries; this in the face of significant "difficulties implementing their commitment to the WTO rules".¹⁷⁴

Free trade and neoliberal policies within a world integrated economy do not have to be perceived as threats to economic growth. On the contrary, they should be viewed as paths to recovery for developing countries. The WTO has the crucial task of helping Member states to achieve economic prosperity, promotion of employment, and its efforts to assure an "appropriate share in the growth of international trade".¹⁷⁵

C. Development through Regional Free Trade Agreements

The need for world economic growth and development in the postwar period gave rise to the liberalization of domestic and international trade. With the birth of the GATT in 1947, countries have sought internal economic growth and development through regional

¹⁷³ See D.A. Gantz, "Failed Efforts to Initiate the *Millennium Round* in Seattle: Lessons for Future Global Trade Negotiations" (Spring 2000) 17 *Ariz. J. Int'l & Comp. L.* 349.

¹⁷⁴ P. Sutherland, "Essay: Concluding the Uruguay Round-Creating the New Architecture of Trade for the Global Economy" (November/December 2000) 24 *Fordham Int'l L.J.* 15.

free trade agreements. In fact, GATT facilitates this through Part III Article XXIV, which refers to *Territorial Application-Frontier-Traffic-Customs Unions and Free-trade Areas*. In particular, paragraph 4 establishes the basis for the creation and recognition of free trade area agreements among nations.¹⁷⁶

Post-war regional, free trade agreements originated in 1952 with the formal economic integration of the European Coal and Steel Community, which promoted the integration of the steel industry.¹⁷⁷ Later in 1957 the Treaty of Rome, pursuing European economic integration,¹⁷⁸ was signed by six countries: France, Germany, Italy, The Netherlands, Belgium and Luxembourg. In 1973, the Caribbean countries formed the Caribbean Common Market (CARICOM).¹⁷⁹ In 1986, the European Union adopted the Single European Act, which set an agenda to create a single European market by 1992.¹⁸⁰ In 1988, the conclusion of the Canada-United States Free Trade Agreement (FTA) became an important step on the road to a North American regional bloc.¹⁸¹ In 1991, the Treaty of Asuncion signed by Argentina, Brazil, Paraguay and Uruguay 1988 ushered in the

¹⁷⁵ See Moore, *supra* note 177.

¹⁷⁶ *General Agreement on Tariffs and Trade*, part III, art. XXIV(4), referring to *Territorial Application-Frontier Traffic-Customs Union and Free-trade Areas*, establishes:

The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

¹⁷⁷ See Trebilcock & Howse, *supra* note 152 at 23.

¹⁷⁸ See *ibid.*

¹⁷⁹ See *Treaty Establishing the Caribbean Community*, 4 July 1973, Annex to the Caribbean Common Market, 946 U.N.T.S. 17, 12 I.L.M. 1033, online: <http://www.sice.oas.org/trade/ccme/ccmetoc.stm> (date accessed: 17 May 2001).

¹⁸⁰ See Trebilcock & Howse, *supra* note 152 at 24.

¹⁸¹ See *ibid.* at 24.

MERCOSUR.¹⁸² In 1992, the North American Free Trade Agreement (NAFTA) was signed by Canada, Mexico, and the United States.¹⁸³ In 1993, the Maastricht Treaty provided economic and political integration within Europe.¹⁸⁴

Most recently, in the year 2000, the EU-Mexico Free Trade Agreement was signed by Mexico and the European Union.¹⁸⁵ Mexico's pursuit of economic growth and development through an integrated market-oriented economy has created new opportunities for partnership. In March 2000, Mexico signed a free trade agreement with the European Union that entered into force on 1 July of the same year. This agreement aims to achieve efficient trade in goods, services, intellectual property, competition, cooperation, and investment between Mexico and EU Members.¹⁸⁶ It is the most extensive commercial agreement ever signed by Europe. Mexico is considered by the European Union as important to be a strategic market that offers economic opportunities as it pursues economic recovery and growth. The European Union is Mexico's second largest commercial trading partner. The EU-Mexico Free Trade Agreement seeks to strengthen its Members' economic and commercial relations according to the regulations of the WTO.¹⁸⁷

¹⁸² See *Treaty Establishing a Common Market Between the Argentinian Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay*, 26 March 1991, 30 I.L.M. 1044, online: <http://www.sice.oas.org/trade/mrcsr/mrcsrtoc.stm> (date accessed: 17 May 2001).

¹⁸³ See Trebilcock & Howse, *supra* note 152 at 24; *North American Free Trade Agreement*, 17 December 1992, 32 I.L.M. 605 [hereinafter NAFTA].

¹⁸⁴ See *ibid.*

¹⁸⁵ See Bilateral Trade Relations, Mexico, "EU-Mexico Free Trade Agreement", online: http://www.europa.eu.int/comm/trade/bilateral/mexico/ftapr_en.htm (date accessed: 17 May 2001) [hereinafter "EU-Mexico Free Trade Agreement"].

¹⁸⁶ See European Commission, *EC Communication from the Commission to the Council and the European Parliament accompanying the final text of the draft decisions by the EC-Mexico Joint Council* (2000), online: Trade Directorate General Information Unit <http://europa.eu.int/comm/trade/bilateral/mexico/mexico.htm> (date accessed: 21 May 2001).

¹⁸⁷ See *European Union-Mexico Free Trade Agreement*, Official Federal Gazette, 26 June 2000, art. 2.

The EU-Mexico Agreement main objective is to establish a framework capable of promoting the exchange of goods and services within a bilateral and preferential, progressive and a reciprocal liberalization of goods and services.¹⁸⁸ It addresses issues such as public procurement, competition, and dispute settlement, in a manner consistent with the WTO framework..¹⁸⁹ With the EU-Mexico Free Trade Agreement, Mexican products will gain facilitated entry to a market of 375 million consumers, and thus it constitutes a potential, significant instrument for the Mexican economy.

Regional trading blocs and the multilateral system are viewed as stepping stones to economic growth and the development of nations. Nevertheless, these structures have become quite controversial due to the varying incomes and the social imbalances of their participants. By far the most important regional trading agreement in which Mexico participate is the North American Free Trade Agreement (NAFTA). The remainder of this section is devoted to an account of Mexico's inclusion within NAFTA and the negotiation of so-called "side" or "supplemental" agreements to the NAFTA.

1. North American Free Trade Agreement

Mexico's accession to the GATT marked a departure from protectionist economic policies, setting the stage for its participation in NAFTA as a consequence of the trade liberalization initiatives launched during the 1980s. In economic terms, this agreement is

¹⁸⁸ See *ibid.*

¹⁸⁹ See "EU-Mexico Free Trade Agreement", *supra* note 187.

the most important Mexico has ever signed. By 1990, Mexico viewed NAFTA as “an opportunity to secure access to the US market and to establish clearly defined rules and procedures for resolving trade and investment disputes”.¹⁹⁰ From the beginning of the negotiations in September 1991 to the ratification vote in the US House of Representatives on 17 November 1993 “the tone of NAFTA debate was counterintuitive”.¹⁹¹ The difference in per capita incomes between Canada and the United States on the one hand, and Mexico on the other, was massive.

The NAFTA negotiation process was made difficult not only because of income disparity but also because of contrasting views concerning the role of markets and strategies for economic development.¹⁹² Furthermore, it was argued that Mexico's environmental laws and labor standards needed to be improved and better enforced. This ultimately led to two “side agreements” to NAFTA. These side agreements are known as North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC).

NAFTA's main objective is to advance the principles and rules established in the GATT, such as national treatment, most-favored-nation treatment, and transparency among the Parties.¹⁹³ It eliminates most tariffs, and non-tariffs; barriers to trade; promotes the free flow of goods and services, and investment throughout Canada, Mexico, and the United States; encourages fair competition in the free trade area; increases substantially

¹⁹⁰ C. Wise, *The Post-NAFTA Political Economy, Mexico and the Western Hemisphere* (Pennsylvania: The Pennsylvania State University, 1998) at 12.

¹⁹¹ *Ibid.* at 12-13.

¹⁹² See *ibid.* at 17.

investment among the Parties' territories; provides adequate and effective protection and enforcement of intellectual property rights by each Party; creates effective procedures for the implementation and application of the agreement, for its joint administration, and for the resolution of disputes; and establishes a framework for further trilateral, regional, and multilateral cooperation to expand and enhance its benefits.¹⁹⁴

The cornerstone of Mexico's North American regional economy is the Mexican maquiladora industry, which allows foreign manufacturing firms to import, without paying any taxes, raw materials and parts to a subsidiary located in Mexico.¹⁹⁵ The maquiladora industry is "one of the most important sources of FDI in Mexico and a key to the stable recovery of the economy".¹⁹⁶ In an attempt to ameliorate its economic circumstances after the 1994 economic crisis, Mexico attracted large amounts of FDI through its political-economic policies and its formal entrance into the global economy. Unfortunately, because Mexico has been hit hard by successive economic crises that have undermined investor confidence, most FDI is concentrated in sectors of industry where workers are considered a cheap, tangible source of production.

¹⁹³ See *NAFTA*, *supra* note 191, c. 1, Objectives, art. 102(1).

¹⁹⁴ See *ibid.*, art. 102(1)(a-f).

¹⁹⁵ The word maquiladora stems from the Spanish word *maquilar*, which means to mill. In pre-modern times, Mexican villagers would take their grain to be ground by the village miller. Today, the word maquila refers to the process of producing and assembling goods through semi-skilled or unskilled machine operators or their equivalents. The word maquiladora refers to the factory that houses this process. Maquiladoras are popular because the process of manufacturing products in the home country and then assembling them in a foreign country is cheaper than assembling products in the home country. See A. Maria Plumtree, "Maquiladoras and Women Workers: The Marginalization of Women in Mexico as a Means to Economic Development" (Spring 1999) 6 Sw. J. of L. & Trade Am. 177, online: Lexis-Nexis (date accessed: 7 May 2001).

¹⁹⁶ D.W. Eaton, "Symposium: NAFTA and the Expansion of Free Trade: Current Issues and Future

2. NAFTA's Supplemental Agreements

Even though NAFTA's Members have acknowledged the economic and social imbalances that exist among them, few strategies have been developed to correct these imbalances. This has slowed down Mexico's economic growth and social development even more. Social imbalances with regard to labor standards and environment protection took entire stage in the final phase of NAFTA negotiations. This gave rise to two "side" or "supplemental" agreements: The North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC).

Article 3 of the NAALC acknowledges the importance of promoting the compliance and enforcement of each country's labor laws. Within the NAALC there is a National Administrative Office, whose responsibilities, include conducting reviews on whether the Parties are enforcing their labor laws. It also investigates and resolves allegations when the parties are not fulfilling their commitments under the Agreement.¹⁹⁷ However, despite all of these legal resources, the Mexican government has still not been enforcing its labor laws because of its economic reliance on maquiladoras as a source of profits, minimum wages and low levels of unionization.

Prospects: Commentary: Transformation of the Mexican Maquiladora Industry: The Driving Force behind the Creation of a NAFTA Regional Economy" (Spring 1997) 14 Ariz. J. Int'l & Comp. L. 337, online: Lexis-Nexis (date accessed: 21 May 2001).

¹⁹⁷ B. Southard Murphy, "NAFTA at age one: A blueprint for Hemispheric Integration: II. The Labor Side Agreement: NAFTA's North American Agreement on Labor Cooperation: The Present and the Future", 10 Conn J. Int'l L. 403, 404 (1995) Lexis-Nexis (date accessed: 30 March, 2001).

With the NAAEC, Mexico made a significant concession to its partners by agreeing to promote environmental protection as well as the achievement of sustainable development. The NAFTA seeks to foster the protection and improvement of the environment in the territories for the well-being of present and future generations.¹⁹⁸ The obligations of this supplemental agreement reinforce some of the environmental provisions of NAFTA such as Article 906 (1)-(3), which obliges the Parties to work together to enhance environmental measures and seek compatibility. Article 1114 (2) stipulates that is not appropriate to encourage investment by relaxing health, safety, and environmental standards.

Within this supplemental agreement, each Party has to adopt certain policies and priorities, establish their own environmental levels of protection, and strive to enforce of its own environmental laws so as for national and international companies. Mexico's interest in keeping production costs low for multinational and domestic enterprises has led to the non-compliance with its environmental laws and consequently social problems in the form of unsustainability in some geographical areas.

NAFTA, as a model for a globalized economy, has brought imbalances that have been difficult to accept, understand, study, and solve. While this agreement has not been in place long enough for its impact to be judged, it is fair to say that to date its market-oriented economic and neoliberal policies have not succeeded in achieving the much-

¹⁹⁸ North American Agreement on Environmental Cooperation (NAAEC), signed on 14 September, 1993 and entered into force on 1 January, 1994. Article 1 (a-b). Online: www.cec.org (accessed on: 24 July, 2001).

needed economic growth and sustainable development that would allow the population to adequately fulfill its basic needs. This later point is discussed in greater detail in the next Chapter.

CHAPTER III

MEXICO'S SOCIAL FRAMEWORK

This Chapter addresses the social policy issues that remain outstanding in the wake of Mexico's transition to a neoliberal economy. The first part of the chapter outlines the legal basis for social policy implementation in Mexico. The second part reviews the historical development of social policy in Mexico. The third part concludes with an account of two critical questions for the future: sustainable development and poverty.

I. ISSUES ADDRESSED BY THE STATE

The state, as a creation of law, is responsible for pursuing national development within a sovereign and democratic regime.¹⁹⁹ Through its Public Administration, it seeks to satisfy the needs of its population and to protect the environment while seeking economic growth, an equal distribution of wealth, social equality, and the promotion of the industrial sector as a means of employment and opportunities.

The links between the economic and social goals in the Mexican Constitution resulted from the political turmoil in the wake of the 1982 crisis. It was in this context that Mexico amended its Constitution in order to create a legal framework compatible with

¹⁹⁹ See *Constitution*, *supra* note 4 at art. 25, 1st para.

the new development model. Prior to that time, the antecedents to Articles 25 and 26 did not provide any formal, legitimate guidance for socio-economic processes and sustainable development that could lead Mexico to achieve national development.

In 1983, the Mexican legal framework underwent economic reform. As part of this process, several constitutional provisions regarding economic and social policies were amended. These new provisions have interposed legal obligations upon Mexico's new economic order. The section that follows complements the earlier discussion of constitutional provisions found in Chapter I.

A. Social Constitutional Provisions

Since the state is responsible for granting benefits and fulfilling the social needs of its citizens, issues such as education, health, housing, employment, and environmental conservation form part of Mexico's constitutional framework. Articles 3, 4, 5, 11, 27, 73 XXIX-G, and 123, stipulate the freedom and right of the population to enjoy a clean environment, improving standard of living, prosperity, and development.

1. Social Services and Rights

Education, housing, and health services are social services that the state grants to its population. These social services are identified as public services and as such are a direct, technical activity that the Public Administration confers on private entities, in addition to

its own public entities. The Public Administration has been created to ensure the regular, continuous development of society through the satisfaction of its most important needs.²⁰⁰ Besides these public services, environmental protection plays a very important role for sustainable development and prosperity.

a. Article 3

Article 3 of the Mexican Constitution establishes a system wherein the state through its “diverse entities” provides free education to its population as a public service, paid out of the federal and local governmental budgets.²⁰¹ According to this provision, every person is entitled to receive an education that encompasses harmoniously all human capacities and encourages awareness of international solidarity.²⁰²

b. Article 4

The fourth paragraph of the Constitution establishes the right of the population to have access to health care. Before the 1982 economic collapse, Mexico's Constitution did not have a provision guaranteeing health services to the population. The unemployed population, not having the financial means to pay a contribution to the state health

²⁰⁰ See *Derecho Administrativo I*, *supra* note 10 at 102.

²⁰¹ According to article 43 of the Mexican Constitution, the thirty-two entities or integral parts of the Mexican state or federation are: Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Mexico, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán, Zacatecas y el Distrito Federal. According to article 44 of the Constitution, the Distrito Federal, Mexico City, is the headquarters of the Executive, Legislative, and Judicial branches. See *Constitution*, *supra* note 4, art. 43.

institutions, had difficulty obtaining medical attention. Fortunately, in February 1983, an amendment to Article 4 established the right of all the population to health care.

Paragraph five addresses the right of the population to have decent housing. Before the early 1980s, the state did not have a well-planned system of providing housing to its population. Employed persons were given housing credits if they were able to make pecuniary contributions matched by the state and the employer; everyone else was ignored. In 1983 the right of the population to have housing was also granted.

c. Articles 5, 11 and 123

Articles 5 and 11 grant a series of individual and social rights of economic liberty. These include the freedom to engage in any kind of lawful job, profession, industry, or commerce, the right to free, fair, and equal compensation, and freedom of movement.

Article 123 is a foundation of Mexico's labor standards and the basis of the *Ley Federal del Trabajo* (Labour Federal Law) and other regulations that establish the employers and employees' obligations within the workplace relationship and grants rights for the protection of the working class. Among other rights, it stipulates that all individuals have the right to decent and honorable work; establishes the duration of the work day; constitutes a national commission responsible for continuously revising the minimum-

²⁰² See *Constitution*, *supra* note 4, art. 3, 2nd para.

wage salaries; requires gender equality in salaries and creates the social security system, its organization, and its services for the workers.²⁰³

2. Social Development

As was outlined in Chapters I and II, the ISI's collapse demonstrated that this model was unsuitable to sustain growth in developing countries. Mexico's adoption of neoliberal policies and its active participation in a market-oriented economy introduced new visions about how to achieve economic growth and national development.

a. Article 25

Article 25 pursues a more just wealth distribution within society and has its basis in the dramatic social disparities that have characterized Mexico's social life. In particular, it ascribes to the state the role of promoting the employment, liberty, and dignity of its individuals, groups, and social classes through the regulation of corporations, their use of natural resources, and their preservation of the environment.

b. Article 26

Article 26 asserts that it is the state's responsibility to organize a democratic planning system for national development that ensures economic growth for its society. This

²⁰³ Ibid at art. 123, (I, II, III, IV, V, VI and XI).

provision; though part of the economic reform following the 1982 economic crisis, remains a counterweight to the neoliberal market-oriented policy framework that characterizes contemporary Mexico.

The National Development Plan, which lays the foundation for Mexico's national development strategy, is designed to achieve a better standard of living for Mexico's population through equitable national development. This plan places importance on granting basic public services and promoting a more just wealth distribution, while giving special consideration to economically and socially disadvantaged groups.²⁰⁴ Under this plan, sustainable development is to be considered an inescapable commitment.²⁰⁵ Consequently, special attention is given to environment and regulations and procedures meant to preserve it. The National Development Plan proceeds on the premise that the responsibility for taking care of the environment is a matter of ethics and must be fulfilled by the government, the industrial sector, and society as a whole.

c. Articles 27 and 73 (XXIX-G)

Article 27, which establishes a property regime for natural resources, and stipulates that they must be preserved in order to achieve an ecological equilibrium that can make the country a better place in which to live. Article 73 (XXIX-G) establishes the jurisdiction

²⁰⁴ See *Plan Nacional de Desarrollo* (National Development Plan) 1994-2000, Mexico's Federal Official Gazette, 31 May 1995 at 63 [hereinafter *Plan Nacional de Desarrollo*]. The National Development Plan has its legal origins in the *Ley de Planeación* (Planning Law) and in art. 26, first paragraph of the Mexican Constitution [translated by author].

given to Congress to legislate with regard to environmental protection, preservation, and the restoration of the ecological equilibrium within the Federation and its entities.²⁰⁶

d. Article 28

Article 28 seeks to protect the population through the control of prices of basic goods. This provision also establishes the jurisdiction to adopt laws that protect consumers' interests.²⁰⁷

B. Overview of Applied Social Policies

The various social policies implemented by Mexico during the last forty years have depended on the economic models to which they relate. The ISI policy, the neoliberal trade model, and the performance of various administrations during their terms in office have set the stage for Mexico's current social situation. The following section undertakes a brief description and analysis of the recent history of Mexican social and environmental policies.

²⁰⁵ *Ibid.* at 75.

²⁰⁶ For more information see *supra* note 201.

²⁰⁷ See *Constitution*, *supra* note 4, art. 28, 3rd para.

1. Closed Economy Policies

a. The 1970-1976 governmental period: Echeverría

During the Echeverría administration, the state sought to demonstrate that its left-wing political strategy was focused on achieving social justice through public expenditures.²⁰⁸

In 1971, public expenditures represented 26% of GDP, and in 1976, they represented 39.6%.²⁰⁹ This expansion originated from the creation of numerous state-owned enterprises, which were conceived as motors of development and creators of employment for the national economy. The Echeverría administration was noteworthy for the absence of a global program and for its contribution to the inefficient use and administration of public resources.²¹⁰

The ISI model evolved during the Echeverría administration, a large proportion of the working population shifted from the agricultural to the industrial sector, with concomitant migration from rural to urban areas. The growth of the industrial working class led to the marginalization of people living in the countryside.

The Echeverría administration placed special emphasis upon the social policies in education, health care, and housing as a means of strengthening political control and

²⁰⁸ See R. Cordera, *Desarrollo y crisis de la economía mexicana* (Mexico: Fondo de Cultura Económica, 1981) Trimestral Economic Readings No. 39 [translated by autor].

²⁰⁹ See P. Aspe & P. Sigmund, *The Political Economy of Income Distribution in Mexico* (New York: Holmes & Meier Publisher, 1984) at 357.

²¹⁰ See Cordera, *supra* note 208 at 583-584.

creating positive attitudes towards the Mexican political system.²¹¹ Thus new programs and plans for elementary schools were implemented and new institutions of higher education were created.²¹² By instituting this new education policy, the Mexican state increased its public expenditures from 1.9% to 3.7% of GDP during 1970-1977 period.²¹³ Nevertheless, these expenditures were not equally distributed among the social classes because, rather than benefitting the rural and poorest population, "it emphasized the importance of granting access to higher education for the middle class as a way of promoting an image of modernity".²¹⁴ This is exemplified by the fact that in 1976, federal expenditures on basic education were 577 pesos per student, while expenditure on higher education were 43,947 pesos per student.²¹⁵

In the fields of health and social security, the Echeverría administration attempted to allocate part of the public budget to medical services in rural and poor regions. But even though efforts were undertaken to establish a massive vaccination program and other preventive medical services, most of the attention and expenditures went to those living in urban areas through the construction and maintenance of expensive medical institutions offering care to the most favored groups of the working population.²¹⁶

²¹¹ A. González Torres, *Las transformaciones en la Agenda Social del Estado Mexicano* (Mexico: El Colegio de México, 1994) at 71 [translated by autor].

²¹² *Higher education* is understood in Mexico as the education given in universities. This superior education is equivalent to an undergraduate program.

²¹³ See González Torres, *supra* note 211 at 73.

²¹⁴ *Ibid.*

²¹⁵ Basic education in Mexico is the education given to children when they are between six and twelve years of age. See *ibid.*

The government emphasized the importance of building houses for the working population through the creation of institutions like the *Instituto Nacional de Fomento para la Vivienda de los Trabajadores* (National Institute of the Promotion of Housing for Workers), known as INFONAVIT.²¹⁷ Once again, the importance given to the working-class, urban society drew attention away from marginalized and poor rural areas. So as not entirely to neglect the marginalized population, the government supplied water, electrical energy, and drainage, strengthening the perception of Echeverría as "a defender and ally of the poor."²¹⁸ From 1970 to 1976, social and economic policies focused especially on granting benefits to union workers and to the urban middle class. The poorest marginalized areas never saw any true economic improvement.

During the Echeverría administration, concern for the environment started to become a priority as a result of the series of effects that industries were having on the environment. In 1971 it was decided to strengthen the prevention and control of environmental pollution. Consequently, article 73 of the Constitution was amended in order to include this concern. The amendment brought to life the *Ley Federal de Prevención y Control de la Contaminación Ambiental* (Federal Law for the Prevention and Control of

²¹⁶ See F. Rodríguez Hernández, *Atención a la salud y desigualdad regional: distribución de los recursos para la atención de la Salud en México* (Mexico: UNAM-CONACYT-CRIM, 1992), c. 3 [translated by autor].

²¹⁷ The *Instituto de Fomento Nacional para la Vivienda de los Trabajadores* (Institute of National Promotion for Housing of Workers), known as INFONAVIT, is an institution that was created on 24 April 1972 to grant housing services and credit facilities to the working population. See INFONAVIT's website, online: www.infonavit.gob.mx and <http://148.243.238.171/data/navega.htm> (date accessed: 10 June 2001).

²¹⁸ P. Ward, *Políticas de bienestar social en México 1970-1989* (Mexico: Nueva Imagen, 1989) at 119 [translated by autor].

Environmental Pollution).²¹⁹ This constitutional reform and the creation of this environmental law represented the first time that the environment was mentioned in the Mexican Constitution and that an environmental law was adopted.²²⁰

b. The 1976-1982 governmental period: López Portillo

The 1976 economic crisis evinced distrust of Echeverría's political bureaucracy among powerful economic groups. Consequently, López Portillo's electoral campaign focused on gaining the confidence and collaboration of all sectors of the population. As was mentioned in Chapter I, during this period most of the state's revenues came from oil exports, which grew from 23% to 75% of total exports, making inward public social expenditures possible.²²¹ But some years later, as oil prices decreased and large amounts of money were spent on inefficient, state-owned enterprises, cuts were made to budgetary expenditures. The quality of public services such as health care, social security, and education decreased on the view "that the alternative to expanding services was to invest fewer resources in improving them".²²²

²¹⁹ R. Brañes, *Manual de Derecho Ambiental Mexicano* (México: Fondo de Cultura Económica, 1994) at 74 [translated by autor].

²²⁰ B. Hogenboom, *Mexico and the NAFTA Environment Debate* (The Netherlands: International Books, 1998) at 74.

²²¹ See Presidencia de la República, *Las razones y las obras. Gobierno de Miguel de la Madrid* (Mexico: Fondo de Cultura Económica-Unidad de la Crónica Presidencial, 1989) at 16 [translated by autor]. For more information see Chapter I., II. Models Utilized by the state, A. A closed Economy: The Import Substitution Industrialization Model, 1 and 2 regarding 1970-1976 and 1976-1982 regarding Echeverría's and López Portillo's governmental periods.

²²² I. Bizberg, "Política laboral y acción sindical en México (1976-1982)" [October-December 1984] No. 98 *Foro Internacional* 172 [translated by autor].

Education remained as one of the major foci of the state's social policies, but as before, "superior education played a more important role than basic education".²²³ Consequently, the middle and upper-middle social classes benefitted, while the marginalized were still considered to be of little consequence to Mexico's social well-being and development.

As regards health care, the government expended more on constructing hospitals for rural areas. Expenditures on medical services favored public sector workers 18% more than the rest of the population.²²⁴ As regards social security, some efforts were made to fight against extreme levels of poverty. In 1977, through the creation of the *Coordinación General del Plan Nacional de Zonas Deprimidas y Marginadas* (General Coordination of the National Plan of Depressed and Marginalized Areas), called COPLAMAR, the federal government initiated a moderate reorientation of social policy, particularly in health and food distribution to the most unprotected, marginalized areas of Mexico.²²⁵ However, these efforts were interrupted by the effects of the 1982 economic crisis, scepticism in the upper social classes, an inefficient bureaucracy system. In fact, extreme poverty persisted and worsened.

During the 1970s, Mexico City began to experience severe over-population, which in turn created environmental problems. Environmental protection was hardly a government priority under the López Portillo administration. During his administration, the *Ley*

²²³ CIDAC, *Educación para una economía competitiva: hacia una estrategia de reforma* (Mexico: Diana, 1991) [translated by autor].

²²⁴ See A. Maddison, *La economía política de la pobreza, la equidad y el crecimiento: Brasil y México* (Mexico: Fondo de Cultura Económica, 1993) at 29 [translated by autor].

²²⁵ See González Torres, *supra* note 211 at 87.

Federal de Prevención y Control de la Contaminación Ambiental (Federal Law for the Prevention and control of Environmental Pollution) was replaced by the *Ley Federal de Protección Ambiental* (Federal Environmental Protection Law).²²⁶ This law entered into force in 1982 and the task to enforce it was given to the *Secretaría de Salud y Asistencia* (Ministry of Health and Assistance).²²⁷ This change meant in practice that the enforcement of environmental protection diminished.

2. Open Economy Policies

a. The 1982-1988 governmental period: *De la Madrid*

When the ISI became defunct, a new, ambitious policy pursuing economic growth through the application of structural reforms was implemented. The de la Madrid neoliberal government pursued a dramatic shift in social policy, that included austerity programs, and a sharp reduction in public employment, salaries, and social assistance for the population.

De la Madrid's fundamental changes in social policy were a result of the effects of the 1982 crisis and the burgeoning distrust of the state's interventionism in all spheres of the economy, politics, and society. The crisis of the 1980s brought inflation and the reduction of the social public expenditures, which between the years of 1983 and 1985 were cut to 17% of the total budget.²²⁸ The austerity programs implemented by the de la

²²⁶ See Brañes, *supra* note 219 at 82

²²⁷ *Ibid* at 157.

²²⁸ See González Torres, *supra* note 211 at 93.

Madrid administration reduced the budget for education from 5.5% of GDP in 1982 to 3.3% in 1988.²²⁹ In fact, these programs brought many “negative consequences, such as the cancellation of education programs, reduced infrastructure, unemployment, and desperation among teachers, whose salaries dropped by 77%”.²³⁰

During the de la Madrid administration, the right to health care and its protected status was enshrined in the Constitution.²³¹ Thus, those who were unemployed had the right to a system of health care granted by the Ministry of Health and other entities. Regarding housing, credits were reserved for workers who earned less than minimum-wage salaries and for those affiliated to a union. “The difficult economic conditions resulting from the 1982 crisis had negative effects on INFONAVIT’s financial health”, which did not allow it to comply with its social housing obligations.²³² Unfortunately, efforts to improve the administration of social expenditures could not make up for tremendous budgetary cutbacks, inflation, and unemployment that the 1982 economic crisis and its aftermath brought to Mexico.

Moreover, the crisis led to wealth concentration within a few groups of the population. According to the data of the *Instituto Nacional de Geografía y Estadística* (National Institute of Geography and Statistics), known as INEGI, “in 1984, the group of families that were in the highest decile received 32.77% of national income and the group that

²²⁹ See *ibid.* at 98.

²³⁰ R.A. Garavito & A. Bolivar, *Mexico en la década de los ochenta: la modernización en cifras* (Mexico: Universidad Autónoma Metropolitana, 1990) [translated by author].

²³¹ See *Constitution*, *supra* note 4, art. 4, 4th para.

was in the lowest decile obtained just 1.72%. Yet, by 1989, the group of families in the highest decile received 37.9% whereas the group of families in the lowest decile received 1.58%".²³³

During this time, there were significant reforms of the environmental policy. The *Secretaría de Salud y Asistencia* (Ministry of Health and Assistance) was replaced by the *Secretaría de Desarrollo Urbano y Ecología* (Ministry of Urban Development and Ecology). Apart from administrative change at federal level, de la Madrid aimed to decentralize certain environmental tasks to local entities by creating administrative units for environmental protection.²³⁴ The new environmental policy did more than just consider issues related to human health and air pollution; it also addressed urban development and natural resources. While there was apparently a genuine effort to improve the environmental protection during this administration, the *Secretaría de Desarrollo Urbano y Ecología* (Ministry of Urban Development and Ecology) did not have enough financial resources to pay adequate attention to the environment.

Environmental regulations developed under de la Madrid were mainly directed at the industrial sector and urban areas. Particular attention was given to Mexico City, Guadalajara and Monterrey, the *maquiladoras* in the border area with the US, and the oil industry in the south-east of Mexico.²³⁵

²³² See INFONAVIT, "Breve descripción de la historia del INFONAVIT", online: <http://148.243.238.171/data/navega.htm> (date accessed: 10 June 2001)[translated by autor].

²³³ BANAMEX, *División de Estudios Económicos y Sociales de Banamex, México Social* (Mexico: Banamex, 1993) at 329 [hereinafter *Estudios Económicos y Sociales*] (date accessed: 10 June 2001) [translated by autor].

²³⁴ See Hogenboom, *supra* note 220 at 79.

²³⁵ See *ibid.* at 82.

In 1987, articles 27 and 73 of the Constitution were amended to promote a more concrete protection and conservation of the environment. These constitutional reforms were the basis for the adoption of the *Ley General de Equilibrio Ecológico* (General Law of Ecological Equilibrium and Environmental Protection), which covers a wide range of environmental issues, including pollution, natural resources conservation, environmental impact and risk assessments, and sanctions. Although this law strengthened the formal basis for environmental policy, enforcement lagged far behind.

b. The 1988-1994 governmental period: Salinas

The social and economic effects seen and felt daily during the 1980s “lost decade” evoked social tensions stemming from the lack of positive results of Mexico’s neoliberal policies and integrated market-oriented economy.²³⁶ After the political values crisis of the previous regime, the Salinas administration sought alternatives that would combine an integrated market-oriented economy based on neoliberal policies with its project for a modernized state.²³⁷ One of its most important proposals consisted of the “modernized state’s social commitment to permit the establishment of a basic social framework that could assure equal opportunities for citizens”.²³⁸

The Salinas administration put into motion the principal objectives of the modernization agenda, which was to entail an ambitious restructuring of the political and social

²³⁶ See Oxhorn & Ducatzenzeiler, *supra* note 109 at 3.

²³⁷ See González Torres, *supra* note 211 at 103.

relationships within the population.²³⁹ The Salinas administration pursued the development of a state capable of working with the population to address social needs.²⁴⁰

In order to create, consolidate, and maintain the population's selective aid programs without exceeding the fiscal and administrative capacities of the state, it was argued that governmental decentralization was needed. To this end, the state's gradual withdrawal from social policies and intervention was stressed. The Salinas administration sought the active participation of the population so as to reduce costs for the state's public works and to benefit a larger number of poor people within the same budget. As regards education, the state attempted to reinforce training for teachers, modernize teaching practices, and improve teachers' salaries.²⁴¹ The administration attempted to enhance health care and social services through non-institutional programs supported by voluntary organizations, professional groups, and the community.

One of the most important social programs that the Salinas administration launched was the *Programa Nacional de Solidaridad* (National Solidarity Program), called PRONASOL, which had its foundations in Salinas' Harvard doctoral dissertation. PRONASOL was an "expansive and innovative social-welfare program with the stated

²³⁸ J. Rebolledo, *La reforma del Estado en México* (Mexico: Fondo de Cultura Económica, 1994) at 80 [translated by author].

²³⁹ See González Torres, *supra* note 211 at 105.

²⁴⁰ See C. Salinas de Gortari, "El reto de la justicia", a discourse given by Salinas de Gortari on 16 May 1988 as a presidential candidate of the PRI [translated by autor].

²⁴¹ See González Torres, *supra* note 211 at 103.

goals of alleviating poverty and transforming state-society relations".²⁴² From the start, Pronasol was conceived by the Salinas administration as a compensatory program that would give attention to the segments of society most affected by the economic crisis and its effects.²⁴³ These groups were the "indigenous population, the rural and marginalized groups, and the low-income urban population".²⁴⁴ PRONASOL was intended to take into account the most pressing social needs by targeting its aid notably to education, health, nutrition, justice, and natural resources preservation.²⁴⁵ Through the implementation of PRONASOL's activities, expenses in the social sector rose from 6% to 9.5% of GDP between 1988 and 1993, and to 10% in 1994.²⁴⁶ PRONASOL was expected to benefit most of the poorest communities in the country, but it did not. The legitimacy of the policy was challenged by some sectors of the Mexican society on the ground that its investment decisions were best understood as an electoral play, and as a way to maintain Salinas' faction of the PRI in power through appearing to satisfy social needs.²⁴⁷

Salinas had the firm intention of giving continuity to de la Madrid's environmental concerns and policies. In the National Program for Environmental Protection 1990-1994, Salinas' goal was formulated as harmonizing economic growth with a restoration of environmental quality.²⁴⁸ During this administration, the *Secretaría de Desarrollo*

²⁴² A.W. Cornelius, A.L. Craig & J. Fox, *Transforming State-Society Relations in Mexico: The National Solidarity Strategy* (San Diego, CA: Center for U.S.-Mexican Studies, 1994), online: <http://www.us-mex.org/borderlines/1995/bl12/bl12revs.html> (date accessed: 10 June 2001).

²⁴³ See PRONASOL, *La agenda social y la reforma social* (Mexico: Coordinación de Comunicación del Programa Nacional de Solidaridad, 1994) at 8 [translated by author].

²⁴⁴ C. Rojas, *Solidaridad en México* (Mexico: El Nacional, 1991) at 13 [translated by autor].

²⁴⁵ See *ibid.*

²⁴⁶ See *Estudios Económicos y Sociales*, *supra* note 233 at 290.

²⁴⁷ See Cornelius, Craig & Fox, *supra* note 242.

²⁴⁸ See Hogenboom, *supra* note 220 at 97.

Urbano y Ecología (Ministry of Urban Development and Ecology) was replaced by the *Secretaría de Medio Ambiente Recursos Naturales y Pesca* (Ministry of Environmental Protection, Natural Resources and Fishing). With this new ministry, two other entities the *Instituto Nacional de Ecología* (National Institute of Ecology) and the *Procuraduría Federal de Protección al Ambiente* (Federal Attorney General for Environmental Protection), were created to oversee the compliance and enforcement of environmental laws and regulations as well as to develop environmental policies.

c. The 1994-2000 governmental period: Zedillo

At the end of 1994, the Zedillo administration inherited all the mismanagement of the previous administration, including the “December mistake”, which devastated Mexico’s economy and society.²⁴⁹ “From the start of his term, President Zedillo concentrated most of his energy on macroeconomic crisis management”, which proved difficult and challenging for his government.²⁵⁰ In June 1995, the Zedillo administration, deciding that the \$1.5 billion budget would be distributed to local governments, dismantled PRONASOL.²⁵¹ The Zedillo administration set the priority of attacking extreme poverty through the social development policy, the *Plan Nacional de Desarrollo* (National Development Plan).²⁵² Concerned that with the implementation of NAFTA, agricultural

²⁴⁹ The 1994 economic crisis is known by the Mexican population as December’s mistake. For more information, see *infra* note 261.

²⁵⁰ E.S. Manning, “Politics and Economic Change in Mexico: Neoliberalism, the State, and Civil Society” (Working Paper #19, Program in Comparative and International Development, Department of Sociology, Johns Hopkins University, Baltimore, MD, 2 August 1996), online <http://www.jhu.edu/soc/pcid/papers/19.htm> (date accessed: 10 June 2001).

²⁵¹ See *ibid.*

²⁵² See *Plan Nacional de Desarrollo*, *supra* note 204.

sectors, especially peasant farming might be hurt by exposure to external competition, the Zedillo administration implemented a program known as PROCAMPO, to compensate both the rich and poor farmers.²⁵³

The Zedillo's administration general social policy objectives, established in the 1994-2000 National Development Plan, sought to create an environment that would extend opportunities to individuals and the population as a whole.²⁵⁴ The National Development Plan policies stressed the importance of the principles of justice, equality, and constitutional rights without differentiation as to ethnic or social origins, social class, or geographical location. Regarding education, the Zedillo administration targeted part of the social budget to the reinforcement of programs in the most impoverished geographical areas. One of its major objectives was to improve services provided to indigenous groups through respect for their languages, customs, and traditions. This administration made many attempts to overcome the inequality of social opportunities that had existed during the 1970s. As regards housing, the Zedillo administration focused its policies on strengthening INFONAVIT through significant budgetary injections, thereby enabling the organization to grant housing credits to the employed population.

During the Zedillo administration there was considerable job creation. The 1995 unemployment rate of 5.10% fell to 2.29% by 2000.²⁵⁵ After Mexico's entry to NAFTA,

²⁵³ See *Randall*, *supra* note 39 at 164.

²⁵⁴ See *Plan Nacional de Desarrollo*, *supra* note 204 at section 4.4 *Objetivo de la política de desarrollo social* (Objectives of the social development policy).

²⁵⁵ See *Indicadores Económicos de Coyuntura. Tasa de Desempleo Abierto* (Economic Indicators), Statistics of Open Unemployment, Banco de Información Económica del Instituto Nacional de Estadística

salaries and benefit payments in the export maquiladoras sector grew as well.²⁵⁶ In 1994, the estimate for that sector in thousands of pesos reached 899,678 and in the year 2000 rose to 7,999,293.²⁵⁷

As regards health care, the government committed itself to improving the quality of service. Consequently, health institution restructurings attempted to extend coverage of services to the entire population.

During 1999, Mexico's economy grew by 3.6%, which led to "continuous job creation, and a sharp decline in unemployment rates".²⁵⁸ During 2000, Mexico's economic strategy was to maintain economic growth and job creation to reduce inflation, and to increase social spending, which by the year 2000 had reached 15.98 billion pesos.²⁵⁹

With the 1988 *Ley General de Equilibrio Ecológico y la Protección al Ambiente* (General Law of Ecological Equilibrium and Environmental Protection), Mexico's environmental framework underwent an accelerated and profound transformation. Even

y Geografía. Encuesta Nacional de Empleo Urbano, INEGI, online: <http://www.inegi.gob.mx/estadistica/espanol/economia/feconomia.html> (date accessed: 23 June 2001) [translated by autor].

²⁵⁶ See Plumtree, *supra* note 195, referring to maquiladora.

²⁵⁷ See *Indicadores Económicos de Coyuntura. Industria Maquiladora de Exportación. Sueldos, Salarios y Prestaciones Pagadas, Remuneraciones (miles de pesos a precios corrientes)* (Economic Indicators. Statistics of the Salaries and Benefit Payments in the Export Maquiladora Sector) (given in thousands of pesos in current prices), Banco de Información Económica del Instituto Nacional de Estadística y Geografía, INEGI, online: <http://www.inegi.gob.mx/estadistica/espanol/economia/feconomia.html> (date accessed: 23 June 2001) [translated by author].

²⁵⁸ See "Mexico: Recent Developments, Structural Reforms and Future Challenges" (March 2000) 37:1 Finance & Development 12.

²⁵⁹ See Secretaría de Desarrollo Social, *Recursos descentralizados a estados y municipios para la Infraestructura Social, 1995-2000* (Ministry of Social Development, Resources channeled to social

though this law was avant garde in encompassing all matters regarding pollution prevention and natural resources conservation, it was difficult to enforce because the appropriate legal tools and entities were missing. In 1996, during the Zedillo administration this law was amended to address environmental problems that were not covered by the 1988 legislation. Most of the changes under the 1996 amendments concerned procedures for the enforcement of and compliance with the law. Within these enforcement procedures, the *Procuraduría de Protección al Ambiente* (Federal Attorney General on Environmental Protection), the *Instituto Nacional de Ecología* (National Institute of Ecology), and the *Comisión Nacional del Agua* (National Water Commission) now participate together to achieve environmental conservation and sustainable development. As regards these issues, the 1994-2001 National Development Plan established that sustainable development is not just a matter of enforcing an environmental law; rather, it is considered as an ethical obligation to the well-being of future generations.²⁶⁰

Successive Mexican governments have made efforts to provide Mexican society with the basic services to meet its needs. The different kinds of social policies and services have depended upon budgetary means and the importance that the government has put on the population's needs. Undoubtedly, the different economic problems within which Mexico has been immersed through a series of crises have caused budgetary cutbacks that have caused scarce and inadequate services that have underwent social development.

infrastructure, 1995-2000), Sedesol, online: <http://www.sedesol.gob.mx/desrg/ral6des.htm> (date accessed: 23 June 2001) [translated by autor].

²⁶⁰ See Plan Nacional de Desarrollo, *supra* note 204.

Besides the economic turmoil, Mexico has been forced since the “lost decade” and the “December mistake”, the neoliberal model and the market-oriented economy to deviate attention from the principles consecrated in Article 25 of the Constitution.²⁶¹ In the current economic climate, competitiveness and reduction of costs are very important for the production process. Unfortunately these goals have brought difficulties such as unemployment, low salaries, unjust wealth distribution, and an environmental disequilibrium not counter balanced by law enforcement.

II. ISSUES ADDRESSED WITHIN AN INTEGRATED MARKET-ORIENTED ECONOMY

The review of Mexico's changing social policies undertaken in the previous section gives rise to a series of questions and concerns about sustainable development and poverty. The section that follows will expose these concerns in greater detail and offer some reflections for the future.

²⁶¹ -The *lost decade* is called to that period of time during the 1980s in which Mexico's economy collapsed after the 1970s fiscal mismanagements caused by the subsidized and inefficient state-owned enterprises, the extreme confidence in oil revenues which were hit by the international prices decrease and the state interventionism which enlarged more inefficiency and corruption.

-The *December mistake*, is called to that period of time during December 1994 in which there was a devaluation caused by diverse circumstances such as flight of portfolio investment and a fall in the federal reserves. For more information, see Chapters I, II. Models Utilized by the State, B. An Open Economy: The Neoliberal Model, 2. An overview of the 1988-1994 Governmental Period: Salinas, 3. An Overview of the 1994-2000 Governmental Period: Zedillo.

A. Sustainable Development

1. Conception and integration into a globalized economy

Although the term sustainable development may seem to be relatively new, it is not a recent perception. The concept originated thousands of years ago when Carthage, after it was conquered by Rome and cultivated excessively, became a dry, unfertile land that impoverished its people.²⁶²

The sustainable development concept resurfaced two or three decades ago as an important theme in discussions of economic and environmental policy.²⁶³ It appeared in the 1980 publication of the World Conservation Strategy of the International Union for the Conservation of Nature (IUCN). The principles of sustainable development stem from the work done in 1972 at the United Nations Conference on the Environment, which generated the Stockholm Declaration on Human Environment. Some years later, the term was popularized by the World Commission on Environment and Development (WECD), known as the "Brundtland Commission".²⁶⁴ According to this commission, sustainable development was conceived as "development which meets the needs of the present without compromising the ability of future generations to meet their own

²⁶² See F.D. Muschett, *Principles of Sustainable Development* (Florida: St. Lucie Press, 1997) at 3, see also P. Brown, *Ethics, Economics and International Relations*, (Edinburgh: Edinburgh University Press, 2000).

²⁶³ See G.D. Meyers & S.C. Muller, "The Ethical Implications, Political Ramifications and Practical Limitations of Adopting Sustainable Development as National and International Policy" (Fall 1996) 4 Buff. Env. L.J. 1, online: Lexis-Nexis (date accessed: 27 June 2001).

²⁶⁴ See *ibid.*

needs.... Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life.”²⁶⁵

In contemporary parlance, sustainable development is defined as economic development and a standard of living that do not impair the future ability of the environment to provide sustenance and support for the population. At the United Nations Conference on Environment and Development in Rio (UNCED), principle #3 formulated the right to sustainable development as follows: “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.²⁶⁶ Principle #4 established that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”²⁶⁷ It is possible to conclude from these principles that all activities related to the production of goods have either positive or negative effects on the environment and the population that dwells there, and that these effects may increase or decrease standards of living. A standard of living is reflected in health, safety, and education, among other factors.

Within the neoliberal model and the market-oriented economy, productivity, low production costs, and economic growth play significant roles. These economic interests have taken precedence over environmental protection and the quality of life of the

²⁶⁵ See V. Wee & N. Heyzer, *Gender, Poverty and Sustainable Development. Towards a Holistic framework of Understanding and Action*. (Singapore: Engender, Centre for Environment, Gender and Development Ltd, 1995) at 4..

²⁶⁶ *Ibid* at 6.

²⁶⁷ *Ibid*.

population. Unfortunately, developing countries still have a weak law enforcement system caused either by the need to specify enforcement procedures or by corruption within the public administration.

Without a doubt, addressing sustainable development among low-income countries of the globalized economy has been quite difficult and has engendered a myriad of moral and ethical dilemmas. Sustainable development has moral dimensions that are rooted in the value of preserving the environment and the obligation to respect the population that lives in the ecosystem.²⁶⁸ Ethics play a role in the decision-making process of the parties, their governments, investors, and producers. Undoubtedly, if in the global economy decision models continue to maintain self-interest as the primary determinant of policy while ignoring the integrated nature of the environment and the economy, neither sustainability nor the changes necessary to achieve it will be possible.

As concerns these principles, for some years, the Roman Catholic Church has been concerned about the consolidated global economy and the continuous growth of social mobility and of the gaps between social classes. Some papal documents point out that economic development must accompany social progress, and that in any event if "there are economic successes and benefits, all the society must share and enjoy them".²⁶⁹ Pope John XXIII, in his remarkable encyclical *Mater et Magistra* suggests that if humanity is

²⁶⁸ See Muschett, *supra* note 262 at 9.

²⁶⁹ *Ciencia Política*, *supra* note 6 at 355.

to achieve economic growth and success, it should not behave indifferently towards the principles of respect for the environment, equality, justice and charity.²⁷⁰

2. Unsustainability and Poverty

ISI proved to be an unsuitable development model for Mexico, because its inefficient, negative economic results based on interventionist and corrupt administrations brought more poverty to marginalized rural sectors, ethnic groups, and low-income urban groups. At this time, social resources ended up benefiting mostly public sector workers and the working and well prepared middle class. This unjust distribution of resources and the lack of a serious planning aggravated economic disparities.²⁷¹

Economic growth is still regarded as the best way to alleviate disparities in income levels of countries participating in an integrated market-oriented economy. The global crisis of sustainability and equality is evidence of how inadequate development strategies have been in solving problems of food, shelter, education, health, and other basic needs.²⁷² Besides the repercussions of the 1982 and 1994 economic collapses, the budgetary cutbacks embraced by austerity programs as part of the neoliberal model have served to reduce the resources available to address the population's needs. Mexico's entry to an integrated market-oriented economy has not yet provided a solution to its lack of sustainable development. The first to benefit have been the highest social classes and the

²⁷⁰ See *ibid.*

²⁷¹ M. Székely, *The Economics of Poverty, Inequality and Wealth Accumulation in Mexico* (Oxford: St. Antony's College, 1998) at 87.

governmental elite, and the last have been the lowest social classes, ethnic groups, and indigenous peoples. Unfortunately, neither old economic strategies nor current economic, political, and social policies have led to improvement for Mexico.

In fact, the gap between the rich and the poor has widened to the point that out of approximately 100 million inhabitants in Mexico, the poor account for 60 million. Of this 60 million people, 40 million are simply below the poverty line and the other 20 million live in wretchedly squalid conditions, in which not even their basic social needs are met.

Poverty is mostly seen in rural areas, where the agriculture has not been given enough economic support, infrastructure, and importance. In Mexico, more than 60 percent of the poor live in rural areas.²⁷³ Poverty in Mexico, as in most of Latin America, is still more rural than urban, yet these two geographical sectors are not comparable due to the rural population's forgotten and unfulfilled needs.²⁷⁴ For many years poverty has generated migration to urban areas and illegal migration to the United States in search of agricultural job opportunities. For the worst part, Mexican indigenous groups are located in the impoverished rural areas, where minimal resources, aid, and social services are provided. Most of these indigenous groups work in the countryside as peasants, earning such low wages that they cannot support their families.

²⁷² Wee & Heyzer, *supra* note 265 at 47.

²⁷³ See R. López, *Rural Poverty in Latin America* (Washington, D.C.: St. Martin's Press, 2000) at 1.

²⁷⁴ *Ibid.*

The globalized economy and the neoliberal model have provoked the active resistance of local communities and social groups, who see their survival as increasingly threatened by the economic, political, and cultural effects of the economic regime and model. Indigenous peoples have been among the most active opponents of these reforms, as well as the adverse integration of their communities into the global capitalist economy under neoliberal conditions. They constitute a sizeable portion of the Mexican population and their political resistance is increasingly connected with the struggles of peasants and rural workers. The existence of an ethnic dimension to poverty, described by Octavio Paz as a “dichotomy between two Mexico’s”, is undeniable.²⁷⁵ Two completely different societies share the same economy, culture, and may find themselves either in comfort or suffering.

Poverty in Mexico has also reached those urban sectors where unemployment is a problem. The growth of the urban population has reached new heights, but opportunities have not grown at the same pace. Macroeconomic statistics show that since Mexico’s integration into the open market economy, there has been some growth and improvement. The INEGI has reported that during the second quarter of 2000, the domestic economy grew by 7.6% per annum, and Mexico experienced “18 consecutive quarters of economic growth”.²⁷⁶ Why is this not evident in Mexico’s social development? The answer is quite complex. As this work has shown, decades of expropriation, inflation, and trade restrictions brought nothing but crises, which were

²⁷⁵ A. Carrigan, “Why is the Zapatista Movement so Attractive to Mexican Civil Society?” (March-April 1998)2:2 Civnet Reports J., online: http://www.officeoftheamericas.org/docs/1998/9803_CIVNET_Zapatista.html (date accessed: 20 June 2001).

underlined by governmental bureaucracy and corruption. The neoliberal policies that have been applied since the 1980s have also brought many problems to Mexico's citizens and its governments.²⁷⁷ Austerity programs and privatization seemed to be attractive solutions which exacerbated social problems by forcing the public administration to cut health, education, social security, and housing expenditures.

B. Policy Inconsistencies and Efforts

Neoliberalism is exacerbating the polarization of the Mexican society in all of its dimensions. The structural adjustments necessary for international economic integration as well as public sector austerity programs have tremendously reduced the possibilities for equitable economic growth and the satisfaction of social needs. Globalization has gained more importance, to the extent that the state specifically focuses on economic goals such as growth, competitiveness, and recovery at the expense of social needs. Apparently, the market-oriented economy in which Mexico and other developing countries are immersed pursues trade and economic growth as the pathway towards social justice. But, the results have not been promising. Since Mexico's entry to the global economy and the adoption of the neoliberal model, some efforts have been made to provide the population with adequate social services. Yet, a lot remains to be done by Mexican epistemic communities and the technocrats in office to seriously address the population's needs, and to tackle poverty and unsustainability. Hence, Mexico must

²⁷⁶ See Grupo Financiero Banamex-Accival, "Review of the Economic Situation of Mexico, Economic and Social Research" (September 2000) LXXVI:897 Banamex 355-356, online: <http://www.artikos.com/pdf/esem/eng/resemsepoo.pdf> (date accessed: 20 June 2001).

collaborate with its free trade partners to achieve sustainability so as to protect the environment and not to be tempted by a "race to the bottom" flowing Mexico's current lack of firmness in enforcing its environmental and labor laws. Likewise, Mexico must fight against the increasing unemployment, low wages, and environmental disequilibrium that sometimes accompany the presence of multinational enterprises, which seek to maximize profits, high productivity, and competitiveness.

1. Within NAFTA and the Mexican government

It is undeniable that the integrated open market economy system has brought many positive expectations for its participants. Within this economic regime, growth and development expectations are still two different somewhat divergent paths that the governments of developed and developing countries, as well as international organizations have to define, study and seek to converge. Uncertainty about employment, and the deterioration of social standards (the environment, human rights, and equality) constitute genuine concerns that merit attention.²⁷⁸

As Mexico's borders have been opening, firms have struggled to be more productive, competitive, and efficient in order to reduce costs and to increase productivity. High productivity processes, advanced technologies, and the bankruptcies of some domestic small-and medium-sized companies have led to Mexico's gradual growth, innumerable job losses, and environmental degradation.

²⁷⁷ D. Bandow & I. Vásquez, *Perpetuating Poverty* (Washington, D.C.: CATO Institute, 1994) at 349.

There are many questions and issues yet to be solved. NAFTA's side agreements have helped in a sense to improve Mexico's laws and enforcement procedures. But, even with the side agreements, Mexico's partners and domestic enterprises are not interested in complying with the laws to provide better working conditions, wages, gender non-discrimination, environmental protection, and a viable ecosystem for its workers and the population that dwells nearby. Unfortunately, the Mexican government has aggravated these circumstances by allowing corruption to continue through a political structure and regime that held power for more than seven decades.

Low production costs, and decreasing wages have marked Mexico's entry into NAFTA through the maquiladora industry. Most of these industries are owned by multinational enterprises, which tend to hire poor women to do assembly jobs. Unfortunately, Mexico's government seeks to ensure foreign investment through the maintenance of a policy that guarantees low wages and a strike-free workforce by not adequately or consistently enforcing labor laws.²⁷⁹ In particular, within the industrial sector, Articles 25, 26, and 123 (V) of the Mexican Constitution and the *Ley Federal del Trabajo* (Federal Labor Law) have been violated through gender discrimination, the paying of such low wages that women workers cannot support their families, by disrespect for pregnant women's rights, and by failure to seek a more just distribution of wealth that may allow the freedom and dignity of the workers.

²⁷⁸ See *Grupo Financiero Banamex-Accival*, *supra* note 276 at 374.

²⁷⁹ See *Plumtree*, *supra* note 195.

Maquiladoras do not want pregnant women working for them because they will have to pay maternity fees. Therefore, maquiladoras try to screen out pregnant women who are applying for a job or pregnant women who are working for them. Some maquiladoras will ask potential female employees to take pregnancy tests as part of the application process. If the test is positive the woman is not hired.²⁸⁰

This is but one example from a key sector showing that although Mexico and its NAFTA partners have made great strides to comply with the labor laws of the Member states, there is much to be done in order to take into account the NAFTA side agreement (NAALC) and its goals. Additionally, Mexico must seriously enforce its laws and sanction irregularities and violations of the Constitution and of the Federal Labor Law.

During the ISI period, Mexico's industrialization neglected the population's need for clean water and air, and adequate housing in urban areas. Today, with the adoption of the neoliberal model, Mexico has made many efforts to improve its environmental laws and regulations, which address most of the issues related to the protection and conservation of the environment. As has been shown in this Chapter, the successive Mexican governments have pursued evolution in the environmental field. In order to comply with Articles 25, 26, 27, and 28 of the Constitution, the government has adopted several laws, designed to achieve social equality and sustainability through the regulation of corporations, their use of natural resources, and their preservation of the environment.

While today, Mexico has a complete, and modern environmental law framework and appropriate public administrative entities to enforce its laws, unfortunately economic

²⁸⁰ *Ibid.* For more information, see M. Kelly, "Individual Companies Need to Encourage Proper Behavior;

interests tend to favor profits at the expense of the environment. NAFTA can be blamed of environmental degradation. Hazardous waste and the treatment of industrial waste are of particular concern. Even though the *Ley General de Equilibrio Ecológico* (General Law of Ecological Equilibrium and Environmental Protection) and its regulations establish disposal methods for hazardous waste, there have not been many companies that are seriously complying with these requirements. This situation is caused on one hand, by indifference to the provisions and objectives established in the NAAEC, and on the other by the continued inefficiency and corruption of the public administration.

2. Some reflections

There are still many tasks to be undertaken by Mexico as a Member state of the free trade market and as a developing country that has been struggling economically to recover and to have better opportunities for its society. Unfortunately, at an international level there has not yet been much concern, thought, or analysis towards establishing a global economic system in which social needs and sustainable development could be achieved within developing countries.²⁸¹

It is not easy to make a fully informed judgement of the contribution of neoliberalism and trade liberalization to Mexico's polarization, unfulfilled social needs and lack of sustainable development. Continuous budgetary cutbacks, the economic crises, the desperate need for economic recovery and growth, and government corruption are factors

Well-intended Laws can have unintentional effects", Star-Tribune, 23 December, 1996 at 3D.

that have been aggravated by the economic overtaken of the neoliberal model and the market-oriented economy. It is not a mistake to be immersed within an integrated market-oriented economy in which production and international trade are the most important factors. The mistake is in how policies are applied, as well as the way real growth and development objectives are addressed and analyzed by trade partners, lending institutions (IFIs), the world trade guardian (WTO), but most importantly by Mexico's government, its epistemic communities and its technocrats in office.

Mexico's seventy-year governance under the PRI did not create a healthy political environment for growth and development. Through the years, "the mechanics of the Mexican succession were transformed into a central responsibility bequeathed by each president to his direct descendant" by seeking benefits for himself as well as for the elite that surrounded him in the decision-making process.²⁸² Fortunately, Mexico's "perfect dictatorship," as described by Peruvian novelist-politician Mario Vargas Llosa, ended with an alternation in power after Mexico's 2000 federal elections.²⁸³ One can only hope that this alternation will provide the impetus for real growth and tangible sustainable development for coming generations.

²⁸¹ See Wee & Heyzer, *supra* note 265 at 19.

²⁸² See J.G. Castañeda, *La Herencia, Arqueología de la Sucesión Presidencial en México* (Mexico: Aguilar, Altea, Taurus, Alfaguara, S.A. de C.V., 1999) at 369 [translated by autor].

²⁸³ See S. Edwards & M. Naím, *Mexico 1994, Anatomy of an Emerging-Market Crash* (Massachusetts: Carnegie Endowment for International Peace, 1997) at 33.

CONCLUSION

During the last two decades, Mexico's political, economic, and social mechanisms have been altered significantly as the country has moved from a closed to an open economy. This has involved more than just putting an end to restrictions, trade tariffs, and state non-interventionism. It has necessitated the extremely complex transformation of the structure of the state and its constitutional and legal framework, new and improved public administrative processes and planning, and a new era in which the need for a market-oriented economic regime has promised economic recovery and growth, but has in fact neglected the needs of the people immersed within it.

With the advantages garnered from adopting the neoliberal development model and a globalized market-oriented economic regime have come disadvantages. Economically, Mexico has experienced gradual economic growth by abandoning the reasons for its fiscal problems, one notable example being state-owned enterprises. The foreign direct investment stemming from privatization and new laws has induced stability and has gradually created jobs in the manufacturing sector, but these are low-wage opportunities. And while trade liberalization has made the production process more competitive, the entrance of multinational enterprises and their technology transfers have led small and medium-sized companies to declare bankruptcy and consequently jobs have been lost.

Still, lower production costs have allowed exports to increase, lowering the country's balance-of-payments deficits.

Politically, neoliberalism and globalization have brought Mexico to an era in which the presidential authority has lost the power it wielded during the ISI model and the two governmental periods following the 1982 and 1994 economic crises. In addition, they have provoked a decentralization of power to the local governments and political entities, including the Congress. However, at certain points in time the neoliberal model has allowed governments to enlarge the existent corrupt strategies and to obtain benefits for the governmental elite and high-income social classes. Consequently, Mexico's economy has not yet recovered and social disparities have increased, contributing to its unsustainability.

Socially, the neoliberal model has pursued economic growth as a necessary precondition for social justice. This model, with its austerity programs, has not been able to satisfy many of the needs of the population. Besides, these policies, which have brought inflation and a reduction in social public expenditures, have generated such scarcity that no real economic development nor a decent standard of living has been possible. Even though the Constitution, in its individual guarantees, grants the right for the satisfaction of the basic social needs of the Mexican population, their fulfillment are still a problem, as evidenced by increased poverty and inequality.

Mexico's attempts to integrate into the global market-oriented economy has not propelled it to a new era of modernity, prosperity, growth, and sustainable development. Many of its old issues continue to be salient. In fact, the effects of globalization have exacerbated chronic problems like economic disparities, unemployment, social inequality, and social injustice, which are particularly prevalent in rural areas, indigenous groups, and urban low-income groups, too.

Besides the social policies already discussed, care for the environment must be considered in evaluating and addressing sustainable development. Mexico's adoption of the neoliberal model and the international economic system has not been accompanied by any real and serious commitment to environmental law enforcement. Consequently, the corporations that partake in the production process do not yet seem to be fully aware of their effects on the nearby population.

Poverty and financial constraints can only be eliminated through economic growth, but the international economic system, intent on trade liberalization, has not been up to the challenge. Poverty, marginalization, gaps between the rich and the poor, and unsustainability are effects that have been aggravated by the neoliberal model, globalization, and corrupt technocrats and elite groups that have controlled Mexico's economy and society.

Still many efforts and planning have to be done by Mexico in really committing itself to fully address the social needs and seriously enforce the laws to achieve the so needed

sustainable development. Hence, Mexico has to take a leading role in promoting its concerns in the international arena, but especially with its trading partners to really use economic growth and its benefits as a path for its sought national development in which sustainability and dignity of the society could be reached.

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