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Consular Protection to Illegal Migratory Workers and Mexican Undocumented Minors: Two Sensitive Issues Addressed by the Thirteenth Annual Meeting of the United States-Mexico Binational Commission

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Consular Protection to Illegal Migratory Workers and Mexican Undocumented Minors: Two Sensitive Issues Addressed by the Thirteenth Annual Meeting of the United States-Mexico Binational Commission

Cover Page Footnote

Professor of Law, University of San Diego School of Law; LL.B., Summa cum laude, National Autonomous University School of Law (UNAM); LL.M., Yale Law School, 1970; J.S.D. Candidate, Yale Law School, 1972; Mexico City Bar Association, former member. The author would like to express his personal thanks to Ms. Kimberly Joy Leong, a University of San Diego law student (class of 1997), for her efficient research assistance during the preparation of this article. The author verifies the accuracy of the Spanish language cites and all English translations appearing in the article.

Recent Development

CONSULAR PROTECTION TO ILLEGAL MIGRATORY WORKERS AND MEXICAN UNDOCUMENTED MINORS: TWO SENSITIVE ISSUES ADDRESSED BY THE THIRTEENTH ANNUAL MEETING OF THE UNITED STATES- MEXICO BINATIONAL COMMISSION

JORGE A. VARGAS*

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I. INTRODUCTION

Traditionally, the relations of the United States with Mexico have been characterized as asymmetrical, complicated, thorny, uneven, distrustful, irritable, and being based on a love-hate relationship.¹ It is evident that these characterizations provide only a partial, inaccurate, and subjective vision of our interactions with Mexico and indicate a vision which in most cases is distorted or occasionally manipulated for political, economic, or cultural reasons.

Whatever the characterization of our relations with Mexico, some specialists believe that these relations suffered a most drastic and constructive change during the administrations of President George Bush² and President Carlos Salinas de Gortari.³ During this period, a new political philosophy was created to govern the diplomatic agenda between the U.S. and Mexico; this philosophy centered on the notion of modernity. Recognizing economic globalization as the most decisive trend in the international commercial arena, acknowledging the paramount significance of physical contiguity as a key factor in the relations between the two countries, and being persuaded that Mexico was engaged in a legitimate process of developing a true political democracy, efficient legal reform and a sound but gradual economic recovery, Presidents Bush and Salinas initiated what may be characterized as a new form of bilateralism. The two presidents created a closer and friendlier relationship, in which historical emotional tensions take a back seat to open dialogue, mutual respect, and common understanding. The new bilateralism is also nurtured by rationality and influenced by pragmatism.

Rather than rely on outmoded policies or old terminological clichés, U.S. relations with Mexico have now been placed at a level of coordination which is more conducive to open and frank dialogue. From a political and diplomatic perspective, the new era of bilateralism demonstrates that the two nations have finally reached the level of maturity which is a precondition for engaging in a sound, stable, and systematic relationship.⁴

1. Literature on the U.S.-Mexico relationship is quite prolific in both countries. See, e.g., CENTER FOR U.S.-MEX. STUDIES, UNIV. OF CAL. AT SAN DIEGO, FOREIGN POLICY IN U.S.-MEXICAN RELATIONS 1-18 (1989); THE CHALLENGE OF INTERDEPENDENCE: MEXICO AND THE UNITED STATES (1989); Andrés Rozental, *Relaciones con los Estados Unidos*, in LA POLITICA EXTERIOR DE MEXICO EN LA ERA DE LA MODERNIDAD 70, 70-78 (1993).

2. See, e.g., ROBERT A. PASTOR & JORGE G. CASTAÑEDA, LIMITES EN LA AMISTAD (1989).

3. See, e.g., Alan Knight, *Salinas and Social Liberalism in Historical Context*, in DISMANTLING THE MEXICAN STATE?, 1-23 (1996); see also Rozental, *supra* note 1, at 19-44.

4. See JORGE G. CASTAÑEDA, THE MEXICAN SHOCK: ITS MEANING FOR THE UNITED STATES 31-46 (1995).

To facilitate discussion of topics requiring the attention of the two nations, the United States-Mexico Binational Commission ("BNC") was established in 1981. On May 6-7, 1996, the Thirteenth Annual Meeting of the BNC took place in Mexico City. In accordance with the principles of the new era of bilateralism, the meeting directly addressed the controversial issue of illegal immigration of Mexican nationals to the U.S. and produced the Memorandum of Understanding on Consular Protection of Mexican and United States Nationals ("Memorandum on Consular Protection").⁵ This article discusses the process leading to the adoption of this memorandum, analyzes the legal merits of the memorandum, and compares it to existing legal instruments. This article also raises another problem addressed by the meeting—delinquent activities of Mexican minors in the U. S.—and proposes an alternative solution to this issue.

II. AUSPICIOUS SIGNS AND OMINOUS EVENTS BEFORE THE MEETING

A. *Auspicious Signs Preceding the Meeting*

The new political philosophy of bilateralism created during the administrations of President Bush and President Salinas is also shared by Mexico's current president, Ernesto Zedillo Ponce de León. Thus in the National Development Plan, 1995-2000,⁶ which sets the six-year course of his administration,⁷ President Zedillo wrote:

With the United States of America, our aim is to establish a new understanding that will promote Mexico's interests; encourage high-level consultations on issues of bilateral and international import; intensify protection of the human and labor rights of Mexican emigrant workers and promote respect for their image and dignity; expand financial, trade, scientific, and technological cooperation; embark on a new, effective, and respectful initiative against the trafficking of drugs, weapons, and individuals; increase the efficiency of environmental protection mechanisms and broaden

5. Memorandum of Understanding on Consular Protection of Mexican and United States Nationals, May 7, 1996, U.S.-Mex., (on file with author) [hereinafter Memorandum on Consular Protection]. The text of the memorandum is reprinted in Appendix One of this article.

6. "Plan nacional de desarrollo, 1995-2000," D.O., 31 de mayo de 1995, at 13 (Mex.) [hereinafter "Plan nacional"].

7. Traditionally, the National Development Plan is made public by each Mexican president at the beginning of the six-year term. From a political viewpoint, it may be considered as the presidential platform or the personal political program of the federal executive in office. During his tenure, the president is publicly committed to implement the National Development Plan for the benefit of the Mexican people. See Jorge A. Vargas, *The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform of 1995*, 11 AM. U. J. INT'L L. & POL'Y 295, 330 (1996).

their scope; devise mechanisms for swift response to the demands of the population living along the border, and lower the incidence of crime and violence in border areas; and encourage more widespread exchanges to promote knowledge of the cultures of both nations.⁸

Based upon this political framework, recent actions by President Zedillo have led analysts to describe him as "more pragmatic and less doctrinaire than his predecessors,"⁹ and events with no precedent in the diplomatic history between both countries appear to give credence to this assertion.

1. Extradition

Mexico has systematically declined to extradite any of its citizens since becoming an autonomous nation in 1821.¹⁰ However, in April of 1996, a few weeks prior to the XIIIth Meeting of the BNC, Mexico extradited two of its nationals to the U.S.¹¹ These extraditions fueled

8. "Plan nacional," *supra* note 6, at 13.

9. Sam Dillon, *Mexico's Leader Quietly Adopts a Warmer Approach to the U.S.*, N.Y. TIMES, May 2, 1996, at A1. This author states that President Zedillo "has recently reversed some dearly held tenets of Mexico's historically prickly relationship with the U.S." *Id.*

10. *See id.* Seeking to justify this policy, Mexico has claimed that its judicial system is capable of adjudicating any legal matters involving Mexican nationals. *See* Dea Abramschmitt, *Neighboring Countries; Un-neighborly Acts: A Look at the Extradition Relationships Among the United States, Mexico, and Canada*, 4 J. TRANSNAT'L L. & POL'Y 121, 128-29 (1995). Further, under Mexican law, extradition of a Mexican national is in discretion of the federal executive. *See* 6 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 866 (1968) (quoting "Ley [1897] de Extradición de la Republica Mexicana" art. 10.II (Mex.), reprinted in CODIGOS PENAL Y DE PROCEDIMIENTOS PENALES PARA EL D. Y T.F. Y FEDERAL DE PROCEDIMIENTOS PENALES (1964)).

In 1978, Mexico and the U.S. signed an extradition treaty. Treaty on Extradition, May 4, 1978, U.S.-Mex., 31 U.S.T. 5059. However, as a result of both the Reagan and Bush administrations' belief that the treaty was ineffective, the U.S. government occasionally resorted to extralegal methods to bring Mexican fugitives to justice. *See* Mark D. Hobson, Note, *Abducting Foreign Nationals Abroad: United States v. Alvarez-Machain*, 1 J. TRANSNAT'L L. & POL'Y 253, 253-54 (1992). Thus in 1990, Humberto Alvarez-Machain, a Mexican national wanted by the Drug Enforcement Agency ("DEA") for torture and murder of a DEA agent, was abducted from Mexico, delivered to DEA authorities in Texas, and subsequently indicted. *See id.* at 256-57. The Ninth District Court dismissed the indictment, finding that the abduction violated the extradition treaty between the two countries. *See* *United States v. Alvarez-Machain*, 946 F.2d 1466, 1466 (9th Cir. 1991). The U.S. Supreme Court reversed, reasoning that the treaty does not prohibit abduction outside of its terms and that, therefore, the fact of the alien's abduction does not prohibit his trial in a U.S. court for violation of U.S. criminal law. *See* *United States v. Alvarez-Machain*, 504 U.S. 655, 655 (1992).

11. *See* Dillon, *supra* note 9, at A1. On April 17, 1996, Mexico delivered Francisco Gámez García, who was convicted in Arizona of sexually abusing a boy in 1993, to U.S. authorities in Phoenix. *See id.* A few days later, on April 25, 1996, Aaron Morel Lebaron, another Mexican national charged with the murder of four people, including a child, was sent back to Houston to face trial. *See id.*

expectations that Mexico would return drug traffickers apprehended in that nation to the U.S.¹²

2. *Military Cooperation*

The U.S. has been traditionally portrayed in Mexican military manuals "as the country's natural enemy."¹³ This ingrained characterization dates back to the 1846-1848 U.S.-Mexican war and to the invasion of the port of Veracruz, in the Gulf of Mexico, by U.S. Marine forces in 1910. Thus observers were quite surprised to learn that General Enrique Cervantes, Mexico's Secretary of Defense, and U.S. Defense Secretary William Perry had approved an agreement whereby twenty UH-1H Huey helicopters were immediately transferred to the Mexican Air Force, to be followed by perhaps fifty or more additional helicopters in 1997.¹⁴ The agreement also provided for training of Mexican soldiers in antinarcotics tactics at Fort Bragg, N.C., as well as training for helicopter pilots and mechanics at other U.S. military bases.¹⁵ This unprecedented agreement was signed in Washington, D.C. on April 24, 1996.¹⁶

On May 14, 1996, the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*) submitted to Mexico's Federal Congress a detailed report informing the Congress of the results of this meeting and outlining principles of military cooperation between the two countries.¹⁷ The Secretariat's report asserted that military cooperation would mainly be channeled into the following four areas: (i) educational exchanges; (ii) assistance to fight drug trafficking; (iii) disaster assistance; and (iv) modernization of antidrug equipment. The report also stated that "last April, instructors of Mexico's armed

12. See *id.*; see also Warren Christopher, Remarks at the Council of the Americas Conference, DEP'T ST. DISPATCH, May 13, 1996, at 239. Addressing the Council of the Americas, U.S. Secretary of State Warren Christopher said, "We hope that this unprecedented action [i.e., Mexico's extradition of its two nationals] will help persuade other Latin American countries to overcome their aversion to extraditing their nationals [to the United States]," making a clear reference to Colombia. *Id.*

13. Dillon, *supra* note 9, at A1. This author writes that Mexico has been the only country in the hemisphere other than Cuba to consistently keep the American military at arm's length, apart from the training of a trickle of officers at American military schools over the years and the purchase of American jets once in the 1980s. See *id.*

14. See *id.*

15. See *id.* According to the article, helicopters previously provided by the U.S. to Mexico have been transferred to the Mexican Attorney General's Office (*Procuraduría General de la República*), and not to the military. See *id.*

16. See *id.*

17. See *Recibe el Congreso de México los acuerdos militares con E.U.*, EL FINANCIERO, May 14, 1996, at 51.

forces took part in training programs in the U.S. designed to teach modern techniques in the fight against drug trafficking activities."¹⁸

3. *Apprehension of Illegal Migratory Workers*

The presence of illegal Mexican migratory workers in the U.S. has been a source of tensions between the two countries for decades. Mainly due to the intransigence shown by both sides, officials have failed to simply agree to discuss this question, let alone propose measures to alleviate the problem. Yet, on April 3, 1996, the U.S. and Mexico agreed to return to Mexico thirteen Mexicans detained by the Immigration and Naturalization Service ("INS") for illegally crossing the border.¹⁹ It was estimated that some 450 more would be flown back to central Mexico by July of 1996 as part of this new pilot program.²⁰ This program, financed by the U.S., is designed to transport the returning Mexican nationals as far from the U.S.-Mexico border as possible.²¹

This program and the agreement on military cooperation have no precedents in the diplomatic and legal history between the two nations. They clearly suggest a new attitude adopted by Mexico vis á vis the U.S. Such an attitude may be indicative of the "new understanding" referred to by President Zedillo in his statement on bilateral interactions with the U.S.²² The importance of this cooperation gains even greater significance, given the fact that extradition, military cooperation, and illegal migratory workers are among the most sensitive issues in U.S.-Mexico relations.

It is clear that President Zedillo is determined to open new and more effective avenues of communication with the U.S., based upon the new political philosophy he defined as a new understanding. The philosophy is likely to demand the construction of a new bilateral policy between the nations. Such a policy will require not only expanding the scope of the bilateral questions addressed by these countries but, more importantly, tackling the very sensitive and controversial issues that until now have been intentionally kept out of a working agenda.

18. *Id.* The report emphasized that said cooperation "is taking place with full respect for the sovereignty, laws and territorial jurisdiction of each nation and by no means implies the undertaking of joint military exercises." *Id.* (emphasis added). Mexican Senator Alvaro Vallarta Ceceña supported the U.S. military assistance to Mexico, which, he said, "consisted basically of helicopters." *Id.*

19. Leonel Sanchez, *U.S. Flies Mexicans to Homes: Thirteen Caught at Border Are Repatriated*, THE SAN DIEGO UNION-TRIBUNE, Apr. 4, 1996, at B1.

20. *Id.*

21. *Id.*

22. See *supra* note 8.

B. Ominous Events Preceding the Meeting

A month before the XIIIth Meeting was to convene in Mexico City, a series of events took place in the U.S. which endangered the very existence of the meeting. The magnitude and widespread publicity of these events provoked an emotional reaction among the Mexican people and generated an atmosphere of anger and deep resentment against the U.S. Bilateral relations between these countries acquired an uncommon level of tension.

1. Beatings in Riverside, California

On April 2, 1996, the front pages of Mexican newspapers reported the chase, abuse, and beating of Mexican nationals by sheriff's deputies in Riverside, California.²³ These reports narrated in vivid detail how

one of the Riverside policemen, holding his baton with both hands as if it were a baseball bat, beat the [Mexican] driver . . . in the back and shoulders, even though this man had already fallen on the ground with his face down. When the woman . . . exited the vehicle, the same agent beat her in the back with his baton and then pulled her by the hair and threw her on the ground. According to a videotape, neither the man nor the woman made any resistance, nor did they attempt to flee.²⁴

This incident generated a national outcry in Mexico and provided an opportunity for Mexican politicians and government officials to severely criticize both the violent episode and President Zedillo's administration. Zedillo was described as adopting "a passive, lukewarm, and bureaucratic policy regarding the growing wave of violence against undocumented Mexicans in the U.S."²⁵ The incident also triggered Latino protests in California.²⁶

23. See *Entregaré E.U. un reporte pormenorizado, en respuesta a México*, EL FINANCIERO, Apr. 15, 1996, at 52 [hereinafter *Un reporte pormenorizado*]; Víctor González, *Policías de E.U. golpean a mexicanos indocumentados*, EL FINANCIERO, Apr. 3, 1996, at 35; Salvador Rico, *Enérgica defensa de indocumentados, exigen legisladores y partidos*, EL FINANCIERO, Apr. 9, 1996, at 46.

24. González, *supra* note 23, at 35.

25. Rico, *supra* note 23, at 46. These remarks are attributed to Mexican Senator Cristóbal Arias Solís, Chair of the Senate Migration Commission (*Comisión de Asuntos Migratorios del Senado*).

26. See *Frenar abusos policíacos; pide la población latina de California*, EL FINANCIERO, Apr. 8, 1996, at 52; Leonel Sanchez, *No Chase by Border Patrol, Survivors Say*, SAN DIEGO-UNION TRIBUNE, Apr. 9, 1996, at A3.

2. Deaths in Temecula, California

The outcry and indignation provoked by the Riverside incident had hardly abated when another equally disturbing event took place in Temecula, California. As a result of a high-speed chase by immigration officials, a vehicle carrying twenty-two Mexican nationals, who were in the U.S. illegally, skidded off a curve and crashed, killing seven Mexicans.²⁷

The government of Mexico, through its Secretariat of Foreign Relations, lodged a strongly worded note of protest, followed by an official visit by the Mexican Undersecretary for Bilateral Affairs to Washington, D.C. A special press communiqué issued by the Secretariat of Foreign Affairs stated, *inter alia*, that:

- The U.S. agreed to provide Mexico with "a detailed report of federal actions regarding both incidents, in particular actions by the Department of Justice's Office for the Defense of Civil Rights."²⁸
- The U.S. Department of Justice agreed to contact the California local police, in particular in Riverside, with the purpose of reviewing their methods and procedures, as well as the training of local police forces, so that similar incidents would be avoided in the future, and responsible agents would be punished with all the rigor of the law. The Department of Justice does not have jurisdiction over the local police and can not force them to adopt new reforms, but it did agree "to undertake a joint effort in the proposed direction with local authorities."²⁹
- Following discussions held at the Department of State, Mexico proposed a draft agreement which provided for consular protection to Mexican nationals irrespective of their immigrant status and which required that any detention or legal incident involving citizens of the two countries would be reported to the closest consulates of the U.S. and Mexico.³⁰ This proposal was characterized as "an instrument to strengthen the capabilities of . . . [Mexican consular] representations in the United States to

27. See Tom Gorman, *Alleged Smuggler May Have Driven Pick Up*, L.A. TIMES, Apr. 17, 1996, at A3; Tom Gorman & Tony Perry, *Immigrant Held in Crash That Killed Seven*, L.A. TIMES, Apr. 12, 1996, at A3; Tony Perry et al., *Seven Die as Truck Evading Border Agents Crashes*, L.A. TIMES, Apr. 7, 1996, at A1.

28. See *Un reporte pormenorizado*, *supra* note 23, at 52.

29. *Id.*

30. See *id.*

provide [Mexican nationals] with timely assistance" in the U.S.³¹

- U.S. local police authorities were urged to fully respect the civil and labor rights of Mexican nationals during any encounters with Mexicans.³²
- Mexican concerns were expressed regarding "the grave repercussions to Mexican nationals" that may result from the adoption of new U.S. immigration laws.³³
- It was agreed that a "permanent dialogue" on this matter was to take place at the forthcoming meeting of the U.S.-Mexico Binational Commission.³⁴
- It was also agreed that officials of the Secretariat of Foreign Affairs were to give "a brief course on human rights, consular protection, Mexican 'idiosyncrasy,' and treatment of Mexicans to cadets of the U.S. Border Patrol."³⁵

3. *Declarations by the DEA Director*

A third upsurge of Mexican indignation was caused by declarations made by Thomas Constantine, U.S. DEA Director, at a press conference in Mexico City, where he attended the XIVth International Conference for the Control of Drugs. Constantine reportedly stated:

Mexican drug cartels already control 50% of the drug distribution in the United States and are as powerful as the Colombian [cartels]. In addition, millions of [U.S.] dollars generated by the sales of cocaine, marijuana, heroin, and metamphetamines in the Americas are being laundered in banks of Northern Mexico The DEA has detected a tendency of drug traffickers to transport their profits to the southwest of the United States and, then . . . ship them to the [Mexican] side of the border for deposit in legitimate banks Until today, the deposit of drug money in Mexican banks has been facilitated because said institutions have no legal obligation to report to the authorities the opening of suspicious accounts. [By contrast,] in other countries, such as Panama, any [banking] transaction of more than ten thousand [U.S.] dollars is registered and reported to the fiscal authorities From each ten tons that

31. *Id.*

32. *See id.*

33. *Id.*

34. *Id.*

35. *Id.*

reach the Americas today, five are controlled by Colombians and five by Mexicans. They are acting in parallel.³⁶

These declarations triggered a flurry of angry reactions and probing questions from such diverse quarters as the Secretariat of Foreign Affairs, Secretariat of Finance and Public Credit, legislature, business community, Mexico's National Association of Bankers, and the National Antinarcotics Institute.³⁷

Mexicans demanded to know the names of individuals or corporations, banking institutions, and amounts of money involved with the alleged laundering of "*narcodólares*." Mr. Constantine left before the end of the conference that had brought him to Mexico. Harold Wankel, a member of the U.S. delegation, made an official statement at the closing of the conference and blamed the Mexican press for imprecision in statements attributed to Mr. Constantine.³⁸

4. *New U.S. Immigration Laws.*

The inauspicious atmosphere prevailing in Mexico prior to the XIIIth Meeting became more tense when in May 1996 the U.S. Congress passed a new immigration bill, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.³⁹ The new law provided, *inter alia*, for doubling the number of border patrol agents, increasing INS detention space, and building of a fourteen-mile, three-tier fence along the Mexican border near San Diego.⁴⁰ Mexican authorities opined that the bill might fuel "the hostile climate [prevailing] against Mexicans in some regions of the U.S., already exacerbated by the [presidential] electoral process."⁴¹

The intense emotional significance this series of events precipitated throughout Mexico could not have placed the U.S. delegation in a more difficult, sensitive, and potentially volatile situation going into the XIIIth Meeting of the U.S.-Mexico Binational Commission ("BNC"). The emotionally charged political climate exercised a

36. Víctor Fuentes, *Bancos del norte de Mexico 'lavan' miles de millones de dólares*, EL FINANCIERO, Apr. 23, 1996, at 51.

37. See Carlos Benavides Ortiz & Víctor Fuentes, *Culpa la DEA a la prensa de las declaraciones de Thomas Constantine*, EL FINANCIERO, Apr. 26, 1996, at 43.

38. See *id.* In this statement, Mr. Wankel "denied that Constantine had alleged that the Mexican banking system was flooded with *narcodólares*." *Id.*

39. H.R. 3610, 104th Cong. (1996). The bill was enacted on September 30, 1996. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 [hereinafter IIRA/IRA].

40. See IIRA/IRA, Pub. L. No. 104-208, § 101-02.

41. José Angel Gurría Treviño, Palabras del secretario de relaciones exteriores de México durante la ceremonia inaugural de la XIII Reunión de la Comisión Binacional México-Estados Unidos, May 6, 1996, [No. 1] (on file with the *Journal of Transnational Law & Policy*).

profound and penetrating influence upon the substance and outcomes reached at the meeting.

III. THE U.S.-MEXICO BNC

A. *Historical Development*

In May of 1977, U.S. President Jimmy Carter and Mexican President José López Portillo established the U.S.-Mexico Consultative Mechanism to provide better coordination in U.S.-Mexico relations.⁴² This Consultative Mechanism was the precursor to the current BNC and consisted of three broadly based working groups on political, social, and economic questions. Each of these were supported by specialized subgroups.

The first meeting of the Consultative Mechanism took place in Mexico City at Tlatelolco, the venue of Mexico's Secretariat of Foreign Relations, between U.S. Secretary of State Cyrus Vance and his Mexican counterpart, Santiago Roel. In February of 1979, the two presidents decided to "re-organize and strengthen the Consultative Mechanism"; the working groups were realigned and broadened "to provide an improved forum for discussion and understanding."⁴³ The presidents later reaffirmed support for the Consultative Mechanism during a September 1979 meeting in Washington, D.C.

The BNC was established in 1981 by U.S. President Ronald Reagan and Mexican President José López Portillo "to serve as a forum for meetings between Cabinet-level officials from both countries."⁴⁴ The BNC was envisioned as a simple, flexible tool that would meet once or twice annually for exchange of an agenda of topics requiring attention. One of the early temporary action groups, the Border Relations Action Group, was formed in November 1981 and met twice, carrying out "several on-site investigations and technical-level consultations, submitting recommendations to the governments."⁴⁵

Since its creation, the number of working groups has steadily grown, with nine groups meeting in 1989.⁴⁶ Groups on education, agriculture, housing and urban development, and labor were added in 1990 and 1991, reaching a total of thirteen.⁴⁷ In 1993, a transportation group was added, and a new science and technology

42. See *Fact Sheet: U.S.-Mexico Binational Commission*, DEP'T ST. DISPATCH, May 22, 1995, at 428.

43. *Id.*

44. *Id.*

45. *Id.*

46. See *id.*

47. See *id.*

subgroup was formed.⁴⁸ Twelve working groups participated at the BNC's XIIth Annual Meeting in Washington, D.C., in 1995.⁴⁹

The BNC has encouraged contacts between the two governments at every level from staff to Cabinet officials. The entering into force of the North America Free Trade Agreement ("NAFTA") has multiplied such official interaction.

B. The XIIIth Annual Meeting of the BNC

1. General Framework

The XIIIth Meeting of the BNC took place in Tlatelolco, Mexico City, on May 6-7, 1996.⁵⁰ The U.S. delegation was headed by Secretary of State Warren Christopher and included a large number of other high-ranking U.S. officials.⁵¹ José Angel Gurría Treviño, Mexico's Secretary of Foreign Relations, led his country's delegation. The combined number of government officials from both countries attending the meeting totaled three hundred.

The meeting was divided into sixteen working groups: (i) agriculture; (ii) business promotion; (iii) border cooperation; (iv) education and cultural affairs; (v) energy; (vi) environment and natural resources; (vii) fiscal, financial, and custom matters; (viii) fishing and tourism; (ix) housing and urban development; (x) labor; (xi) legal affairs and antinarcotics cooperation; (xii) migration and consular affairs; (xiii) political affairs; (xiv) science and technology; (xv) trade and investment; and (xvi) transportation.⁵²

48. *See id.*

49. *See id.* The 1995 working groups were divided into the following areas: (i) agriculture; (ii) business development; (iii) fisheries and tourism; (iv) education and cultural affairs; (v) environmental cooperation; (vi) fiscal, financial, and custom matters; (vii) housing and urban development; (viii) labor; (ix) legal affairs and antinarcotics cooperation; (x) migration and consular affairs; (xi) trade and investment; and (xii) transportation. *See id.*

50. Sam Dillon, *U.S. Signs Pact on Telling Mexico About Certain Migrant Cases*, N.Y. TIMES, May 8, 1996, at 7; Mark Fineman & Stanley Meisler, *Mexicans Tell U.S. Delegation of Resentment*, L.A. TIMES, May 8, 1996, at A1.

51. The U.S. delegation included the following officials: (i) Secretary of State Warren Christopher; (ii) Attorney General Janet Reno; (iii) Secretary of the Interior Bruce Babbitt; (iv) Secretary of Health and Human Services Donna Shalala; (v) Secretary of Housing and Urban Development Henry Cisneros; (vi) Secretary of Transportation Federico Peña; (vii) Secretary of Education Richard Riley; (viii) EPA Administrator Carol Browner; and (ix) U.S. Information Agency Director Joseph Duffey. General Barry McCaffrey, Coordinator for U.S. Counter-Narcotics Policy, Thomas McLarty, Presidential Adviser, and five undersecretaries also attended the meeting. *See* Ben Barber, *Clinton Cabinet Swoops South for Binational Commission*, WASH. TIMES, May 7, 1996, at A9; *see also* Mark Stevenson, *Mexico Makes Immigration Proposals*, UPI, May 6, 1996, available in LEXIS, Nexis Library, UPI File.

52. José Angel Gurría Treviño, *Palabras del secretario de relaciones exteriores* [No. 2] (on file with the *Journal of Transnational Law & Policy*).

At its conclusion on May 8, 1996, the meeting had generated eleven bilateral agreements involving such diverse topics as consular protection to nationals of each country, education, energy, international bridge construction, air pollution, epidemiology, and the environment.⁵³

2. Welcoming Remarks by Mexico's Foreign Minister

In his welcoming remarks, Minister Gurría referred to the new understanding existing between both countries as follows:

[Last year,] we agreed to work on the construction of relations [based upon] genuine mutual confidence, profound respect, and moderation. This work would involve an intense collaboration, free of conditions, and produce a relationship where suspicion, recriminations, and violence have no place. A nexus would be sustained giving the fullest respect to the sovereignty of each nation and awareness of our [respective] asymmetries and idiosyncrasies.⁵⁴

Minister Gurría enumerated the following five priority areas to be addressed by the meeting: (i) immigration; (ii) border issues; (iii) problems posed by drug trafficking; (iv) political relations; and (v) economic relations.⁵⁵ While identifying immigration as "one of the most controversial topics on the bilateral agenda," Minister Gurría acknowledged that "Mexico recognizes the right of every government to enforce its laws in this area."⁵⁶ He further emphasized

the unwavering duty of the Mexican government to protect the integrity and the rights, both human [rights] and labor [rights], of its own nationals. Migratory status [of Mexican nationals] does not alter their inalienable rights as human beings, nor does it deny their important contribution to the U.S. economy.⁵⁷

According to Gurría, rather than conceiving of the border as a space to erect new walls, the two nations should promote the creation of a zone of shared prosperity.⁵⁸ He opined that the effects of drug trafficking are devastating for all societies affected by drug consumption, production, and smuggling operations, with everyone becoming a victim.⁵⁹ On the economic front, he emphasized the

53. For a list of these agreements, see Appendix Two.

54. Gurría, *supra* note 41, at 1.

55. *See id.* 2-5.

56. *Id.*

57. *Id.*

58. *See id.*

59. *See id.*

need of both countries to effectively apply the rules of commerce and international law, and reiterated Mexico's firm rejection of extra-territorial application of domestic provisions, such as the Helms-Burton Act.⁶⁰ Given the intense commercial relations between both countries, Gurría regarded the emergence of tensions and differences as only logical.⁶¹

Citing Mexico as the "third largest global commercial partner of the U.S., buying more U.S. goods than France and Germany combined,"⁶² Gurría concluded by saying that since NAFTA, "the commercial exchange has increased twenty percent per year, thus reaching an annual flow of 120 billion dollars."⁶³

3. *Consular Protection to Illegal Migratory Workers*

Problems associated with the illegal entry of Mexican nationals to the territory of the U.S., and their subsequent unlawful presence and activities here, constitute one of the oldest and most stinging irritants to bilateral relations between the two countries.

Two factors appear to contribute to this dismaying state of affairs. First, the presence of Mexican illegal workers is not a new phenomenon in the U.S., and, according to one study, the problem has been in existence for more than a hundred years.⁶⁴ The intractability of this irritant may have led to the belief that this is now a problem inherent to the relations between these socio-economically contrasting nations. Thus as long as the U.S. and Mexico continue to be economically asymmetrical, this irritant will continue to be a part of their relations. Such an understanding may have produced a sentiment of despair among U.S. citizens, who now tend to think that the presence of illegal Mexican nationals has become an endless problem. Perhaps this view has caused the wave of intense sentiment directed against the presence of illegal Mexicans in the U.S. and contributed to the passing of Proposition 187 in California a few years ago.⁶⁵ Second, each country has adopted divergent

60. Cuban Liberty and Democratic Solidarity (Helms-Burton) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (1996).

61. See Gurría, *supra* note 41, at 5.

62. Dan Trotta, *Mexico, U.S. Open High Level Talks amid Sniping*, REUTERS N. AM. WIRE, May 5, 1996, available in LEXIS, Nexis Library, Reuters File.

63. Carlos Benavides & Jaime Hernández, *Insta gurría a detener la confrontación y el reclamo en la relación bilateral*, EL FINANCIERO, May 7, 1996, at 49.

64. See Wayne A. Cornelius & Jorge A. Bustamante, *Mexican Migration to the United States*, in MEXICAN IMMIGRATION TO THE UNITED STATES 1 (1989).

65. Cal. Proposition 187 (1994) (to be codified at CAL. PENAL CODE §§ 113, 834b (Deering Supp. 1995), CAL. WELF. & INST. CODE § 10001.5 (Deering Supp. 1995), CAL. HEALTH & SAFETY CODE § 130 (Deering Supp. 1995), CAL. EDUC. CODE. §§ 48215, 66010.8 (Deering Supp. 1995), CAL. GOV'T CODE § 53069.65 (Deering Supp. 1995)), reprinted in Randall Kyle Hawes, *California*

positions on this sensitive issue. Over time these positions have not only become hardened and anachronistic but devoid of practical meaning.

From the Mexican perspective, the sensitivity of the issue requires the use of adequate "Mexican terminology." This view finds that it is unacceptable to describe Mexican nationals in immigration law terms as individuals who made an "illegal entry" into the territory of the U.S.,⁶⁶ nor is it correct to refer to their physical presence in this country as "unlawful" on the ground that they have no immigration documents.⁶⁷ According to this perspective, these Mexican nationals should instead be characterized as "migratory workers" (*trabajadores migratorios*) or "undocumented aliens" (*extranjeros indocumentados*). To date, these semantic disputes appear to have achieved nothing beyond preventing the parties from addressing the actual problem at hand.

The government of Mexico is of the opinion that the act of entry into the U.S., the physical presence of Mexican nationals in the U.S., and their activities therein must be considered a truly binational question. The Mexican government believes that this question demands joint U.S.-Mexico action and cannot be resolved unilaterally by either of the two nations involved. Mexico argues that the presence and activities of Mexican migratory workers in the U.S. are the result of an interplay of "push and pull factors" that affect both countries equally. Thus, although poverty and unemployment may be present in parts of Mexico, forcing Mexicans to abandon their country and to look for better living conditions in the U.S. (push factors), it is argued that there is a need for cheap and permanent labor in the U.S. at certain times of the year and in specific areas of the economy, particularly in the agricultural and services areas (pull factors). This chronic and insatiable U.S. demand for cheap and

Proposition 187: Will the Populist Mandate Survive Constitutional Scrutiny?, 37 S. TEX. L. REV. 1391 app. at 1418-23 (1996). For a detailed analysis of this legislation, see Minty Siu Chung, *Proposition 187: A Beginner's Tour Through a Recurring Nightmare*, 1 U.C. DAVIS J. INT'L L. & POL'Y 267 (1995); Barbara Nesbet & Sherilyn K. Sellgren, *California's Proposition 187: A Painful History Repeats Itself*, 1 U.C. DAVIS J. INT'L L. & POL'Y 153 (1995).

66. The term "entry" means "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise" Immigration and Nationality Act of 1990 § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1995).

67. No U.S. citizen is allowed to travel abroad without a valid U.S. passport or other documentation required for legal entry into the territory of a foreign nation. Mexican law lacks this legal rule. As a consequence, any Mexican citizen or national of that country may physically leave Mexico without a valid Mexican passport or any other documentation. Seeking to rationalize this peculiar immigration situation, the government of Mexico alleges that in accordance with Article 11 of the Mexican Constitution, "*any man [sic] has the right to enter into the Republic [of Mexico], exit said Republic . . . without a passport . . . or any similar requirements.*" CONST. art. 11 (Mex.) (emphasis added).

unprotected labor serves as the most powerful magnet in attracting Mexican migratory workers to those areas. When the U.S. demand for labor becomes urgent or acute (for example, when certain crops are in danger of going to waste), the international border becomes conveniently open or at least quite porous. This lasts just long enough for Mexican migratory workers to get to the areas where their labor is in demand.

Following this logic, it is clear that a permanent quid pro quo exercise has been taking place across the U.S.-Mexico border during the last five or six decades. The regular flow of illegal Mexican workers, who are attracted to economic magnet areas in the U.S., constitutes a chronic socio-economic bilateral phenomenon. This phenomenon can properly be characterized as an informal, non-written understanding between the U.S. and Mexico. It is a de facto understanding that is in place because it benefits both countries. Although the informality of this understanding causes adverse effects which generally afflict the weakest individual actors in this transboundary interplay, the undocumented aliens, the official perception shared by both governments is that the overall economic benefits clearly outweigh the negative consequences; hence a possible explanation as to why this situation continues to be tolerated and remain in place.⁶⁸

a. The Need for Consular Protection to Mexican Nationals

One of the main issues addressed by the XIIIth Meeting of the BNC was the need for consular protection to Mexican migratory workers. In recent years, the civil, criminal, and human rights violations inflicted upon Mexican illegal immigrants, especially by Border Patrol agents, as well as by members of the police and deputy sheriffs, have not only increased steadily but become more violent.

According to Mexico's National Commission of Human Rights ("CNDH") "killing and aggressions against undocumented Mexican workers do not constitute isolated cases but [are] a recurring practice."⁶⁹ In its Second Report on Human Rights Violations of Mexican Migratory Workers in Transit to the U.S., CNDH compiled the following results:

68. See REMEDIO GÓMEZ ARNAU, *MEXICO Y LA PROTECCIÓN DE SUS NACIONALES EN ESTADOS UNIDOS* 216-17 (1990).

69. Carlos Benavides Ortiz, *Documentó la CNDH el asesinato de 16 indocumentados en cuatro años*, *EL FINANCIERO*, Apr. 9, 1996, at 47.

- Sixteen Mexican nationals were reported dead as the result of actions taken by U.S. police or security agents between 1991 and 1994.⁷⁰
- Seven out of those sixteen Mexican nationals were murdered by Border Patrol agents.⁷¹
- At the time of detaining the Mexican nationals, the U.S. authorities acted in bad faith and, in numerous cases, with excessive impropriety.⁷²
- Out of the fifty-five incidents reported to the Secretariat of Foreign Affairs and thirty-four to the Secretary of the Interior (*Secretaría de Gobernación*) (a total of eighty-nine incidents), "nine cases involved injuries [to undocumented workers] caused by Border Patrol vehicles which were operating with their headlights off [at night]."⁷³
- The case of José Carlos Martínez Carrillo is illustrative. Along with other undocumented workers, he was trying to cross the border along an interstate highway. This highway was allegedly guarded by a Border Patrol vehicle running at night with no headlights. The workers did not see the vehicle approaching them, and the vehicle ran over José Carlos, who died instantly on the spot.⁷⁴
- In forty percent of the reported incidents, "Border Patrol agents showed an intent to cause injuries to the Mexican undocumented workers, beating the workers with their fists, batons, flashlights or kicking them."⁷⁵
- Fifteen percent of the incidents involved physical injuries caused by Border patrol agents to Mexican nationals by the use of firearms.⁷⁶
- In ninety-six percent of the incidents involving physical injuries to Mexican nationals, "no sanction was imposed on the agents." This evidence clearly suggests that "impunity and physical violence exercised against Mexican immigrants [by Border Patrol agents] go hand in hand at Mexico's northern border."⁷⁷
- Mexican immigrants are commonly subjected to human rights violations. These violations involve physical mistreatment

70. *See id.*

71. *See id.*

72. *See id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *See id.*

77. *Id.*

(*maltrato físico*) or verbal abuse (*vejación verbal*). The former includes pushing, hitting, slapping, beating, and kicking; the latter includes threats, insults, and intimidating acts. One hundred and eight acts of physical mistreatment and twenty-three acts of verbal abuse were documented.⁷⁸

- In sixteen incidents, Mexican nationals were “illegally deprived of their liberty” (*privados ilegalmente de la libertad*) by U.S. police authorities.⁷⁹
- In six incidents, “U.S. authorities confiscated or canceled documents of Mexicans who attempted to cross the border.”⁸⁰
- Neither the Secretariat of Foreign Affairs nor the Secretary of the Interior has been notified “of the legal course pursued against the U.S. offenders” involved in any of the above incidents reported to these institutions.⁸¹

A summary of the violations documented in the 1996 CNDH report was as follows:

- (a) 48.3% of the incidents involved abuse of authority by U.S. agents;
- (b) 29.3% – physical injuries;
- (c) 9.4% – death of Mexican nationals;
- (d) 5.7% – illegal deprivation of liberty;
- (e) 4.8% – rape and sexual battery;
- (f) 4.3% – confiscation or cancellation of documents; and
- (g) 2.6% – robbery by U.S. agents.⁸²

b. Memorandum of Understanding on Consular Protection

The above violations and especially the Riverside and Temecula incidents⁸³ played a key role in the drafting of the Memorandum on

78. *See id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *See id.* According to the 1996 CNDH report, the complete list of U.S. violations against Mexican undocumented immigrants includes the following: (i) beatings; (ii) denying of medical attention; (iii) Border Patrol vehicles' running over Mexicans; (iv) leading them or boxing them into canyons and rivers; (v) hitting them with flashlights and batons; (vi) kicking them; (vii) violently pushing them against official U.S. vehicles; (viii) torturing them with the air conditioning in the winter time; (ix) threatening them, so that they will not file any complaints; (x) abusing them sexually; (xi) handcuffing them with violence; (xii) subjecting them to humiliating inspections; (xiii) destroying or confiscating of documents; (xiv) intimidating; and (xv) insulting. *See id.*

Consular Protection by the XIIIth Meeting of the BNC. The memorandum was signed by Warren Christopher, U.S. Secretary of State, and Miguel Angel Gurría, Mexico's Secretary of Foreign Relations, and entered into force immediately.⁸⁴ The working group constructing the Memorandum on Consular Protection considered the interests of both governments in preventing situations that negatively affect the physical safety, dignity, and human rights of their nationals within the territory of the other country, and the importance of having adequate institutional mechanisms to effectively address those situations when they might occur. The Memorandum on Consular Protection included the following statement of major principles and goals:

To provide any individual detained by migration authorities with notice of his/her legal rights and options, including the right to contact his/her consular representatives, and to facilitate communication between consular representatives and their nationals. Both Governments will endeavor, consistent with the relevant laws of each country, to ensure that specific notification to consular representatives is given in cases involving the detention of minors, pregnant women and people at risk.⁸⁵

Although the Memorandum on Consular Protection was drafted to provide consular protection to both U.S. citizens in Mexico and to Mexican citizens in the U.S. in order to maintain a climate of bilateral reciprocity, it can be inferred that it was primarily intended to address consular protection given to Mexican citizens in the U.S. It can be further inferred that the memorandum may have been based on Mexico's "proposed draft for an agreement giving consular protection to Mexican nationals," mentioned in a press communiqué issued by the Secretariat of Foreign Affairs during the visit of its Undersecretary of Bilateral Affairs to Washington, D.C.⁸⁶ However, from a diplomatic viewpoint, the Memorandum on Consular Protection had to be drafted in reciprocal terms.

The memorandum contemplates that "both governments will endeavor, consistent with the relevant laws of each country," to ensure that their respective immigration authorities (the INS and the Mexican Secretary of the Interior) provide aliens with a notice of all

83. See discussion *supra* Part II.B.1-2.

84. See Memorandum on Consular Protection, *supra* note 5.

85. *Id.* ¶ 3. The memorandum expanded the mandate of the BNC's Working Group on Migration and Consular Affairs to include "discussion and evaluation of issues, problems, and trends related to the consular protection and human rights of nationals of both countries" in order to make recommendations to the respective governments "if mutually agreed upon." *Id.* ¶ 1.

86. See *supra* text accompanying note 28.

rights and options, particularly the right to contact consular representatives.⁸⁷ However, in reality, this provision adds very little to Article VI of the Consular Convention between the U.S. and Mexico, signed at Mexico City on August 12, 1942.⁸⁸

Pursuant to the 1942 Consular Convention, consular officers are recognized to have the right:

(a) to interview and communicate with the nationals of the State which appointed them; (b) to inquire into any incidents which have occurred affecting the interests of the nationals of the State which appointed them; (c) . . . to visit any of the nationals of the State which appointed them who are imprisoned or detained by authorities of the State; and (d) to assist nationals of the State which appointed them in proceedings before or relations with authorities of the State.⁸⁹

In its final paragraph, Article VI expressly recognizes that the nationals of each contracting country "have the right at all times to communicate with the consular officers of their country."⁹⁰

Furthermore, most of these consular functions were also incorporated into the 1963 Vienna Convention on Consular Relations.⁹¹ According to this convention, it is internationally recognized that the consular function consists of "helping and assisting nationals, both individuals and bodies corporate, of the sending State."⁹² Consuls may also represent and arrange appropriate representation for their nationals

before the tribunals and other authorities of the receiving State, for the purpose of obtaining . . . provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defense of their rights and interests.⁹³

In addition, consuls are allowed to perform

any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the

87. Memorandum on Consular Protection, *supra* note 5, ¶ 2.

88. Consular Convention, Aug. 12, 1942, U.S.-Mex., 57 Stat. 800, 125 U.N.T.S. 301.

89. *Id.* art. VI(2)(a)-(d), 57 Stat. at 808-09, 125 U.N.T.S. at 310.

90. *Id.* art. VI(3), 57 Stat. at 809, 125 U.N.T.S. at 310.

91. Vienna Convention on Consular Relations and Optional Protocol on Disputes, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 [hereinafter Vienna Convention on Consular Relations]. The convention entered into force for the U.S. on December 24, 1969, *see id.*, 21 U.S.T. at 77, and for Mexico on March 19, 1967, *see* SECRETARÍA DE RELACIONES EXTERIORES, MEXICO: RELACION DE TRADAROS EN VIGOR 130 (1993).

92. Vienna Convention on Consular Relations, *supra* note 91, art. 5(e), 21 U.S.T. at 83, 596 U.N.T.S. at 268.

93. *Id.* art. 5(i), 21 U.S.T. at 84, 596 U.N.T.S. at 268.

receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.⁹⁴

Given the degree of wide acceptance and universal recognition that most members of the international legal community currently give to the Vienna Convention on Consular Relations, for many States this instrument is perceived not as a mere codificatory convention of well-accepted principles and practices enjoyed by consular officials, but rather, as a multilateral instrument that contains important customary international law norms and procedures governing this area.

c. Notice of Rights Requirement

The objective of paragraph 2 of the Memorandum on Consular Protection is somewhat disconcerting, given that the U.S., in conformity with conventional international law on consular practices, has customarily provided foreign nationals detained by the INS (including Mexicans), or by any U.S. authorities, with unimpeded access to their respective consular officials. More specifically, as a result of the 1992 settlement agreement in *Lopez v. INS*,⁹⁵ the INS must now provide a Notice of Rights to any foreign national arrested by immigration officers who believe said foreigner is in the U.S. illegally. The Notice of Rights refers to: (i) the right to be represented by an attorney or representative; (ii) the right to a hearing before an immigration judge; (iii) the right to bond determination; and (iv) the right to communicate with consul.⁹⁶

(i) Right to be Represented by an Attorney or Representative

Interestingly, the Notice of Rights starts with the phrase: "In the United States, you have rights when you are arrested."⁹⁷ The purpose of this notice is to explain some of those rights to the foreign national. If the foreigner has any questions regarding the rights available, the notice informs the foreigner of the right to "speak with an attorney or representative who can explain . . . [the foreigner's] rights, including any relief that may be available to . . . [the foreigner] from deportation."⁹⁸ The INS officer is instructed to provide the

94. *Id.* art. 5(m), 21 U.S.T. at 85, 596 U.N.T.S. at 270.

95. *Lopez v. INS*, No. 78-1912-WMB (C.D. Cal. Aug. 20, 1992) (unreported case, on file with author).

96. *See id.*; see also 8 C.F.R. §§ 242.1, 242.16 (1995).

97. *Lopez*, No. 78-1912-WMB.

98. *Id.*

foreigner with "a list of organizations that can provide legal information . . . for free or for a small fee" and that might speak the foreigner's language.⁹⁹ The notice is explicit in stating that the foreigner has "the right to use a telephone to call a lawyer or other representative . . . at this time, [i.e., at the time the notice is provided,] or at any time prior to . . . [the foreigner's] departure from the United States."¹⁰⁰

(ii) The Right to a Hearing Before an Immigration Judge

The right to a hearing is available when the foreign national does not wish to return to the country of origin. For such a case, the notice reads, "you have the right to a hearing before an immigration judge, who will determine whether you can remain in the United States."¹⁰¹ If the foreigner requests a hearing, he or she may be represented by a lawyer at the foreigner's own expense. If the foreigner cannot afford to pay a lawyer, the INS officer may inform the foreigner how to contact organizations on the list of free legal services.¹⁰²

(iii) Right to Bond Determination

This section of the notice provides information as to how the foreign national, if eligible, may be released on bond.

(iv) Communication with Consul

In this regard, the notice reads: "You may talk to the consular or diplomatic officer of your country. If you wish to do so, your legal representative or the officer who gave you this notice may be able to help you get in touch with the proper person."¹⁰³

The Federal Regulations corresponding to the Immigration and Nationality Act of 1990 include the following section covering the alien's communication with the consul:

99. *Id.*

100. *Id.*

101. *See id.* When detained by the INS for entering into the U.S. illegally, an alien may choose to leave voluntarily rather than be deported by an immigration judge. *See* Immigration and Nationality Act of 1990 § 242(b), 8 U.S.C. § 1252(b) (1995). The majority of Mexican detainees elect to leave voluntarily. Thus in 1992, out of 1.2 million total alien apprehensions, where the majority of those apprehended were Mexican nationals, 1.1 million aliens were required to depart, and only 37,794 were deported. *See* IMMIGRATION AND NATURALIZATION SERV., U.S. DEP'T OF JUST., INS FACT BOOK: SUMMARY OF RECENT IMMIGRATION DATA 10 (July 1993) (on file with author).

102. *See Lopez*, No. 78-1912-WMB; *see also* 8 C.F.R. §§ 292.2, 292a.1, 292a.2 (1995).

103. *Lopez*, No. 78-1912-WMB.

Every detained alien shall be notified that he may communicate with the consular or diplomatic officers of the country of his nationality in the United States. Existing treaties require *immediate communication* with appropriate consular or diplomatic officers whenever nationals of . . . [certain countries, including Mexico,] are detained in exclusion or expulsion proceedings, whether or not requested by the alien, and, in fact, even if the alien requests that no communication be undertaken in his behalf.¹⁰⁴

These U.S. regulations are in stark contrast to the lack of Mexican domestic legislation on this issue. Article 33 of the Mexican Constitution is of paramount importance on immigration law questions, especially in relation to the rights of aliens in that country. Since its enactment in 1917, this constitutional provision enshrines Mexico's policy regarding immigrants, wherein although foreigners are protected by the constitutional rights ("*garantías individuales*") enunciated in the first twenty-nine articles of the Mexican Constitution, "the Executive of the Union . . . [has] the *exclusive power* to require any foreigner whose stay is deemed inconvenient to abandon national territory *immediately and without a trial*."¹⁰⁵

Under Mexican law, this exclusive power of the federal executive is exercised by the Secretariat of the Interior, Mexico's counterpart to the INS, pursuant to the General Population Act (*Ley general de población*)¹⁰⁶ and its corresponding regulations (*Reglamento*).¹⁰⁷

Article 128 of the General Population Act stipulates that any measures adopted by the executive involving the expulsion of foreigners, or their detention in immigration facilities, are to be considered "for any and all legal effects, a matter of public order."¹⁰⁸ The apparent illegality of this provision has triggered numerous complaints from foreign nationals who believe that the constitutional

104. 8 C.F.R. § 242.2(g) (1995) (emphasis added).

105. CONST. art. 33 (Mex.) (emphasis added).

106. "Ley general de población," D.O., 7 de enero de 1974, *as amended* D.O., 22 de julio de 1992 (Mex.), reprinted in LEONEL PEREZNIETO CASTRO & MARÍA ELENA MANSILLA Y MEJÍA, MANUAL PRACTICO DEL EXTRANJERO EN MEXICO 51-125 (2d ed. 1993). The Mexican federal statute parallels the U.S. Immigration and Nationality Act of 1990. Out of 143 articles of the Mexican statute, no mention is made to the right of consular officials of the sending states to communicate with, or provide assistance to, their respective nationals.

107. "Reglamento de la Ley general de población," D.O., 31 de agosto y 16 de noviembre de 1992 (Mex.), reprinted in PEREZNIETO & MANSILLA Y MEJÍA, *supra* note 106, at 127-85. Out of a total of 173 articles, there is no reference to any consular protection provided by foreign consular officials to their respective nationals.

108. "Ley general de población," art. 128, *supra* note 106, at 14. The corresponding portion of the Spanish original reads: "Son de orden público, para todos los efectos legales, la expulsión de los extranjeros y las medidas que dicte la Secretaría de Gobernación para el aseguramiento de los extranjeros en estaciones migratorias o en lugares habilitados para ello, cuando tengan por objeto su expulsión del país." *Id.*

rights contained in the first chapter of Mexico's Federal Constitution, in particular Articles 14 and 16,¹⁰⁹ are clearly violated by such arbitrary expulsions, which are administratively mandated without any hearing or appearance before a Mexican court. As a result, foreign nationals have filed claims against the government of Mexico, specifically against the Secretary of the Interior, by means of a writ of *amparo*,¹¹⁰ challenging the constitutionality of the General Population Act.

In a series of decisions, Mexico's Supreme Court construed Article 33 of the Federal Constitution in very broad terms, thereby suggesting that the executive's power in matters regarding the expulsion or deportation of foreigners is not only absolute and unlimited but also highly discretionary. The court explained:

The terms of Article 33 of the Constitution are so authoritative (*determinantes*) that they are subject to no interpretation; nor can it be admitted that the power (*facultad*) granted to the Federal Executive to expel undesirable foreigners (*extranjeros perniciosos*) from the country is limited or restricted in any sense. For if this were the case, this would substitute the judgment of the President of the Republic with that of the Federal courts and thus would be contrary to what is established by said Article 33. The application of this precept to a foreigner constitutes not a violation of constitutional guarantees, but rather, a limitation thereof. Such limitation is authorized by Article 1 of the Constitution, which provides that said guarantees may be restricted and suspended in the cases provided by the Constitution itself.¹¹¹

Thus Mexico's federal judiciary recognizes an almost absolute power of the executive in matters of expulsion of foreign nationals and other immigration matters. Most cases decided by Mexico's Supreme Court between 1917 and 1975 are somewhat reminiscent of

109. Under Article 14 of the Mexican Constitution, no one can be deprived of life, liberty, property, possessions, or rights, except when so ordered by a proper court in compliance with due process and in conformity with the applicable laws. Under Article 16 of the Mexican Constitution, no one can be molested in his or her person, family, or domicile, except when so ordered in writing by a competent authority who must provide the legal basis and the proper explanation of its acts.

110. Under Mexican law, *amparo* is federal writ of constitutional redress filed in a federal court by either a Mexican national or a foreigner, whereby plaintiff alleges that his or her constitutional rights have been violated by a Mexican authority, whether federal, state, or municipal. *Amparo* is a unique federal proceeding provided for by Articles 93 and 107 of the Mexican Constitution and regulated by the Federal Amparo Act, "Ley federal de amparo," D.O., 10 de enero de 1936. Articles 14 and 16 of the Mexican Constitution consistently serve as the legal basis for *amparo* claims.

111. "Casaab, José," Tomo XXXI, p. 1291, March 5, 1931, quoted in PEREZNIETO & MANSILLA Y MEJIA, *supra* note 106, at 115.

similar decisions of the U.S. Supreme Court rendered a century ago.¹¹²

Over the last decade, Mexico has been actively engaged in a process of economic modernization and political reform. This trend has already produced outstanding results in key areas of its legal system.¹¹³ Therefore, it would not be unreasonable to anticipate that Mexico will give special attention in the near future to the establishment of a fair and modern regime recognizing the constitutional rights of foreigners. In conformity with the latest trends in international law, the creation of Mexican immigration law courts and the establishment of legal avenues for foreign nationals are vital. These legal mechanisms will allow foreigners to defend their substantive and procedural rights, especially in expulsion or deportation proceedings. The expectation that Mexico will undertake such reforms becomes more viable when one considers the legitimate interest and strong advocacy Mexico has recently displayed in international forums in favor of individual human rights, regardless of whether these human rights involve Mexican nationals, indigenous peoples, or foreigners.

Other principles and goals included in the Memorandum on Consular Protection are couched as follows:

To endeavor to provide settings conducive to full and free exchange between the consular representatives and detained individuals in order to allow, consistent with the relevant laws of each country, consular officials to interview their respective nationals when they are detained, arrested, incarcerated or held in custody¹¹⁴

The tenor of this provision suggests that an effort is to be made by the receiving state to provide consular officials of the sending state with what can be described as adequate physical settings. These settings should be of such a kind as to be conducive to a full and free exchange for consular officials interviewing detained or imprisoned nationals of the sending state. This requirement

112. See, e.g., *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (finding that right of a nation to expel aliens who are naturalized is as absolute and unqualified as the right to prevent their entrance into the country); *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892) (finding that federal law deeming decision of immigration official final and conclusive is constitutional exercise of congressional power); *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (approving application of new federal law which prohibited reentry of Chinese laborers who, prior to its passage, had departed with certificate granting permission to return).

113. See generally Jorge A. Vargas, *Mexico's Legal Revolution: An Appraisal of Its Recent Constitutional Changes, 1988-1995*, 25 GA. J. INT'L & COMP. L. 497 (1996).

114. Memorandum on Consular Protection, *supra* note 5, ¶ 3. This provision is based upon Consular Convention, *supra* note 88, art. VI(2)(c), 57 Stat. at 809, 125 U.N.T.S. at 310, and Vienna Convention on Consular Relations, *supra* note 91, art. 36(1)(c), 21 U.S.T. at 101, 596 U.N.T.S. at 292.

encompasses not only a physical space offering adequate privacy but also a psychological atmosphere which allows for an unimpeded and frank exchange of information, free of fears or pressures.¹¹⁵

Further, the memorandum provides that the U.S. and Mexico undertake

[t]o allow and to facilitate, consistent with the relevant laws of each country, consular officials to be present at all times at the trials or judicial procedures concerning their respective nationals, including those legal procedures relating to minors.¹¹⁶

Basically, these two objectives—providing for adequate physical settings and for consular access to judicial procedures—reiterate the content of almost identical provisions found in the 1942 Consular Convention between both countries and in the 1963 Vienna Convention on Consular Relations. For example, the Consular Convention already recognized in an explicit manner that consular officers have the right

(a) to interview and communicate with the nationals of the State which appointed them;

(b) to inquire into any incidents which have occurred affecting the interests of the nationals of the State which appointed them;

(c) upon notification of the appropriate authority, to visit any of the nationals of the State which appointed them who are imprisoned or detained by authorities of the State; . . .

(d) to assist the nationals of the State which appointed them in proceedings before or relations with authorities of the State.¹¹⁷

It also recognized that the nationals of each contracting country "have the right at all times to communicate at all times with the consular officers of their country."¹¹⁸

Likewise, Article 36 of the Convention on Consular Relations reads in pertinent part:

(a) consular officers shall be *free to communicate* with nationals of the sending State and *to have access to them*. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

115. Considering the current physical condition of certain Mexican jails, detention centers, and penitentiaries, this goal would seem to impose a heavier burden on Mexico than on the U.S.

116. Memorandum on Consular Protection, *supra* note 5, ¶ 4.

117. Consular Convention, *supra* note 88, art. VI(2), 57 Stat. at 808-09, 125 U.N.T.S. at 310.

118. *Id.* art. VI(3), 57 Stat. at 809, 125 U.N.T.S. at 310.

(b) if . . . [the consular officer of the sending State] so requests, *the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of the State is arrested or committed to prison or to custody pending trial or is detained in any other manner* The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) *consular officers shall have the right to visit a national of the sending state who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.* They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment.¹¹⁹

The tenor of this provision is not only more comprehensive in its scope than the recent Memorandum on Consular Protection but also enumerates in detail the specific types of consular functions relating to nationals of the sending state. However, the government of Mexico had a specific concern not expressly included in said conventions. Accordingly, the memorandum addressed whether, pursuant to relevant U.S. legislation, to allow Mexican consular officials to "be present at all times at the trials or judicial procedures" concerning Mexican nationals and minors.¹²⁰ This special reference to Mexican minors merits special commentary.

IV. DELINQUENT ACTIVITIES OF MEXICAN MINORS IN U.S. BORDER CITIES

During the last two decades, the number of delinquent activities committed in U.S. border cities by Mexican minors has been growing in a most alarming manner. Although in the past most of these activities consisted of petty thefts and minor destruction of property, in recent years, these criminal activities have escalated both in number and degree of seriousness and now include auto theft, prostitution, and drug-related crimes.¹²¹

The problem is not a recent one.¹²² In 1978, Judge Enrique H. Peña of El Paso, Texas, addressed this sensitive question at the Texas Corrections Annual Conference in these terms:

119. Vienna Convention on Consular Relations, *supra* note 91, art. 36(1)(a)-(c), 21 U.S.T. at 100, 596 U.N.T.S. at 292 (emphasis added).

120. Memorandum on Consular Protection, *supra* note 5, ¶4.

121. Letter from Ms. Tabacco, Liaison Officer, San Diego County-Tijuana, Baja California, Border Youth Project, Department of Probation, to Jorge A. Vargas (Oct. 3, 1996) (on file with the *Journal of Transnational Law & Policy*).

122. See generally JOHN A. GARCIA, UNIVERSITY OF ARIZONA, MEXICAN JUVENILES AND CRIME IN UNITED STATES BORDER COMMUNITIES (1974).

The last few years we have seen a remarkable increase of young Mexican Nationals being apprehended in all border states for the commission of crimes, mostly involving property. While there are no compiled facts from such states as California, Arizona, New Mexico and Texas, there is much agreement from judges, probation officers and border officials that the number of referrals for the commission of criminal offenses by Mexican juveniles is alarmingly higher each year.¹²³

A. Statistical Aspects

According to some of the statistical data reported by the Juvenile Alien Borderlands Conference as early as 1975, the City of Los Angeles, California, had the largest number of illegal juvenile alien apprehensions—446 annually.¹²⁴ Other cities reporting high incidence of these apprehensions included El Paso, Texas (353); Cochise, Arizona (312); San Diego, California (292); Cameron, Texas (202); and Hidalgo, Texas (190).¹²⁵ Among the four U.S. states bordering Mexico, the state of Texas reported the highest total of annual apprehensions—1,045.¹²⁶ California was the second highest with 791, while Arizona occupied third place with 444.¹²⁷

The report of the Juvenile Alien Borderlands Conference contains a breakdown of recorded charges against illegal juvenile aliens apprehended during 1974 and 1975. Thus out of the 1,443 charges reported during these two years, the highest percentage was for theft (40.3%); immigration violations accounted for 26.1%, and burglary for 21.4%. Theft, immigration violations, and burglary had a combined total of 87.8% of all charges.¹²⁸

With respect to recorded dispositions on these charges, the results were:¹²⁹

123. Enrique H. Peña, J., Mexican Juvenile Aliens Present Problem—but Whose Problem Is It?, Address at the Texas Corrections Annual Conference 2 (May 1978) (on file with the *Journal of Transnational Law & Policy*).

124. See Juvenile Alien Borderlands Conference: Final Report (Oct. 21-23, 1975) (on file with the *Journal of Transnational Law & Policy*).

125. See *id.*

126. See *id.*

127. See *id.*

128. See *id.*

129. See *id.* at 29. The data used was obtained from County Juvenile Probation Departments, City Police Departments, and County Sheriffs Departments and reflects mostly 1974 disposition. See *id.*

<i>Disposition</i>	<i>Texas</i>	<i>Arizona</i>	<i>California</i>	<i>TOTAL</i>	<i>Percent</i>
Released	95 (9.5%)	N/A	16 (10.3%)	111	7.3%
Released to INS	823 (82%)	279 (76%)	88 (56.8%)	1180	78.0%
Released to Probation	N/A	N/A	19 (12.3%)	19	1.3%
Indicted	5 (0.5%)	80 (22%)	24 (19.5%)	109	7.2%
Convicted	N/A	10 (2.7%)	N/A	10	0.7%
Other	75 (7.5%)	N/A	8 (5.2%)	83	5.5%
TOTALS	998	369	155	1512	100%

Data on the age and gender of illegal juvenile alien offenders indicates that in Arizona the majority of offenders were between twelve and sixteen years of age, eighty-nine percent being male and eleven percent being female. The most frequent offenses committed by female offenders were shoplifting and petty theft.¹³⁰

Seeking information on the causes of this problem and possible strategies to solve it, the 1975 Juvenile Alien Borderlands Conference conducted a survey among its participants before and after the conference. The pre-conference results indicated that (a) almost ninety-nine percent of the participants "felt that the problem was related to the economic differences between Mexico and the U.S."; (b) eighty-nine percent attributed the problem to the migration between both countries; and (c) ninety-six percent suggested that "the problem will become of increasing concern and seriousness with time if something is not done about it now."¹³¹

The post-conference results indicated that forty-three percent of participants "felt that the problem is chronic along the border . . . and can never be solved"; six percent had no opinion on the issue; and fifty-one percent felt that it was "solvable to some extent." Less than half of the participants (thirty-nine percent), "felt the problem is of equal importance to Mexico as it is to the United States."¹³² A very small minority (less than four percent) "felt the illegal juvenile alien problem was actually no problem at all."¹³³ A majority of the participants (sixty-three percent) thought that "the problem must be addressed simultaneously by all levels of government, including combined multistate and binational efforts."¹³⁴

130. See GARCIA, *supra* note 122, at 37 tbl. 4.

131. Juvenile Alien Borderlands Conference: Final Report, *supra* note 124.

132. *Id.*

133. *Id.*

134. *Id.*

The conference produced seventeen high-priority recommendations, which addressed immigration law,¹³⁵ measures to be taken by the four U.S. border states affected by this problem,¹³⁶ direct involvement of the U.S. federal government,¹³⁷ and international cooperation with Mexico.¹³⁸

While delinquent acts committed by Mexican minors gave cause for great concern two decades ago, it seems that these criminal acts have today become an endemic problem which is affecting virtually every major U.S. city located on the Mexican border, from San Diego, California, in the west, to Eagle Pass, Texas, in the east. Given the pervasive and persistent nature of this problem, its chronic presence is becoming an increasingly sensitive bilateral issue between both countries, a problem which may cost U.S. taxpayers millions of dollars every year.

The city of San Diego is unfortunately not immune from the problem of Mexican juvenile crime. According to the latest statistical data, prior to 1984 only 400 Mexican illegal minors had been processed through the San Diego Juvenile Justice system.¹³⁹ Currently, the San Diego County Probation Department reports the following statistics:¹⁴⁰

135. *See id.* Among these recommendations were the following: to restrict illegal entry into the U.S. by both adult and juvenile individuals; to enact more punitive laws and sentences; to put an end to voluntary departure; to introduce a stronger version of the Rodino Bill; to maximize physical barriers to deter illegal entrants; and to expand border deterrence of illegal entrants. *See id.*

136. *See id.* It was suggested, for example, that a state compact among Arizona, California, New Mexico, and Texas should be encouraged. *Id.* It was further suggested to seek "impact funds to be provided to border school districts . . . to deal with the extra burden imposed by aliens." *Id.*

137. *See id.* It was recommended that the border states "join in seeking legal determination of [U.S.] federal government's responsibility in illegal alien problems, such as in the area of health care services" and "obtain the U.S. federal government involvement in the illegal juvenile alien problem and work with the federal government in Mexico on international agreements needed for its resolution." *Id.*

138. Participants of the conference called upon U.S. border states to establish "international health and welfare service linkages between Mexico and the United States" and to seek "more cooperation from Mexican officials in dealing with the illegal juvenile alien problem." *Id.*

139. *See* Arizona-Sonora Judicial Relations Project, The Border Youth Project 1 (Aug. 23, 1996) (manuscript provided by Ms. Tabacco, Liaison Officer, San Diego County-Tijuana, Baja California, Border Youth Project, on file with the *Journal of Transnational Law & Policy*).

140. *See* Probation Dep't, County of San Diego, Statistics: 1995 (report provided by Mr. David L. Simmons, Director, Community Partnership, San Diego).

Year	1990	1991	1992	1993	1994	1995
Delinquent Male Minors	6,863	9,006	9,769	10,105	10,732	10,495
Delinquent Female Minors	1,805	2,039	2,201	2,247	2,576	2,171
TOTAL	8,668	11,045	11,970	12,352	13,308	13,212

The reported delinquent activities involve the following: (i) narcotics, dangerous drugs, glue, and other drugs (possession, sale, use and under the influence of); (ii) marijuana (possession, sale, and use of); (iii) burglary; (iv) receiving stolen property; (v) larceny and theft (grand theft and petty theft); (vi) vehicle theft (grand theft auto, joyride); (vii) possession of weapons; (viii) robbery; (ix) murder, attempted murder, and manslaughter; (x) kidnapping; (xi) sexual delinquency; (xii) drunk driving, drinking, and possession of alcohol; (xiii) curfew, vagrancy, and truancy; (xiv) running away; (xv) other delinquent activities, including miscellaneous misdemeanors, felonies, malicious mischief, and traffic violations.¹⁴¹

This data clearly indicates a considerable increase in both the number of delinquent acts and seriousness of the offense. For example, regarding the number of offenses, 8,668 were reported in 1990, 12,352 in 1993, and 13,212 in 1995, a substantial quantitative increase.¹⁴² With respect to the seriousness of the delinquent acts, the data reveals that narcotics offenses increased from 467 in 1990, to 609 in 1993, and 773 in 1995; murders and other violent crimes—from 30 in 1990, to 102 in 1993, and 79 in 1995; possession of weapons—from 337 in 1993, to 630 in 1993, and 601 in 1995; marijuana use from 255 in 1990, to 578 in 1993 and 1,072 in 1995; and assault from 1,453 in 1990, to 2,020 in 1993.¹⁴³

Delinquent referrals by ethnicity indicate that the majority of offenses are committed by Mexican-Americans (39.5%), followed by Caucasians (33.3%) and African-Americans (18.6%). Other groups represented include Filipino, Pacific-Islander, Amerindian, Eskimo, and Chinese juveniles.¹⁴⁴

Information indicating national origin of juvenile offenders is reported when offenders are admitted to juvenile institutions. According to this data, Rancho del Rayo, a juvenile institution in San

141. *See id.*

142. *See id.*, "Delinquent Referrals by Offense."

143. *See id.*

144. The data does not include information as to nationality or citizenship of the juvenile offender.

Diego, received 10 Mexicans in 1990, none in 1991 and 1992, 16 in 1993 and 1994, and 66 in 1995. Another San Diego institution, Rancho del Campo, admitted 5 Mexicans in 1993, 17 in 1994, and 45 in 1995.¹⁴⁵

Further, the data reported indicates that in 1990, out of a total of 360 cases, 296 (82.2%) were Mexican nationals; in 1991, the total was 410, with 376 (91.7%) Mexicans; in 1992, the total was 449, with 403 (89.8%) Mexicans; in 1993, the total was 428, with 386 (90.2%) Mexicans; in 1994, the total was 419, with 359 (85.7%) Mexicans; and, in 1995, the total was 400, with 339 (84.8%) Mexicans.¹⁴⁶

The problem caused by delinquent activities of illegal Mexican minors in U.S. border cities constitutes a truly unique and multifaceted transboundary legal problem. It is unique because it hardly happens at any other international border in the world, and multifaceted because it involves not only legal but also cultural, diplomatic, economic, educational, family, moral, and political questions that are delicately interwoven and placed within a binational context.

From a cultural perspective, this problem poses challenging questions that stem from the psycho-biological development of the minor and directly affect the minor's cultural vision of the world. Such a vision is shaped by the two countries' contrasting value systems, which are vastly different and separated by an artificial boundary but which, from a transcultural angle, are becoming more alike every day, especially along the U.S.-Mexico border. Economically, it is evident that Mexican minors enter the U.S. illegally in search of a higher standard of living, sometimes simply looking for food and shelter, and in hope of finding a better life.

Notwithstanding the serious philosophical implications posed by these issues, this problem is also turning into a delicate item on the binational agenda between the two countries because it raises profound moral and legal questions. Serious questions exist as to how to proceed legally with foreign delinquents who are minors; as to who is truly responsible for the minors' delinquent acts; as to how these acts should be governed by the law; and as to what law to apply. Debate continues over whether it should be the law of the U.S., where the act was committed, or the law of Mexico, where the minor was born and raised. The problem of delinquent activities of Mexican minors in the U.S. is clearly a binational problem that demands a binational solution, but to date this issue has not yet been directly addressed by the BNC. The time has come.

145. See *id.*, "Admissions by Ethnicity."

146. See *id.*, "Ratio of Juvenile Admissions to DCU Screening."

B. Solutions Developed by Border State Cities

1. Border Children Justice Project

The complexities associated with this challenging transboundary legal problem have led certain U.S. border cities to craft creative approaches to solving the dilemma. These approaches tend to enhance the recognition and respect for the human rights of illegal Mexican minor offenders rather than the pure and simple application of the law of the country where the delinquent act was committed.

For example, in 1985, Texas established the Border Children Justice Project. This project consists of a binational cooperative effort with Mexican counterparts designed "to complete background checks, provide information to the Texas Juvenile Court system on minors [who are Mexican nationals], supervise border minors and [provide them with] border services."¹⁴⁷ Similar efforts have been undertaken by Mexico, in particular through the recently established Minor Border Protection Councils (*Consejos Tutelares de la Frontera*) ("*Consejos*"). In general, these *Consejos* explore avenues of official cooperation with U.S. juvenile justice entities to address the problems, including conducting studies which may serve as the basis for eventual domestic legislation directed at modernizing, improving, and expediting the final disposition of Mexican offenders.¹⁴⁸

The *Consejos* appear to be derived from the Federal District Minor Offender Protection Councils (*Consejos Tutelares para Menores Infractores del Distrito Federal*), which were created in 1974 "to promote the social readaptation of minors under 18 years of age . . . through personality studies, the application of corrective measures, and the protection and supervision of the corresponding treatment."¹⁴⁹ The enacting statute established an administrative system in Mexico City to adjudicate cases involving minors under eighteen years of age who "have violated criminal laws or police or government regulations, or who show some other form of behavior which may lead to the fundamental presumption that they are inclined to cause harm to themselves, family, or society at large and which, therefore, require the intervention of the Council."¹⁵⁰

147. Arizona-Sonora Judicial Relations Project, *supra* note 139, at 1.

148. *See id.*

149. "Ley que crea los consejos tutelares para menores Infractores del Distrito Federal," D.O., 2 de agosto de 1974 (Mex.).

150. *Id.*

The new *Consejos*, which are now established in each of Mexico's thirty-one states,¹⁵¹ are elaborate substantive and procedural institutions that operate more as administrative advisory councils than formal judicial bodies. The *Consejos* are assisted by a staff of medical doctors, psychologists, and social workers, whose principal function is to rehabilitate the minor offender. The Mexican state of Baja California (especially the border cities of Tijuana and Mexicali) is a considerable source of minor offenders. Many of these offenders become regular transborder offenders as their *modi operandi* consists of crossing the international border illegally to engage in criminal activities in the U.S. However, unlike other Mexican states, the legislature of Baja California has not enacted legislation on this important matter.¹⁵²

Mexico's policy preference favoring the rehabilitation of the minor offender is clearly reflected in the type of final disposition given by the *Consejos* to these minors. According to Article 120 of Mexico's Federal Penal Code:

Depending upon the characteristics of the minor, and the seriousness of the offense . . . the applicable measures to minors shall consist of a warning (*aprecibimiento*) and internment in the following manner:

- I. Home confinement;
- II. School confinement;
- III. Confinement at an honorable home, or other similar institution;
- IV. Confinement at a medical institution;
- V. Confinement at an institution of technical education; and
- VI. Confinement at a correctional institution.¹⁵³

It is important to point out that under Mexican law, unlike U.S. law, minors who "infringe the provisions of any criminal law statute"¹⁵⁴ are not legally deemed to be delinquents or criminal offenders. Literally, they are "minor offenders" (*menores infractores*), whose misconduct falls into the administrative category of "antisocial offense" (*infracción antisocial*), not the category of formal criminal

151. See, e.g., "Reglamento de los centros de observación para menores de conducta antisocial de Baja California" (Mex.), reprinted in LEYES Y REGLAMENTOS DE BAJA CALIFORNIA 1149-58 (1992) [hereinafter "Reglamento de los centros de observación"].

152. The state of Baja California applies a 1991 Mexican federal statute, "Ley para el tratamiento de menores infractores para el Distrito Federal," reprinted in LEYES Y REGLAMENTOS DE BAJA CALIFORNIA, *supra* note 151, at 405-06. Absent substantive local legislation on this topic, Baja California currently applies brief administrative regulations, which were enacted by the local legislature on March 5, 1981. "Reglamento de los centros de observación," *supra* note 151, at 1158.

153. CODIGO PENAL PARA EL DISTRITO FEDERAL art. 120.

154. *Id.* art. 119.

charge (*delito*). As a consequence, it would be legally improper to characterize a minor offender in Mexico as a "delinquent" (*delincuente*) or a "criminal" (*criminal*).

2. Border Youth Project

In July of 1987, the San Diego Juvenile Court and Probation Department met in Monterrey, Nuevo León, Mexico, with officials from Texas and Nuevo León to discuss the Border Children Justice Project. As a result of this meeting, and encouraged by the success of the Texas-Mexico project, California officials decided to establish a similar program between the San Diego County Probation Department and the Tijuana, Mexico, Protection of Minors Council (*Consejo Tutelar de Menores*). Accordingly, the Border Youth Project ("BYP") was established in July of 1987.¹⁵⁵ The BYP's major objective is "to repatriate to Mexico Mexican citizens [sic] who are wards of the [U.S. Juvenile] court."¹⁵⁶

As of July of 1996, 813 minors have been ordered returned to Mexico through the BYP. Out of this group, 100 minors, or 11.99% were rearrested in the U.S. By August 23, 1996, the BYP "was processing approximately eight minors per month."¹⁵⁷

Legally, a number of delicate issues had to be solved in order to establish and implement the BYP. Two basic questions raised were: (i) does the County of San Diego have the power to enter into a binational agreement with Mexico or is this power, under the U.S. Constitution, exclusively vested in the hands of the president of the United States?¹⁵⁸ and (ii) is it legal, under Mexican law (Articles 14 and 16 of the Mexican Constitution, in particular), to confine to a *Consejo* a Mexican national, who is a minor, for an offense committed outside Mexico, when no Mexican court can order deprivation of the minor's liberty?¹⁵⁹

In relation to the first question, the County of San Diego carefully proceeded in the following manner. It first entered into an agreement with Volunteers in Probation, Inc. ("VIP, Inc."), a nonprofit, charitable California corporation.¹⁶⁰ Under the agreement, VIP, Inc.,

155. Arizona-Sonora Judicial Relations Project, *supra* note 139, at 1.

156. See *id.* at 2. It should be clarified that under Mexican law, any individual is eligible for Mexican citizenship if he or she is eighteen years of age and has an honest way of living. See CONST. art. 34 (Mex.). Accordingly, instead of "Mexican citizens" this sentence should read "Mexican nationals."

157. Arizona-Sonora Judicial Relations Project, *supra* note 139, at 2.

158. For a list of presidential powers, see U.S. CONST. art. II, § 2.

159. See *supra* note 109.

160. Agreement Between the County of San Diego and Volunteers in Probation, Inc. (July 1, 1996) (on file with the *Journal of Transnational Law & Policy*).

was "to render certain special professional services and advice in connection with all Mexican nationals detained in the Juvenile Hall of the County of San Diego"161 VIP, Inc., then subcontracted with *Programa de Atención de Menores Indocumentados* (Undocumented Minor Program), a Mexican social service agency located in Tijuana.¹⁶²

Pursuant to this agreement, Tijuana's *Programa de Atención de Menores Infracrores* performs the following functions:

- (a) Interview a monthly average of 13 Mexican nationals being detained in San Diego County Juvenile Hall to determine eligibility for the program;
- (b) Investigate and make necessary contacts to determine the true names, dates of birth, and address of all Mexican nationals detained. This information is then furnished to Deputy Probation Officers and the San Diego Juvenile Court;
- (c) Contact the minor's parents in Mexico;
- (d) Conduct necessary interviews to expedite the process of immediate return to Mexico of minors; and
- (e) Transport a monthly average of six Mexican Nationals and release these nationals to the custody of juvenile authorities in Mexico.¹⁶³

For these services, VIP, Inc., pays *Programa de Atención de Menores Infracrores* \$35,000 dollars per year.¹⁶⁴ Both agreements are to be interpreted according to the laws of the State of California.¹⁶⁵

Who are the Mexican undocumented minors who qualify under the Border Youth Project? Once the undocumented minor is referred to the San Diego Juvenile Hall by the arresting agency, "[t]he intake officer, [i.e., liaison officer,] determines if it is appropriate to refer to the Border Youth Project."¹⁶⁶ It would appear, then, that it is at the entire discretion of the liaison officer in San Diego to determine which minors are accepted or rejected for the BYP. However, in making this determination, the BYP takes into consideration the opinion

161. *Id.* at 1.

162. Sub-Contract Agreement Between Volunteers in Probation, Inc., and Programa del [sic] Atención Menores Indocumentados, Delegado de Area Tijuana, Baja California (July 1, 1996) (on file with the *Journal of Transnational Law and Policy*). The subcontractor is "to render certain special professional services and advice in connection with all Mexican Nationals detained in the Juvenile Hall of the County of San Diego" *Id.* at 1.

163. *Id.* at 1-2.

164. *See id.* at 2.

165. *See id.* at 6.

166. Arizona-Sonora Judicial Relations Project, *supra* note 139, at 2-3.

of "Mexican officials [who] interview the minor and acquire relevant information in an effort to determine whether or not a minor is a suitable candidate."¹⁶⁷ The data is furnished to probation officers to assist in completion of the evaluation.¹⁶⁸

Mexican undocumented minors who are accepted must meet four requirements: (i) be in the U.S. for a short time; (ii) have no strong ties in the U.S.; (iii) have family in Mexico; and, (iv) be judged appropriate to be returned to Mexico via the Mexican authorities, the Tijuana-based Council on Orientation and Reeducation of Minors with Antisocial Behavior (*Consejo de Orientación Reeducación para Menores de Conducta Antisocial*) (*Consejo de Orientación*).¹⁶⁹

Conversely, when "(a) all of the minor's family is in the U.S.; (b) the minor speaks English and has strong ties to the community in the U.S.; (c) the minor does not want to return to Mexico; or (d) the minor is a recidivist,"¹⁷⁰ then the minor is rejected by the program.

Since the BYP is a binational effort which was created and has been jointly implemented since 1987 to address a binational problem, the determination regarding the eligibility of minors to participate in this program should not be left to the sole discretion of the U.S. authorities. If the BYP is to be truly binational and democratic, the admission procedure should be modified to give the corresponding Mexican authorities equal say in the decision-making process. Such a change would transform the BYP into a truly international project, where both nations are directly involved in the solution or eventual amelioration of the transborder problems created by Mexican undocumented minors.

In fact, from a substantive point of view, the Mexican agency's input into the BYP eligibility process should carry even heavier weight than that of its U.S. counterpart. It is only natural that a Mexican authority would be better able to identify those Mexican minors who are legitimately in need of being properly placed back in their own national, cultural, and socio-economic environment. It should be a simpler task for a Mexican authority to determine who is truly a Mexican undocumented minor.

The BYP's benefits to the County of San Diego have been characterized as numerous and include "reduced overcrowding in Juvenile

167. *Id.* at 3.

168. *See id.*

169. *See id.* In the context of the BYP's determination whether a Mexican undocumented minor is eligible or not for the program, the BYP has not issued any written guidelines defining what should be understood for "short period of time," "strong ties," "family," and "appropriate to be returned to Mexico."

170. *Id.* Again, the BYP has no guidelines to interpret these requirements.

Hall; cost avoidance to the County; a more direct and accountable means of returning Mexican nationals to Mexico; and an increase in the goodwill and cooperation between the justice agencies in the San Diego and Mexican border areas."¹⁷¹

In sum, it can be argued that the County of San Diego has not technically entered into any "agreement or compact with another State, or with a foreign power," as prohibited by the U.S. Constitution.¹⁷² This is the case even when the consequences of an indirect binational agreement directly affect not only the current form of living of those very vulnerable Mexican undocumented minors but also their future existence. Further, the U.S. Department of State has not objected to this indirect binational arrangement.

Regarding Mexico's position, it may be said that the direct involvement of Tijuana's *Consejo de Orientación*, a Baja California State entity, as well as the consular and legal supervision provided by the direct and regular involvement of consular officials from the Consulate General of Mexico in San Diego (dating back to the inception of the BYP in 1987), clearly suggests that the government of Mexico has no objection to the BYP. Moreover, the Mexican representatives of the BYP's Binational Board of Directors include several officials from the Mexican Consulate in San Diego (including the Consul General) and the Director General of the Consular Service of Mexico's Secretariat of Foreign Affairs.

Turning to the question regarding Mexican jurisdiction over offenses committed outside of Mexico, the only valid answer to be given under Mexican law would be as follows: it would be a flagrant violation of the guarantees of law and due process enshrined in Mexico's Constitution to deprive a Mexican minor of liberty for having committed a crime in the U.S. or anywhere outside Mexico. Furthermore, this unconstitutional deprivation of the minor's liberty would also be a human rights violation. Any infringement of a minor's human rights would not only violate Mexico's domestic legislation on this matter at the state¹⁷³ and federal levels¹⁷⁴ but also

171. *Id.* at 2.

172. U.S. CONST. art. I, § 10(3).

173. Following a national trend designed to promote human rights in Mexico, the State of Baja California established a few years ago the Attorney General's Office on Human Rights (*Procuraduría de Derechos Humanos*).

174. See "Ley de la Comisión Nacional de Derechos Humanos," D.O., 29 de junio de 1992 (Mex.).

conventional international law, that is legally binding upon Mexico.¹⁷⁵

However, it has been asserted by officials of Mexico's Consulate General in San Diego that when these minors are "repatriated" (the term used by BYP and the Consulate), none of them are confined or restricted in their liberty, or in any of their constitutional rights.¹⁷⁶ The reason given by officials for the return of these undocumented minors through the *Consejo de Orientación* is to facilitate placement with the minors' nuclear families. This placement can only take place with the proper consent of the minor's parents or of those relatives who exercise legal custody (*patria potestad*) over the minor.

Given this official explanation, it is difficult to find a clear infringement of the minor's constitutional rights by Mexican authorities. However, the official position of Mexico may not be immune from valid constitutional and human rights challenges. For example, according to Baja California's Office for Human Rights Protection, "the human rights of Mexican undocumented minors have been violated."¹⁷⁷ Yet, to date this office has not officially intervened to inquire into the alleged human rights violations.

Finally, a question may arise as to whether the return of Mexican minors through a Mexican agency violates minors' rights under the U.S. Constitution. The Fourth District Court of Appeal of California addressed this issue in *In re Manuel*,¹⁷⁸ where a Mexican minor challenged a California statute providing for the return of nonresident juvenile delinquents to a foreign agency charged with their care.¹⁷⁹ The court interpreted the statute as "allowing courts to order such juveniles released to federal immigration authorities for deportation by federal government, so as not to infringe on the federal government's exclusive power over immigration and deportation matters."¹⁸⁰ The court found the statute did not violate the compact clause, the juvenile offender's due process, or the offender's equal protection rights.¹⁸¹

The dissenting judge asserted as follows:

175. Mexico is a party to the Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989), reprinted in 28 I.L.M. 1448 (1989).

176. See Interview with Verónica Trujillo, Esq., Consulate General of Mexico at San Diego, California (Oct. 8, 1996).

177. Interview with Rafael Reyes, Esq., Procuraduría de los Derechos Humanos, in Tijuana, Baja California (Oct. 19, 1996).

178. 263 Cal. Rptr. 447 (Cal. Ct. App. 4th Dist. 1989), cert. denied, 498 U.S. 832 (1990).

179. CAL. WELF. & INST. CODE § 738 (West 1995).

180. *In re Manuel*, 263 Cal. Rptr. at 447.

181. See *id.*

I believe due process requires that transfer be accomplished only after informed consent to the transfer and after all rights of appeals have been exhausted. I therefore, conclude the Border Youth Project as implemented in Manuel's case violated fundamental rights of due process—rights to which he was unquestionably entitled as a juvenile and alien My discussion of the due process issues complements my earlier discussion of the *unconstitutionality of the Border Youth Project* and underscores the need for a treaty between the United States and Mexico for the transfer of juvenile offenders.¹⁸²

C. *The Need for a New Approach to the Problem*

The problem of minor undocumented offenders extends throughout all the urban areas along the U.S.-Mexican border and is indeed a binational problem. Therefore, it demands close attention and cooperation by both the U.S. and Mexican authorities. To date, no state agency on either side of the border has carried out a comprehensive overview of the problem as it affects both countries. It would be appropriate to convene a binational conference as early as possible, in 1997 or 1998, with representatives of all states on the U.S.-Mexico border to identify, describe, and evaluate the issue.¹⁸³ The information that would result from such a conference, along with any recommendations advanced to solve or ameliorate this problem, should be formally submitted to the U.S.-Mexico BNC.

This question is likely to attract the interest of at least four of the BNC's Working Groups: (i) border cooperation; (ii) migration and consular affairs; (iii) education and cultural affairs; and (iv) legal affairs. Once the BNC addresses this most sensitive and truly binational issue, it could be expected to prepare a formal bilateral agreement.

Experience has proven that ad hoc attempts to solve this problem have failed because they involved novel legal issues, were limited in scope, and lacked adequate funding. Unless the problem is faced directly by the federal government of each country, a comprehensive binational solution will continue to elude both nations.

From a practical viewpoint, local arrangements between border cities across the international boundary constitute only politically timid, inefficient, and unsystematic ways of handling a mounting problem. Since no official federal involvement is present when these

182. *Id.* at 473 (emphasis added).

183. These states include Arizona, California, New Mexico, and Texas in the U.S., with their Mexican counterparts, Baja California, Sonora, Chihuahua, Coahuila, Nuevo León, and Tamaupila.

ad hoc avenues are attempted, border cities are forced to develop innovative approaches which, unfortunately, have been chronically seeded with a number of debilitating problems. Some of these problems involve the following questions: Are these avenues legitimate? Are they constitutionally valid? Do they circumvent the foreign affairs power of each country? Are these avenues operating in a hidden manner, without the knowledge of or official backing from U.S. Department of State or Mexico's Secretariat of Foreign Affairs? These and other questions create major uncertainties that run counter to any ad hoc arrangement, thus imposing obstacles that make it inoperative.

The most intimidating burden of ad hoc or indirect arrangements is the fact that U.S. border states are forced to handle a problem, that is extranational in nature. The primary effort, on the part of the U.S., to solve it must come from the U.S. federal government, and not from the individual and uncoordinated efforts displayed by California, Arizona, New Mexico, and Texas. To leave these four states alone to handle an international problem is not only unfair but also unconstitutional.

Today, delinquent activities of undocumented Mexican minors constitute a serious and escalating problem in the U.S. Although good faith efforts have been advanced in the past to solve it at the local level, all of these efforts have proved to be mediocre, underfinanced, and uncoordinated at best.

A new approach is needed—a formal bilateral agreement between the U.S. and Mexico. Such an official agreement from a binational viewpoint must take into account the vulnerability of these minors, their undocumented status in the U.S., the needed protection of their legal rights, and, above all, their constitutional and human rights not only in the U.S. but also in Mexico, their country of origin.

Until now, the government of Mexico has been an indirect player observing the innovative but informal ad hoc attempts to deal with the issue, which have been advanced by U.S. border cities, such as San Diego. It is indisputable that a more active involvement of the government of Mexico and vigorous political commitment on its part is indispensable to finding a practical and prompt solution to the tragic and officially ignored transboundary problem created in the U.S. by Mexican minors.

V. CONCLUSION

For over a century, the bilateral relations between the U.S. and Mexico have been dictated by intense emotions and chronic distrust. However, recent developments suggest that economic considerations

are beginning to ameliorate those deeply ingrained feelings. In a sense, the bilateral relationship has already entered into a cooling-off period. Hopefully, this new approach may lead to a more rational, pragmatic, and mature dialogue between the two countries.

The U.S.-Mexico BNC offers an effective forum for enhanced communication between both nations. The proliferation of working groups serves as an indication of the growing number of interests between these countries and underscores the need to address certain questions in a specialized and technical manner.

The XIIIth Annual Meeting of the U.S.-Mexico BNC held in Mexico City on May 6-7, 1996, was an atypical reunion. It was atypical not only because of the massive participation of U.S. cabinet members but also because of the somber atmosphere caused by the tragic incidents involving undocumented Mexicans and U.S. authorities in California.

Consular relations between the U.S. and Mexico have been recognized as an area where both countries have had a long, constructive, and close cooperation. The Consular Convention of 1942 was a pioneer effort at the bilateral and regional levels to clearly recognize the importance of consular protection. This recognition was expanded and detailed in the Vienna Convention on Consular Relations, to which the U.S. and Mexico are parties. The 1996 Memorandum on Consular Protection between both countries appears to have been a direct consequence of the tragic incidents in Riverside and Temecula, California. Consular protection is likely to become a major item on the bilateral agenda between the two countries.

The transboundary problem created in the U.S. by Mexican minors is clearly becoming more serious, costly, and pervasive for the U.S. cities located along the international border with Mexico. Ad hoc arrangements to solve it have proven to be politically timid, underfinanced, and uncoordinated at best. A binational conference of border states in the U.S. with Mexico should be convened in 1997 or 1998 to address this problem. No solution is likely to be reached on this sensitive question, unless the problem is directly addressed by the federal government of each country. A bilateral agreement on this matter offers the only official and viable solution to this problem. Indeed, this is an area where international cooperation between the U.S. and Mexico is a fertile ground for finding a prompt and practical solution.

VI. APPENDIX ONE

Memorandum of Understanding on Consular Protection of Mexican and United States Nationals

The Government of the United Mexican States and the Government of the United States of America,

Considering their firm commitment to respect the human rights of all individuals within their respective territories;

Considering their firm commitment to strengthen and enhance their relationships in all areas, within the spirit of good neighbors and mutual respect;

Considering the need to continue to foster and strengthen the effective relationships and communications among consular officials and local authorities of both countries, within the spirit of the Consular Convention between the two Governments and the Vienna Convention on Consular Relations;

Considering that the Working Group on Migration and Consular Affairs of the Binational Commission has proven to be an effective forum to discuss and exchange information on the migratory phenomenon between the two countries, as well as to agree on measures that serve the interest of both nations;

Considering the will of both Governments to strengthen the Border Liaison Mechanisms and the Consultation Mechanisms on Immigration and Naturalization Service Activities and Consular Protection, which have been recently established for, among other purposes, sharing information concerning migratory practices and procedures by authorities on both sides of the border, and resolving problems at the local level, including issues related to the protection of human rights;

Considering the interest of both Governments in preventing situations that negatively affect the physical safety, dignity and human rights of their nationals within the territory of the other country, and the importance of having adequate institutional mechanisms to effectively address those situations when they might occur,

Adopt the following principles and goals:

1. To include, within the mandate of the Working Group on Migration and Consular Affairs of the Binational Commission, the discussion and evaluation of issues, problems and trends related to the consular protection and human rights of nationals of both countries and the understandings expressed in this memorandum as regular matters on its agenda, in order to make

recommendations to the respective Governments, if mutually agreed upon.

2. To provide any individual detained by migration authorities with notice of his/her legal rights and options, including the right to contact his/her consular representatives, and to facilitate communication between consular representatives and their nationals. Both Governments will endeavor, consistent with the relevant laws of each country, to ensure that specific notification to consular representatives is given in cases involving the detention of minors, pregnant women and people at risk.

3. To endeavor to provide settings conducive to full and free exchange between the consular representatives and detained individuals in order to allow, consistent with the relevant laws of each country, consular officials to interview their respective nationals when they are detained, arrested, incarcerated or held in custody in accordance with Article VI, paragraph 2, section (c) of the Consular Convention between the United Mexican States and the United States of America of August 12, 1942, and in accordance with Article 36, first paragraph, of the Vienna Convention on Consular Relations of 1963.

4. To allow and to facilitate, consistent with the relevant laws of each country, consular officials to be present at all times at the trials or judicial procedures concerning their respective nationals, including those legal procedures relating to minors.

5. To bring to the attention of the Working Group on Migration and Consular Affairs significant reports concerning consular protection and respect for human rights of nationals of both countries discussed at the Border Liaison Mechanisms and the Consultation Mechanisms on Immigration and Naturalization Service Activities and Consular Protection.

6. To promote bicultural sensitivity and understanding related to human rights protection through the Border Liaison Mechanisms and the Consultation Mechanisms on Immigration and Naturalization Service Activities and Consular Protection, and to encourage the participation of local authorities in these entities.

7. To encourage cooperation at the highest level to facilitate investigation of violent and serious incidents involving consular protection of their respective nationals.

Signed in Mexico City this 7th day of May, in the Spanish and English languages. Signed for the Government of the United Mexican States, Angel Gurría, Secretary of Foreign Relations, and for the Government of the United States of America, Warren Christopher, Secretary of State.

VII. APPENDIX TWO

*XIIIth Meeting of the U.S.-Mexico Binational Commission**List of Final Agreements:*

1. *Memorandum of Understanding on Consular Protection of Mexican and United States Nationals.* Signed by W. Christopher, U.S. Secretary of State, and J.A. Gurriá, Secretary of Foreign Relations of Mexico; done at Mexico City on May 7, 1996; entered into force on the date of signature.
2. *Agreement Between the U.S. Department of Energy and the Secretariat of Energy of Mexico for Energy Cooperation.* Signed by Charles B. Curtis, Undersecretary of the U.S. Department of Energy, and Alfredo Navarrete, Undersecretary of Policy and Development, Secretariat of Mines and Energy of Mexico; done at Mexico City on May 7, 1996; entered into force on the date of signature for a period of five years.
3. *Letter of Intent Between the Secretariat of Agriculture, Livestock, and Rural Development of Mexico and the U.S. Department of Agriculture in Relation to Rural Development.* Signed by James Schroeder, Deputy Undersecretary for Farm and Foreign Agricultural Services, U.S. Department of Agriculture, and José A. Mendoza Zazueta, Subsecretary of Rural Development, Secretariat of Agriculture, Livestock and Rural Development; done at Mexico City on May 7, 1996; entered into force on the date of signature.
4. *Memorandum of Cooperation in Epidemiology Between the U.S. Department of Health and Human Services and the Secretariat of Health of Mexico.* Signed by Donna E. Shalala, U.S. Secretary of Health and Human Services, and Juan R. De la Fuente, Secretary of Health of Mexico; done in Mexico City on May 7, 1996; entered into force on the date of signature for three years.
5. *Memorandum of Cooperation Between the U.S. Department of Health and Human Services and the Secretariat of Health of Mexico for Cooperation in the Field of Health.* Signed by Donna E. Shalala, U.S. Secretary of Health and Human Services, and Juan R. De la Fuente, Secretary of Health of Mexico; done in Mexico City on May 7, 1996; entered into force for five years.
6. *Annex IV to the Memorandum of Understanding on Education Between the Government of the United States of America and the Government of Mexico.* Signed by Richard W. Riley, U.S. Secretary of Education, Joseph Duffey, Director of the U.S. Information Agency; and Miguel Limón Rojas, Secretary of Public Education of Mexico; done at Mexico City on May 6, 1996; entered into force on the date of signature.

7. *Exchange of Notes to the Planned Replacement of the International Cordova Bridge of the Americas on the Rio Grande at El Paso, Texas-Ciudad Juárez, Chihuahua.* Signed by W. Christopher, U.S. Secretary of State, in Washington, D.C., on May 7, 1996.
8. *Exchange of Notes Regarding the Presidential Permit to the City of Eagle Pass International Bridge Board to Construct a Second Bridge Across the Rio Grande River Between the City of Eagle Pass and Piedras Negras, Coahuila.* Signed by W. Christopher, U.S. Secretary of State, in Washington, D.C., on May 7, 1996.
9. *Exchange of Notes Proposing New Appendices to Annex V to the Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement) for Air Quality Improvement in the Ciudad Juárez, Chihuahua/El Paso/Doña Ana County, New Mexico Air Basin (Note No. 0521).* Signed by James Jones, U.S. Ambassador to Mexico, in Mexico City on May 7, 1996.
10. *Memorandum of Understanding Between the U.S. Geological Survey and the National Institute for Statistics, Geography and Information of Mexico to Establish the Framework for a Bilateral Aerial Photography Initiative Along the U.S.-Mexico Border (Note No. 0522).* Signed by James Jones, U.S. Ambassador to Mexico, in Mexico City on May 7, 1996; entered into force on the date of signature.
11. *Letter of Presentation of the Border XXIst Program.* Signed by Bruce Babbitt, U.S. Secretary of the Interior; Julia Carabias, Secretary for the Environment, Natural Resources and Fisheries of Mexico; Carol Browner, Environmental Protection Agency Director; Juan R. De la Fuente, Secretary of Health of Mexico; and Donna El Shalala, U.S. Secretary of Health and Human Services; done at Mexico City on May 7, 1996.