

3. MEXICAN FOREIGN POLICY IN RELATION TO  
THE REFUGEES .....16  
The 1951 U.N. Convention and the 1967 Protocol .....16  
Comisión Mexicana de Ayuda a Refugiados (COMAR) .....17  
Mexico’s Policy within the Framework of the Contadora Group .....18  
The Declaration of Cartagena Concerning Refugees .....19

## **CHAPTER 3**

### **MEXICAN FOREIGN POLICY IN RELATION TO THE REFUGEES**

In many areas, Mexico's foreign policy has been consistently progressive. Mexico, along with other countries, has defended international principles such as non-intervention and self-determination. As described earlier, Mexico has afforded humanitarian refuge to thousands of persons who have fled their countries of origin due to political persecution or violent internal or international conflict.

The Mexican government has broken diplomatic relations with dictatorial regimes, such as Franco's in Spain and Somoza's in Nicaragua. At other times, the government has declared war, as during the Second World War against the totalitarian Axis powers. In yet other cases, Mexico has helped create and support international bodies, such as the Contadora Group in Central America, which try to formulate peaceful solutions to international conflict.

However, Mexico's progressive foreign policy exists side-by-side with the Mexican government's extremely distrustful attitude concerning supervision by international bodies over Mexico's domestic fulfillment of its commitments in the international legal system. This attitude has led to contradictory and paradoxical situations.

#### **THE 1951 U.N. CONVENTION AND THE 1967 PROTOCOL**

Mexico has not ratified the U.N. Convention of 1951 nor its Protocol of 1967. Little research has been done on the steps that would have to be taken in Mexico if Mexico were to become a party to these agreements. The Mexican government has not officially announced its reasons for not adhering to the Convention and Protocol. However, there are several likely explanations for the government's failure to sign.

First, there are incompatibilities between some standards of domestic Mexican law and some standards of the U.N. instruments. For example, Article 33 of the Mexican Constitution authorizes the immediate expulsion without prior legal process of any foreigner, and consequently of any political asylee or refugee, whose stay in the country is considered inadvisable. In contrast, Article 32 of the 1951 U.N. Convention specifies that the decision to expel a refugee must be taken in keeping with due process of law, permitting the refugee to present exculpatory evidence, to exercise the right of appeal, and to be represented before competent authority.

The foregoing difference is not an insurmountable obstacle. To resolve the incompatibility, an appropriate constitutional amendment could be under-

taken or a reservation could be expressed toward this provision of the Convention. For example, Mexico took an express reservation to Article 13 of the International Covenant on Civil and Political Rights of December 16, 1966, when it signed this pact on March 24, 1981.[1]

Second, the government could advance national security and Mexico's serious economic difficulties as solid arguments for opposing adhesion to international instruments. For example, the presence in Mexico of Guatemalan refugees along the border with Guatemala has resulted in the Guatemalan military crossing the border into Mexico. Any obligation under international law that would oblige Mexico to receive additional refugees could create an increased threat to national security. Similarly, any international obligation that would require Mexico to receive additional refugees at a time of great economic crisis could be considered too great a strain on Mexico's capacities.

However, these arguments need not prevent Mexico from becoming a party to the agreements. Article 9 of the 1951 U.N. Convention provides that no provision prevents a participating country from taking the measures it deems advisable and essential in order to deal with grave and exceptional situations. In addition, in the current state of applicable law, the final decision on the admission of refugees still depends on the sovereign and entirely discretionary decision of the asylum state.

The Mexican government's apparent suspicion of international control has emerged in other human rights issues. For example, the government refused to adhere to the enabling Protocol of the 1966 International Covenant on Civil and Political Rights[2], which grants jurisdiction to the Committee on Human Rights to receive complaints from individuals who consider themselves victims of a violation of the rights and liberties guaranteed by the Covenant. Mexico refused to make the declaration provided by Article 41 of the Covenant, which would recognize the jurisdiction of the Committee on Human Rights to receive and examine an allegation by one member country that another is not complying with the obligations imposed by the Covenant. In the same way, it refused to make the declaration provided by Article 62 of the San Jose Pact, which would recognize as obligatory the jurisdiction of the Inter-American Court of Human Rights.[3]

The government explains its refusal to submit itself to the jurisdiction of international bodies on the grounds that complaints can be resolved under Mexican law. For example, Mexico justified its refusal to accept the jurisdiction of the Inter-American Court of Human Rights by stating that adequate redress exists under Mexican law.

### **COMISIÓN MEXICANA DE AYUDA A REFUGIADOS (COMAR)**

When large and successive groups of Central Americans began fleeing repression or death in their countries and entering Mexico, the Mexican government created COMAR through a presidential decree on June 22, 1980.

Within a few months, COMAR began a policy of cooperation with the UNHCR in assisting refugees. This cooperation was first implemented through an Agreement of Assistance signed on March 2, 1981, through which Mexico was granted international aid from the U.N. for the refugees. Second, the two cooperated by signing the Accord for the Establishment of an Office of the UNHCR in the Capital of Mexico, announced on April 1, 1982.[4]

Such collaboration, however, has not been fruitful. Despite the publicly declared commitment to work with the UNHCR, COMAR's activities sometimes have been plagued by difficulties. These include differing opinions in COMAR and the Interior Ministry concerning who should be considered political asylees (and for what reasons) and, as a consequence, who should receive assistance and protection. There have been resignations and replacements of some of the authorities of COMAR, the *Dirección General de Servicios Migratorios*, and the UNHCR, as well as friction and misunderstanding between Mexican officials in the Interior Ministry and UNHCR officials.[5] Moreover, the Mexican government limited COMAR's jurisdiction only to the officially recognized camps for Guatemalans in southern Mexico.

The legal foundations of COMAR and the UNHCR in Mexico are weak. COMAR was created by executive decree rather than as a result of legal recognition of the status of refugee. The UNHCR operates in Mexico despite the government's failure to ratify both the U.N. Convention of 1951 and the Protocol of 1967, which are the international instruments that lay the foundation for and legally sustain the functions and activities of the UNHCR.

## **MEXICO'S POLICY WITHIN THE FRAMEWORK OF THE CONTADORA GROUP**

The refugee problem also has great significance in the work of the Contadora Group. This group is made up of Mexico, Venezuela, Panama, and Colombia. Since its formation in 1983, its efforts have been directed toward achieving a peaceful and stable solution to the grave conflicts, some armed and some characterized by repression and generalized violence, which plague Central America.

Because of the international repercussions caused by the flows of thousands of Central American refugees, the Contadora Group has included agreements concerning refugees in the proposed revised version of the Act of Contadora on Peace and Cooperation in Central America.[6] The member countries commit themselves to undertake the constitutional proceedings to adhere to the U.N. Convention of 1951 and the Protocol of 1967 on the Status of Refugees (No. 60); to adopt the terminology established in these instruments in order to differentiate refugees from other categories of migrants (No. 61); to establish the internal mechanisms necessary for the application of these instruments once adherence is implemented (No. 62); to support the UNHCR's work in Central America and to establish direct coordinating mechanisms to help carry out its mandate (No. 64); to solicit immediate aid for Central American refugees from the international community, both directly through bilateral and multilateral agreements as well as through the UNHCR and other agencies (No. 70); to locate, with the help of the UNHCR, other possible receptor coun-

tries for Central American refugees, without allowing the relocating of a refugee to a third country against his will (No. 71); and, finally, to work with the UNHCR in the voluntary repatriation of refugees (Nos. 65, 66, 73 and 74).[7]

Mexico has joined in these recommendations although it has not adhered to the U.N. Convention or the Protocol or recognized the status of refugee set out in them. The Mexican government has not explained this contradiction. However, it can be speculated that if the Act were signed, the responsibility for refugees would be shared among many countries, including the U.S. If this were the case, Mexico might be willing to submit to the requirements of the U.N. Convention.

The commitments under the Contadora Act contain an implicit principle of cooperation, both between governments and with international organizations whose task is focused specifically on aiding and protecting refugees. The possibility of success of the Contadora Group is purely speculative.

### **THE DECLARATION OF CARTAGENA CONCERNING REFUGEES**

Finally, Mexico has expressed its support of international obligations in the conclusions and recommendations adopted at a meeting in Cartagena, Colombia, concerning international protection of refugees in Central America, Mexico, and Panama. This meeting was organized by the United Nations and took place in November 1984. Governmental representatives from Mexico and all Central American countries, as well as Panama, Colombia, and Venezuela, attended. Mexico's governmental representatives included Oscar Gonzalez, director of COMAR, as well as other diplomatic representatives.

The Declaration of Cartagena, joined in by Mexico, contains a strong recommendation that the countries of the region ratify the 1951 U.N. Convention and the 1967 Protocol.[8] Moreover, the group urged the adoption of the broad definition of refugee set forth in Article 1, paragraph 2 of the Convention of the Organization of African Unity and in reports of the Inter-American Commission on Human Rights. As described previously, this definition includes as refugees those persons who have fled their countries because their life, safety, or liberty have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have gravely disturbed the public order. Neither recommendation has become part of Mexican domestic law.